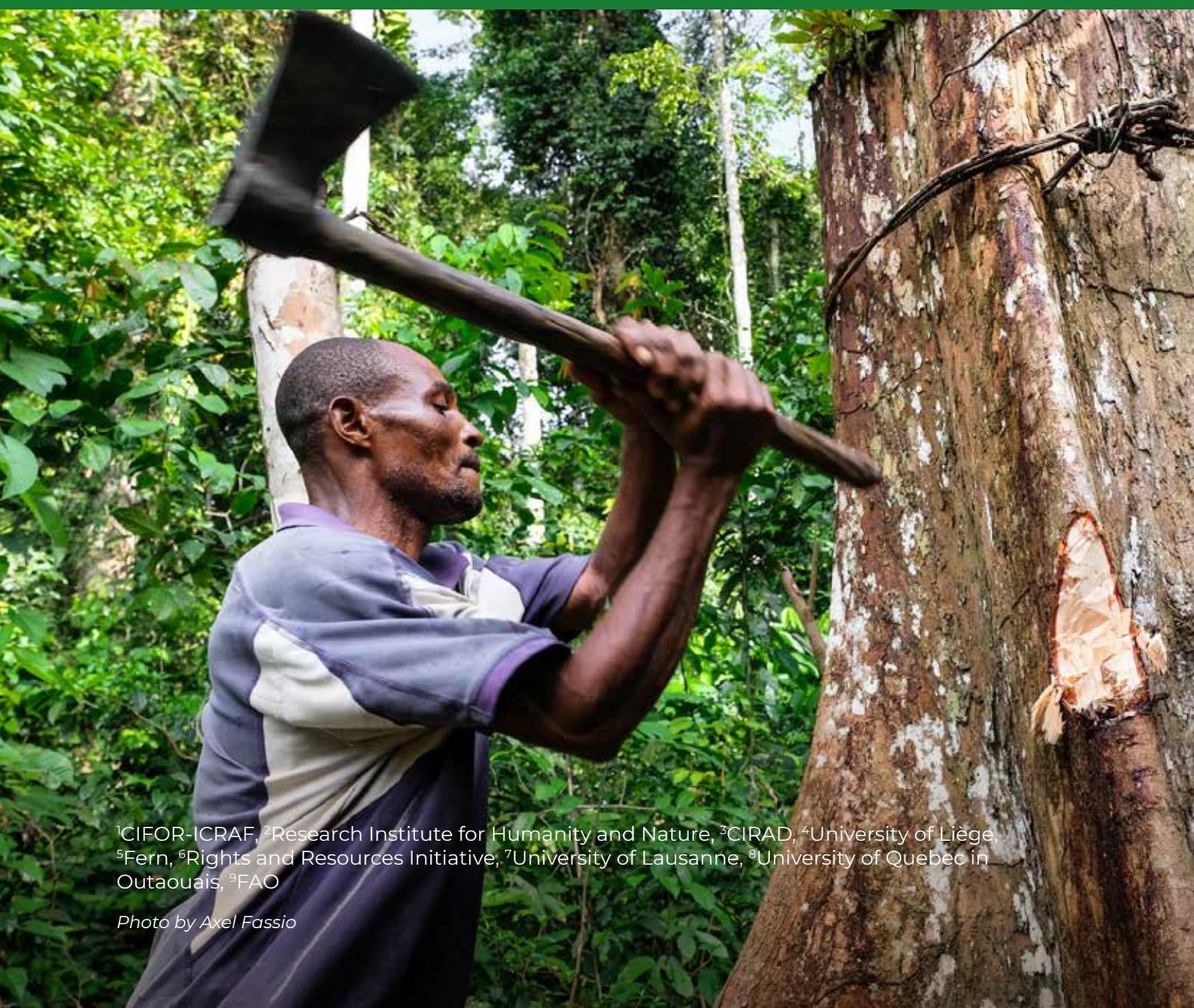


The rights of local and indigenous peoples in the light of forest and conservation policies

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Introduction

The subject of the rights of local and indigenous peoples is at the heart of the international forest resource management agenda, now more than ever (Sikor and Stahl 2011). These groups claim a set of inherent rights to enjoy land and forest tenure, to practice their cultures and to speak on the management of the natural resources around their biotopes. In response to these demands and pressure from both the grassroots and the non-governmental organizations (NGOs) that claim to represent them, the international community and many governments have put in place a range of legal mechanisms that recognize and promote the rights and duties of these vulnerable social groups in relation to biodiversity. The natural resource conservation approach – focused on promoting and respecting the rights of these groups – is, of course, one response to local stakeholders’ demands for environmental justice (Campese et al. 2009).

