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# Local Communities' and Indigenous Peoples' Rights to Forests in Central Africa: From Hope to Challenges

Samuel Assembe-Mvondo

**Abstract:** This paper reviews the various rights of local communities and indigenous peoples over forest resources in Central Africa. Indeed, in 2010, the Council of Ministers of the Commission des Forêts d'Afrique Centrale (COMIFAC) adopted the Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa. A survey of this subregional legal instrument highlights a genuine commitment by states to consolidate the benefits and the emerging rights that can improve the living conditions of vulnerable communities and strengthen the subregional regime of sustainable forest management. However, the effectiveness of the subregional guidelines hinges on the administrative acts and practical measures of member states to incorporate this instrument into their domestic legal systems and to enforce it.

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**Keywords:** Central Africa, international cooperation of regions/local communities, civil rights/human rights, forest, forestry, customary law

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The forest policies and laws of Central African countries have established participatory management as a linchpin of sustainable forest management and poverty alleviation (Nguingui 1999; Trefon 2008). In view of policies recommended by the international community, however, the current approach to participatory management is inconsistent, and the practice of sustainable implementation inadequate (Topa et al. 2009). Furthermore, the national mechanisms set up and implemented in the framework of the Central African Forests Commission (COMIFAC – Commission des Forêts de l’Afrique Centrale) member states are inconsistent and divergent. To overcome shortcomings in mechanisms designed to involve local stakeholders in forest management, COMIFAC, with the financial support of the UN’s Food and Agriculture Organization (FAO), prepared the Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa.<sup>1</sup> These guidelines, central to negotiations among experts from all member states for more than two years, were adopted during the 6<sup>th</sup> Ordinary Session of COMIFAC’s Council of Ministers held from 10 to 11 November 2010 in Kinshasa, Democratic Republic of the Congo (DRC).

The adoption of regulations to govern the participation of local communities and indigenous peoples in forest management in Central Africa is not an isolated occurrence. It is part of the global trend to grant local communities and indigenous peoples rights and genuine powers over the management of natural resources. It is clear that International Labour Organization (ILO) Convention No. 169 (adopted in 1989), the 1992 Rio Earth Summit, and the 2007 United Nations Declaration on the Rights of Indigenous Peoples have inspired Central African states. Furthermore, the need to combat climate change by adapting strategies and REDD+ mechanisms<sup>2</sup> under negotiation have revived the global debate on the rights of local communities and indigenous peoples (Sunderlin et al. 2009; Cotula and Mayers 2009; Karsenty and Ongolo 2012). This subregional regulation can also be seen as a collective response by COMIFAC member states to mitigate the negative impacts on the local population caused by the “land-grabbing” phenomenon that is linked to increased large-scale agricultural investments in forest zones in the Congo Basin (Karsenty 2010; Nguiffo and

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1 Directives sous-régionales sur la participation des populations locales et autochtones et des ONG à la gestion durable des forêts d’Afrique centrale, see COMIFAC-website, <[www.comifac.org/Members/webmaster/dir-popaut.pdf](http://www.comifac.org/Members/webmaster/dir-popaut.pdf)>.

2 REDD = Reducing Emissions from Deforestation and Forest Degradation.

Schwartz 2012).<sup>3</sup> In addition, at the subregional level, the guidelines are aligned with what should henceforth be regarded as the process of formulation of a subregional, sustainable forest-management regime, which in fact heralds the advent of a genuine and harmonized forest law in this subregion.

This contribution reviews the various forest rights of local communities and indigenous peoples in the Central African subregion provided for by the new regulations. The paper takes an *a priori* approach with some illustrations based on historical and current facts. First, the paper presents the legal framework governing forests in Central Africa. Second, there is a summary of the different rights contained in the subregional guidelines. Third, there is an analysis and discussion of progress, including possible consequences of the new legal instrument on the laws of member states and the main beneficiaries.

## Subregional Regime Framework of Sustainable Forest Management in Central Africa

According to Tarasofsky (1999), the international forest regime implies the existence of a set of international and regional laws governing the management of forest resources. Although the existence of a global forest regime has been questioned (Smouts 2008), arguments supporting its reality have recently been demonstrated (Rayner et al. 2010). The dynamics of inter-state actions in the Central African subregion in favour of sustainable forest management seem to confirm the existence of a set of binding and soft legal instruments governing forest ecosystems (Assembe-Mvondo 2006a).

The Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa, which established COMIFAC, came into force in late 2007 after its ratification by two-thirds of the parliaments of the ten member states.<sup>4</sup> It serves as the constitution of the subregional regime of the Congo Basin forest resources (Assembe-Mvondo 2009). In addition, two other important legal instruments were adopted during the meeting of COMIFAC's Council of Ministers held in Brazzaville in October 2008 – namely, the Subregional Agreement on Forest Control in Central Africa, and the Subregional Guidelines on the Sustainable Management of Non-Timber Forest Products (NTFP). The formulation of these two instruments was financed by FAO. This list of legally binding instruments that henceforth

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3 In this later publication, the authors have documented the negative impacts of land concession for oil palm agro-industry on local communities in Cameroon. See Nguiffo and Schwartz 2012.

4 Member states: Burundi, Cameroon, Chad, Central African Republic, Congo-Brazzaville, DR Congo, Equatorial Guinea, Gabon, Rwanda, São Tomé e Príncipe.

reinforce the sustainable forest-management regime includes the aforementioned Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa, adopted in November 2010 by the Council of Ministers.

The first Summit of Central African Heads of State on the Conservation and Sustainable Management of Tropical Forests, held on 17 March 1999, led to the issuing of the Yaoundé Declaration, in which Central African states clearly expressed their commitment to the principles of biodiversity conservation and sustainable management of their forest ecosystems. The Yaoundé Declaration is fundamental, but it does not seem to add anything new to the fundamental law (McDermott et al. 2010). In fact, the Treaty of Brazzaville of 2005 serves as the constitution of COMIFAC. The resolution adopted by the heads of state during their second summit in Brazzaville on 5 February 2005 also falls within the category of “flexible” acts of law. Along those lines, the 2005 resolution reaffirms the commitment made in the Yaoundé Declaration in 1999, and gives a new institutional orientation to subregional cooperation with the signing of the treaty and the adoption of the Convergence Plan, the main working document of COMIFAC.

COMIFAC is responsible for the subregional framework for sustainable forest management. In fact, according to Article 5 of the Treaty of Brazzaville from 2005,

a subregional organization known as the “Central African Forest Commission”, abbreviated as COMIFAC, is hereby established to implement this Treaty. COMIFAC is responsible for spearheading, harmonizing and monitoring policies on forests and the environment in Central Africa.

This subregional organization is headquartered in Yaoundé (Cameroon). COMIFAC comprises three main bodies: 1) the Summit of Heads of State and Government, 2) the Council of Ministers and 3) the Executive Secretariat. Decision No. 3 A/CEEAC/CCEG/XIII/07 of the Economic Community of Central African States (ECCAS) henceforth considers COMIFAC as a specialized agency focused on forest-management policies. One of the main contributions of COMIFAC to global negotiations is the proposal to integrate forest degradation in future multilateral mechanisms to mitigate the effects of climate change, thus progressing from a simple “RED” (Reducing Emissions from Deforestation) to “REDD” during the Conference of the Parties held in Bali in 2007 (Karsenty 2008). Moreover, during the 28<sup>th</sup> session of the SBSTA (Subsidiary Body for Scientific and Technological Advice of the United Nations Convention on Climate Change) in 2008, COMIFAC countries requested the explicit inclusion of: 1) conservation and sustainable

forest management in the REDD mechanism and 2) the improvement of forest carbon stock (forest plantation and agroforestry) within the REDD mechanism. It is these new elements that helped to a certain extent to establish the current REDD+ skeleton at the Copenhagen and Cancun Climate Change Conferences (Tadoum et al. 2012).

The Congo Basin in Central Africa is the second-largest rainforest in the world after the Amazon (CARPE 2005; CBF 2006). The biodiversity of the Congo Basin has both global and regional significance in view of both its global climate regulatory effects and the vast natural resources it contains, especially for the more than 30 million people whose livelihoods depend on it (FAO 2007). COMIFAC is expected to harmonize the divergent political views of its member states and to defend a common vision at global debates on forest resources and related issues, such as the fight against climate change.

