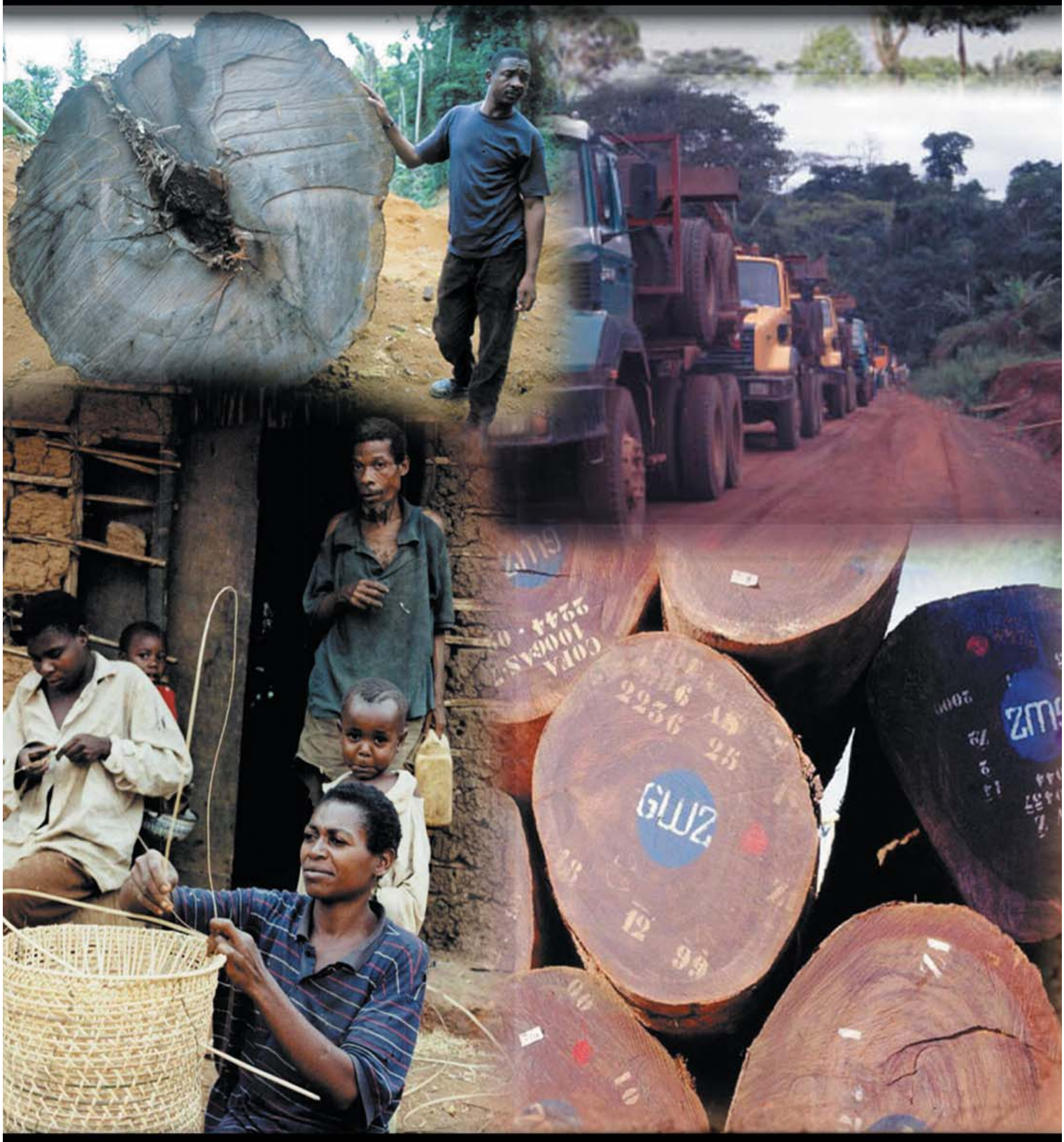
Forest Management Transparency, Governance and the Law

Case studies from the Congo Basin

Prepared for the Ministerial Conference on Africa Forest Law Enforcement and Governance (AFLEG)
YAOUNDE, OCTOBER 13-16, 2003



Edited by CED, Cameroun - Rainforest Foundation, UK & Forests Monitor, UK *October 2003*

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Note

The case studies included in this report were originally written in French. Due to limitation of time, the edited versions as they appear, in both the French and the English language versions have not been checked and approved by the authors. Where there is a difference between the French and English versions concerning the sense or possible interpretation of the text, the French version should be considered definitive.
The Center for Environment and Development, The Rainforest Foundation and Forests Monitor do not necessarily share the views expressed in the case studies.

Edited by The Center for Environment and Development
the Rainforest Foundation & Forests Monitor ***October 2003***

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Summary

This study is aimed at presenting some of the concerns of representatives of the civil society of Central Africa about the forestry law and its implementation in the region. It contains various topics ranging from land laws to governance through the production of non-timber forest products (NTFPs), violent conflicts and deforestation, with examples drawn from Cameroon, the Democratic Republic of Congo and Gabon . The main concerns outlined here include issues of transparency, governance and the respect of the rights of forest communities in Central Africa. This clarion call from the civil society of this part of Africa is complemented by recommendations aimed at improving forest management and the conditions of forest peoples.

Part one lays emphasis on problems linked to the rights of natives and the sustainable management of forest resources. **Chapter I** (CED) shows how provisions of the law aimed at ensuring the rights and interests of local communities in forest management are ineffective in the case of pygmy populations, because of the cultural peculiarities of such communities.
Chapter II (CIAD) explains how the issue of land laws is important in forestry laws and governance. **Chapter III** (RAPY) raises the problem of governance of protected areas and suggests that the exploitation of the Congo Basin should take into consideration the rights of the people living around such forests.

Part two shows how illegal activities, poor governance and violent conflicts contribute to the degradation of the environment.
Chapter IV (CLONG) focuses on agreements between logging companies and the Government of Congo and illustrates the importance of discouraging African governments from granting facilities that enable logging companies to evade taxes.
Chapter V (Heritiers de la Justice) establishes the link between violent conflicts and the degradation of the environment and suggests that stricter laws be applied in order to avoid the degradation of protected areas during violent conflicts.

Part three focuses on issues of transparency and the weaknesses of the forestry code.
Chapter VI (CCOCE) draws the attention of international organisations engaged in the AFLEG process to the risk of seeing the IMF/WB structural adjustment programmes reducing governments' means in their effort to implement forestry laws, as is the case in the Republic of Congo where such programmes have caused the reduction of workers in the forestry administration. Then, in **Chapter VII,** (OCDH) proposes that AFLEG should take into consideration the fact that forestry operations must respect the national labour code as well as forestry rules and regulations. Atrocious working conditions and poor infrastructure play a major role in corruption and poor management of forest resources. **Chapter VIII** (GTF/CRONGD) discusses the innovations and shortcomings of the new Forestry Code of the Democratic Republic of Congo, and focuses on the problem of double standards in laws.

Part four concentrates on the specific problems of local communities.
Chapter IX (CED) attempts, almost ten years after the enactment of the forestry law in 1994, a rapid assessment of its implementation building on the requirements of transparent management of forest resources**.** Lastly, **Chapter X** (EDEN) presents non-timber forest products and proposes that AFLEG should reflect on the issue of illegal exploitation of non-timber forest products in the same way as that of timber products.

Summary of Recommendations to the AFLEG Ministerial Conference

The following recommendations are based upon:
- Congo Basin NGOs' discussions and declaration at the January 2003 AFLEG preparatory meeting in Yaoundé;
- Case studies prepared by civil society groups within the context of the AFLEG process.

On transparency in forest management, NGOs recommend :
- A publicly accessible, centralised database/register system in the Congo Basin sub-region for violations of forestry laws should be set up, and should serve to monitor industrial forest companies' activities throughout the region, and to provide an overview of sanctions at the sub-regional level.
- The establishment of an independent observer for the control of forest activities in all the States of the sub-region, with a view to enhancing forest monitoring so as to prevent the relocation of the most destructive companies to countries where controls are less stringent.
- Governments of Congo Basin States should allow, upon request, free public access to all non confidential forestry sector documents, including:
    - ❍ Lists of companies involved in infractions of the forestry law, sanctions imposed, and status of sanctions
    - ❍ Details of conventions signed by the State and concessions allocated to logging companies
    - ❍ The forestry law and regulations.

On legislative reform and forest peoples' rights, NGOs recommend that the Congo Basin States :

- Ratify international legal instruments on the protection of biodiversity and the rights of indigenous peoples, including ILO convention 169.
- Recognise pygmy peoples' land rights, including in protected areas and forest concessions.
- Enact legal provisions that recognise pygmy peoples' traditional rights to exploit forest products.
- Prohibit the industrial logging of species of high cultural, therapeutic or nutritional value for forest peoples.
- Acknowledge the importance of the role of the civil society, and the creation of the conditions for its independence, in order to allow civil society groups to contribute to the reinforcement of the rule of law in the forestry sector.
- Improve the political and legal framework for the involvement of civil society organisations operating in the forestry sector, especially through systematic access to information, greater popular participation and improved conditions for accessing the courts in order to refer matters of forest management-related crimes and offences.

On good governance, NGOs recommend that:

- Sanctions against offenders of forest laws should be immediately implemented.
- The immediate withdrawal of authorisations of companies guilty of repeat offences.
- Fair compensation should be paid to "pygmies" for loss of, or expulsion from, their lands because of protected areas or logging concessions.
- Wildlife poaching control units should be established in forest concessions.
- There should be strict enforcement of the ban on all minerals and other raw material from conflict areas.
- Indigenous and other forest peoples should be involved in the process of creation and management of national parks and other natural and forest reserves.
- That there needs to be a commitment to improvement of the capacities of the administrations in charge of Forests and Wildlife, including staff, budgets and equipment.
- There should be Conclusion, between G8 and Congo Basin countries, of agreements aiming at combating illegal logging and providing time delimited obligations for producers and consumers countries to halt the trade in products from illegal forestry operations.

<u>To the G8 countries, NGOs recommend :</u>

- Prohibition of the importation of illegally sourced timber or timber from conflict areas to G8 countries
- Prohibition of access to public funds or any other public support for companies guilty of illegal logging, applicable also to parent, subsidiary and related companies.

List of Acronyms

AFLEG:	African Forests Law Enforcement and Governance
APR:	Rwandan Patriotic Army
ARB:	Timber Salvage Authorisation
CCOCE:	Consultative Committee of Conservation and Environmental NGOs
CED :	Centre for the Environment and Development
CENAREST :	National Scientific and Technical Research Centre
CFAF:	Franc of the Central African Financial Community
CIAD:	Centre International d'Appui au Développement Durable
CLONG :	Congo NGOs Liaison Committee
DRC:	Democratic Republic of Congo
EDEN :	Education for the Defence of the Environment and Nature
FAR :	Rwandan Armed Forces
FMU :	Forest Management Unit
FPR:	Rwandan Patriotic Front
GTF:	Working Group on Forests
ICCN:	Congolese Institute for Nature Conservation
ILO:	International Labour Organisation
IPHAMETRA:	Institute of Pharmacopoeia and Traditional Medicine
MINEF:	Ministry of the Environment and Forestry
NGO :	Non-Governmental Organisation
NTFP :	Non-Timber Forest Product
OCDH:	Congolese Observatory for Human Rights
OHADA:	Organisation for the Harmonisation of Business Law in Africa
PNKB:	Kahuzi-Biega National Park
PNV:	Virunga National Park
PSFE:	Forest-Environment Sector Programme
RAPY:	Network of Native Pygmy Associations
RCD or CDR :	Congo Democratic Republic
SFH:	Société Forestière Hazim
UNHCR:	United Nations High Commission for Refugees
UTA :	Union transport Africa

Chapter 1 Forestry law and the marginalisation of pygmy populations

Centre for environment and Development (CED)
Samuel Nguiffo

With a population generally estimated to number about 100,000 persons in Cameroon, pygmies constitute the best known and the most vulnerable of Africa's forest peoples. Their lifestyle is closely linked to the forest, from which they obtain their food (meat, fruits, tree bark, roots, etc.) and the traditional medicinal products for which they are known to be great experts. The forest is their natural habitat in which they continue, for the most part, to be nomadic.

Cameroon's 1993 Forestry Policy provided for greater involvement of local communities in forest management. The 1994 Forestry Law and its implementation instruments laid down the modalities for involving communities in the management of both geographical space (especially community forests and community hunting territories) and financial resources drawn from industrial timber exploitation (forest royalties).

However, a closer analysis shows that the provisions of the law aiming to mainstream the rights and interests of local communities in forest management are ineffective in the case of "pygmies", because of the cultural peculiarities of these communities.

1. Negation of the customary rights of natives

Cameroon has a system of double legal standards, with a statute law of colonial origin, presented as "modern", which coexists with a multitude of unwritten laws referred to as "customary", of a pre-colonial origin. According to modern law, the State is owner of the land and the entire forestry resource (Article 6 of the 1994 Forestry Law, Article 1 of 6, July 1974 Ordinance, concerning land rules and regulations), while the various customary laws recognise community ownership. The law and jurisprudence, both of which grant precedence of modern law over customary law, settled the coexistence of the two types of laws.

By virtue of the implementation of the notion of "no man's land", which was unknown in the customary laws of forest-dwelling people, the State claimed all the land on which individuals were incapable of showing proof of ownership in accordance with modern law (i.e. land titles).

2. Logging and pygmy rights and livelihoods

As practised today, industrial-scale forest exploitation contributes to the marginalisation of forest-dwelling people in the management of this vital resource.

Such communities are largely omitted from all stages of the process ;

- The granting of concessions is the preserve of the forestry administration, and the procedure ignores all the marginal communities. The determination of surface areas open to exploitation takes into consideration neither the hunting areas nor the migration zones of "pygmies". Only economic profitability criteria are considered when determining production forests, thus ignoring any social consideration. It can be noted, for instance, that most of the production forests in east Cameroon cover primary forests, where the Baka take refuge to flee industrial-scale forest exploitation. It is also been observed that "pygmies" have been excluded by the Bantus from dispute settlements or information meetings, as provided for by the forestry law, during which the forest exploiter takes

Many species of high commercial value (e.g. Moabi, Bubinga, etc.) also have a cultural importance to pygmy communities.

note of the grievances of people living in and around the exploitation zone.

- Laying down of exploitation modalities, such as the exploitable species, and the designation of 'buffer zones' around exploitation areas.

Industrial-scale timber exploitation has a negative effect on the "pygmy" populations, both directly through the destruction of forest resources on which they rely, and indirectly by creating access to the forest, with all the consequences that the intrusion of new actors may cause in the social and ecological systems of the forest;

1. Alteration of the foundations of pygmy life: Many species of high commercial value as timber, such as moabi and bubinga, also have an economic and cultural importance to "pygmy" communities. Felling of such species by logging companies contributes in altering the foundations of "pygmy" life, and contributes to the destruction of their culture.

2. Forest exploitation opens access to the forest: forest tracks have opened the forest to poachers who may carry out game collection on a massive scale. By so doing, they contribute to growing scarcity of wildlife resources, which directly impact on the diet and therefore quality of life of 'pygmies'.

3. Community forestry

Since the enactment of the forestry law on 20th January 1994, village communities living on or around State land have had the right to obtain community forests. As defined in the law, a community forest is a piece of State forest land, free from any forest exploitation licence, and having a surface area of at most 5,000 ha, on which the State grants a management concession to a village community. The State retains ownership of the land, but entrusts the management of the forestry resources to the village community concerned for 25 years, on a renewable basis. The community forest agreement signed between the State and the community is accompanied by a simple forest management plan that should govern all activities carried out in the designated area. The forestry administration has the power to monitor the management of the community forest and to sanction communities not working in accordance with the simple management plan. Such sanctions may include automatic execution of the work contained in the management plan at the expense of the community, or the termination of the management agreement (Art. 38(2) of the law).

Forest products of any nature resulting from the exploitation of the community forest belong entirely to the community (Art. 37(3) and 67(2) of the law). Exploitation may be left either in the hands of trustees, or sub-contracted (Art. 54 of the law).

Under the existing provisions, "pygmy" communities would find it very difficult to obtain a community forest, for the following reasons:

• One of the prerequisites for obtaining a community forest is the legalisation of an institution representing 'the community'. Generally, "pygmy" communities do not have the level of education or social organisation needed to enable them to fulfil this requirement.

• The community forest application dossier is complex and comprises many technical elements (maps and simple management plans, for instance), which no "pygmy" communities have the capacity to produce unaided.

• The community forest may be designated only in areas where the community enjoys customary land rights. Generally, "pygmies" who have been re-settled along forest roads and tracks do not enjoy any customary land rights, as such rights are reserved to the Bantus who 'host' them. The law does not provide for the designation of community forests in the 'Permanent Forest', where pygmies mostly enjoy 'customary rights'. This is therefore a de facto exclusion of pygmies from benefiting from the 1994 Law's innovation concerning community forests.

• The maximum surface area of community

forests and community hunting areas (5,000 ha) is not adapted to "pygmies", whose hunting and gathering way of life generally extends over a much greater surface areas.