Conscious of current shifts in the discourse in favour of recognizing and promoting the rights of local communities and indigenous peoples in forest management, Central African Forestry Commission (COMIFAC) member countries have aligned their subregional and national policies with international norms and standards by opening up forest management processes to local stakeholders. It is in this spirit that the Subregional guidelines for the participation of local and indigenous communities and NGOs in sustainable forest management in Central Africa were published and Strategic Objective 5.2. of the Convergence Plan was adopted to “strengthen the participation of all stakeholders, especially vulnerable populations, in forest management”.

The rights of local and indigenous peoples can be understood as stemming from “a bundle of norms, principles and rules (bundle of rights) that constrain and direct interactions between this social group and various institutions” (Campese 2009; Schlager and Ostrom 1992). The rights currently recognized by international mechanisms – most of which are also recognized in national law – include procedural rights (participation in decision-making, information sharing, notification of decisions and other instruments, and access to justice) and substantive or fundamental rights (right to life, security of person, health, an adequate standard of living, education, development, a healthy environment, access to natural resources and benefits, free, prior and informed consent, self-determination, representation and to practice customs) (Greiber et al. 2009).

The rights of indigenous and local peoples are effectively embedded into the normative framework, at least in theory. However, an assessment conducted by the Rainforest Foundation in 2016 clearly showed that recognition of local communities and indigenous peoples’ rights was declining in Central African forest management practice, particularly around protected areas (Pyhälä et al. 2016).

The “Indigènes”¹ and colonial-era forestry

Two distinct periods characterized French colonial rule in French Equatorial Africa, one before and one after the introduction of a new policy on the “native” population adopted in 1941. After the demise of African logging enterprises, ‘indigenes’ were primarily seen by French administrators as a source of unskilled labour in the forestry sector during both periods. ‘Indigenes’ were labourers (without status) initially engaged by the concessionaires to supply export markets with “rich products”, namely wild rubber (both tree rubber, *Funtumia elastica*, and vine rubber, *Landolphia*) and ivory. Rubber production was abandoned after 1920. In addition, ‘indigenes’ supported the French war efforts (World War I, and WWII) and post WWI reconstruction. British and French efforts to reach a “cordial economic agreement” with French Equatorial Africa in 1919 were not successful (Michel 1975). Similarly, French Equatorial Africa’s initial attempts to introduce horticulture and small livestock farming between 1907 and 1910 all failed. A subsequent treaty signed in 1911 led to further efforts to establish coffee, rubber, cotton, rice and cassava plantations, as well as a new forestry industry (Coquery-Vidrovitch 2001).

French Equatorial Africa slowly emerged from a period of stagnation after WWI, as a competitive economy gradually replaced the monopolies previously enjoyed by large concessionaires. New investments were made in timber, notably in okoume (*Aucoumea klaineana*) in Gabon, new agricultural crops, road and rail infrastructure, and the mining sector. All concessions remained dependent on “native” labour. Working conditions were appalling and wages did not keep pace with colonial taxation nor the inflation of import prices. Traditional food production systems were disrupted, resulting in widespread famine, revolts between 1928 and 1932, and rural exodus (Coquery-Vidrovitch 2001; Rich 2007). An anti-colonial movement led by André Matsoua established the Société Amicale des Originaires of French Equatorial Africa and sought French citizenship for the subjects of the territory in the late 1920s and early 1930s (Ansprenger 1989). The more progressive labour laws introduced in French West Africa did not extend to French Equatorial Africa (Bertin 1929).

A new policy for ‘indigenes’ was introduced in French Equatorial Africa by the Governor General, Félix Éboué, on 8 November 1941. The document was prepared for the Brazzaville Conference, held from 30 January to 8 February 1944. The conference brought together all the colonial governors and sought to realign the policies of the French colonial empire (Éboué 1941). The conference was held over two decades after Maurice Delafosse’s Native Policy for French West Africa was presented at a Franco-British colonial conference convened by the French Colonial Union in Paris in 1919. The so-called Éboué circular called for traditions to be respected, customary chiefs to be supported, existing social structures to be developed and working conditions to be improved.