## Local Communities' and Indigenous Peoples' Rights Provided by the COMIFAC Guidelines

The instrument (the guidelines) comprises two main parts and two annexes dealing, respectively, with terminological clarifications and major innovations induced by the subregional regulation. The second part of the guidelines, which contains the basic rights of local communities and indigenous peoples, is subdivided into nine major principles, 39 guidelines, and a list of priority actions to be carried out by each COMIFAC member state. The guidelines appear to be in line with Component 7.21 of the Convergence Plan adopted by the heads of state in Brazzaville in 2005 which seeks to

ensure by 2015 forest ecosystem conservation and reduction of poverty in Central Africa by effectively involving local communities and indigenous peoples and NGOs in forest management and recognizing and consolidating the power and rights of local communities and indigenous peoples and NGOs in forest management.

Six of the nine principles contained in the subregional legal instrument provide for the rights of local communities and indigenous peoples. The last two principles deal with issues concerning bodies in charge of promoting the participation of rural communities in forest management. The table below summarizes the various rights local communities and indigenous people are recognized as having by the COMIFAC instrument. From this perspective, it is possible to make the following distinction among the listed rights:

1. consolidated rights, which refer to those rights that are already mentioned in current, post-Rio Conference forest legislation, whose content

- the COMIFAC guidelines appear to only improve upon or re-emphasize;
2. re-established rights, those rights that were removed by many statutory legislations after the independence of Central African countries despite their resilience in the form of *de facto* practices (the COMIFAC guidelines are explicitly mentioned and provide them with content); and
  3. emerging rights, those rights derived from the newly established mechanisms, which have not yet been implemented (for example, REDD+ rights, FLEGT, FPIC, VPA, etc.<sup>5</sup>).

**Table 1: Various Rights of Local Communities and Indigenous Peoples Recognized by the COMIFAC Guidelines**

Consolidated rights	Re-established rights	Emerging rights
Right to participate in forest and land management	Customary ownership of forest resources and forest land	Right to customary preference clause
Right to be represented in forest and land decision-making centres	Right to ownership in community areas	Right to FPIC
Right to access to land and forest	Right to sell products or lease forest land (alienation)	Right to payment of environmental services (PES)
Right to use forest resources and land	Right to determine who has access rights and to what extent	Right to participate in REDD+, FLEGT/VPA mechanisms, forest certification and legality audits
Pre-emptive right on some forest areas	Right to regulate internal use patterns and transform the resources by making improvements	Right to prior notification of administrative decisions on land and forests tenure
Right to enjoy land and forest resources		
Right to the ownership of part of forest and land revenues		
Right to be compensated in case of expropriation		
Right to access to justice		
Right to be informed on land and forest management decisions		

Source: Author's compilation based on COMIFAC guidelines.

5 FLEGT = Forest Law Enforcement, Governance and Trade Action Plan of the European Union; FPIC = free, prior and informed consent; VPA = voluntary partnership agreement.

## Review of Local Communities and Indigenous People's Rights Provided for by the COMIFAC Guidelines

To better understand these guidelines, it is necessary to summarize the situation that has prevailed since the colonial period in the Central African sub-region.

### From the Complexity of Customary Ownership to the Simplification of User Rights

Before the colonial period, relations between local forest communities (which also includes ethnic Bantu tribes) and the natural spaces that make up their natural habitats generally hinged on four systems of access and ownership (Kouassigan 1982; Diaw 1997; Diaw and Oyono 1998): 1) collective ownership of all anthropoid spaces; 2) individual control of farmlands, water and some tree species; 3) free access to some major rivers, arid zones, roads and special products; 4) limited access to a common pool of resources like wildlife, forest products, NTFPs, some streams and natural forests. These systems of access comprised a series of collective and individual customary rights (Binet 1951; Le Roy 1982; Diaw 1997): genealogical rights based on *le droit de bache* (wood-chopping rights) or being the first occupant; productive rights integrating human labour in resources; rights of succession and inheritance guaranteeing the continuity of collective rights over individual rights, and allocation rights granted to foreigners adopted by the local community. In other words, African customary law is originally communal or “usufructuary”, meaning that land rights are not vested in any individual but in some corporate group such as a clan, community or family (Diaw 2010; Lund 2011). In this sense, Le Meur (2010: 92) rightly summarized this complex relation between local people and land tenure, saying, “One belongs to a group, one belongs to the land, the land belongs to us.” Therefore, for Jacob and Le Meur (2012: 94), “you must belong to the land if you want the land to become a little bit yours”. The customary rights were profoundly changed due to the imposition of individualistic logic and the profit-driven colonial legal system (Binet 1951; Kouassigan 1982). Kouassigan (1978) provides some explanations to help understand the rapid dislocation of the customary rights of ethnic communities during the colonial period.