4. User Rights

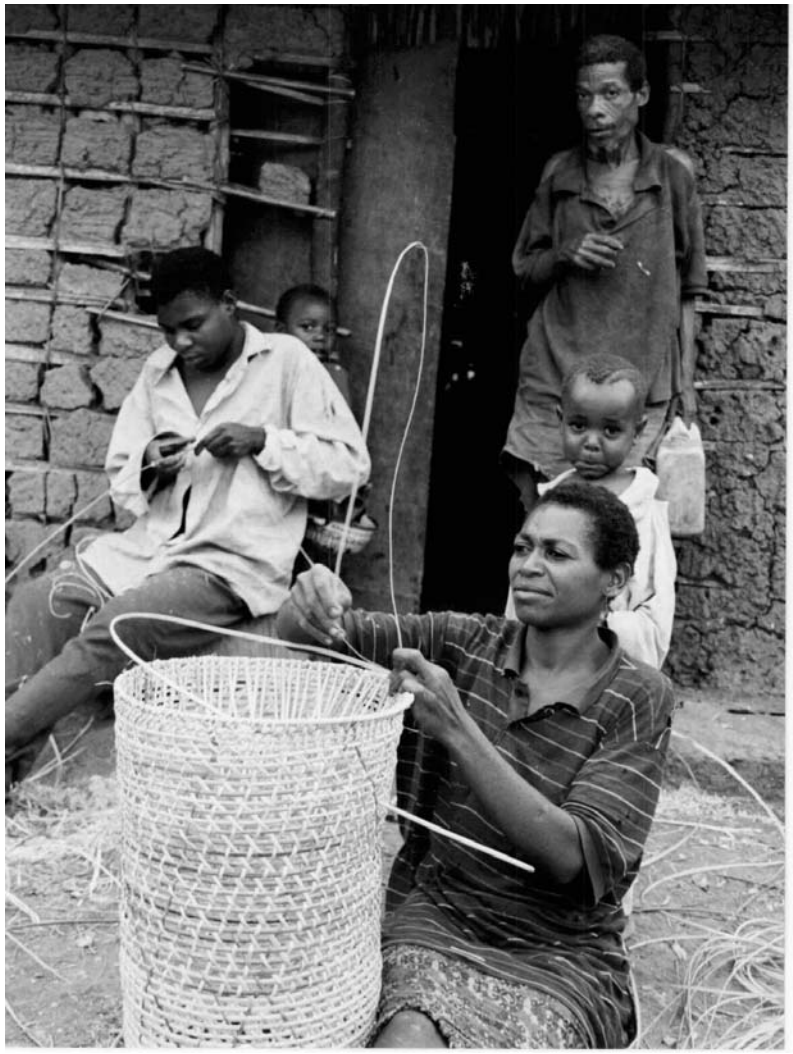
According to the 1994 law, "user or customary right […] shall be that recognised to the local people to exploit all forestry, wildlife and fisheries products with the exception of protected species, for personal use".
However, it is clear that the actual modalities for exercising user rights are detrimental to pygmy populations.

i. Rights concentrated in non-permanent national forests: Although the 1994 law guarantees the user rights of local peoples both in permanent (Art. 26(1) and Art. 30(2)) and in non-permanent forests (Art. 36 and 38(2)), no implementation instrument has yet been promulgated to establish the modalities for the exercise of such rights in permanent forests. There are however many limitations to communities' user rights in most of the permanent forests (which include protected areas and production forests). For instance, pygmy communities living in protected areas suffer from major restrictions in regard to hunting. Furthermore, they may obtain neither a community forest nor a community hunting area within the 'permanent forest estate'.

ii. Rights limited to 'personal consumption': According to the law, communities are free to collect non-protected forestry products without an authorisation. However, such products must be exclusively destined for 'non profit-making', personal, use. It is therefore forbidden to sell them. Such provisions are in stark contrast to the reality of forest community economies, where the sale of various products obtained from the forest (within the context of exercising user rights), such as firewood, game, okok (Gnetum africanus), njansang (Ricinodendron heudelotii), honey, medicinal plants, cane and bamboo, are amongst the most common forms of economic activitiy. "Pygmies" are generally hunter-gatherers, and the sale of the product obtained from their activities constitutes their main, and often only, source of income. The prohibition of sale of such products collected in the exercise of their user rights therefore deprives them of income, or forces them to operate illegally.

5. Precarious rights.

According to the Forestry Law, Ministries in charge of forestry, wildlife and fisheries, may, for reasons of public utility and after consultation with the people concerned, temporarily or definitely suspend user rights, if the need arises (Art. 8(2)). In practice, despite the consultation provided for, government



officials cited by the law are in fact the only ones to decide on the need to suspend user rights. Because they are vulnerable, "pygmy" communities are often the main victims of such measures. For example, with the establishment of the Campo National Park, a strict and sudden restriction of the user rights of "pygmy" communities was implemented in the region, which appeared to be accompanied by a significant degradation of "pygmy" living conditions.

6. Conclusions and recommendations

"Pygmy" communities are an important and integral part of the cultural and human heritage of the Congo Basin. In Cameroon, "pygmy" customary rights concerning the management of space and resources are among those that have been sacrificed in the name of modernism, through the imposition of 'modern law' over 'customary law'. The frailty of "pygmy" communities existence, compounded by their strong dependence on an intact forest ecosystem, should have justified special attention by the law in their favour.

Current forest management practices in Cameroon may, in the long run, lead to the destruction of these peoples' livelihoods. Urgent and vigorous measures need to be taken in order to ensure that forest exploitation and conservation policies are not detrimental to the pygmies of the Congo basin:

1. There is a need for recognition within Cameroon's forest zoning plan of "pygmies'" customary land rights, including in concessions and protected areas. In protected areas, "pygmy" communities should be involved in law enforcement and other monitoring operations, in collaboration with the administration;
2. The logging of species with high cultural, therapeutic or nutritional value for forest dependent peoples should be prohibited;
3. The government should increase sanctions against illegal loggers;
4. The regulations concerning community forestry should be adapted to take account of the particular context of "pygmy" communities;
5. Definitions of acceptable user rights should be adapted to to encompass pygmy modes of production, in order to enable them earn their living legally through the sale of traditionally gathered products in the forest.

Chapter 2 Land ownership in Cameroon : Legal opportunities and constraints of the Baka "pygmies"

INTERNATIONAL CENTRE FOR SUPPORT TO SUSTAINABLE DEVELOPMENT (CIAD)
ELIAS DJOH

1. Introduction

The so-called "pygmy" people are the most ancient inhabitants of the forest. They depend on the forest for their livelihood. Current forest management practices do not take their rights into account but give preference to industrial forest exploitation and conservation through the protected areas system. Such exploitation and conservation activities jeopardise the interests of "pygmy" populations and significantly limit their access to land and other resources. It appears that in the interests of transparent and sustainable management from a social point of view, the various forest administrations of the Congo Basin should pay greater attention to the rights and needs of forest dependent people. From this point of view, the problem of land security for the "pygmies" remains a major issue.

2. The Baka of Lomie, Cameroon

A long time ago, the "pygmies" of the Lomie area lived in the heart of the Equatorial Forest. History holds it that they were the first inhabitants of the forests of Central Africa. In Cameroon and in Lomie in particular, they are known as the Baka A few years after independence, the budding State of Cameroon adopted a national integration policy. One of its measures was to encourage the Baka to live along roadsides so that they could settle down and be modernised. They were therefore asked, through the national integration policy, to leave their natural habitat, the forest, most of which has today become State property.

Due to this situation, the Baka people now suffer harm in their day-to-day relations with the Bantus (in the area of Lomie, the Nzime people), who only regard them as 'refugees'. This is compounded by the fact that Baka villages are often considered by the Bantus as 'camps', i.e. a precarious and temporary settlement.

The enactment of the 1994 Forestry Law, which grants a few benefits (forest royalties, community forests) to the communities neighbouring the forest, strengthened the position of the Bantus in their refusal to recognise the rights of the Baka people on the plots of land they have been occupying for several years. It should be noted that this stems especially from the fact that the law has not clearly defined the notion of 'community': Is it a family, a village neighbourhood or the village itself? As such, the terms 'camp' and 'community' continue to deprive the Baka people from enjoying their rights to own land.

3. The legal provisions

The following section considers the main existing legal provisions as these relate to the situation of "pygmy" people.

a) The Constitution of 18 January 1996

The 1996 Constitution of Cameroon stipulates in its preamble that:
" The State shall ensure the protection of minorities and preserve the rights of natives in accordance with the law".

This is an important step in trying to uphold the main principles of human rights and freedoms. Generally, these principles favour all citizens including the Baka. Likewise,

As to the question "who may be issued a land title in Cameroon?" the law states that: a title can be obtained by a village, an individual from the village, a native of the village or any other person of Cameroonian nationality who would have 'developed' the land prior to 5th August 1974.

they establish equality of all people in rights and duties and recognise the need for their protection by the State. The text provides that the State shall henceforth ensure the protection of minorities and natives, which implies that the interests of the Baka people will be safeguarded.

The preamble also recognises the right for all to settle in any place and to move freely, provided that they do not violate the legal prescriptions relating to public order, security and tranquillity. However, whilst the Constitution of Cameroon is an example of 'pluralism', this cannot be said of other specific laws.

b) Land law in Cameroon: Ordinance No. 74-1 of 6 January 1974 to lay down land regulations

Since 1974, land ownership in Cameroon has been governed by modern law and is subject to the holding of a land title. Our focus here shall be on two aspects:

1. For which land in Cameroon can titles be obtained, and;
2. Who can obtain them?

1. According to the law, individuals and private corporate bodies can only obtain land ownership titles on some parts of State land. For lands for which a title has never been granted, title may only be issued under certain conditions, namely:
- That the land was occupied prior to 5 August 1974;
- That it is granted by the State as a concession where the land was not occupied before this date.

This law is disadvantageous to the Baka, who cannot meet the first condition because most of the land they occupied before this date happens to be State private property, thereby giving the State the right to issue land titles for it. Concerning the second condition, the procedure for the final attribution of a concession is very long and rather complex, and would be beyond the means of all Baka communities.

2. As for the question to know "who may be issued a land title in Cameroon?" the law states that a title can be obtained by a village, an individual from the village, a native of the village or any other person of Cameroonian nationality who 'developed' ('mise en valeur') the land prior to 5 August 1974.

This answer is also disadvantageous to the Baka. Firstly, as mentioned earlier, Baka villages are considered as 'camps'. Secondly, it is difficult for the Baka to prove that the land has actually been 'developed', as their principal activities (hunting, fishing, gathering, etc.) do not leave any direct trace on nature. As for the requirement of Cameroonian nationality, it is still difficult for the Baka people to prove that they are Cameroonians since most of them do not have identification documents (birth certificates, national identity cards, etc.), which also excludes them from the electoral process.

In general, then, the land tenure system as set out in the 1974 law is of no advantage to the Baka, particularly when it comes to land ownership.

c) Establishment of chiefdoms (Decree No. 77/245 of 15 July 1977)

The chiefdom is an institution recognised by law as a type of traditional authority. Directly or indirectly, it allows the inhabitants of a village to exercise certain customary rights on their land. To this effect, the law provides that the chiefdom shall be set up on a territorial basis. It may be a neighbourhood or a village in the rural area.
In the specific case of 'third class chiefdoms', that are probably most applicable to Baka settlements, we can only deplore the fact that the lands occupied by these people continue to be considered as temporary 'camps' and not villages, as the law prescribes.

d) Protection of land ownership right

Cameroon operates under a dual legal system: modern jurisdictions that apply the statute law (Law No. 99/157 of 28 July 1999) and jurisdictions that use customary law (Decree No. 69/DF/544 of 19 December 1999). Considering that statute law has priority over customary law, especially in land ownership matters, we

can conclude that the protection of the land ownership right of the Baka people remains all the more weak.

4. Problems faced by the Baka in obtaining community forests – a case study of the village of Payo

Payo is a small "pygmy" village established in 1972 by Catholic sisters. This area was given to them by the late Bantu paramount chief named Mabia around 1970. It is about ten kilometres from the town of Lomie. Because it is located along the road linking the Lomie subdivision and the district of Messok, it is increasingly visited by foreigners, as well as "pygmies". The population of about 200 people, which consist almost exclusively Baka, is growing so fast that Payo is currently one of the most populous "pygmy" villages in the East province.

The communities' decisions are almost always made after consultation and, ultimately, by women, whose opinion counts a great deal. The people are divided into four main families (clans) commonly called "yé". The traditional organisation consists of a chief who represents the whole community, who is assisted by notables who are clan heads and respectively represent their "yé" family. Daily activities are hunting, picking and lately, farming (mainly food crops). Faced with financial difficulties, they are often obliged to work for the Bantus to meet their subsistence needs. Payo has only one well, that was built by the Lomie rural council, and no primary school and no health centre.

Just as with all other "pygmy" communities, Payo inhabitants are faced with land problems. As the village is located between two neighbourhoods of a Bantu village, Doumzoh, it has been automatically annexed by the Bantu chief, who views Payo not as an autonomous village, but rather as his property. Several "pygmy" farms and even some of their houses are considered as private property by the Bantu chief. Land is distributed without any consent from the "pygmies". This situation encourages the illegal exploitation of the Payo forest by small-holders who act in connivance with the Bantu chief. In addition, this situation has hindered the Baka community's commitment to the process of setting up their own community forest. The neighbouring Bantus view the Baka as a minority group that is incapable of managing a community forest, and are opposed to their efforts towards autonomy[1].

5. Recommendations

- The notion of "community" or "village" should be clearly defined in law;
- Community forests for the Baka people should be considered as concessions requiring land titles issued on behalf of the community;
- The conditions for the creation of chiefdoms should be clearly set out



(number of inhabitants, surface area, etc.) by the administration subsequent to meaningful consultation with, among others, Baka communities;
- Special provisions should be adopted for the Baka, particularly when it comes to obtaining a land title on a portion of State land that was not 'occupied' or ''developed' prior to 5th August 1974, in accordance with the current definitions';
- The forestry law should provide for additional special measures for the Baka people, as well as forest royalties.

Chapter 3

Forest Governance and pygmy people Access of pygmy indigenes to land : the case of pygmies rejected from the Kahuzi-Biega National Park, South-Kivu, Eastern DRC

Network of Pygmy Indigenous Associations (RAPY)
Adolphine Muley, Adrien Sinafasi & Pacifique M

The laws on land tenure and forest management in DRC have some flaws and shortcomings especially with regard to the rights and interests of local and indigenous communities.

1. Foreword

The Congo basin is the world's second largest forest expanse after the Amazon. This immense forest spans several central African countries and abounds with natural resources. However, in spite of the potential of the region based on its rich and varied fauna and flora, the exploitation of mineral resources and timber exploitation, the peoples of the countries concerned, especially indigenous pygmy populations, remain very poor. The problem here lies with the management of these forests and their resources. The forestry laws in force in these countries do not encourage the participation of local communities in the management of forest resources and, as a consequence, do not allow for a fair distribution of benefits from forest exploitation. It follows that the local people, especially the pygmies, cannot engage in 'self-reliant poverty alleviation'. The situation of the pygmies of eastern Democratic Republic of Congo (DRC) is a case in point.

In the DRC, the key principle of the law concerning land tenure is that the soil and sub-soil belong to the State. Traditional authority over land is therefore not recognised by the law. Such authority exists only in principle; it is just "tolerated". According to the law, the Congolese State is not accountable to local and indigenous communities regarding the manner in which it intends to use land. However, without prior consultation or equitable compensation, it ejected entire communities from their land in order to facilitate the exploitation of timber concessions and the establishment of protected areas, pasture lands and farms by private individuals, companies or the State.

In this regard, the AFLEG process is very timely; we hope that it will offer the possibility to correct errors made in the past in forest management by furthering the enactment, in Central African countries, of forestry laws that duly incorporate the rights and interests of local and indigenous communities, so as to ensure efficient and sustainable use of the abundant forest resources of the Congo basin.

2. Introduction

It is generally agreed that pygmies were the first inhabitants of forested Central Africa, including in what is now the Democratic Republic of Congo (DRC). Ironically, these first inhabitants of the DRC are also the "landless" people of the country. Their habitat, the forest, has been invaded over the centuries by an ever-increasing number of farmers, cattle-herders and forest exploiters who violate the rights of the pygmy indigenes. Unfortunately, insufficient attention has been given to these peoples' right of access to land, and there has been a lack of consideration and protection they deserve as the 'first citizens' of the country. The accord, which they have every right to expect from the Congolese State, has not been forthcoming. On the contrary, the State has instead compounded the uncertainty and instability over pygmies' land ownership, thus exacerbating their already precarious situation.

Either the successive land laws have always been detrimental to the pygmy indigenes

who, by their culture, happen to be nomadic people, hunters and fruit collectors, or the provisions that can protect them have never been implemented. This is the case with pygmies whose property was damaged and who were expelled from their forest during the creation of the Kahuzi-Biega National Park (PNKB), in the South Kivu Province of Eastern DRC.

Not having received any compensation for their brutal expulsion, and since they no longer have access to the forest in which they lived, Batwa (or Bambuti) pygmies, uprooted as they were, now exist in squalid living conditions. They are crippled by abject poverty, which is exacerbated by discrimination, rejection and marginalisation by other groups. In the Bantu villages in which they took refuge during their forced expulsion from KBNP, they do not have access to land, which is already becoming scarce due to the population growth of host communities.

This paper raises the problem of land access for pygmies. It examines the specific case of those pygmies whose property was damaged and who were expropriated by the Congolese Institute for the Conservation of Nature (ICCN) and the Kahuzi-Biega National Park authorities, and who were victims of a poor forest management policy. We will start by dealing with the situation of pygmies before and after the creation of the PNKB, as well as the social, economic and cultural consequences of the creation and extension of the park. Then, we will look at the often-underestimated merits of the traditional pygmy methods of forest exploitation that are 'environment friendly'. After that, we will examine the legal land tenure in the DRC, particularly concerning rural lands occupied by "local communities" (among which are the pygmies), trying to highlight those provisions that may constitute legal protection of the rights of "local communities," including the pygmies. We end this paper by making a series of recommendations to the various stakeholders, in which we emphasise the deep concerns of the indigenous pygmy communities about the problem of access to the peripheral area around the PNKB.

3. Situation of pygmies after the creation of the park

Concerned with protecting large mammals, especially gorillas, in eastern DRC, the colonial authorities created the Kahuzi-Biega Integral Game and Forest Reserve over an area of around 75,000 ha in the Mounts Kahuzi and Biega region in 1937. The status of an Integral Reserve gave absolute protection to the region's wildlife, thereby prohibiting the exploitation of resources except for scientific research purposes. On 30 November 1970, the reserve was upgraded to a National Park by Ordinance No. 70/316 of the President of the Republic. At the same time, some of its boundaries were changed and this reduced the surface area of the park to 60,000 hectares. This change of boundaries led to some confusion that has continued until today, particularly in the southern part of the former area of the park.

This park is located on the east of Congo between 27°33' and 28°40' longitude east and between 1°36' and 2°37' latitude south. It harbours many animal species, notably 13 species of primates, 9 antelope species, more than 400 bird species, and thousands of plant species. The pygmies who hitherto lived in this area were living in harmony with this wildlife and, despite popular belief, cared strongly for its protection. Eloquent proof of this coexistence with wildlife was the abundance of plant and animal life in the forest at the time of the park's establishment in 1970, after centuries of occupation and exploitation of the forest by pygmies.

The setting up of the park marked the

start of the process to evacuate the people who found themselves within the boundaries defined by the Ordinance to create the park. Although the expropriation of these indigenous peoples in 1970 was done in the most brutal manner, it went on without any resistance from the pygmies because they greatly feared coercive measures. It should however be noted that they acted against their wish, even though they received no compensation or assistance whatsoever, that would have helped them settle elsewhere. Abandoned to their fate, they were forced to become vassals or slaves in other areas. Consequently, most of them settled in Bantu villages found on the fringes of the park, where they constitute a minority. Others settled along the Bunyakiri-Kalonge road in the Kalehe and Kabare area. Some of them remained in the area of the PNKB, with the hope that they would one day return to their hills.

4. The extension of the PNKB in 1975 – impacts on the pygmies

In 1950, the surface area of the reserve was reduced to 60,000 hectares. However, by Ordinance No. 75/238 of 22 July 1975, the National Park was established, covering an area of some 600,000 hectares, thus linking the gorilla population of the highlands with lowland forests.

i. Cultural impact

According to the pygmy tradition, land is not only a functional property capable of providing its owner with economic benefits. To them, land is also sacred because it provides food and shelter for the living, and shelter for the ancestors with whom it is associated. It is important to try to recognise and understand the particular and mostly spiritual relationship that the people have with the land, a fundamental element of their very existence and the basis of all their beliefs, customs and traditional values. For pygmies, the land is not simply an object of possession and production. The very essence of the relationship pygmies have with their motherland, their land, is pregnant with meaning. Moreover, land is not property that can be owned. Rather, it is a natural element that everybody should use freely. They have continued to highlight the relationship that exists between them and the land. They did this with the immediate aim of encouraging non-pygmies and leaders to understand the spiritual, social, cultural, economic and political importance they attach to their land as far as the survival and vitality of pygmy communities are concerned. They have explained that understanding such strong attachment to their land requires rethinking the conceptual framework and acknowledging the existing cultural differences.