Working conditions in the forestry camps did not improve significantly after 1941 (Moutangu 2013). While forced labour was abolished in the French colonies in 1946 and a new labour code was adopted in 1952 (Cooper 2018), labour-intensive methods continued to be used in the Central African Republic until 1965 (Tchakossa 2012). In 1953, 39 percent of Gabon’s working population was employed in the forestry sector (Mouloungui 2014), suggesting that wages and employment conditions for African workers had improved since the time of company concessions. Strikes did, however, take place in 1957. Conditions were influenced by the increasing mechanization of logging operations, improved road infrastructure and the adoption of new technologies (like aerial photography), giving African nationals more opportunity to develop specialized skills.

¹ The term “Indigène” was used during the colonial period to refer to local and indigenous people to distinguish them from (European) colonizers and people brought in from other parts of Africa (see Bruel 1930 and Bruel 1935).

Contemporary conception of local and indigenous peoples in Central Africa

The situation of forest peoples, in particular hunter-gatherers, and transhumant and nomadic populations, such as the Mbororo Fulani herders, has raised the question of rights and a specific status to protect these populations from threats to their culture, their way of life and their territory. Despite the fact that many groups, including nomadic, herder and hunter-gatherer peoples, are highly vulnerable and extremely marginalized, the legal recognition of the status of indigenous peoples is still a work in progress in Africa. “Indigenous peoples” are often minority groups in a country who differ from the rest of the population in the historical continuity of their specific production methods or access to natural resources. A wide range of peoples are considered indigenous, including nomadic, pastoralist or herder, and hunter-gatherer peoples (International Labour Organization 2013). In Central Africa, “Pygmy” and Mbororo peoples are explicitly recognized as indigenous (see Table 13.1).

At the international level, the recognition of indigenous peoples is based, on the one hand, on the anteriority of their presence on a territory in comparison with subsequent population movements or colonization and, on the other hand, on self-identification, which is legally recognized independently of national governments (Karpe 2008). This description is however contested in many Central African countries. The normative framework for protecting the rights of communities in Central Africa does not therefore always distinguish between local communities and indigenous peoples.

In Cameroon, for example, forestry legislation does not include a clear legal definition of indigenous peoples. The preamble to the Constitution of 18 January 1996 affirms without further clarification that “the government shall protect minorities and protect the rights of indigenous peoples”. The recognition of indigenous peoples and the elevation of the need to protect them to constitutional status does not, however, give any indication of how to distinguish them from other social groups at the national level. In 2021, the Cameroonian legislator further clarified the concept in Act No. 2021/014 of 9 July 2021 governing access to genetic resources, their derivatives, associated

Table 13.1: Indigenous peoples in Central Africa

Country	Indigenous peoples
Burundi	Batwa
Cameroon	Bakola / Bagyeli Baka Bedzan Mbororo
Gabon	Baka
Central African Republic	Baaka / Aka (Bayaka, Biaka) Mbororo
Republic of the Congo	Yaka
DRC	Batwa Bacwa Bambuti
Rwanda	Batwa

Source: African Commission on Human and Peoples’ Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA) (2006)

traditional knowledge, and fair and equitable sharing of the benefits arising from their use. Article 7 sheds light on the legal concept of indigenous peoples: “Indigenous peoples and local communities: communities of inhabitants who rely on their traditional knowledge to obtain their livelihoods from their natural environment and genetic resources, and whose way of life is conducive to the conservation and sustainable use of the resources”. This approach differs somewhat from that adopted in international legal instruments, in particular International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples and the African Charter on Human and Peoples’ Rights. Cameroonian legislation, for example, groups indigenous peoples and local communities together rather than distinguishing them as recommended by international standards.

In the Republic of the Congo, the relevant legislation identifies indigenous populations much more precisely, but explicitly rejects anteriority as a defining characteristic. Article 1 of Congolese Act No. 5-2011 of 25 February 2011 on the promotion and protection of the rights of indigenous peoples defines indigenous peoples: “For the purposes of this Act, without prejudice to any anteriority on the national territory, indigenous populations shall mean those populations who differ from other groups of the national population in their cultural identity, their way of life and their extreme vulnerability”.