Colonial administrations tried to adapt written law to the existing, complex customary regimes and to modify traditional ownership rights. Attempts to reform traditional legal systems were hesitant and contradictory. The colonial lawmaker had two main tasks: to establish a land system enabling the

colonial administration to develop virgin lands through its public services or through European concessionaires, and to establish a tenure system based on written law to gradually replace traditional land laws (Tallon 1971; Hesselings and Le Roy 1990). The policy on public ownership of land alternated between two main trends, one interpreting land ownership broadly and the other narrowly (Breton 1982). State land became space on which “native” populations could only harvest natural resources such as NTFPs. This led to the granting of user rights regarding land and other natural resources, or related rights, to the local communities. The situation remains more-or-less the same today. The procedure for establishing land rights, which was first introduced into West Africa by French colonists between July and October 1928 and later extended to Cameroon (1932), Togo (1935) and Equatorial Africa (1938), resulted in the establishment of ownership titles (Chauveau et al. 1982). This trend was significantly modified by the 1955–1956 instruments with the dual aim of keeping the administrative records of all approved tenures and rights and defining the legal status of individual and collective tenure systems.

Central African countries that gained independence in the early 1960s inherited from the colonial period a system of land and forest tenure characterized by a kind of conflicting coexistence between a prominent written law and a modified, simplified and marginalized customary law. In fact, the legislative reform of the postcolonial administration was not structured (Diaw 2010). It aimed to adapt the colonial regime to the new status of independent states or to perpetuate the dominance of written law over customary laws (Hesselings and Le Roy 1990). This gradually eroded customary practices to the benefit of the legal system imposed by European colonial authorities. Thus, the postcolonial land-tenure system incorporated customary land, which was considered to be vacant and unoccupied, into state land (Oyono 2005a). Local communities were almost completely stripped of their land (Pougoue and Bachelet 1982). Customary ownership or tenure rights were replaced with user rights granted to farmers and local communities and the possibility for any economic operator to obtain a land registration. State monopoly over land was confirmed in land laws and systematic registration. The inheritance of dual-tenure systems (statutory vs. customary) has continued into the era of independence, and to the present day (Diaw 2010). Despite the variations between the legal and administrative systems of the French, Belgian, Spanish and Portuguese colonizers in Central African countries, Elbow et al. (1996: 8) believe that the overall trend in sub-Saharan African governments toward officially encouraging the growth of land and forest resources markets is reminiscent of the turn-of-the-century colonial policies designed to replace customary tenure with state-administrated land

en route to formally registering one's property. Similar general concluding remarks have been made by Alden Wily (2012).

All this forest-tenure postcolonial legislation has been affected by the Rio Conference (1992) and a widening sense of basic needs and human rights related to the Millennium Development Goals (MDG). It is now recognized that local stakeholders should enjoy genuine rights to manage land and natural resources (Ribot 2002; German et al. 2010). In fact, after decades of centralized, authoritarian and poor governance by postcolonial administrations (Karsenty 1999; Oyono and Lelo Nzuzi 2006), some timid measures have been adopted in Cameroon, Congo-Brazzaville, the Central African Republic, Gabon and the DR Congo, all of which are moving to involve other, peripheral stakeholders (Karsenty 2006). Concretely, concepts like community forests and/or local community forests; allocation of a part of forest royalties; pre-emptive rights over some forest spaces; community hunting areas; and the creation of platforms for the representation of local stakeholders have emerged in legal instruments governing the management of forest resources (CBFP 2006; Assembe-Mvondo 2009; Bigombe 2010). Accordingly, the exercise of user rights could reinforce legal frameworks within the global trend toward the sustainable management of forest resources in or on state-owned lands. According to Eba'a Atyi et al. (2009: 26), among the most important innovations within the new forest laws adopted by Central African countries are those relating to the participation of local populations, decentralization and benefit-sharing. Oyono et al. (2012) hastily characterized this evolution of tenure rights as a simple "re-configuration of community rights". Yet, the different forest laws in force do not cover land-tenure dynamics (Karsenty and Assembe-Mvondo 2011). Despite such an evolution, improvements in the socio-economic conditions of local communities and indigenous peoples have remained relatively modest (Oyono et al. 2009; Topa et al. 2009; Cerutti et al. 2010; Malele Mbala and Karsenty 2010; Greenpeace 2010; Oyono et al. 2012). For example, as noted by Alden Wily (2012: 57) in the Gabon case:

Land and resources laws are intrinsically unjust. Various palliative measures such as setting aside a certain area for village use, requiring concessionaires and national parks to prepare management plans which permit local use of some parts of what have become their areas, or the institutional governance mechanisms [that are] needed to facilitate community- or neighbourhood-level claim[s] against abuse have not materialized.