The pygmies considered their eviction from the forest as expropriation and a deliberate attempt to estrange them from their traditional values. As a result, it was increasingly difficult to preserve their culture and perform their rites in their new environment. This sparked an identity crisis, as the pygmies could barely adapt to the culture of their host communities while preserving their own. Hence, seeds of persistent ethnic discrimination were sown by people of other ethnic groups who did not understand pygmy rituals. Consequently, the pygmy culture was gradually eroded.

ii. Socio-economic impact

a) After the expulsion: a catastrophic situation

As well as disrupting their culture, the destruction of property and expropriation (without compensation) of pygmies from their natural habitat completely changed their socio-economic situation. After the expropriation, they had to forget about their normal hunting and harvesting and their nomadic lifestyle, in order to adapt to a new way of life. It is estimated that by 1975, 980 pygmy families (that is to

say, more than 6,000 people) had been ejected in the eastern highland forested part of the park alone. Since they no longer had forests in which to hunt, harvest and collect fruits and other products, the expropriated pygmies who were ejected from the PNKB were forced to become sedentary and take up farming in order to survive. But farmers need land to cultivate crops. Yet, the pygmies who were driven from their land without compensation had no land of their own, and could not access land in their already overpopulated host communities. With no access to the forest or to farmland, it is clear that the pygmies who live on the fringes of the PNKB are bound to misery, wandering and begging.

Consequently:
- Landless pygmies feel they have lost the quality of fully-fledged "persons", as they no longer have anything to offer their neighbours in exchange and trade. Their lives now depend on their neighbours, likea parasite.
- They suffer more discrimination than ever before and they are exploited by their neighbours, who consider them as cheap labour fit only for degrading jobs.
- Their children cannot go to school like other children because of lack of means. Their youth and future are therefore compromised.
- The pygmies expropriated around the PNKB cannot access medical treatment in the event of illness (which is frequent) not only because they lack money to get basic healthcare but also because they no longer have access to most of the plants used in their traditional medicine, knowledge of which is declining . This explains why the mortality rate among pygmies is higher than that of other ethnic groups.
- They are poorly dressed and find it difficult to maintain a good degree of cleanliness and hygiene since they lack the necessary products (soap, body lotions etc)
- They have a poor diet, if ever they find anything at all to eat. Many pygmy children, and even adults, suffer from malnutrition, something that was hitherto almost unheard of among pygmies.
- They live in squalid housing conditions.

Economically, the damage was even greater as pygmies lost the land, which is viewed by Africans as the first wealth. As such, they continue to suffer the consequences of that loss because the host villages make sure those pygmies who are lucky enough to be leased land have no rights over it. With this, cases of their unconditional expulsion for no good reason abound. The pygmy population has become poorer as they were living on small resources, derived from hunting, harvesting and works of art. But, pygmies no longer have the possibility of obtaining the products from the forest that has become the Kahuzi-Biega National Park (PNKB). It follows that the pygmy population who suddenly found themselves in a very different environment where they cannot carry out their main activities (hunting and harvesting), an environment where they do not find their usual medicinal plants, are exposed to great danger, which has led to great loss of human life. There is a very real danger that, if nothing is done, the pygmy population could become extinct.

b) Expropriation of Pygmies

The expropriation that followed the creation and extension of the PNKB was carried out in flagrant violation of the relevant laws. We would like to focus particularly on the expropriation that took place following the extension of the park in 1975. The administrative phase of the procedure for expropriation requires that public authorities start by carrying out investigations and by meeting with the people concerned by the planned expropriation. In the case at hand, the pygmies who were living in the areas concerned with the extension of the park were never consulted, as the law

demands, nor were any prior investigations carried out. As a matter of fact, everything was done without their knowledge and they received no compensation, though the law is very clear on this point.

According to Article 21 of the Transition Constitution Act (ACT), compensation shall be 'just and equitable', that is to say, enough to cover all the damage suffered because of expropriation. It follows therefore that, for the indigenous pygmy people who, by nature, live nomadic lives, depend on hunting and harvesting which all necessitate large areas of forest, the just and equitable compensation should have been to allocate them another forest or an area that meets their basic needs, and, above all, that allows them to preserve their traditional and cultural values which are based on the forest. From the foregoing, it can be concluded that the non-respect of the legal instruments that uphold the rights of pygmies on the land affected by expropriation measures caused them a lot of demographic, cultural, social, economic and other harm.

It is necessary to maintain local communities on the land they occupy, given the sacred relationship existing between them and the land. Should displacement become necessary (expropriation for public interest) the international community recommends that the people concerned should be given compensation, preferably in kind. This is recognised in Articles 15 and 16 of Convention 169 of the International Labour Organisation, concerning indigenous and tribal peoples, adopted in 1989. The convention states that;

Article 15
"The rights of the people concerning the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Article 16
Subject to the following paragraphs of this article, the peoples concerned shall not be removed from the lands that they occupy.

1. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

2. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

3. Where such a return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantee.

4. Persons thus relocated shall be fully compensated for any resulting loss or injury".

5. Conclusions and Recommendations

The law on land tenure and the forest management in the DRC has flaws and shortcomings with regard to the rights and interests of local and indigenous communities. Pygmies have the right to preserve and strengthen the special, spiritual and material relationship linking

It is necessary to maintain local communities on the land they occupy, given the sacred relationship existing between them and the land.

them to their land, their territory and other resources that they own, occupy or exploit traditionally, and to make sure such resources and land are preserved for future generations. To achieve sound management of the environment and forests, it is necessary to involve indigenous peoples for whom forests constitute a natural habitat.

The authors believe that:

• Given that the pygmies are generally recognised as first occupants of the DRC; Considering that damage of pygmy property and their expulsion from the PNKB were inequitable (not to mention being in contravention of the laws in force, as the ICCN / PNKB officials themselves admit)

• Noting that the legal provisions that protect pygmy victims were not implemented, as the legal expropriation procedure was not followed;

• Considering that the case of PNKB is not the only case of illegal expropriation of pygmy lands in Central Africa;

• Desirous to ensure the moral, material and psychological rehabilitation of these expropriated pygmies;

On behalf of the pygmies of Central Africa we recommend:

i For Congo and the other Central African States

- That the Congolese State compensate the pygmies ejected from the PNKB in a just and equitable manner by allocating them other land;
- That the Government of Congo grants damages to all pygmies for the wrong done to them following their expropriation and uprooting, with a view to ensuring their proper development;
- That the Democratic Republic of Congo and the other Central African States involve and integrate pygmy peoples' in the process of establishing and managing national parks and natural or forest reserves;
- That Congo and the other Central African States take into account the aspirations and interests of pygmy indigenous populations when reviewing and/or drawing up national laws (forestry and land) and guarantee the strict application of the laws that protect pygmy populations;
- That Congo and the other Central African States ratify international legal instruments relating to the rights of indigenous peoples., who are always victims of the vagueness and ambiguity of our laws, suggest that In the case of expropriation of land for public use, the State should, when arranging just and equitable compensation, consider not only the economic benefits that pygmy communities derive from their land, but also, and especially the relationship that exists between them and that land as well as the need to preserve their culture.

ii. For NGOs and International Institutions

- That they support the action of indigenous pygmy associations of Central Africa concerned with the protection of the rights of pygmies with a view to rehabilitating them, and ensuring their self-reliance and harmonious integration;
- That they encourage the Central African States concerned to ratify the international legal instruments which protect the rights of indigenous pygmies, while respecting those already contained in national laws of the different States and implementing their provisions.

iii. For indigenous organisations

- That they carry out more sensitisation and education campaigns for indigenous pygmies on the land and Forestry Laws in force in their respective countries.
- That they work in synergy at the level of the Central African sub-region to increase their strength and be more efficient.

iv. Recommendations for AFLEG

- Given that most of the forests of the Congo basin are inhabited, and that many communities depend on forest resources for their subsistence, exploitation of these forests must take the rights and interests of these inhabitants into account. AFLEG must therefore ensure that the "legality" of forestry regulations is coherent with international and national standards of human and peoples' rights. AFLEG should especially require all African Governments to ratify international legal instruments on the rights of indigenous peoples, including ILO 169.

Chapter 4

Partnership and Governance : the government, logging companies, and road building in the Republic of Congo

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1. Introduction

Within the context of the development of road infrastructure in the northern areas of the country, the Government of the Republic of Congo signed a partnership agreement with a group of forest exploiters working in this zone. If partnership means coming together to carry out a common interest endeavour, the specific case of the partnership agreement between the Government of Congo and signatory logging companies raises a few questions. As (good) governance presupposes "rigorous State management", the deliberate circumvention of national instruments by the very people responsible for enforcing them is a case of bad governance.

The partnership agreement was signed on 8 September 2001 by five ministers and nine logging companies including:

For government (2001 term of office):
- the Minister for the Economy, Finance and Budget
- the Minister for Territorial Administration and Regional Development
- the Minister for Equipment, Public Works, Building, Town planning and Housing in charge of Land Reform
- the Minister for Internal Affairs, Security and Territorial Administration
- the Minister for Forestry Economy in charge of Fishing and Fishery resources.

For logging companies:
- Congolaise industrielle des bois (CIB)
- Industrie forestière de Ouesso (IFO)
- Société arabe libyenne (Socalib)
- Industrielle de transformation des bois de la Likouala (ITBL)
- Mokabi SA
- Thanry - Congo
- Cristal
- Likouala timber
- Bois et placages de Lopola (BPL)



This case study focuses particularly on the partnership agreement and its lack of coherence with the national instruments in force, as well as the impacts of its implementation.

2. Analysis of legal instruments

i. Provisions of the partnership agreement

a) The original spirit of the agreement

The partnership agreement signed between the Government of Congo and forest exploiters operating in the northern area of the country was originally an initiative of the President of the Republic of Congo, and was aimed at ensuring greater involvement of businessmen whose activities would also

contribute to the development of this part of the country. To achieve this ambition, the partnership agreement was perceived as a legal framework that would determine the role each stakeholder would play in carrying out earmarked projects.

b) The terms of the agreement

The terms of the partnership agreement show several discrepancies both in the agreement itself and between the agreement and the forestry regulations in force in Congo (see Table 1):

- The agreement provides that the government may take any legal action in compliance with the laws and regulations in force, but in its chapter on applicable taxes, the agreement disregards the law and provides for tax exemption.
- In the preamble, the group of logging companies agrees to take an active part in the partnership. Yet, further on, it shifts the responsibility for funding to the Government.
- The road projects were to be carried out according to forest roads' standards, whereas on the list of road infrastructure in the Ministry in charge of Public Works, this type of roads is not classified under any recognised category.
- In the event of dispute, the document provides that only the Act of the Organisation for the Harmonisation of Business Law in Africa (OHADA) shall be applicable, whereas the logging companies were established under national laws.

ii. Provisions of the Law on the Forestry Code

The Law on the Forestry Code is the main legal framework for the management of forest resources in the Republic of Congo. Adopted by the National Transition Council, which was the legislative body before the setting-up of the current governing bodies, and after endorsement by the Supreme Court, it was promulgated by the President of the Republic on 20 November 2000, number 16-2000. The law provides, among other things, for the level of income that the Government of Congo should expect from the forest resources exploited throughout its territory. Since privatisation in the forestry sector had been achieved (Article 80 of the Forestry Code), the law in question defines the legal framework for forest exploitation activity and sets the limits beyond which the activity becomes illegal.

iii. Provisions of related instruments

At the time of signing the agreement, the Law on the Forestry Code that was promulgated in November 2000 had rendered all previous instruments on forest resource management null and void. Specific aspects of the day-to-day management of forests were governed by Ministerial circulars. The main implementation instruments of this new law (16 Decrees and Orders) were only published on 31 December 2002.

4- Provisions of company management agreements

In all management agreements signed between the government and logging companies, the latter undertake to finance specific projects for the forestry administration, the people and regional or local governments of areas in which they operate.

Most management and processing agreements have been, or are being updated, especially since the publication on 31 December 2002 of new implementation instruments of the Law on the Forestry Code that includes new fiscal provisions. The company Congolaise Industrielle des Bois (CIB), for instance, updated its management agreement in late November 2001.

As such, the companies resolve to contribute, especially financially, to all development works initiated by the government through their supervisory ministry. The management and processing agreement therefore predisposes companies to a well-understood partnership, provided it is well negotiated by government authorities.

A reading of the contradictions between the Law on the Forestry Code and the agreement under review (as summarised in Table 1) shows many discrepancies, which allow subtle understandings to 'slip

TABLE 1
DISCREPANCIES BETWEEN THE FORESTRY CODE AND THE PARTNERSHIP AGREEMENT

Provisions of the law and its implementation instruments		Provisions of the agreement and its implementation protocols		Comments
Article	**Terms**	**Article**	**Terms**	
65	**[Law]** : Exploitation permits (…) Such permits shall be granted only to corporate bodies under Congoleseunder Congolese law or individuals of Congolese nationality.	**13**	In the absence of amicable agreement between the parties, any dispute resulting from thefrom the present contract concerning its interpretation or implementationor implementation shall be definitely settled following the rules of the OHADA Act governing arbitration (…)	Logging companies are established under Congolese law, they yet demand that the Congolese government should apply instruments other than national laws in their case.
85	**[Law]** :Except in the event of user rights (…) the exploitation of forest products and deforestation are subject to the payment of forest taxes. *(…)* There shall be no exemption for any of the taxes provided for by the present law »	**1 (4th paragraphpara.)**	Adopt the necessary regulatory instruments and obtain any decision that guarantees that the partnership, be it in its implementation or in pursuance of its goal, is in conformity with the laws and regulations in force in Congo	Here, the companies acknowledge and request the implementation of instruments in force in Congo. However, further ahead (Art. 7 of the agreement), they demand exemptions that are forbidden by the law (Art. 85 of the Forestry Code, paragraph 3)
		7	The projects undertaken within this specific context shall benefit from an exemption on all taxes and duties directly related to the project, including but not limited to the following: exemption from custom duties and VAT for equipment supplies, spare parts, fuel and lubricants as well as all services provided; tax exemption on laterite quarries and corresponding land duties; exemption from taxes on the environment; exemption from registration duties; exemption from business licence; exemption from registration duties on the setting-up and dissolution of the association of foresters, whatever be its legal structure.	For rather unclear reasons, the government adopted the approach of companies' eligibility requesting for "unlimited" exemptions.
Chapter on the commitment of companies	**[Management agreement]** : The company hereby undertakes to carry out specific activities in favour of the forestry administration, the people and regional or local governments of the area.	**9**	The activities shall be entirely funded on by the State budget (…) The association of forest exploiters may shall provide no advance funding	Despite all the exemptions it provides to forest exploiters, the government accepts to single-handedly fund the forest roads' project on forest roads.

through the net' of the Law and its implementation instruments. Since the aim of forestry companies is to make profit, the agreement, which was amended by the forestry companies, but accepted and signed by the authorities, serves the companies' interests more than those of the government. Judging from the way it was negotiated and signed, the partnership agreement is a cause for concern to the wider Congolese government, considering especially Article 7, which leaves room for much abuse.

To justify the initiation and signing of the agreement, the government states that its objective was to open up the northern regions of the country through the construction of road infrastructures. Because the "meagre" resources of the State were not enough to translate this ambition into reality, the support of logging companies operating in the region was solicited within the framework of a so-called "State-private sector" partnership (see paragraph 1.a of the study).

Such argument is however difficult to sustain, as it is the prime duty of the State to construct roads. It is worth noting here that the roads constructed by the ministry for public works and those by forest exploitation companies do not have the same characteristics. The agreement clearly provides that such roads are "forest standard roads", yet in the nomenclature of roads, the highways department cannot recognise this type of road. This abnormality, presents another technical problem to implementation.

Logging companies are not established in order to construct roads. For the purpose of carrying out their activities, they open temporary roads for transportation of their products. (Though it is true that such roads can afterwards serve other purposes, their goal is to ensure transportation of forest products, and only that.) It is clear that within the context of a well-understood partnership and through well-negotiated instruments, agreements and protocols, such companies can support government action, as provided for in the contract specifications included in the management and processing agreements. However, logging companies should not take the place of the government.

Lastly, concerning the financial aspects, nothing can make one expect a real balance between the potential cost of a quality road and the volume of taxes the government would collect from a dozen logging companies during the two years of implementation of the agreement.

5. Losses or gains

Taxes are the mainstay of the Congolese economy and the forestry sector is the second source of revenue for the country, after oil. It is therefore crucial that the government's efforts focus on the effective collection of all taxes provided for by the instruments in force. For example, the fees collected by the government over the past three years stand as shown below in Table 2:

Table 2:Net annual average of fiscal resources collected by Congo during the last three years (FCFA)

1999	2000	2001	Annual average	Projection 2002 (*)
783.463.310	1.164.741.531	1.001.526.972	983.243.934	+983.243.934

*(*At the time of the study, the 2002 report of the Ministry in charge of forests was not yet available.)*

Yet, this does not tie in with the terms of the partnership agreement. In article 7 of the partnership agreement for instance, logging companies are exempted from paying more than seven taxes to the services in charge of forestry, and this represents only part of an open list.

6. Conclusion

The government of the Republic of Congo has deliberately signed a partnership agreement and protocols from which it does not benefit. Not only do these documents compromise the national forestry regulation in force and create a

dangerous precedent, but they also cost the Congolese Public Treasury a great deal in lost revenue. Similarly, due to specific technical requirements in road construction standards, the Congolese government loses in that it is applying weakly defined 'forestry standards' on one of the sections of the Trans-African highway that was agreed upon by all the countries of the Central African sub-region. In due course, it will be necessary to carry out further studies and expensive additional works in order to bring this road up to national and/or international standards. Forced to respect the commitment it undertook, the Congolese government cannot rescind the signatures of the five ministers who endorsed the partnership agreement. Consequently, the Congolese forestry sector and economy as a whole will be penalised for the two years of works on the planned road projects.



7. Recommendations for AFLEG

One of the objectives of the AFLEG process is to ensure that African countries draw maximum revenues from the exploitation of their forests. But, of what use is it if governments grant facilities to forest companies, exempting them from contributing to State revenues? AFLEG should strongly encourage African governments to stop singing such agreements with logging companies.

Though governments are turning a blind eye, it is all the more necessary to continue to hammer out this notion, through mechanisms such as the AFLEG process or other institutions. In the specific case considered here, in the event that the partnership agreement is renewed for reasons of non-completion of the specified road projects, it would be advisable to renegotiate the terms of the agreement in order to respect the forestry instruments in force.