Rwanda, for its part, prefers the concept of “historically marginalized groups”. The reference to marginalization makes it possible to confer “indigenous” status on all the social groups that make up the Rwandan population. A report on the implementation of the African Charter on Human and Peoples’ Rights in Rwanda specifically highlights that: “[I]t is difficult, if not impossible, to define indigenous peoples in the Rwandan context. This is because, in view of our history and knowledge, we cannot say that any group of Rwandans is considered to have a preferential right to Rwanda on the basis of the concept of indigenous people or any other form of ownership. All Rwandans are historically regarded as indigenous to Rwanda, sharing resources, opportunities, and social and cultural values. However, it is clear from our history that Rwanda is home to communities that can be categorized as historically marginalized. This situation is a direct consequence of the self-serving policies pursued by pre-genocide regimes. Such artificial divisions are currently prohibited as inhuman and barbaric practices that belong in the past”.²

While countries’ national legislation appears to be inflexible with regard to their recognition of indigenous identity in respect of specific groups, governments are nevertheless relatively flexible when it comes to implementing commitments agreed with international financial institutions. For example, the World Bank accords indigenous people’s high priority in its operational policies and requires borrowing governments to comply with these policies when implementing projects that it finances (Couillard et al. 2009). By agreeing to these instruments, governments tacitly recognize the existence of a specific indigenous identity on their territory.

COMIFAC (2010) has adopted the definition laid down in ILO Convention No. 169 and World Bank Policy 4.10, which was taken up by the 2007 United Nations Declaration on the Rights of Indigenous Peoples (World Bank 2017). COMIFAC recognizes indigenous peoples as “people whose cultural and social identity distinguishes them from the dominant groups in society and makes them vulnerable in the process of development. They have an economic and social status that limits their ability to defend their interests and rights to land and other productive resources, or that limits their ability to participate in and benefit from development. They are characterized by a strong attachment to the

² Republic of Rwanda, Ministry of Justice. Ninth and tenth periodic reports of Rwanda under the African Charter on Human and Peoples’ Rights. Period covered by the report: 2005-July 2009. July 2009. Para. 50.

territories of their ancestors and to the natural resources of these places, the presence of customary social and political institutions, economic systems geared towards subsistence production, an indigenous language, often different from the majority language, and self-identification and recognition by peers as belonging to a distinct cultural group”.

Rather than focusing on anteriority, which is contested by governments, distinctness of cultural identity and self-determination, the concept of indigenusness should be considered in its broader context. In this vein, in the sense used by the African Commission on Human and Peoples’ Rights (ACHPR), the question of indigenusness is of particular relevance in two spheres: human rights and the environment. According to the ACHPR, the term “indigenous peoples” has come to have connotations and meanings that go far beyond the question of “who came first”. It is now a global term and movement that fights for the rights of and justice for specific groups who have been left behind by development, who are viewed negatively by dominant development paradigms, whose cultures and lifestyles are discriminated against and disrespected, and whose very existence is threatened with extinction (ACHPR and IWGIA 2005).

Defining the concept of local communities is equally complex. Karsenty (2008) has already noted the difficulty of identifying local communities, given that the concept does not define clear boundaries nor fixed rules for doing so. There are, however, some criteria that make it possible to identify local communities. They are traditional groups who, like indigenous peoples, have specific customs and beliefs, but who do not have any territorial claim linked to their prior occupation of the land. This does not prevent them from claiming specific rights over the natural resources located around their settlements. On this point, COMIFAC draws on Article 1 of Act No. 011/2002 of 29 August 2002 on the Forestry Code in the Democratic Republic of the Congo (DRC), which states: “local populations are village populations settled in forest areas, who organize their lives on the basis of custom and tradition and who are united by bonds of solidarity and kinship that underpin their cohesion and ensure their continuity in space and time”.

13.1 A normative framework with room for improvement

Several legal instruments promote the rights of local and indigenous peoples, including to land and natural resources. At both the international and the regional level, the protection regime comprises both *hard* and *soft* law instruments (Siegele et al. 2009). Some of these instruments are rooted in the United Nations system and others take the form of multilateral and regional agreements.

13.1.1 International protection instruments

The legal protection of indigenous peoples is enshrined in international instruments such as ILO Convention No. 169 (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007). The Convention on Biological Diversity also offers opportunities for the protection of local and indigenous peoples. ILO Convention No. 169 is a binding instrument that requires ratifying countries to implement specific policies and measures that respect the rights of indigenous peoples, such as self-determination, autonomy and collective land rights. The United Nations Declaration on the other hand is not legally binding. It does, however, have considerable “moral weight”, though this is not sufficient to allow it to arbitrate on nor define specific rights for the whole world, at any time (Pelican 2009).