Another illustration of the current situation is that logging companies must indicate in their forest management plans (FMPs) how customary use will be taken into account and administered within forest concession. Inside the

concession, micro-zoning sorts the areas that are assigned to timber-logging, those turned into protected areas and, sometimes, those used for agroforestry by local communities and indigenous peoples. The exercise of user rights in these various areas is not sufficiently detailed in FMPs. Additionally, most of those FMP documents also lack details on the type of activities that local communities can implement in each forest concession (Lescuyer et al. 2012). This is not a surprise: Just as in most other humid forest areas where large-scale logging is under way, Central Africa is afflicted by corruption, illegal logging practices, adverse impacts on biodiversity, lack of governmental oversight and inattention to existing uses and claims to resources by local peoples. Maybe this is one of the reasons that led Oyono et al. (2012: 180) to hastily conclude that neither the rights-based nor the development-based approach to livelihood is significantly consolidated by the implementation process of the forest policy reforms of the 1990s. The COMIFAC guidelines have yet to be included in administrative measures, and practical actions still need to be taken to substantially improve the living conditions of vulnerable local stakeholders with regard to land and forest tenure.

## Innovations Introduced by the COMIFAC Guidelines

To begin with, the guidelines certainly help to promote and consolidate the sustainable management of forest ecosystems in the Congo Basin. Indeed, as mentioned earlier in this contribution, the sustainable management of forest ecosystems in Central Africa, which is enshrined in the 2005 Treaty of Brazzaville managed by COMIFAC, consists of a series of common principles, standards and rules enacted in four binding instruments and others that fall under “soft law”. Therefore, the guidelines are another landmark reflecting the political will of member states to consider local communities and indigenous peoples as key stakeholders in the management of forest ecosystems in the Congo Basin. This singular approach of states leads to the effective participation and involvement of local stakeholders and recognition of the fundamental rights of vulnerable communities in global participatory paradigms. Furthermore, states partially reduce the void in the existence of coherent and suitable social norms in the management of tropical forests and emphasize the social dimension of the concept of sustainable forest management.

The COMIFAC guidelines have introduced many legal innovations, some of which should be emphasized. First, the guidelines introduce new legal terms that are meant to be incorporated into national legislation – namely, traditional hunting, a customary preference clause, FPIC, community forests, customary ownership of forests, the differentiation between “local communities” and “indigenous peoples”, etc. Annex 1 of the guide-

lines defines FPIC as a legal and/or customary right recognized to local forest communities and indigenous peoples to express/give their consent or not, to agree or disagree, regarding any decision on the management of their lands and related natural resources. Therefore, FPIC in the Central African context has a more restrictive meaning than the position taken by the Inter-American Court of Human Rights (IACHR) in the case “Saramaka People v. Suriname” (MacKay 2011). In that case, the Court held that indigenous peoples hold the right to self-determination derived from the interpretation of their FPIC. Although these concepts have already been used by some of the forest stakeholders of the subregion, their incorporation into the legal corpus of this subregional instrument gives them a legal force that was lacking prior to the FPIC’s adoption by the COMIFAC Council of Ministers. Second, the recognition of the customary ownership of forests is another major achievement that breaks with the trend toward continuous marginalization and a kind of repudiation of the customary rights of local communities and indigenous populations to land and forest resources that have prevailed in various laws from the colonial period to date (Diaw and Oyono 1998). Henceforth, it is possible to envisage a more-or-less peaceful coexistence between “modern law” and “customary laws” whereby traditional and modern modes of ownership of forest spaces and products would all be governed by a republican law: toward legal pluralism. Third, the extension of the target of forest revenues collected as user rights helps to put an end to many illegal commercial practices perpetuated daily by local and indigenous communities. In other words, states wish to abandon the hypocrisy of tolerating lucrative commercial practices undertaken by indigenous or local people who harvest forest products within the framework of the exercise of user rights, though the law is supposed to limit their use to home consumption. These legal developments can generate more revenue for local stakeholders, who, though involved in forest management in Central Africa, are generally poor.