A review of the legality of this agreement should be undertaken and, regarding future agreements, in order to draw maximum benefit from its resources and a partnership with logging companies or any other economic operator, and to avoid any discrepancy between legislative and regulatory texts in force and future agreements with a third party, the government of Congo should resolutely board the train of good governance.

Chapter 5

War-related forest destruction and rehabilitation : the case of the South-Kivu Province in the Democratic Republic of Congo

Heritiers de la Justice
Fatuma Ngongo Kilongo & Roger Muchuba Buhereko

1. Introduction

The wars and armed conflicts which have been raging in the Great Lakes region for the past decade have not only impacted on the life and physical integrity of human beings, but also on their environment. The consequence for the Democratic Republic of Congo (DRC) has been the destruction of its wildlife and flora to the extent that today we talk of an 'ecocide', meaning the extermination of the ecosystem. The East of the DRC has been worst hit, especially the provinces of North- and South-Kivu, considered to be the gateway of all the wars that have damaged the country. This case study bears on the background of wars, the impact of the wars on nature conservation, the areas affected and the consequences, as well as the responsibilities of the various actors. Lastly, it presents proposals for rehabilitating this rich biodiversity that has been destroyed and the possibility to repair all the injustices caused.

2. Background

On 6 April 1994, the day Juvenal Habyarimana, former President of Rwanda, was killed and the Rwandan Patriotic Front (FPR) took power, 4 million Rwandans pourred into the Congolese territory, especially the two provinces of North- and South-Kivu. Following the intervention of the international community, numerous refugee camps were established under the auspices of the UN High Commission for Refugees (UN-HCR). Unfortunately, some of the camps were built on the fringes of protected areas. To crown it all, in 1996, Rwanda invaded the DRC, starting with South-Kivu. A rebel movement, the Alliance of Democratic Forces for Liberation (AFDL) was set up, with the support of the same aggressors. Among other targets of the aggressors were the refugee camps. The conflict that started in the East progressed to the West, crossing almost all the natural reserves of the DRC. It is worth noting that some refugees remained in these natural reserves up to 1998. In the meantime, Rwandan refugees, the Interahamwe militias and former RAF (Rwandan Armed Forces) soldiers are still camped in the forests. According to UN-HCR sources, they are estimated to number around 48 000 people.

3. Impact of the wars on the forests

This section presents sites that were seriously affected by the above-mentioned wars.

The Kahuzi-Biega National Park (PKNB)

ThePKNB was established by law No. 70-316 of 30 November 1970. As early as1934, the area had been recognised by the Belgian colonial masters as an integral and zoological forest reserve. Because of its rich and rare biodiversity, it was classified as a World Heritage Site in 1980, managed by the Congolese Institute for the Conservation of Nature (ICCN). Before being extended, its original surface area was 75,000 hectares .

In 1996, the Park was invaded by Rwandan fighters and refugees, to the extend that the ICCN has declared that it currently controls less than 10% of the forest, which has been classified as an 'endangered' World Heritage site.

More than 90% of the Park is occupied by armed gangs including the Maï-Maï, former Rwandan fighters as well as rebel forces (RCD) and their allies of the Rwandan Patriotic Army (APR).

The whole PNKB area, which had been extended to 600,000 hectares in 1975 by the regime of President Mobutu, was totally reoccupied by the population which built 64 villages in the Park in flagrant violation of the law. However, it is important to note that , during the process of extension of PNKB, the population did not receive any compensation With the wars, they took advantage of the lack of any government authority to recover the land that had been taken away from them.

The Kahuzi-Biega National Park covers the territories of Shabunga, Mwenga and Walikale in North-Kivu. It was around Walikale that the Ugandans extensively exploited timber. Between the high altitude and the low altitude areas, there was a corridor that enabled animals to move into the dense forest. This strategic area was also occupied by armed gangs.

In May 2000[2] , the former governor of the South-Kivu province, Norbert Bashengezi Kantintima, cancelled some of the contracts for temporary occupation of the Park. However, this cancellation did not take effect, as the occupants considered that the governor was not qualified to pass such an order, Today, the case is still pending at the Bukavu High Court .

The Virunga National Park (PNV)
The Virunga National Park suffered a similar fate to the PNKB, especially with the presence of refugee camps near the protected areas, including Rumango (880,000 refugees), Sake (210,000), Kikumba (250,000), Kahindo (100,000) and Katale (220,000). Humanitarian bodies distributed food to the refugees but no firewood. The refugees claimed that the United Nations High Commission for Refugees (UN-HCR) had purchased land in the Park for them; within a few weeks, the refugees had already wiped out more than 7 square kilometres of forest inside the Park.

Most of the refugees went back to Rwanda during the 1996 war, while the rest went further inside the Park. Armed gangs also settled there, especially the Maï-Maï, former Rwandan fighters, the Interahamwe, DRC soldiers and Ugandan forces.

Individual concessions

In South-Kivu, individual concessions often include many hectares of wooded areas, as trees epitomise wealth; hence the numerous long-term contracts. With the above mentioned wars, many concessions belonging to individuals were seriously affected, including:

- the concession of the Maristes brothers in Nyangezi in the Walungu territory
- the concession of Mushera in Ngweshe, about 22 kilometres from Bukavu in the same territory
- the concessions of various traditional rulers, etc.

Forest reserves

South-Kivu is home to numerous forest

reserves including the reserves of Ulindi (Walungu), Lolemba, Ngoma and Kifumbwe (Fizi), Mokanga, Kasombe, Mikelo and Itula (Shabunda), Mushwere (Kabare), Kawiwira (Uvira), Nyamusisi (Idjwi), Numbi and Mulagiza, Kasirusiru and Ikonzi (Kalehe), as well as Chumes island found in Lake Kivu.

These reserves were not spared by the throes of war. Some of them were 'de-classified' by political and traditional leaders, who handed them over to their friends and relatives. The most endangered ones include the Nyamusi reserves of Idjwi, which are currently illegally occupied by the population.

4.Consequences

The greatest victim of this destruction is the State of Congo and especially the people of South-Kivu who live on the riches of these areas but who now pay the price of the wars and attendant destruction of their rich biodiversity.

Impoverishment of the people

The development programme launched by the Congolese Institute for the Conservation of Nature (ICCN) in favour of the local people of the protected areas has declined, plunging thousands of people who benefited from the programme into abject poverty. Forest exploitation companies that employed the local people have wound up or were completely looted by armed gangs, thereby causing their former employees to be laid-off. The loss for the tourism industry, evaluated at thousands of dollars, affected the local populations who derived much benefit from this activity.

Displacement of the Pygmies

The pygmy population, whose life is closely linked to the forest, was obliged to leave the areas surrounding the park and the forest because of fighting between armed gangs (see also Chapter 3).

Slaughter of protected species

The destruction of wildlife and flora is staggering. In 2003, it is estimated that there are 130 gorillas, including 86 that are observable and monitored daily by the ICCN, whereas there are only 3 traces of elephants observed The ICCN gathered elephant and gorilla skulls found in the park in an 'ecocide museum'. This slaughter was extended to other animal species. Many other animals are no longer visible, and it is feared that they have been exterminated, or they have fled to more welcoming forests. Many of the animals were exported illegally to Rwanda, Burundi and Uganda, and others were held captive in private holdings in Bukavu and its environs.

Flora species

The most affected species include the bamboo, the PNKB variety of which is the Arundinaria alpina. It occupies 37% of the high altitude areas of the PNKB.. Bamboo is the most important food item of gorillas. Before 1996, it was estimated that 6% of the bamboo surface area was destroyed annually by local populations, but this situation has been seriously compounded by repeated wars.

5. Responsibilities / Conclusions

The responsibility for forest destruction is shared at both the national and international levels. Since the injustice suffered is real and the responsibilities clearly identified, fair and equitable reparations should be paid; given that the injustice is material and moral in nature, all those responsible should bear their share of the responsibility.

At the national level

The province of South-Kivu is administered by a rebel movement called the Congolese

The greatest victim of this destruction is the State of Congo and especially the people of South-Kivu who live on the riches of these areas but who now pay the price of the wars and attendanted destruction of their rich biodiversity.

Movement for Democracy (RCD) that is backed by Rwanda both at the military and decision-making level. In return, the Movement allows its sponsors to illegally exploit the wealth of the Democratic Republic of Congo. The armed gangs that chose to operate in parks and forests also resort to illegal exploitation and unrestrained consumption of wildlife and flora species.

Miners and poachers have opened quarries in the park and other forest reserves and do not hesitate to fell trees for mining purposes. They are accomplice to armed gangs, farmers, traders and other itinerant people. Measures should be taken to severely sanction all miners and poachers. They should be disarmed and all markets and sales' points for ivory and smoked meat closed.

At the international level

Because of their presence and military support to the rebels, the aggressors of the DRC, i.e. Rwanda, Uganda and Burundi, are responsible for the destruction of the forests. A great part of the timber illegally exploited by the Ugandan-Thai company called Dara-Forest in Walikale was destined for Uganda. The above-mentioned countries should commit themselves to compensate the injustice caused to the Congolese people.

6. Recommendations for AFLEG

- Local people should be involved in rehabilitation activities, both at the design and execution phases.
- The government resulting from the national reconciliation dialogue should urgently make an assessment of the situation of forests in South-Kivu and adopt legal reforms in order to strengthen available institutional mechanisms, taking into account the need for rehabilitation
- More emphasis should be laid on the interrelation between refugee camps and the destruction of protected areas.
- Stringent laws on the exportation of minerals from conflict areas should be enforced
- Western countries should be held accountable for the importation of minerals and other raw materials from conflict areas.

Chapter 6 Recovery of penalties in the Congolese forest sector

Advisory Committee of Conservation and Environmental NGOs (CCOCE)
Dominique Nsosso

1. Introduction: The problem

The bad governance observed in the forestry sector is characterized by:
- illegal activities, especially non-respect of contract provisions contained in special specifications concerning the rights of local people;
- lax and even confused application of forestry regulations with regards to the determination of offences and recovery of penalties by civil servants.

In addition, corruption and impunity leads to the wastage of forest resources, loss of State revenue, and an aggravation of poverty and the precarious living conditions of local and indigenous peoples.

To ensure the sustainability of forests, the Forestry Code of Congo-Brazzaville (Law No. 16-2000 of 20 November 2000), stipulates in one of its provisions that the government's Forestry services shall draw up and implement national, regional, and local development plans so that activities authorized in national forests are carried out in such a manner as to avoid forest destruction and ensure long lasting and sustainable use of the resource (Art. 45).

The Forestry Code institutes a body of forestry workers whose duty is to identify violations of the law and of its implementing instruments within their jurisdiction (Art. 111). Staff of this and other services, especially judicial police officers, determine violations of the law in State forests and are supposed to prepare reports about them.

Staff of the service are supposed to take an oath and have the right to request the assistance of the forces of law and order. They may access any home before 5 a.m. and after 7 p.m. (Arts. 114 and 113), and seize forest products held or being sold illegally (Art. 122). Some of the sworn officials of the service having the rank of Regional Director have the authority to decide and to impose a penalty on the authors of violations of the law (Arts. 134 and135). The law also authorizes members of the service to bring before a public prosecutor any suspect whose offence they cannot handle because of its gravity or when a culprit does not pay an agreed penalty within the prescribed deadline.

The aim of this study is to identify the strengths and weaknesses, and assess the objectivity and transparency, of the recovery operations of the Forestry Department, and to indicate the needs for strengthening of the operational capacities of prosecution and collection services and of judicial authorities.

2-Penalties

i) General penalties:
The law on wildlife provides for two categories of offences: contraventions and crimes. Under this law, contraventions are violations that, according to the penal code, are punished with small fines or with a short imprisonment term (2 months at most). According to the same law, crimes are offences liable to more substantial penalty, that is,

a fine and/or an imprisonment term with the fine varying from CFA F 10,000 to CFA F 5,000,000.

By contrast, the Forestry Code does not make this distinction and considers that all offences are punishable with the fines and imprisonment terms stated below.

ii). Penalties for a range of offences
Law No. 16-2000 establishes a range of activities that are likely to have a negative impact on the forest and its resources. Such activities and the fine for each of them are listed in the chapter on offences and penalties, and they range from grazing of cattle (fine of CFA F 3000-5000 per cattle head) to the non-respect of the forest development plan (fine of CFA F 5 million-20 million) and from CFA F 20 million - 50 million for non-execution of the investment programme for one year. To ensure proper implementation, a prescription deadline of five years is set for civil actions (Art. 132).

iii) Execution of sentences:

- Measures to ensure the execution of sentences:

The following provisions of the Congolese forestry code can facilitate the execution of sentences. These include:

- Imprisonment for debt (Art. 171);
- Sentencing of fathers, mothers, and guardians for offences committed by minors or wards living with them and not married. Masters and principals are also held responsible for violations committed by their agents (Art. 168);
- Awarding 30% of the fines, transactions, restitutions, damages, proceeds of public auction sale or sale by mutual agreement of various products or objects seized on behalf of the forestry service and proceeds deriving from lawsuits won, to staff of the forestry service and all those who have taken part in prosecution.

- Monitoring, follow-up and evaluation mechanisms:

To carry out monitoring and/or self-monitoring, follow-up and evaluation, the Forestry Department has set up a General Inspectorate of Forestry. This institution is subdivided into 3 sub-inspectorates, namely, the Inspectorate of Forests, the Inspectorate of Wildlife and Protected areas, and the Legal Inspectorate for financial control and auditing. As will be illustrated below when considering the data collected from penalties, this institution has played a decisive and key role in fighting forest offences.

3. Efficiency of the penalty collection mechanisms

Information gathered for the purposes of this study in the Brazzaville Forestry service and the Kouilou Regional Forestry service in Pointe-Noire shows that the application of the former prosecution mechanism (former law No. 32/82 of 7/7/82 instituting the Forestry Code) still in force (law No. 20/11/2000) has been only moderately efficient.

i) The data collected
Data was collected through interviews and a study of:

- The dispute registers of the Brazzaville Forestry service and the Kouilou Regional Forestry service;
- The annual progress reports of the various institutions of the General Department of Forestry (the Brazzaville Forestry service and the Kouilou Regional service);
- The records of the General Inspectorate of Forestry;
- The records of the Ministry in charge of forestry.

According to the data gathered, 22 categories of forest offences were established in 2002 (see Table 1) and give the possibility for 69 types of fines. These offences include illegal felling in State forests (2 penalties), lateness in executing

contract clauses (6), failing to forward the balance sheet of the 2001 financial year (24), felling of timber above the authorized quota (3), non-maintenance of the forest tracks bordering Forest Management Units (1), felling of timber within a protected area (1), trafficking of marks and numbers (1), failing to forward road and site maps to the regional office (6), poorly kept site documents (2), obstruction of control by forestry staff (2), and subcontracting of licence to third parties (1).

The fines imposed by the Forestry Department amounted to CFA F 317,300,000, whereas fines collected amounted to only CFA F 99,350,000, representing 31.31% of the fines imposed. At the level of the Kouilou Regional Forestry service in Pointe-Noire, fines amounted to CFA F 203,596,738 with effective recovery of CFA F 162,000,005 representing a recovery rate of about 80%. The penalties presented here are those for 2002. There is little data available for the

Table 1: Forestry law violations, Congo-Brazzaville, 2002

Order N°	Category of violation	Frequency	Defaulting forestry companies	Location of the violation zone
1	Logging in the Sate forest	2	EFGC, STCPA, Bois	FEU Doumanga
2	Felling beyond outside the authorized limitscoupe	1	STPCPA, BOIS,IFO	FEU Igoumina (FMU south II
3	Felling below minimumbelow minimum exploitation diameter	1	IFO	FEU Igoumina
4	Lateness in executing contract clauses	6	IFO, LT, SOCALIB, THANRY CONGO, SOBDI, COFOBOIS	
5	False declaration about size of headquarters	1	SOCALIB	FMU West
6	No transit checkpoint	2	MOKABI, BPL	FMU Mokabi and FMU Lopola
7	Insulting Affronting forestry agentsofficials	1	LT, ITBL, CRISTAL, COFIBOIS	FMU South, FMU
8	Non transmission of 2001 balance sheet	24	MUKABI, BPL, THANRY ? QUATOR Congo STCPA BOIS TRABEC MOUNGONDO, BISSON et Cie, FORALAC, MAN	UF, Sud UFA UFA Enyellé, UFA
9	No development plan	1	CRISTAL	FMU West, FMU south, FMU South 1, FMU South 1
10	No industrial processing factory	1	CRISTAL	FMU Centre, FMU
11	Felling above quota	3	CIB	FMU Pokola
12	Unauthorized felling in VMA	1	CIB	FMU KabpKabo
13	Un-maintained forest track	1	CIB	FMU Kabo-Pokola
14	Ffelling within a protected area (464 feetstumps)	1	MANFATAI	FMU
15	Felling above quota authorized in VMA	2	FORALAC	FMU
16	Non execution of contract clauses	7	MOKABI, CIBN, BPL, CIB, TMAN INDUSTRIE, ESBO, IFO	UFA Centre, UFA Sud 1
17	No explanatory map	2	KIMBAKALA FORALAC	FMU South 2, FMU South 1
18	Non transmission of waybills to regional office	6	QUATOR, KIMBAKALA FORALAC, MANFATAI, COFIBOIS, SFGC	FMU South 2, FMU South 1, FMU South 2
19	Trafficking of marks and numbers	1	FORALAC	FMU south South 2
20	Poorly kept site documents	2	KIMBAKALA, COFIBOIS	FMU South 1, FMU South 2
21	Obstructing control by forestry agents	2	COFIBOIS	FMU South 2
22	Subcontracting of licence to third parties	1	COFIBOIS	FMU South 2

Source: Dispute register of the Forestry Department (2002)