Fourth, the guidelines have re-established the recognition of land ownership by local and indigenous communities in some community areas. This could eventually result in the emergence of a new category of state land known as “local and indigenous community land” alongside public and state land (Karsenty and Assembe-Mvondo 2011). This would clearly re-establish in legislation the customary land rights that were once provided for by some land-tenure regimes after independence: examples include the 1963 land-tenure system in Cameroon. However, such customary land rights had been abolished during the land reforms of the 1970s, particularly in Cameroon and (the former) Zaire (Kouassigan 1982). Fifth, states have a genuine and strong will to broaden the scope of the principle of local participation in the emerging complex processes such as the independent monitoring of logging,

forest certifications and audits and FLEGT/VPA. In fact, these forest-management niches seemed to be the privileged and exclusive niches of a select few considered to be “experts”. However, they ironically suffer from a lack of social legitimacy in local and indigenous forest communities. This lack of social basis largely discredits various results of forest certifications and audits among local stakeholders. Accordingly, the principle of effective participation of local communities and indigenous populations could enhance the legality of certifications and audits. Sixth, the framework for the participation of local stakeholders in the fight against climate change and the right to benefit from PES, including future carbon trading, are henceforth governed by COMIFAC’s new legal instrument. The aim is to ensure that vulnerable segments of society are included in the framework of the implementation of the REDD+ mechanisms (Cerutti et al. 2010; Agrawal et al. 2011).

Seventh, even if there is no consensus on the definition of “rights-based approaches” (RBAs) in forest management, the COMIFAC guidelines are a kind of package of the RBAs. In this connection, RBAs can be understood as integrating rights, norms, standards and principles into policy, planning, implementation and outcomes assessments to help ensure that sustainable forest-management practices respect rights in all actions, and support their further realization where possible (Campese 2009: 8). Along those lines, the COMIFAC guidelines include:

1. procedural rights, such as the right to participate in decision-making on forest and land tenure, to acquire information, to have access to decision-making centres/administration and to justice, etc., and
2. substantive rights, such as the right to adequate compensation, to use and enjoy forest-related products, to benefit from forest and hunting revenues, etc.

Therefore, various rights provided by this regional instrument are norms and entitlements that create constraints and obligations in interactions between local communities/indigenous peoples and state and other institutions involved in forest and land management. Such evolution of a rights-based package should induce a “win-win situation” and probably minimize some forest-related interest conflicts that are usually caused by actions that challenge locally perceived rights and that threaten or diminish the livelihoods of those in rural communities.

Eighth, according to Daviet and Larsen (2012), the REDD+ safeguards framework defined by the United Nations Framework Convention on Climate Change (UNFCCC) includes social, governance and environmental principles to be captured by REDD+ activities, notably

1. the respect for the knowledge and rights of indigenous people and members of local communities and
2. the full and effective participation of relevant stakeholders – in particular, indigenous people and local communities.

The COMIFAC guidelines are pioneering when compared to some extent with the above requirements of the safeguards, despite the fact that each member state will need to design its own domestic framework in order to make the REDD+ safeguards effective.

Finally, mention can be made of the distinction by the subregional legal instrument between local communities and indigenous populations. In this sense, Annex 1 of the guidelines explicitly defines the local forest community as members of all the ethnic groups who have historically depended on the forest areas such as the various Bantu ethnicities. The indigenous forest people are defined the way ILO Convention No. 169 prescribes, but more precisely these terms must be used in the Central African context to point to Pygmy ethnic groups (such as Baka, Aka and Bagyeli) and Mbororo people (Mouiche 2011).<sup>6</sup> In fact, the land and forest rights enjoyed by native populations in forest areas were not clearly defined in legislation in certain Central African countries as advocated by ILO Convention No. 169 on Indigenous and Tribal Peoples and the 2007 UN Declaration on the Rights of Indigenous Peoples. Rather, the absence of policies that specifically address the socio-economic emergence of indigenous peoples has so far resulted in discriminatory practices and the socio-political exclusion of indigenous populations (Eba'a Atyi and Simula 2002), despite the historical acknowledgement that indigenous peoples were the first occupants of the Congo Basin forest (Bahuchet 1988; Oyono 2005b; Assembe-Mvondo 2006b). *De facto* and *de jure*, the COMIFAC guidelines introduce innovations and develop a new political vision in the Central African subregion not only by acknowledging the rights of minority groups (Pygmies) over land and forest resources, but also by granting the same guarantees to other local communities (Bantu). In other words, the COMIFAC guidelines could probably bring about more awareness and behavioural changes in the relations between Bantu ethnic groups and Pygmy minorities. Indeed, as reported by several authors (Guillaume 1989; Oyono 2005b; Assembe-Mvondo and Sangkwa 2009), interethnic relationships between Bantu and their neighbouring Pygmies are character-