CIB: frequency total number of of offences : 4

SOCALIB: frequency of offence: 2

FORALAC: frequency of offence: 2

Table 2: Forestry penalties imposed by the Forestry Department in 2002

Records No and date 01/IGEF/02	Settlement records and date 01/23/04/02	Penalties EFGC	Defaulting companies EFGC	Penalties effectively recovered 15.000.000	Unrecovered penalties -	Rate of recovery 100	Forestry allowances 4.500.000	Recovery in favour of the State 10.500.000
002/IGEF/02	02/2/040	3.500.000	IFO					
003/2002	003/21/03/02	45.000.000	EFGC/SAAB	45.000.000	-	100	1.050.000	2.450.000
001/04/03/02	004/04/06/02	5.000.000	SOCALIB	-	0.	100	12.500.000	32.500.000
004/2002	005/06/06/02	500.000	MOKABI	500.000		100	150.000	350.000
005/2002	006/06/06/02	1.000.000	BPL	1.700.000		100	300.000	700.000
006/2002	007/06/06/02	500.000	BPL	500.000		100	150.000	350.000
008/05/07/02	008/06/06/02	2.000.000	SOCALIB	-	2.000.000	0	-	
009/07/05/02	009/06/06/02	500.000	IFO	500.000	-	100	150.000	350.000
010/2002	010/06/06/02	500.000	SOBODI	-	500.000	0	-	-
012/02002	011/06/06/02	1.000.000	COFIBOIS	-	1.000.000	0	-	-
011/02/02	012/21/06/02	1.000.000	LT	-	1.000.000	0		
	-	-						
07/2002	013/24/06/02	1.000.000	THANRYcongo	-	1.000.000	0	-	-
003/2002	014/12/07/02	1.000.000	LT	-	1.000.000	0	-	-
003/2002	015/12/07/02	1.000.000	ITBL	-	1.000.000	0	-	-
003/2002	016/12/07/02	1.000.000	CRISTAL	-	1.000.000	0	-	-
003/2002	017/12/07/02	1.000.000	MOKABI	-	1.000.000	0	-	-
003/2002/	018/12/07/02	500.000	BPL	-	500.000	0	-	-
003/2002	019/12/07/02	500.000	THANRY Congo	-	500.000	0	-	-
005/2002	020/12/07/02	1.000.000	STCPA	-	1.000.000	0	-	-
005/2002	021/12/07/02	400.000	SFGC	-	400.000	0	-	-
005/2002	022/12/07/02	200.000	MOUNGONDOV	-	200.000	0	-	-
007/2002	023/12/07/02	500.000	- FORALAC	-	500.000	0	-	-
007/2002	024/12/07/02	500.000	TRABEC	-	1.000.000	0	-	-

007/2002	025/12/07/02	1.000.000	QUATOR	-	1.000.000	0	-	-
007/2002	026/12/07/02	1.000.000	MANFAITAI	-	1.000.000	0	-	-
007/2002	027/12/07/02	1.000.000	COFIBOIS	-	1.000.000	0	-	-
007/2002	028/12/07/02	1.000.000	BISSON ET CIE	1.700.000	-	100	300.000	700.000
005/2002	029/12/07/02	200.000	ESBO	-	200.000	0	-	-
008/2002	030/12/07/02	1.000.000	CIB	-	1.000.000	0	-	-
008/05/07/02	031/12/07/02	1.000.000	SOCALIB	-	1.000.000	0	-	-
008/05/07/02	032/12/07/02	1.000.000	IFO	1.000.000	-	100	300.000	700.000
006/05/07/02	033/12/07/02	200.000	AFRIWOOD	200.000	0	100	60.000	140.000
006/2002	034/17/02	1.000.000	CITB		200.000	0	-	-
006/2002	035/17/07/02	200.000	CIBN		200.000	0	-	-
006/2002	036/17/07/02	200.000	MAV CONGO	-	200.000	0	-	-
0062002	037/17/07/02	200.000	SOBODI	-	200.000	0	-	-
014/2002	038/22/07/02	500.000	CRISTAL	5.000.000		100	1.500.000	
013/22/07/02	039/02/08/02	1.500.000	MOKABI	-	1.500.000	0.	-	-
015/30/07/02	040/02/08/02	1.000.000	CIBN	-	1.000.000	0	-	-
016/31/07/02	041/02/08/02	1.500.000	BPL	-	1.000.000	0	-	-
017/31/07/02	042/02/07/02	1.500.000	CIB	-	1.500.000	0	-	-
019/24/08/02	043/26/08/02	1.000.000	TAMAN INDUSTRIE		-	1.000.000	0	- -
009/29/08/02	044/05/09/02	1.500.000	ESBO	-	1.500.000	0	-	-
	005/20/11/01/	4.000.000	SOCALIB	2.800.000	1.200.000	70	-	2.300.000
	020/15/11/02	500.000	NDONAFLAVIENNE		350.000	150.000	70	- 350.000
020/29/10/02	045/21/10/02	2.000.000	IFO	2.000.000	-	100	-	-
025/29/10/02	047/30/11/02	500.000	CIB	-	1.000.000	0	-	-
023/29/10/02	048/30/11/02	1.000.000	CIB	-	1.000.000	0	-	-
019/27/08/02	046/21/10/02	150.000.000	MAN FAI TAI	21.000.000	129.000.000	14	6.300.000	14.700.000
24/29/10/02	049/02/12/02/	1.000.000	CIB		1.000.000	0	-	-
21/29/10/02	050/02/12/02	1.000.000	CIB	-	1.000.000	0	-	-
22/29/10/02	051/02/12/02	1.000.000	CIB	-	1.000.000	0	-	-

28/17/11/02	052/26/12/02	1.000.000	FORALAC	-	1.000.000	0	-	-
31/17/11/02	053/26/12/02	250.000	KIMBAKALA	-	250.000	0	-	-
32/17/11/02	054/26/12/02	250.000	-/-	-	250.000	0	-	-
35/16/11/02	055/26/12/02	500.000	MAN FAI TAI.	-	500.000	0	-	-
37/16/11/02	057/26/12/02	250.000	KIMBAKALA	-	250.000	0	-	-
38/20/11/02	058/26/12/02	10.000.000	COFIBOIS	-	10.000.000	0	-	-
39/20/11/02	059/26/12/02	250.000	/-/	-	250.000	0	-	-
42/20/11/02	060/26/12/02	250.000	QUATOR	-	250.0000	0	-	-
43/20/12/02	061/26/12/02	250.000	/-/	-	250.000	0	-	-
44/18/11/02	062/26/12/02	250.000	SFGC	-	7.500.000	0	-	-
44/18/12/02	063/04/01/03	7.500.000	STCPPABOIS	-	2.000.000	0	-	-
41/20/12/02	064/04/01/03	2.000.000	COFIBOIS	-	2.000.000	0	-	-
40/20/12/02	065/04/12/02	250.000	/-/	-	250.000			
26/17/11/02	066/16/01/03	1.500.000	FORALAC	-	1.500.000	0	-	-
29/17/11/02	067/16/01/03	500.000	-/-	-	500.000	0	-	-
27/18/11/02	173/03/02/03	25.000.000	- /-	-	25.000.000	0	-	-
TOTAL		**317.300.000**		**99.350.000**	**217.950.000**		**2.7860.000**	**71.490.000**

Source : Dispute register of the Forests Department (2002)

previous years except for 2001, where information was gathered from the report of the General Inspectorate of Forestry. With regard to the Kouilou Regional Forestry service, one known fine was that of a CFA F 150 million penalty for felling within a protected area.

ii) The means available to recovery agents.

Penalty recovery means: Chapter three and sub chapters 3-1, 3.12, 3.1-1-1, 1-1-2-3, of the Forestry Code set out the penalty recovery mechanisms and enable the various corps, especially workers of forestry services, to carry out the actions expected of them in order to ensure sustainable management of forests. In theory, these mechanisms should be sufficiently dissuasive, and would increase Government revenue needed for investments in forest areas, in view of improving the living conditions of rural and indigenous communities. Unfortunately, the situation on the ground is characterized by many shortcomings.

Weaknesses of forest workers in prosecution and penalty recovery operations: Weakness in the prosecution of offences and collection of penalties is evident from the very few prosecution actions actually pursued; 26 offences established in 2001, and only 70 in 2002. Furthermore, the amounts of money collected each financial year were very limited: only 99,350,000 CFAF out of only 317,300,000 CFAF in 2002 (see Table 2).

Limited number of judicial procedures and matters brought before the courts: Not a single case of offence committed in the forestry sector has been brought before the competent judicial bodies. An examination of the dispute registers shows that so far no matters have been brought before the courts. However, all competent authorities namely, the General Inspector of Forestry, the Inspector of Forests, and the Director of Forests, are agreed that there has been an increase in forest offences.

Inadequate action by competent services: An examination of administrative records, especially the 2000 and 2001 Forest Department annual reports and the dispute registers, reveals the following:
- Limited number of control and monitoring missions carried out in forest exploitation sites. The General Inspectorate of Forestry and the General Directorate of Forestry carried out most of the field missions, and prepared the reports;
- Very few reports were written by sworn-in-workers of the services in charge of the control and management of state forest, especially the General Inspectorate of Forestry (24 reports only), the General Department of Forestry (44 reports), and the Kouilou Regional service (42 reports). Based on these reports, there were 67 settlements for penalties amounting to CFAF 317,300,00 (dispute register of the Brazzaville Forestry service) and a little less than CFAF 203,596,738 (dispute register of the Kouilou service) in 2002.

The 2001 report of the General Inspectorate of Forestry states that: "its action was characterized by an insufficient number of field missions which are the cornerstone of the institution. However, the few field missions carried out paid close attention to the prosecution aspect and produced more than 20 reports establishing offences for penalties worth CFAF 20,000,000 against companies guilty of such offences". According to the same report, shortcomings in the management of State forests were noted during the field missions. These include:
- Poor implementation of the law and regulations governing the management of forest and wildlife resources, particularly within control brigades and stations;
- Little knowledge of the key provisions of

The average monthly salary of a forest worker stands at CFA F 30,000 and has not changed for around ten years now.

the legislative and regulatory texts in force by both economic operators and the Forestry Department, as evidenced by the uncontrolled issuance of exploitation permits for lumber and special products, and in the collection of taxes not provided for by the law;
- Lack of professionalism during field missions;
- Absence of rigour and discipline in handling seized timber that has been declared State property.

- Non-transmission of cases to courts of law: In all the dispute registers examined, it was noticed that not a single case of non-payment of penalties within deadlines had been referred to the courts. This is clear negligence of the provisions of the law. As a consequence, the penalties (CFAF 217,950,000) that were not collected as of 31 December 2002 may lapse and this would be a great loss to the State.

4. Reasons for lack of collection of fines

Here, we may point mainly to some impediments and administrative bottlenecks, negligence and even inadequate staff and financial and material resources, and probably the abusive use of settlement procedures.

i 'Social impediments'
These impediments relate especially to the working conditions of forest workers responsible for prosecution and recovering penalties. These mainly include very low salaries and huge unpaid salary arrears.

The average monthly salary of a forest worker stands at CFA F 30,000 and has not changed for around ten years[3] . The allowances of 10% on disputes that were instituted by the old Forestry Code (Law No. 32/82 of 7/07/82) had not been paid to workers of the sector for close to 11 years, and this helps to explain the the general lack of interest in the collection of forestry fines. This is often manifested through negative behaviours referred to as "field commissions".One paragraph of the 2000 Forest Department annual report (page 15) reveals the following information concerning forestry allowances: "a draft order on the sharing of proceeds from forestry and hunting cases for the year 1991 is being finalised" (emphasis added).

ii. Administrative bottlenecks:
These include pressure and influence exerted by some personalities of the administrative and even political spheres. Such pressure weakens the proper implementation of the law and regulations and affects the professional ethics of the workers of the prosecution and penalty recovery services. It also leads to fraud and significant loss of revenue from settlement because of what we referred to above as "field commissions".

During discussions with workers of the Forestry Department, some problems relating to administrative bottlenecks were noted, and included:
- The current conflict between the Ministry of the Economy, Finance and the Budget and the Ministry in charge of Forestry arising from differing interpretations of the Forestry Code. The Ministry of Finance intends to take over the collection of forestry taxes and fines from the forestry administration. Inter-ministerial documents were even signed, especially that of 27 December 2002, to set the maximum amount of forestry allowances to be paid back to workers of the forestry services at CFA F 30,000,000 for the year 2002. This instrument is the source of many controversies and, were it to be applied, it is to be feared that there will be many dangers for the effectiveness of penalty recovery in 2003.
- The case mentioned in the Department's 2001 annual report, relating to fraudulent felling of timber within two protected areas, was authorised by a senior official of the forestry administration with

acquaintances in the party at fault.

iii. Inadequate personnel:
The State forest is estimated to cover a surface area of 20,323,405 hectares. Regional offices and forestry brigades were set up to manage them and they continue to do so today. There is a need for sufficient and qualified personnel to carry out management, prosecution and penalties recovery activities. Unfortunately, our study of the human resources documents of the Department of Administrative and Financial Affairs reveals that there is crying need for workers. There are around 319 forestry workers as against 310 workers at the central (administrative) services and 48 staff from other services such as education, agriculture and computer sciences, giving a total of 677 staff.

The ratio between forestry workers and staff from other services points to a rather anachronistic situation. Given the surface area of forests to be managed, it is really impossible to talk of efficiency with regard to the prosecution and penalty recovery services. This situation is due to the fact that there have been no recruitments since 1986 (the Republic of Congo having been placed under the IMJF/World Bank Enhanced Structural Adjustment Programme). In effect, each year, staff size reduces as a result of death or retirement.

iv. Inadequate financial and material means.
To tackle the problem of inadequate financial and material means, the Forestry Department endowed itself with a financial mechanism referred to as the "Natural Resources Development Fund" (FARN) in 1974. Under the new forestry code, FARN has been transformed into the Forestry Fund, which becomes operational in 2003.

In spite of the existence of this fund, it is to be noted that most of the missions assigned to the forestry sector are not performed as expected because the contribution of that sector to the State budget remains below expectation. The 2001 annual report of the Inspectorate of Forestry notes that "The action of the General Inspectorate of Forests for 2001 has, for want of the necessary support requested, been characterized by a very limited number of field missions, which constitute the cornerstone of the institution's activities, etc."

v. Settlements and their utilisation:
Article 134 of Law No. 16-2000 institutes use of 'settlements' and authorises competent authorities (the Minister in charge of Forestry, the Director General and the Regional Director of Forestry) to use this when appropriate. A study of the dispute registers of the Department of Forestry and of the Kouilou Regional Service of Forestry shows that not a single case was referred to the courts even in case of a repeat or serious offence such as logging within a protected area. It can be concluded that there has been a systematic recourse to 'settlement'. As a result, the judicial authority called upon to intervene in forestry matters has been prevented from performing its duties. In addition, the paltry penalties imposed on defaulting companies have not been dissuasive.

5. Improving the recovery of penalties

The authors of this study believe there is a need to ensure objectivity and greater transparency of penalty recovery operations in the Congolese forestry sector. There is also a need for strengthening of the operational capacities of the prosecution and

recovery services of the Forestry Department through the implementation and improvement of recovery, follow-up, and supervision procedures.

To this end, actions should be undertaken at the level of competent services and stakeholders including training and other activities geared towards the improvement of recovery operations. Below are some specific suggestions as to how this can happen.

i. Improving penalty recovery through reform or strengthening of the forestry services

The above shortcomings of the competent services as well as other services involved calls for an improvement of the penalty recovery mechanisms and services of the Congolese forestry sector.

Improvement of recovery can be done in two ways namely, through the enhancement of the capacities and means of the Forestry Department and its branches (regional offices and their brigades) and involvement of other stakeholders recognized by the law (including Law No. 16-2000, Law No.48-83, Law No 003/91).

The following solutions are envisaged:
- Building the operational capacities of the Forestry Department and of regional and other offices of the forestry sector. There is need to carry out a structural reform in the handling of legal affairs by setting up a legal affairs service having two bureaux at the level of the central service (Department of Forestry and Department of Wildlife and Protected Areas) and at the regional level (regional services). The bureaux should have the following functions:
- Prosecution Bureau;
- Penalty Recovery and Follow-up and Disputes Such a bureau to be responsible for relations with judicial services and other competent services.

The attributions and organisation of the service could be as follows:

a) Purpose:

- follow-up the transmission of reports drawn up by competent services especially the forestry services and others;
- gather, process, analyse, update, and preserve data relating to cases;
- organize and structure data relating to cases;
- generate a litigations data base;
- assist legal affairs services and regional legal affairs bureaux;
- study reports and files relating to cases and update registers;
- perform other tasks falling within its competence.

b) Attributions of the bureaux:

i. Prosecution Bureau:
- gather, process, analyse, update and preserve information relating to data contained in reports;
- study the annual reports of the Ministry in Charge of Forestry, those of the various central and regional services as well as the General Inspectorate of Forestry;
- prepare and manage registers for the follow-up of reports and sales by mutual agreement of objects seized and confiscated by the courts;
- create a data base;
- perform other tasks falling within its competence.

ii. Penalty Recovery and Follow-up and Disputes Bureau responsible for relations with judicial services and other competent services
- gather, process, analyse, update and preserve information relating to forestry and/or hunting penalties;
- study the annual reports of the Ministry of Forestry, forestry and wildlife services and regional forestry services;
- prepare and manage registers of disputes , reports and settlements, court judgements relating to forestry and

wildlife matters, bills to be cashed, 'forms of transmission' to the courts of cases of non respect of transaction deadlines and follow up the judgements;
- organize and structure settlement data;
- create a data base;
- propose mechanisms necessary to improve disputes management .

iii. Strengthening the resources of central and regional forestry and wildlife services and brigades

As mentioned above, the human, financial and material resources available to the prosecution and penalty recovery services are largely insufficient. This constitutes a major obstacle to field activities and consequently makes the recovery of forestry and hunting penalties less efficient.

Strengthening the operational means of the various bodies responsible for penalty recovery will thus logically lead to an improvement of performances. This means that with regard to financial and material resources, the following measures should be taken:
- earmark transportation and financial resources (two vehicles per regional service and one vehicle per brigade every two years). In addition, off- road bicycles and adequate finances should be made available.
- empower the personnel recruited by conservation projects and forest concessions as part of the Surveillance and Anti-poaching Units (USLAB). The case study carried out by Venant TCHOUKOMAKOUA and Grégoire JIOGUE within the framework of ECOFAC, and the ongoing negotiations between the Government and the World Bank and the IMF as part of the Emergency and Economic Revival Credit (CURE) programme, are viable alternatives for solving the problem.

iv. Involvement of conservation and environmental NGOs and Associations

It has been noted that workers of forestry services have, until now, not been very interested in the recovery of forestry penalties, hence the low level of recovery. Campaigns to sensitise forestry companies to take this concern into account appear to be a welcome solution. The Minister of the Forestry Economy and the Environment with whom we had an interview on 6 February 2003 has also supported this idea.

The Minister expressed his desire to see NGOs and Associations support Government action within the context of the programme of conservation of forests and protected areas. In a welcome act of 'transparency', the minister provided the authors and other NGOs with the texts of 16 implementation instruments of the forestry code.

v. Involvement of local and indigenous communities

Sensitisation of local and indigenous communities, or in short, the general public, about forestry penalties and their recovery could also be envisaged through seminars, training workshops, film projections, commented pictures and posters. However, such programmes would require resources that are not presently available.

vi. Direct involvement of financial services

The Lands and Stamp Duty Service should be involved in the recovery of fines arising from sentences pronounced in application of Paragraph 2 of Article 170 of the Forestry Code. This will help avoid frustration, quarrels and conflicts of competence. It is to be noted however that the above service and the Forestry Department have always worked in collaboration especially with regard to forestry and hunting penalties.

vii. Involvement of an Independent Observer

The low level of penalty recovery (see Table 2) could also be offset by involving an Independent Observer, which is of great importance and interest in view of the country's credibility vis-à-vis international financial institutions and programmes, including the HIPC initiative. However, such a commitment with this mechanism presupposes proper definition of responsibilities in its implementation. In this light, the role of an Independent Observer could be as follows:

- to contribute to the dissemination of information on penalty recovery and supervision at the local, national and international levels, in order to improve transparency;
- to facilitate the development of a computerized system for the follow-up of disputes and field missions relating to financial auditing and other management actions.