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6 In this article, Mouiche demonstrates how the Mbororo people have built their political awareness to better defend their own interests in the Cameroonian political arena by going through elite channels. Unfortunately, this is not yet the case for Pygmy peoples. See Mouiche 2011.

ized by a kind of “ideology of domination” or a “master–slave relationship” that contributes to the marginalization of the Pygmies (Oyono 2005b).

## The Prospects for Incorporating and the Challenges of Implementing the COMIFAC Guidelines at the Domestic Level

The fundamental question is: What became of the COMIFAC guidelines following their adoption by the Council of Ministers? First, it should be noted that the subregional guidelines fall under the category of legal instruments which set specific targets to be met by the member states of a multilateral organization. In this case, the target is to incorporate the guidelines into the national legal systems of the member states. Thus, the guidelines are not automatically applicable in the national legal systems of states. In fact, the demand for an incorporated national instrument directly conflicts with the application of any subregional guideline. In other words, despite the fact that the Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa are not binding for all its member states, their implementation at the national level requires that each country first incorporates the guidelines into its domestic legal system. From the point of view of Nanda and Pring (2003: 60–61), international environmental law can only be truly effective if states adopt, fund and implement appropriate laws, regulations and enforcement programmes to make these grand international pronouncements work on the ground.

However, the difficulty of incorporating the subregional rules and standards enacted by COMIFAC into national legislation in the member states is already obvious. Indeed, the guidelines on NTFP adopted in 2008 have not yet been integrated into the national laws and regulations of the ten member states. The Subregional Agreement on Forest Control in the Central African Forest adopted in 2008 is still more-or-less disregarded by some states’ forestry officials, and the different national laws and regulations have yet to be aligned across borders. At this time it would be prudent to mention that under the VPA between Cameroon and the European Union, signed in 2010, the legal framework adopted continues to explicitly refer to the agreement of 26 October 2008 as “the Draft COMIFAC instrument on forest control in Central Africa”, while Article 43 (1) of the agreement clearly stipulates the following:

This Agreement was adopted by consensus. It will be opened for signature by COMIFAC member states during the meeting of the Council of Ministers which adopted it. It will immediately come into force.

To present it as a mere draft instrument – as is the case in the agreement signed between Cameroon and the European Union – is a kind of strategy by each party to circumvent or wilfully disregard the subregional rules and standards of sustainable forest management, often for reasons unknown to scholars (Assemble-Mvondo 2012).

A possible explanation for the non-transplantation of subregional instruments into the legal systems of COMIFAC member states relates to the absence of fixed time frames in the different guidelines adopted. In fact, in the case of the regulation of the European Union, adopted directives are required to be implemented within a set transposition period (Romi 1999). Any refusal or delay in applying an EU directive generally results in sanctions against the member state at fault. Though, the binding nature and usefulness of the instrument facilitates its direct application in European Union member states (Combacau and Sur 2006). However, simply imagining or even planning a direct implementation of the directive does not relieve an EU member state of its obligation to incorporate it into its set of national laws. It is this kind of rigour in the formulation and application of legal instruments governing forest management in the Congo Basin that COMIFAC seems to lack today. In fact, efforts made by COMIFAC officials and partner agencies seem to focus on the implementation of the Convergence Plan, which has so far served to hinder states' obligations to implement the main legal instruments. Thus, it is feared that the Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa that also express the political will of states, would meet the same fate of slow internalization and implementation in legal systems.

However, to claim that a state of inertia best characterizes the transpositioning of some provisions of the COMIFAC guidelines would be premature; we must also refer to the recent adoption of specific national legislations on the rights of indigenous populations (Pygmies) by Congo-Brazzaville and the Central African Republic (CAR) as a step in the right direction. This is in fact the direct transplantation of ILO Convention No. 169 on Indigenous and Tribal Peoples (explicitly the case in the CAR) and the 2007 UN Declaration on the Rights of Indigenous Peoples. Hence, these two countries have already made progress toward implementing part of the Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa.