The objectives of the independent observation would be as follows:

- ensure the fairness and transparency of monitoring and penalty recovery operations carried out by the forestry department and the Lands and Stamp Duty Service;
- build the operational capacities of forestry workers through the implementation and improvement of procedures;
- analyse the monitoring and recovery modalities through the role of the various stakeholders and use a specific reference system for offences and penalties that was established in conformity with the laws and regulations in force;
- help to ensure implementation of the recommendations and decisions of monitoring and recovery missions that shall be carried out by the various services of the Forestry Department with the support of the independent observer.

The overall mandate of an independent observer could be as follows:

- participation of the independent observer as a member of all the control and recovery missions;
- free and unconditional access to check all documents relating to control and penalty recovery;
- presence of the independent observer during hearings of offenders before drafting of reports;
- independent observer's access to the various titles for the removal of timber and/or wildlife products;
- participation of the independent observer in meetings for the granting of permits and the validation of reports.
- The right of the independent Observer to publish its reports.

viii. Improvement of penalty recovery through sensitisation and education of penalty recovery workers and people liable to penalties

It has already been noted that fines levied for breach of forestry regulations are not sufficiently dissuasive, which explains the repeat offences and non-respect of the law and regulations in force. In addition, the negligence of some forestry workers contributes to the promotion of such reprehensible behaviour.

Hence, there is a need to organize more sensitisation and education campaigns for the above-mentioned stakeholders. Activities to be carried out during such campaigns could be those defined under the sub-heading on the involvement of conservation and environmental NGOs and Associations.

ix. Improving the salaries and allowances paid to prosecution and penalty recovery agents

Staff competent to prosecute forestry offences and to recover the required penalties are exposed to what we may call 'latent or active corruption. Also, although the Forestry law in force gives an indication of the benefits accruing to

prosecution agents, the salary situation of civil servants is a problem yet to be solved. We strongly suggest the following solutions:
- raising the index point from today's 160 to 210 as decided during the sovereign national conference;
- Promoting workers to higher scales with a financial supplement, which would require that the current situation should be reviewed by an administrative instrument;
- Revocation of the roughly 28% cut in the salaries of some civil servants.

This proposal would be in line with steps taken by the Government and international institutions (World Bank and IMF) through such initiatives as the Emergency and Economic Revival Credit (CURE) and the Heavily Indebted Poor Countries Initiative (HIPC).

x. Improving the procedure for assessing the settlement

Articles 134, 135, and 136 of Law No. 16-2000 (the Forestry Code) indicate the range within which the authorities competent to strike a settlement should conform, but are unfortunately silent about the criteria to be used to calculate the fines. Consequently, we propose the following formula:
Fine = X + Y + Z + Q where:
X = the market price of the product;
Y = fees attendant to the exploitation permit / contract or licence;
Z = the State's shortfall, that is (X + Y) plus a 130% surcharge;
Q = expenses incurred to track down and arrest the offender.

6. Conclusions and recommendations

i. Main conclusions

The Forestry Department has a legal and regulatory framework that was recently supplemented with 16 implementation instruments published on 31 December 2002. This almost complete framework for the sustainable management of forestry and wildlife resources contains provisions that involve all stakeholders (State, NGOs and Associations, local and indigenous communities and the private sector). Provisions relating to prosecution and penalty recovery are sufficiently detailed and provide for some benefits, especially the proceeds of cases (30%), which shall be shared among forestry workers and any other person having participated in prosecution (Art. 172).

Unfortunately, penalty recovery remains a problem. There is need to develop new mechanisms in order to ensure that this activity contributes to a raising of State revenue which is needed to develop the hinterland where local and indigenous peoples live in abject poverty and in extremely precarious conditions.

ii. Main recommendations:

Law and institutions: The following recommendations are made:

1. The setting up within the central services (Forestry and Wildlife Departments) and the regional services of a legal affairs service which should have two bureaux, one for prosecution and one for the recovery and follow-up of penalties and legal matters.
2. Instituting nine registers (main disputes, reports, settlements, reports of sales by mutual agreement of objects seized, reports of cases referred to the courts, etc.).
3. Strengthening the human, financial and material resources of the General Inspectorate of Forestry and those of the central and regional services and brigades.
4. Reviewing the salaries and even the financial and material benefits of workers of the forestry administration as a means of fighting corrupt practices.
5. Increasing the staff strength of the service in charge of forestry which at

present stands at barely 319 forestry workers. In this way, absorption into the civil service of the commissioned forestry staff working in protected areas and in Surveillance and Anti-poaching Units (USLAB) may be the immediate solution. Staff recruitment may be envisaged within the context of the Emergency and Economic Revival Credit for which negotiations are currently underway with the World Bank.

6. Involving conservation and environmental NGOs and Associations in the sensitisation of timber companies and local and indigenous communities on illegal practices of forest resource exploitation.

7. Defining the criteria for calculating fines for settlement.

8. The relevant implementation instruments as applicable from 2003 onwards should contribute to ensuring the sustainable management of forests. However, they are somewhat complex for the uninitiated, and are generally poor known understood by the relevant stakeholders. Consequently, it is necessary to disseminate them among NGOs, the private forestry and industrial sector, and the public in general, in order for them to be effective.

Conservation and use of forest ecosystems: The following recommendations are made:

9. Establishment of an Independent Observer of forest law enforcement.

10. Better involvement of NGOs and Associations.

11. Involvement, sensitisation, and training of local and indigenous communities.

12. Sensitisation of defaulting logging and hunting companies liable to forestry penalties.

Chapter 7

Forest exploitation in the Republic of Congo : The case of Tamann Industrie Limited in the Mayombe forest

Congolese Observatory for human Rights (OCDH)
Roch Euloge N'Zobo

1. Introduction

As part of its programme aimed at protecting the environment and forest peoples, OCDH undertook to report on a case of forest exploitation in the Mayombe forest, more precisely in the Niari region, situated in the southeast of the Republic of Congo. The report brings to the fore the problem of lack of transparency in the region, of disrespect for the law and for human rights abuse. The case under review, which is not the only one, reflects a practice that is generalised in the logging sector in Congo.

It is not by chance for instance that the logging company Hazim-Cristal, charged for illegal logging by the Government of Cameroon. Hazim-Cristal distinguished itself through illegal logging, especially in Forest Management Units 10 030 and 10 029 in Cameroon, which has been well documented (see, for example, the July 2002 issue of the newspaper "Bubinga") .This company has now moved from that country to establish itself in Congo where recent satellite photographs have shown that it may well be exploiting beyond the limits of its concession there too.

Although informed of the fact, the Congolese authorities did not yet deign to take the appropriate sanctions against the Group.

Just like oil, which is the main source of revenue for the Congolese State budget, excessive logging has negative impacts on the rights of the people who are supposed to enjoy the resulting economic and financial benefits. In addition, the part played by timber and oil in the origin of recurrent wars in Congo is proof of the need of transparent management of these resources.

2. Logging by Tamann Industrie Limited in the Mayombe forest

Tamann is a company under Congolese law and founded by Chinese entrepreneurs. The logging activity is governed by an agreement signed between the government and Tamann. The agreement was signed on the basis of a transfer of concessions that had hitherto belonged to small-scale Congolese logging companies. But the terms of the agreement are known neither to the inhabitants of the localities concerned, nor to the workers of the company, as the agreement has never been made public. As a result, Tamann officials import manpower from Malaysia and the Philippines, considered to be the cheapest in the whole world, instead of recruiting local peoples in Congo. The importation of such cheap manpower is undertaken before the watchful eyes of the Congolese authorities. It is Malaysian workers, for the most part, who are responsible for evacuating the timber day and night from logging sites to the port of Pointe-Noire.

3. An impressive lorry fleet and timber yard managed without transparency

With the arrival of Tamann Industrie Limited, State authorities announced the installation of an industrial-scale sawmill at Makabana. A year after, only a timber yard and a garage are evidence of intense activity. Logs are transported to Pointe-Noire by impressive convoys of trailers, to be loaded in ships and conveyed to where they will be processed. Congo is experiencing a green gold boom, but at what cost?

Mila-Mila is the main control post of the Niari Regional Department of Forestry. It is situated at the crossroads of the major logging zones (Makabana, Divenie and Mossendjo) towards Pointe-Noire. Tamann has a timber yard of 20 hectares there[5].

In Makabana, just as in Mila-Mila, the logs that are packed in endless heaps in yards before being transported to the Pointe-Noire seaport, through Hinda, seem to echo the sound of felling of huge tree trunks of the Ingolo forests at Sibiti, Mossendjo (to the north-east) and Divenie (to the north-west). The inhabitants of the Niari region cannot remember having experienced such a concentration of trucks loaded with logs on their roads before the coming of the Tamann logging company. The fleet of lorries is, indeed, impressive lorry fleet; the Union Transport Africa (UTA) garage showed some thirty forty-ton trailers when the authors of this study visited it, and, at the lowest estimate, at least 150 Mercedes trailers are involved in the logging business. When added to dumper trucks, the unloading machines and the four-wheel drive cars, one can have an idea of the means deployed for logging.



Abong Mbang - Lomie road reconstruction.
In Cameroon also, road are suffering.

In less than a month, the Mila-Mila park, whose dimensions were not disclosed by its head, Mr. Ling, has filled up with timber from Mossendjo and Divenie. In the absence of a sawmill, it can be feared that the intensive exploitation would not guarantee the presence of Tamann in Makabana for very long. This therefore suggests that there is little guarantee that people living around the operations will ever be able to gain employment with the company.

4. Violation of the law and corruption

The Forestry Code of Congo limits the quantity of timber produced each year. For instance, Sobodi, sub-contactor of Tamann, has a licence of 70,000 hectares in Divenie. Its direct or indirect beneficiary is supposed to exploit at most 40,000 cubic meters of timber annually. In 2002, Tamann, is believed to have produced between 100,000 to 130,000 cubic meters of timber. In addition, only 40% was supposed to be exported and the rest processed locally. This however, has not been the case.

During its establishment in Congo, Tamann had promised to set up a sawmill in Mila-Mila, in accordance with the law that stipulates that a logging company may not export more than 40% of production as unprocessed timber. However, there is still no such sawmill, and the timber felled in the Niari region barely makes a stop-over in Mila-Mila, then on to a yard at Hinda, before being conveyed directly into ships at the Pointe-Noire seaport in the form of logs.

Logging activities by Tamann appear to breach various aspects of the law, apparently with the knowledge of local officials. According to workers interviewed on-site, the company fells trees without respecting the norms and without distinction of species. When such facts are reported to the authorities, no action follows, although no official of the Forestry Economy Department or the Sub-

Divisional Office would state clearly that the allowable annual cut (VAM) of timber is respected by Tamann in such sites.

There are numerous means of collusion between the State and the logging companies engaged in forest exploitation in Congo by which companies evade sanctions and taxes. Amongst these are the purchase for State officials of four-wheel drive Toyota cars, computers, and the carrying out of renovation works at Regional Forestry Department offices. It could be argued that the State does not have the means or any economic operator to carry out such works, and that the State could not turn down the services of a benefactor; but at what cost are such repairs done?

In the case of Tamann, following accusations of complicity and maladministration, the Forestry Administration acknowledged the malpractices of logging companies. As such, in the final release of the budgetary session of the Divisional Council held in Dolisie from 26 May to 1 June 2003, divisional councillors condemned "… the criminal practices of logging companies and the prospect of an ecological disaster …". They were worried about the rate of exploitation of the logging companies, which not only do not respect the terms specific in their contracts, but also damage the environment. The Council stated that: "logging companies, especially Tamann and Man Fai Tai, freely exploit timber in our division without taking into consideration the contract specifications. As such, if nothing is done, after a few years, the forest zone of the Niari region will become a desert. To remedy a situation that does not benefit our division in any way, the Council firmly recommended that the logging companies should strictly respect the laws and regulations of the Republic in exercising their functions". Consequently, the Council set up a seven-man Commission of Enquiry on logging in the Division. Unfortunately, the practice in Congo is that Commissions of Enquiry never release their reports publicly.

5. Violations of the rights of workers

Logging companies are known for poor payment of their workers. Working hours are so restrictive and poorly calculated that the employees feel as though they are being 'squeezed like lemons'. Officially, work begins at 7 a.m. and ends at 5 p.m., with a break from 11 a.m. to 1 p.m. In reality, work ends between 8 and 10 p.m. and up to midnight for those at the garage, although often only eight hours of work are recorded.

Considering the length of the working day, and that the working week excludes only Sunday, it is unsurprising that the workers of this company have the feeling of being 'enslaved'. Life is reduced to 'work-bed-work', which is devastating for family life, and is the cause many resignations. In Makabana, Tamann employees have been nicknamed "bangamba" (slaves). One worker interviewed complained that "it is as if we were back in the colonial days".

In addition, trade unionism is almost non-existent. Mr. Joseph Koumba, the Secretary General of the Niari Region Forestry Workers Trade Union, points out that Tamann impedes trade union liberty. In February 2003, it's the company unlawfully dismissed four workers on the grounds that they had been elected trade union delegates (in accordance with the pre-electoral Memorandum of Understanding provided for by the forestry collective agreement). The dismissal took place with the knowledge of regional authorities, notably the Makabana Sub-divisional Officer, Mr. Jean François Ngembo and the regional director of labour, Mr. Remi Bawawana. Tamann Limited did not respond to the petition sent to them by the Forest Workers Trade Union after the dismissal.

The company has a "monitoring" system, and we were told that the company does

not hesitate to remind employees of their 'vigilance'. Employees have been told that the company does not want to hear any complaint from them about their working conditions, let alone about their rights. The company apparently has a dismissive attitude towards visiting officials of the Labour Inspectorate, arguing that the company only wishes to deal with the "big fish" of the administration. Trade Union representatives are chosen by the company management, not by workers.

Workers report that they have been pressurised to sign worksheets without having the possibility of seeing what exactly was recorded on them. One truck driver stated to us that "it is because jobs are rare after the war; there are very few enterprises. We are obliged to stay on with such enterprises in order to meet family obligations, otherwise I would have resigned. It is a prison which in addition pays poorly".

The situation of truck drivers is particularly bad. In order to obtain a living wage, they have to multiply the number of journeys driven. We were informed of one driver who, without an assistant, made eighteen trips to Hinda in one month, without any sleep - for which he received payment of around CFAF 400,000). This compared with payment of close to one million francs that had been earned for similar work with a previous employer.

6. Laxity of the authorities in monitoring the activities of Tamann Industrie Limited

The monitoring of the activities of Tamann Industrie Limited appears to be little more than a mere formality. The main control post of the Niari Regional Department of Forestry in Mila-Mila, for instance, serves as the registration office. It was discovered that workers of the forestry administration posted there rarely leave their offices to inspect parked vehicles, nor compare the loading declaration with the actual goods on board timber trucks. They often fail to verify if the waybill submitted to them by the truckers is in conformity with the declared loads. The drivers themselves confided to us that the trucks transport between 70 to 120 cubic meters per load. A few days of observation at Mila-Mila suggested that the authorised allowable annual cut is being greatly and systematically exceeded.

In addition, while most of the activities take place in the Niari region, Tamann pays its taxes in Pointe-Noire where, up to June 2003, certificates of origin were issued.

Apart from their laxity in controlling timber exploitation and the way workers are treated, the Congolese government has failed to ensure that the company meets it obligations to process timber locally, so as to create added value and jobs for local people.

For many years Tamann collected timber from the forest on the basis of contracts with small-scale logging companies, which are holders of small licences granted for a duration of seven years, with a well stated allowable annual cut (VMA) for the period covered by the licence. The Forestry Code does not however provide for renting or leasing of a licence to third parties. This raises the issue of the legality of the activities carried out by Tamann before it signed a logging agreement with the Congolese government in December 2002.

Tamann's partners, who own the licences concerned, include: Sociéte des Bois de Divenie (Sobodi - 70,000 hectares), Afriwood (35,000 hectares), Koumba Bernard (17,000 hectares), Ingolo, Sibiti), Société Industrielle des Bois du Niari (Sibn, former Sibom) in Mossendjo, Boplac in Mbouyi, Société Forestière Goma Gaston et Compagnie (Sfgc). These are Congolese who were unable to exploit the licences granted them, but the fact remains that the 'leasing' of their licences is illegal. In principle, when a licence is not exploited, it is supposed to be returned to the State.

There do not appear to have been proper controls to ensure that the allowable annual cut, as prescribed by the Forestry code, has been respected by Tamann . The authorities in Gabon noticed through satellite surveillance that Tamann had logged beyond limits in the area of Divenie and that tree fellers had entered Gabonese territory.

7. Degradation of the forest, road infrastructure and the environment

The intensive and rapid exploitation of the forest by Tamann is particularly worrying, as the forests' ecology has already been weakened by past exploitation. The company's exploitation of immature trees raises doubts about the ability of the forest to recover.

Another source of worry is the damage caused to bridges and roads by the very heavy weights of the company's lorries. Roads used by UTA and Tamann lorries have been widened but road maintenance remains poor. Both the Makabana-Mila-Mila road and the Divenie road, which were previously at least partially covered with laterite, have been stripped, leaving layers of dust of up to 30 centimetres deep in the dry season.

The rainy season brings so much mud that only heavy-duty trucks can ply through. For the 63.5 km separating Dolisie and Mila-Mila, the road that has not been maintained since 1997 has become a quagmire. As such, in February 2003, the parliamentarians of the districts of Kibangou (Damien Boussoukou Boumba) and Divenie (Claude Etienne Massimba) had to make several diversions of more than 170 km to reach their respective constituencies, despite the fact that they were riding in four-wheel drive cars, not affordable by their constitutents or the local public transport companies. It is reported that Tamann may in future use the Itsotso-Leboulou-Kibangou road for logs from Mossendjo. The fear is that once operational, this portion of the road would suffer the same fate as the former.

On Highway No. 3, which runs from Dolisie to Gabon through Mila-Mila, Kibangou and Loubeti, there is a bridge on the Niari, constructed in 1949 and intended to receive at the time a maximum load of 35 tonnes. About 400 trucks loaded with logs belonging to Tamann or its sub-contractors UTA (Union Transport Africa), Man Fai Tai or the Société des Transports Terrestres (STT) ply the road regularly in order to evacuate their timber to the Pointe-Noire seaport, in a convoy of three or four trucks. The Niari Bridge, which suffers the constant movements of timber trucks carrying between 70 and 120 cubic metres of timber has today undergone a worrying degradation, with large cracks and potholes having appeared in the concrete. There has also already been visible impacts on the bridges on the railway routes of Niari and Louesse, less than 10 kilometres from Makabana. The need for truck drivers to load as much as possible for better remuneration often leads to overloading that damages bridges which have not been maintained in recent years. There are concerns that the overloading is damaging not only abutments of bridges, but also the entire structure.

8. Conclusions and Recommendations

The total area now sub-licenced to Tamann far exceeds 100,000 hectares, and thus represents a substantial forest resource. However, local people are gaining very little in terms of employment, and the only benefit so far has been a new route to Pointe-Noire. But with the bridges on this road constructed hastily and, for the most part, in wood, even this road will not be a lasting benefit.

With regard to the preceding, OCDH recommends that the Congolese government should:
- Make publicly available the agreements signed with, and any other concessions

granted to, Tamann Industrie Limited and submit them to legal review;
- Demand that Tamann Industrie Limited establishes a timber processing plant in Makabana, so as to guarantee jobs for local people;
- Send an inspection mission from the Ministry of Labour to the work site of Tamann Industrie Limited to investigate allegations of serious violations of workers' rights, and sanction defaulters in accordance with existing labour laws of Congo;
- Require Tamann Industrie Limited to reconstruct the roads and bridges damaged as a result of its activity;
- Reinforce forest and tax control and follow-up of the activities of Tamann Industrie Limited in Congo.

AFLEG should take into consideration the fact that logging must respect national labour laws as well as forestry rules and regulations. It should be acknowledged that, under the pretext of humanitarian needs to improve living conditions, dangerous industries that do not pay well may establish and bring about poor working conditions, corruption, poor forest resource management and problems such as poaching, etc.

The infrastructure in most parts of the forest zone in the Congo basin is in an extremely pitiful state, and this is an element of poverty suffered by millions of people living in rural communities. AFLEG should seek to ensure that logging companies are brought to pay reparations for the damages they cause to the infrastructure they destroy.

Chapter 8 Implementation of the Congolese Forestry Code : The case of provisions relating to local communities

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Bienvenu Ngoy Isikimo

1. Introduction

On 29 August 2002, the Democratic Republic of Congo enacted law N° 011/20002 of 29/08/2002, a new Forestry Code. The new law represents a major reform in forest policy in the DRC, as it replaces the former approach that dates as far back as 1949.

Drafting a law is one thing, implementing it is another. This case study lays emphasis on provisions with the new Code relating to local communities, and attempts to assess how far it can be implemented at this level. This case study focuses on the functioning of the provisions related to user- and ownership rights as well as the right to be consulted on major decisions regarding forest management. In other words, we shall make a brief analysis of the content of the code and highlight the key articles that address local communities by identifying their strengths and weaknesses. The study draws on fieldwork conducted by the authors in the Mayombe forest of Bas Congo, where the Code was discussed with local communities and NGOs.

2. Background - context of the DRC forest

The forest of DRC covers an estimated surface area of 125 million hectares, representing about 52% of the national territory. The forest contributes greatly to the Congolese economy and plays a vital ecological role. DRC occupies a strategic position in this region, which implies that if the country itself does not ensure good governance of the sector, other internal or external players may do so in one way or the other, with all the resulting loss of earnings that may cause.

The government of DRC is aware of the role played by its forest ecosystem in the balance of the biosphere both at the national and international levels. This awareness is reflected in the signing of several conventions by the State of Congo.

What is important to do now is to draw up sustainable forest management policies. Due to very limited financial resources, however, the country may experience serious problems in the management and development of its wildlife and forest resources. In Bas Congo alone, an inventory of logging companies compiled by GTF reveals that there are about 11 operational companies. There are many others in the provinces of Bandundu, Equateur, Katanga, the two Kasais (under government control) as well as the North-Kivu, South Kivu and Maniema provinces, and part of Equateur (under rebel control).

3. Major innovations in the new Forestry Code

The new law brought some notable innovations:

1) The establishment of three categories of forests:
- Classified forest;
- Protected forest;
- Permanent production forest;

2) The setting up of a forest cadastral (land tenure) survey at the national and provincial levels;
3) The setting up of Consultative Committees;
4) Granting of social benefits to grassroots communities;
5) The promotion of a programme of forestry research

4. Key provisions relating to local communities

It should be noted that one of the merits of the new Congolese Forestry Code is that it attempts to better harmonise customary land law with modern law.
Though the new code underscores that Congolese forests are the property of the State, user, ownership and possession rights have been codified. This is considerable progress for what the law defines as 'local communities'.

• **a) The concept of local community**
The Code defines a 'local community' as 'a people traditionally organised on the basis of custom and united by clan or family solidarity relations, which is the basis of its internal cohesion'. This community is also characterised by its attachment to a specific territory (page 4 of the Code).

In the Mayombe forest, this definition accords with the actual exercise of local authority over the forests. It is therefore around the clan that forestry issues are managed, although the State also plays a role.

• **b) User, ownership, possession and consultation rights**
Since colonial times the State has claimed ownership of forests. Ownership rights of local communities have only been regarded as de facto rights. The new Code provides for regulatory provisions on the exercise of these rights. The following analyses the Code in respect of these rights.

- User rights

Article 36 stipulates that the forest user rights of the people living within or near the forest estate shall be those resulting from local customs and traditions, provided they do not violate the laws. The provisions allow local people to exploit forest resources in order to meet their domestic needs, individually and collectively. The law underscores that the people can exercise their user rights even in classified forests as long as they respect the law.

Article 44 states that the people living near a forest concession shall continue to exercise their user rights, excluding farming, if they comply with forest exploitation laws.

In some areas studied in the Mayombe forest, in practice it is possible to carry out farming in some concessions, since forest exploiters are only interested in the timber resource that they exploit. However, in our opinion, for the Code to ban farming is a great shortcoming, as it represents the livelihood of the villagers.

- Ownership rights

Article 22 underscores that a local community may, upon request, obtain as a forest concession part or all of the protected areas of the forests that formerly belonged to them by virtue of the custom. It is worth noting that the conditions for granting such concessions to local communities must be set out in a Presidential Decree.

Articles 7 and 9 provide for the rights of local communities to own the trees found in a village or its immediate surroundings. Such trees may be transferred to third parties.

Article 25 states that the management of classified forests, for example, may be entrusted to corporate bodies or associations that would develop them or use them for activities of public interest.

- Right to be consulted

Article 29 of the Code provides the public with a right to be consulted, and provides for the setting up of Consultative Committees at the national and provincial levels. Article 15 also requires the President of the Republic to consult neighbouring communities before classifying any forest.

Our studies in the Mayombe forest suggest that, in practice, small-scale timber dealers and even some industrial logging

companies, do carry out some form of 'informal consultation' with local communities, even though the State has given the latter all the necessary authorisations. Often, they also pay what is referred to as "customary tax" which is paid either in kind or in cash. Unfortunately, the so-called "customary tax" is very often insignificant compared with the profits made by the companies; in effect, after having paid taxes to the State, the timber is cut for free.

- Right to enjoyment of social amenities

Article 89 stipulates that logging companies exploiting a given area should provide social amenities for the neighbouring population (construction of roads, schools, hospitals, etc.). In practice, logging companies often fail to do this. Evidently, many of them feel that since they pay taxes to the State, it is incumbent upon the State to take care of social amenities and development.

In the Mayombe forest, it is clear that communities are concerned by the fact that very few companies bother about development problems and social benefits that the local population should derive from the presence of the companies. They consider that logging companies will not implement new provisions in the Code unless the State is prepared to mete out exemplary sanctions against those who fail to comply.

5. Impediments to the implementation of the code

The implementation of local communities-related provisions of the new Congolese Forestry Code faces a number of obstacles, including but not limited to the following:

- The effective implementation of many of the provisions depends on the implementation measures to be taken in the form of Orders or Decrees to be signed either by the President of the Republic or the Minister in charge of forestry. Such implementation measures will be many.
- There is a tendency of always transferring exploitation rights recognised away from the population, due to their lack of means.
- Will be difficult to implement the Code when its provisions are very poorly known by the public.
- Logging companies will continue to believe that the obligations on them, under Article 89, to provide social amenities are compensated by the taxes they pay to the State.

6. Guidelines for a proper implementation of the provisions relating to local communities

Some concerns relating to the benefits that local communities should derive from their forests have been given greater consideration in the new Code. Also, the discrepancy between customary law and modern law could be reduced by appropriate implementation of the Code. Several local practices deemed informal have been codified in view of the relationship between the need for the rights of local people, conservation and exploitation. Hopefully, this is the beginning of a solution to the dual nature of the two types of laws, a problem that has caused many land and forestry disputes.



However, for the opportunities represented by the Code to be properly realised, the following should be taken into account:

- The good faith of public authorities is required. The State is perceived as guarantor of the respect of laws; but it sometimes violates them outright and acts as judge in its own case.
- The good faith of logging companies is also required. At present, they are sometimes thought of as solely concerned with the unbridled search for profit, thus sacrificing the ecological balance and present and future survival of the population.
- Priority should be given to the popularisation and dissemination of the new Forestry Code. NGOs could play a vital role at this level. The Code should be published and disseminated in the four national languages (Kikongo, Swahili, Tshiluba and Lingala).
- The drafting of implementation measures should include careful and broad consultation with civil society. Traditional rulers should be informed and consulted.
- Exemplary sanctions should be meted out to ensure the best relations among various players and promote social harmony.

Chapter 9 Law, Transparency, Responsibility and Rights of Citizens in Cameroonian Forests

Centre for the Environment and Development (CED)
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The forest in Cameroon is a national resource. The products found within it (timber, non-timber forest products, game etc.) are used far beyond the forest zone. A study conducted in 1995 as part of the National Environment Management Plan on the use of the biodiversity in Cameroon, shows that the value of all the types of forest products used in Cameroon represents several billions of CFA francs.

This study firstly considers the provisions of the 1994 Forestry Law, which was partly intended to increase 'transparency' of the management of the sector. It then considers in more detail some of the difficulties in the implementation of procedural rights in Cameroon, and how this contributes in reinforcing the 'opaque' management of forests, and the multiplication of practices contrary to the law.

1. The 1994 Forestry Law - progress in promoting transparency?

The reform of the Forestry Law that started in the early years of structural adjustment in Cameroon (around 1988) was aimed, among others, at improving transparency in the management of the sector, such as in the granting of exploitation rights, and the monitoring of exploitation, etc.. The idea was to guarantee optimum profitability of forest management for the State.

When compared with previous laws and with other instruments governing access to natural resources (mines and oil, for instance), the 1994 Forestry Law was undoubtedly an important step in the promotion of transparency. It clearly spelled out the modalities for granting exploitation titles, and set up a system that, in theory, promoted equality of opportunities between the various applicants. Important provisions within the law include:

i. Allocation by open invitation to tender, a legal means of accessing the resource:
This put an end to granting by mutual agreement that had been the practice in the former forestry law. The 1994 law imposed allocation by open invitations to tender as the common law method of acquiring forest exploitation titles. The finance law imposed a minimum rate for bids (CFA F1,500/ha for concessions and CFAF 2,500/ha for sales of standing volume).

ii. Prior publication of selection criteria;
Selection criteria for offers are stipulated in an order signed by the Minister of the Environment and Forestry, who disseminates them broadly within the forestry sector. The criteria insist on technical and financial parameters, and state the modalities of weighting the technical capacities, previous commitments and the bids of applicants.

iii. Institution of an observer at the commission for the granting of forest exploitation titles:
The inter-ministerial commission for the granting of forest exploitation titles has an Independent Observer responsible for controlling the regularity of commission deliberations and decisions. The Observer drafts a report to the Minister of the Environment and Forestry at the end of each commission meeting.

However, despite the progressive intention of these provisions, it is clear that they have not functioned properly. Indeed it appears that the existence of the law has not brought about fundamental changes in the malfunctioning of the system and corrupt practices that prevail in the forestry sector.

2. Continuing 'opacity' and impunity

It is clear that 'opacity' has continued and has even worsened in the forestry sector. This assertion can be illustrated with a few examples:

a) The principle of invitations to tender was not always transparent:
In many cases, the rules pertaining to the granting of concessions did not function as provided for by the law. For example, as early as 1996, the Prime Minister granted five concessions 'by mutual understating', in violation of the 1994 law.

The 1997 round of concession allocations awarded concessions to the best financial and technical offers in less than half of cases. In 2000, some worrying facts cast doubts on the confidentiality of bids or, at least, on the reliability of the bidding system. In a context of stiff competition between forestry companies to access the resource, it was notable that bidders consistently proposed only the minimum amount for concessions situated in regions that were among the richest in the whole country. It is very unlikely that they would have risked losing rights to such lucrative concessions unless they were reasonably sure that they were the only bidders.



In addition, it was noticed that in the early 1990s, the Minstry of Forests and the Environment (MINEF) had granted numerous "timber salvage authorisations", which was tantamount to circumventing the procedures of open tendering for logging rights. The timber salvage authorisations themselves did not respect the legal requirements, as they did not actually relate to the recovery of timber felled incidentally during a development operation. Also, each of the authorisations was for the maximum salvage surface area (1000 hectares). In 2001, the Minister of the Environment and Forestry prohibited the granting of salvage authorisations, but at least one (ARB 192) is still operating some four years after it was granted.

b) The independent observer at the commission for the allocation of forest exploitation titles has not stopped irregularities; The Independent Observer at the commission for the allocation of forest exploitation titles does not have the power to suspend the findings of the commission in the event of irregularity. Furthermore, his reports are not made public, and the irregularities noted up till now have never been followed by any decision from the Minister.

c) Forest control remains inadequate; Forest control that is aimed at ensuring the respect of the law by logging companies is far from optimal in practice. As such, many illegal operations continue with complete impunity. Four problems can be raised with regard to forest control:

• Control operations are not systematic. some companies that are strongly suspected of illegal logging have not undergone any real control during the

past three years. A mission of the Independent Observer was interrupted around the Dja Reserve periphery by instructions from the administrative hierarchy.

• Offences noted in the field do not lead to the drafting of an Official Statement of Offence. The drafting of an Official Statement of Offence ('Proces Verbal) report to notify an offence is not systematic after forest control operations, although only such a report can grant legal existence to illegal operations. Such negligence on the part of the administration enables delinquent companies to continue to circumvent the law. The most glaring case has been that of Société Forestière Hazim (SFH), whose illegal operations in FMU 10 030 have cost the State a loss of earnings worth about 25 billion CFAF (around US $38 million). The absence of a report drafted at the time the facts concerning SFH were noted might today limit the administration's chances of success in its attempt recover it's the fines due to it.

• Sanctions are not dissuasive. Where levied, sanctions represent just a minute proportion of profit made by the company from the illegal operations, and are often almost insignificant. The best example of such a practice concerns the company known as Wijma, relating to illegal operations around the sale of standing volume No. 09-02-132. The surface area exploited illegally was 2,000 ha, for an estimated production of 14,000 cubic meters, representing a value of US$ 21,000,000 or CFAF 14,000,000,000. In settlement of the case, WIJMA ended up paying 10,000,000 FCFA.

• Sanctions imposed are not always applied. There is no mechanism for verifying if sanctions imposed by MINEF are actually applied. The Ministry does not publish the list of amounts actually paid by companies in fines and damages. Such opacity paves the way for numerous further malpractices.

It can therefore be seen clearly that the existence of a law with provisions that encourage transparency is not enough, if it is not accompanied with political will.. As discussed in the following section, these problems are compounded by a lack of 'procedural rights' in relation to the forestry sector.

3. Shortcomings in procedural rights; the source of opacity in the forestry sector

Given that the overall objective of industrial-scale forest exploitation is to fill State coffers, the entire population of Cameroon has an interest in seeing to the resource being well managed. Therefore, there should logically exist modalities for civic input to the control of the activities of actors of the forestry sector. Such control could be exerted through procedural rights that should include:

• the right to access information on forest management issues;

• the right for the public to participate in making decisions that are likely to have an impact on the environment;

• the right to access independent and impartial justice in the event of litigation relating to forest management. Each of these is considered in turn, below.

i) Recognition of procedural rights is enshrined in Cameroonian law

Procedural rights are recognised in Cameroonian law. The 1996 Constitution recognises the right to a 'healthy environment' for all the inhabitants of Cameroon. It considers environmental protection an "obligation for everyone" and imposes on the State to see to "the defence and promotion of the environment". Such formulation carries with it several implications:

• The right to a healthy environment has been elevated to the status of fundamental human right in Cameroon. This is Cameroon's translation of article 24 of the African Charter on Human and Peoples' Rights, which the Cameroon Constitution has included as an

integral part.

• This right generates obligations and duties for all actors. The Constitution imposes on all the respect of the right to the environment. This right has as a corollary the capacity recognised in all inhabitants of the territory to make any possible defaulters respect the same, including the State. The State is invested with the role of guarantor of this right, and must assume the responsibility of defending the environment, in the interest of all. When applied to the forestry sector, this obligation imposes on the State the guarantee of sustainable management of forest areas and resources.

Access to information is one of the pillars of good environmental governance and civic participation in forest management.

In practice, however, this right is not always respected in Cameroon, thereby jeopardising the involvement of the people in forest management.

ii) Access to information is still limited

Access to information is one of the pillars of good environmental governance and civic participation in forest management. In his or her capacity as holder of the right to a healthy environment, the citizen has the right to be fully informed, in a timely manner, of any activity that is likely to cause a lasting and/or substantial modification to his or her habitat. A citizen's access to information on the possible threats against the forest raises a number of questions:

• On the nature of the information to be supplied; how "secret" should be commercial or State 'secrets'? Who determines the nature of information to be disseminated?

• On the responsibility in producing and disseminating information; who, between the enterprise that invests and the State that authorises it to do so, should ensure public access to information?

• On the practical modalities of such an enterprise; in which language? By which means? With what time limits? etc.

The principle here is freedom of access to information. The African Charter on Human and Peoples' Rights, which is incorporated within Cameroon's 1996 Constitution, proclaims that "Every man shall have the right to information". Cameroonian law guarantees the principle of free access to information. The Law on social communication, passed in 1990, lays down this general principle: "Except otherwise stated by law, access to administrative documents shall be free". It further specifies the scope of such freedom, which is extended to "all files, reports, studies, minutes, statistics, guidelines, instructions, circulars, notes, in any case all documents governed by statute law".



The principle of free access to information is confirmed in environmental management by the 1996 Framework Law on the Environment, which authorises just one exception in Cameroon: secret information relating to defence of the nation.

One can thus validly believe that all the information available in the various public administrations of Cameroon (including the Ministry of

the Environment and Forestry) should, under the law, be accessible to citizens who so request it. At MINEF, such free access should, amongst others, be applied to all computerised database systems for the management of forest related information e.g. SIGIF, to reports of the control missions of the Central Control Unit, to offences and sanctions, and to transactions entered into between MINEF and private companies. Such information is supposed to be open to citizens for 'passive access' (i.e. made available by MINEF) or active access (available on request).

At the moment, MINEF makes public the following information:

- A list of valid forest exploitation titles;
- A list of offences and sanctions.