Last, it should be pointed out that the International Forum on Indigenous Peoples of Central Africa (FIPAC) now serves as a subregional platform for discussions on how to ensure the socio-economic empowerment of indigenous forest populations. The second edition of this platform took place in March 2011 with the political support of COMIFAC. The DR Congo has also moved forward in the promotion of customary ownership of land through the establishment of this legal principle in its current constitution.

Nonetheless, after incorporating the provisions of these guidelines into domestic legislations, the burning issues will be their enforcement and the compliance that people demonstrate at the ground level. Indeed, once a country adopts any multilateral agreement, it should commence implementation and enforcement efforts. This has not yet been done in the case of these COMIFAC guidelines. Sections of regional legislation such as the COMIFAC and national laws must mirror each other. The duty to adopt effective national legislation and to enforce laws to meet international/regional legal obligations is a well-recognized principle, but hardly one that is practised uniformly (Nanda and Pring 2003). Therefore, civil society, donors and the public should be careful campaigning in favour of the implementation and enforcement processes of this subregional instrument.

## Conclusion

The Subregional Guidelines on the Participation of Local Communities and Indigenous Peoples and NGOs in Sustainable Forest Management in Central Africa adopted in November 2010 by the COMIFAC Council of Ministers is a major step toward improving the basic rights and living conditions of these vulnerable stakeholders. The adoption of the guidelines represents a breakdown with the past colonial legal system, an innovation as the provisions of this instrument incorporate emerging mechanisms like REDD+, FLEGT/VPA and PES, and bring hope for the improvement of the rights of the targeted populations. Such a political evolution complies with social claims (of domestic stakeholders, especially grass-roots activists) and the requirements (conditionalities) of donors such as the World Bank (Deininger and Binswanger 1999). However, the effectiveness of the rights granted to local stakeholders will largely depend on the quality of their enforcement and the willingness of each member state to comply at the domestic level, along with the ownership of these various rights by the local communities and indigenous people. Whatever the case, the current improvements in the land rights of local communities and indigenous peoples have been driven by both subregional (COMIFAC member states' internal commitments) and international (Convention on Biological Diversity, ILO,

FLEGT, REDD processes) agendas, but build on and continue to struggle with colonial and postcolonial path dependencies.

According to Larson (2012), the concept of tenure or property rights does address all aspects of rights and practice that affect access to and control of forest land on the part of forest-based communities. Therefore, the shift toward rights-based approaches in development demonstrates a concern for rights beyond property rights alone (Campese 2009). In fact, rights-based approaches stress the importance of grounding practice in human rights and development methods (Campese et al. 2009). Therefore, whether or not this approach can really improve development practices, rights, forest and land-tenure conditions or livelihoods in connection with the new framework of the COMIFAC guidelines is a subject for future research in a Central African context.

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## **Die Rechte lokaler Gemeinschaften und indigener Völker an den Wäldern in Zentralafrika: von Hoffnungen zu Herausforderungen**

**Zusammenfassung:** Dieser Beitrag untersucht die diversen Rechte lokaler Gemeinschaften und indigener Völker an Waldressourcen in Zentralafrika. Im Jahr 2010 hat der Ministerrat der Commission des Forêts d'Afrique Centrale (COMIFAC) die „Subregionalen Richtlinien zur Partizipation der lokalen und autochthonen Bevölkerung sowie von Nichtregierungsorganisationen am nachhaltigen Management der Wälder Zentralafrikas“ (Directives sous-régionales sur la participation des populations locales et autochtones et des ONG à la gestion durable des forêts d'Afrique centrale) angenommen. Eine Prüfung dieses rechtlichen Instruments wirft ein Schlaglicht auf das ernsthafte Bekenntnis von Staaten zu einer Konsolidierung bisheriger Leistungen und der sich entwickelnden Rechtsmittel, um die Lebensbedingungen bedrohter Volksgruppen zu verbessern und nachhaltiges Forstmanagement auf subregionaler Ebene zu stärken. Allerdings hängt die Wirksamkeit der Richtlinien von administrativem Handeln und praktischen Maßnahmen der COMIFAC-Mitgliedsländer ab, dieses Instrument in ihre jeweiligen nationalen Rechtssysteme aufzunehmen und in Kraft zu setzen.

**Schlagwörter:** Zentralafrika, Internationale Zusammenarbeit von Regionen/Kommunen, Bürgerrechte/Menschenrechte, Wald, Forstwirtschaft, Gewohnheitsrecht