MINEF does not communicate the following information:

- The status of disputes, such as information on the application of sanctions;
- Detailed production statistics per company and per licence (necessary for detecting illegal operations).

The absence of such crucial information hinders the involvement of citizens in monitoring the management of the forestry sector.

The situation is no better with regard to access to justice.

iii). Access to justice; many impediments

The African Charter on Human and Peoples' Rights is undoubtedly the primary regional legal instrument that specifically provides for the recognition of a right to justice. In Article 3, it proclaims "total equality" of all before the law, and provides for the right to equal protection by the law. In addition, it elevates access to justice to the status of a fundamental right, stating: "Everybody shall have the right to have his cause heard". According to the writers of the Charter, this right includes "The right to refer any matter that violates his fundamental rights recognised and guaranteed by existing conventions, laws, regulations and customs to national competent jurisdictions".

In Cameroon, the right to justice is also enshrined in the preamble of the Constitution, which stipulates: "The law shall ensure to all men the right to have justice done". This principle is stated clearly in the Penal Code, which stipulates that: "the criminal law shall apply to all". In the same light, the Civil Code places obligations on judges referred with a case: "Any judge who refuses to hear a case, under the pretext of silence, obscurity or shortcomings of the law, may be charged guilty of denial of justice". Furthermore, the judge is obliged to state the law in a precise and specific manner whenever a case is brought to him. Lastly, the civil procedure makes it possible to sanction a judge in cases of denial of justice: "There is denial of justice when judges refuse to answer petitions or neglect to handle cases as they are and in turn to be judged".

In the forestry sector, access to justice should be a facility open to all persons subject to be tried against decisions, actions or omissions of all actors in forest management, including the forestry administration. It is however evident that the forestry administration has progressively elevated itself de facto and de jure to the status of principal 'manager' of forestry-related disputes, thereby becoming, in many cases, judge in its own case. The jurisdictional function of the administration is thus extended, to the detriment of the judicial process. This situation, which is superimposed on the traditional rules relating to access to justice, accentuates the marginalisation of citizens in forestry-related cases.

Thus, with the absence of a procedure set forth by the administration, it is impossible for citizens to take any action

against illegal forest exploitation. It should also be noted that the transactions entered into between the State and delinquent companies generally flout the rights of communities, whereas the law guarantees such rights. For example, the 10% of annual forestry royalties that are due to forest communities are not mentioned in the calculation of pecuniary sanctions inflicted by the State on delinquent companies. The sanctions are limited to fines and damages, i.e. only the amounts to be paid to the State treasury.

Guaranteeing access to justice for all citizens with regard to infringements on forestry law would be a significant progress in monitoring the respect of the law. Difficulties in accessing justice deprive citizens from enjoying their rights on the following issues:

• Control of the use of forest royalties. In the event of poor use of forest royalties, the beneficiary communities may not take the matter to court, because such funds are public funds. Only the State may sue to obtain reparation for poor use of public funds.

• Control of illegal logging. Because they are not owners of the forest, local communities may not sue to have illegal operations stopped.

In both cases, the official administration as a whole has neglected to pursue justice in order to obtain reparation for the communities. In the rare cases where the administration decides to go to court, it does not always take the necessary precautions to guarantee the chances of success. This has been the case with the dispute withthe Société Forestière Hazim (SFH), concerning illegal logging in FMUs 10 092 and 10 030. Although the facts had been known since 1999, MINEF preferred not to draft any report against SFH for more than three years. When the administration finally decided to sue, SFH contested the facts. The communities would have acted with much more flexibility than the administration, if they had the right to sue and ask for the end of the illegal operations of SFH.

The shortcomings of the instruments and the practice in matters of access to information contribute to a weakening of civil society, and de facto exclude it from the management of forest resources. The legal provisions to organise the setting up and functioning of the major organisations of the civil society compound this weakening.



d. The civil society in Cameroon is still weak

Organised civil society is relatively young in Cameron. The law distinguishes 'NGOs' and 'associations'.

The establishment of national associations is governed by the 'declaration' system. The law stipulates that associations shall be set up freely, but shall acquire legal status only when their headquarters are registered at the Divisional Office, against a receipt. However, associations suffer from two constraints that jeopardise both their independence and their survival:

Opportunities for financial strangulation of associations: According to the law, a registered association that does not enjoy

public utility recognition has the right to receive "neither subventions from public bodies nor donations and legacies from private individuals". But such forms of prohibited funding constitute the main income of associations elsewhere. Such restriction weakens the civil society.

The 'Damocles sword' of dissolution; The administration has the power to interrupt the activities of an association through legal or administrative means. The law stipulates "the Minister in charge of territorial administration may, on the reasoned proposal of the divisional officer, suspend by order, for a maximum duration of three months, the activities of any association for disturbance of public order".

In one notable case in the past, this provision was used, purportedly because of "disturbance of public order", to threaten suspension of the activities of an organisation that had spoken publicly about the illegal operations of SFH in the Lomie region. Three years later, the forestry administration filed in a suit against the same company.

Concerning NGOs, a 1999 law organises their establishment and functioning. NGOs are governed by the approval system, granted by the Minister in charge of Territorial Administration, for a period of five years, renewable (Article 10).

Some problems may be raised here:
- The law does not lay down the criteria on the basis of which such approval may be granted or denied. This may cause the administration to act arbitrarily and it would be difficult for the injured NGOs to press for justice on objective grounds.
- The approval is renewable every five years. This provision may make it possible to update the NGO file in Cameroon, by renewing the approval of only those that function. But it may constitute a means of pressure from the administration on the most "critical" NGOs, in the absence of objective criteria on the basis of which the approval is granted or renewed.

The law authorises the Minister of Territorial Administration to dissolve an NGO "whose activities deviate from its objectives" (Article 22), and provides for very severe sanctions – imprisonment of from 3 months to 1 year and a fine of from FCFA 100,000 to 1 million – for leaders of NGOs operating without an approval (or who operate pending the approval).

Because of such weakness on the part of the civil society, and because of restrictions in involving citizens in the management of forestry resources, the administration maintains a monopoly on monitoring of forest management operations. The communities and civil society are almost completely oblivious of forest controls, for instance. This promotes impunity for illegal operations, which is detrimental to both the public treasury and communities of the forest zone.

4. Recommendations

1- The Ministry of the Environment and Forestry should enable citizens who so request to have access to all non-confidential documents. The list of defaulters to the forestry law, the sanctions imposed, as well as the status of disputes, should be published.
2- It is indispensable to recognise communities' and civil society organisations' right to sue in order to obtain sanctions for infringements against the forestry law.
3- The important role of civil society should be recognised, and conditions for its independence secured, so it may continue to enhance the rule of law in the forestry sector.

Part 4

Chapter 10

Illegal exploitation of Gaboon resin in Gabon

Education for the Defence of the Environment and Nature (EDEN)
Marthe Praxède Mapangou

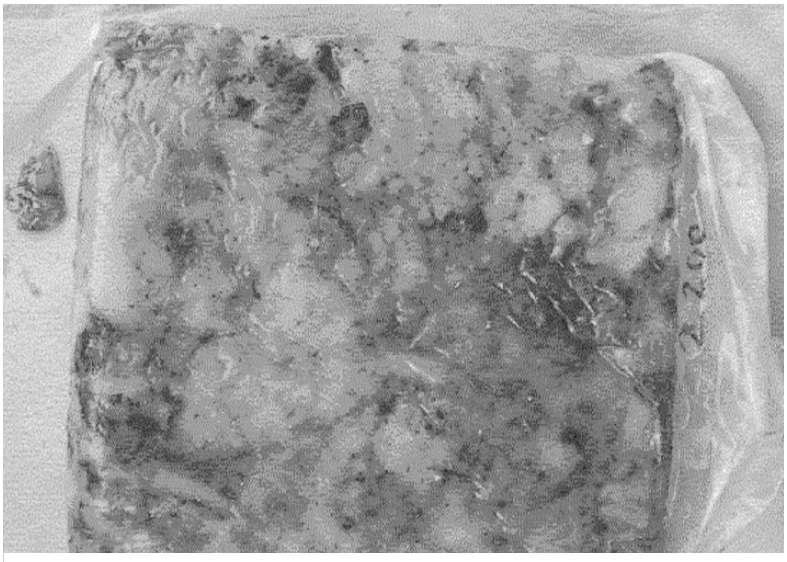
1. Introduction

This case study presents an example of illegal exploitation and trade of non-timber forest products (NTFPs). It aims to highlight the need for a sharing of responsibilities among the various 'stakeholders'. The legal vacuum in law concerning the exploitation and trade of NTFPs indicates a failure of responsibility of the State. The State's failure to regulate the sector has allowed logging companies to exploit and trade or simply plunder the forestry wealth that covers the surface area granted them. The responsibility of forest product consumers is illustrated by the passive attitude of the company Dior, which, although potentially helping to 'add value' to forest resources, may also be benefiting from illegal practices by failing to ensure the legality of their raw material supplies.

2. Laws and regulations governing exploitation and trade of NTFPs

Gabon's Forestry Code is today the only law that lays down modalities for the management of resources of the forestry sector. Under the law, only two clauses have provisions on Non-Timber Forest Products. The 31st December 2001, version of the law stipulates that:
- "Obtaining a forest exploitation title shall not give right to the exploitation of forestry products other than timber. The exploitation of other products such as genetic, wildlife, fisheries, agricultural and mining resources and the canopy shall be subject to distinct instruments" ;;

- "The objective of the exercise of customary user rights shall be to meet the personal and collective needs of village communities, which include:
The use of trees for construction and the use of dead timber or branches as firewood;
the collection of secondary forest products such as tree bark, latex, fungi, medicinal or edible plants, stones, lianas;
Small-scale hunting and fishing;
Grazing in the savannah, in the clearing, and the use of branches and leaves as fodder;
Subsistence farming;
Grazing and water use rights.



Goboon resin - a high value forest product

The exercise of customary user rights shall be free in rural forest estates for the members of village communities living traditionally near such forests and on condition that they respect the restrictive regulations for management or protection" .

Thus, the exploitation of NTFPs is clearly governed by different provisions from those applying to timber logging. As such, the

holding of a logging licence does not give right to the exploitation of other products, even when such products are found inside the concession granted. Furthermore, members of village communities traditionally living in or near the forest estate may enjoy the exercise of customary user rights. Such rights enable them to freely exploit NTFPs, if such exploitation is aimed at meeting their needs.

The exploitation and trade of NTFPs are, at present, not regulated in Gabon. Only taxes paid by retail traders in the market may be considered as fiscal revenue linked to the sale of NTFPs, and these are insignificant. However, the authors understand that NTFPs will be included within implementation instruments that are currently being drafted. These legal instruments will regulate the use and exploitation of NTFPs, and lay down the regulatory framework for their exploitation for commercial purposes.

3. Gaboon : A forest giant

Gaboon (Aucoumea klaineana) is a tree of the Burseraceae family. It is referred to as Angouma, Moukoumi and N'Koumi in local Gabonese languages. The distribution of the Gaboon is limited to the West and Centre of Gabon and to some small areas in Equatorial Guinea, Congo and Cameroon. Aucoumea klaineana is one of the most abundant species in the forests of the Guinea/Congo coastal areas, especially in aged secondary forests, on well-drained soils.

Its exploitation constitutes the main activity of the forest sector in Gabon. It is the most important commercial timber in Gabon and contributes about 90% of annual production. Gabon is the world's leading producer of Gaboon timber.

Gaboon is considered as an excellent timber for veneer or plywood, and equally produces good quality sawn wood. France is the major importer of Gaboon. Others include Italy, Japan and Israel. The exportation of Gaboon timber to Western Europe and Japan is becoming increasingly significant for the Gabonese economy because of declining oil income.

However, according to the findings of the IUCN Regional Workshop for the Conservation and Sustainable Management of Trees project, repeated felling limits the regeneration of the species, thereby constituting a threat to its survival. This threat is compounded by its limited distribution and the attendant destruction of the ecosystem. Furthermore, the genetic reservoir of Gaboon has been seriously eroded by decades of selective harvesting. The FAO considers A. klaineana a priority species for in situ conservation.

4.Exploitation of Gaboon resin



A villager working on Okoume's resin

i. The actors:
Gaboon resin is exploited mostly by the local people who use it essentially for its mystical-medicinal properties. The resin is generally used for manufacturing traditional torches used during certain initiation rites (by, amongst others, the Bwiti, Njembe, Okuku ethnic groups), for the purification of water, for the treatment of abscesses and as an insecticide and deodorant.

For some years now, certain logging companies have embarked on the exploitation of Gaboon resin. Such exploitation is illegal, as the law (mentioned above) states that logging licences do not authorise the exploitation of its by-products.

Gabonese authorities are currently studying means of a more "modern" exploitation of the resin, especially with regard to screening for potential uses including parasitological, pharmacological and other chemical properties. As such, the resin that was hitherto used in rubber manufacturing or as fuel in torch manufacturing is today being tested by the cosmetic industry. Dior, the French cosmetics corporation, for instance, already has an interest in Gaboon resin.

ii. Modes of collection of the resin:
The rural people of Gabon collect resin by tapping the trees. It takes two to three days for the tapped tree to produce resin. It has been reported that, in active logging operations, resin is collected simply after the feeling of Gaboon trunks.

iii. Sale of the Gaboon resin:
Gaboon resin is sold locally by the rural communities. For some families, this activity is the main source of income. The resin is collected and transported in small-scale and sold in the village itself, or bought by merchants to be distributed in town. The "native torch" manufactured from Gaboon resin is the main product sold on the local market. It costs between CFAF 500 and 20,000.

Field investigations have revealed that certain logging companies are also engaged in the production and sale of Gaboon resin. In this case, the resin is collected in industrial quantities and exported. This was discovered during the execution of a research project, the BIODIVALOR-Gabon programme, which was jointly initiated by Pro-Natura International and IPHAMETRA, representing the Government of Gabon. This programme was funded by the French Cooperation. The BIODIVALOR-Gabon programme was aimed at studying ways of valorising natural products (including NTFPs such as Gaboon resin) in the chemical and/or agronomic industries. Within the context of the programme, Dior was asked to test the Gaboon resin to determine its possible importance for the manufacturing of cosmetic products. Village communities living around the areas where Gaboon is found were expected to be the main suppliers of the resin through IPHAMETRA, which was supposed to distribute the financial benefits. The earliest resin samples tested showed impressive anti-protease and anti-inflammatory activities. This led Dior, in 2000, to become interested in more regular supplies of resin and to finalise the development of a product that would serve as base for body creams and/or nail polish. In order to meet this increasing demand, a mission grouping representatives of Pro-Natura International and the French Ministry of Foreign Affairs asked the logging company Thanry (Compagnie Equatorial des Bois - CEB) to experiment with the production of Gaboon resin. The resin produced was to be handed to IPHAMETRA, for onward transmission to Dior.

The authors of this study discovered that, with increasing demand from Dior, the quantities transmitted by IPHAMETRA were no longer sufficient. The company Leroy-Gabon, which exploits a forest concession of 654,000 hectares in the Lope region (Lot No. 32), was thus contacted to produce and directly supply the Gaboon resin to Dior. Testimonies recorded in the field indicate that IPHAMETRA has no control of

the 'trade circuit'.

The activity is thought to be illegal, as noted above, the law clearly stipulates that a logging licence authorises only logging; the exploitation of all other non-timber forest products is prohibited. Leroy Gabon is therefore not authorised to exploit Gaboon resin;

- It also undermines the development contribution to Gabon as Dior has apparently decided to stop obtaining supplies from IPHAMETRA, the body authorised to exploit Gaboon resin on an experimental basis. Furthermore, it is understood that Dior has moved from the stage of experimentation to the industrial stage, which presupposes an increase in the quantity demanded.

iv. Losses and impacts

a. Fiscal losses due to lack of control of the activity

A kilogram of Gaboon resin costs between CFAF 35,000 and 50,000. When exploitation was controlled by IPHAMETRA, production was estimated at about 400 kg per year, giving a total potential annual income of between CFAF 14 to 20 million. With the development of the Gaboon resin market, there is the risk that Leroy Gabon would have an ever-increasing turnover, to the detriment of the State of Gabon, which does not exercise any control nor collect any tax on the activity (neither at production nor at exportation).

b. Losses incurred by local people

When the activity was carried out by IPHAMETRA the resin was collected by the village communities living around the collection zones. This activity thus generated some income for the poorest sections of society in Gabon. Today, only the logging company enjoys such benefits.

c. Socio-economic impacts of Gaboon resin exploitation by logging companies

Socio-economic impacts: Today, the exploitation and trade of the Gaboon resin, like most NTFPs, is not controlled. Sales for export such as those carried out by Leroy Gabon or CEB through IPHAMETRA are not taxed. Therefore, nobody at the local level benefits, neither the State nor the populace. The involvement of big companies in resin exploitation and trade excludes the local populations from the activity, and hence from profits they could have made as a result of their proximity to the Gaboon region. Rough estimates show that the sale of Gaboon torches alone produces a monthly turnover of CFAF 40,000 per household.

Environmental impacts: The environmental impacts of Gaboon resin exploitation are not well known. In principle, when such exploitation is limited to the bark of the tree, it can be carried out sustainably.

5. Conclusions and recommendations

The authors draw several conclusions and recommendations from the study;

- It was interesting to note that, although the issue of Gaboon resin exploitation poses a real problem, especially to rural forest communities, none of the persons met was willing to testify openly.
- Gaboon resin presents a significant socio-economic and financial opportunity. It is necessary for the Ministry responsible for forest management to set up a permanent institutional and regulatory framework to enable rational and sustainable exploitation of NTFPs, including Gaboon resin.
- In order to maximise the development benefits of Gaboon resin, exploitation and trade should be organised in a way to enable the local people to profit from the activity.
- There should be further research aimed at improving the impacts of resin collection on the life of trees in particular and on the environment in general.

The Gabonese law clearly stipulates that a logging licence authorises only logging; the exploitation of all other non-timber forest products is prohibited. Mr. Leroy Gabon is therefore not authorised to exploit the Gaboon resin...

Notes

[1] Even where Baka are applying for community forests, it is generally for only very small areas, less than 1,500 hectares (the law allows for up to 5,000 hectares).

[2] By order No. 01/029/CAB/GP-SK/2000.

[3] Promotions without salary increases in the public service date back to 1994 when the CFA F was devalued at 100%.

[4] During the meeting of Central African NGOs held in Yaounde in January 2003, as part of the AFLEG process, participants issued a declaration in which they condemned the 'transhumance' and unscrupulousness of the Hazim-Cristal group that moved from Cameroon to Congo.

[5] We were informed that the extensive Mila-Mila yard had been acquired from the Sub-divisional Officer for around five hundred thousand francs (CFAF 500,000), a very low price.

[6] Article 148, chapter two: Exploitation of the forest and wildlife, Section 1: Forest exploitation, Sub-section 3: General clauses on the exploitation of timber producing forests.

[7] Articles 252 and 253, Part VI: Customary user rights.

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