Table 13.2: Non-exhaustive list of major binding international mechanisms relating to the rights of local communities and indigenous peoples in Central Africa

	Legally binding instrument	Year signed
1	International Covenant on Civil and Political Rights	16 December 1966
2	International Covenant on Economic, Social and Cultural Rights	16 December 1966
3	International Convention on the Elimination of All Forms of Racial Discrimination	21 December 1965
4	Convention on Biological Diversity (CBD)	5 June 1992
5	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD	29 October 2010
6	International Treaty on Plant Genetic Resources for Food and Agriculture	3 November 2001
7	ILO Indigenous and Tribal Peoples Convention No. 169	1989
8	African Charter on Human and Peoples' Rights	June 1981
9	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	11 July 2003

Source: Authors

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by 143 countries, including all African countries. In contrast, the Central African Republic (CAR) is the only African country to have ratified ILO Convention No. 169, which it did in 2010. The vast majority of African countries have refrained from acceding to this instrument because self-determination is such a divisive domestic issue. Moreover, national governments often prefer to avoid making binding commitments at the international level, so as to limit the delegation of their authority to other centres of power.

The Convention on Biological Diversity has been ratified by all 10 COMIFAC member countries. Among others, this Convention – in particular Article 8(j) thereof – has catalysed the claims made by indigenous peoples' organizations. Moreover, highlighting the links between these threads promotes more coordinated allocation of financial assistance. For example, the Batwa of DRC are supported by various donors, such as the European Union and Norway, through anti-deforestation, climate change adaptation and forest management governance programmes, and by the World Bank's operational policies on indigenous peoples. International organizations are also very active in this area: Forest Peoples Programme (Couillard et al. 2009), for example, is the best known and works in the area of forest management in the Congo Basin (Boutinot and Karpe 2020).

In addition to those found in international legal instruments, specific provisions for indigenous peoples are included in programmes to review land and forest law or to adopt and implement policies to combat climate change and deforestation (such as Reducing emissions from deforestation and forest degradation (REDD)) (Alvarado and Wertz-Kanounnikoff 2008). Such provisions can also be found in the rules established by forestry certifications, such as the Forest Stewardship Council (FSC) certification.

13.1.2 National protection instruments

At the national level, the need to protect the rights of indigenous peoples and local communities is consistently asserted in the forestry legislation of Congo Basin countries. Their laws formally recognize the rights of these groups to their ancestral lands. The acknowledgement of customary usage rights is often harnessed as the legal mechanism for the recognition and protection of the

economic, social and cultural rights of communities. In terms of economic and social effects, such rights should guarantee local and indigenous peoples access to the resources essential to their livelihoods. As regards cultural impacts, this approach seeks to protect sites of recognized importance to the identity of indigenous peoples and local communities.

According to the Forestry Code of CAR, customary usage rights apply to forest areas and the collection of non-timber forest products. The Gabonese Forestry Code is more explicit about what is covered by the concept of traditional rights. Specifically, it permits small-scale hunting and fishing, subsistence agriculture, the use of trees for building materials, grazing and the use of water, among other activities. In Cameroon, local people's usage or customary rights are recognized, allowing them to use all types of forest, wildlife and fishery resources for personal use with the exception of protected species. The Forestry Code of DRC recognizes the existence of traditional usage rights without specifying their content. In the Republic of the Congo, Act No. 33-2020 of 8 July 2020 on the Forestry Code takes a new approach to traditional usage rights. Article 2 defines usage rights as "rights that flow from local custom or tradition that allow local communities or indigenous peoples, in a forest not belonging to them, either to harvest certain products or engage in certain productive activities, whether or not intended for sale, to meet their domestic needs". In this provision, the Republic of the Congo explicitly establishes the right to use resources for commercial purposes, whereas the trend in Central Africa is to require products collected in exercise of usage rights to be used to meet personal needs.

Our analysis of forestry legislation shows that traditional rights are characterized by their limited scope and insufficient legal safeguards. As regards the scope of traditional rights, forestry laws tend to make them revocable in practice, particularly if they are considered incompatible with sustainable management objectives. As regards legal safeguards, existing legal instruments have not delivered sufficiently robust mechanisms to ensure these rights are respected, let alone to provide remedies if they are violated. Requirements such as the obligation to consult communities, to respect usage rights when classifying forests in the permanent forest domain or to pay compensation if these rights are restricted are not subject to any penalties in the event of non-compliance (Nguiffo 2020). Given that the obligation to respect the rights of local communities and indigenous peoples is not accompanied by enforcement mechanisms, governments and concessionaires feel fairly free to disregard it (Nguiffo 2020). Legal remedies are virtually non-existent in the event that traditional rights are violated. Considering that forests are public property, over which governments exercise full ownership rights, the capacity of indigenous and local peoples to act before the courts is undermined because they are not recognized as independent legal entities.

Beyond the recognition of traditional rights, forestry codes and related legislation contain several provisions aimed at improving the consideration of local communities and indigenous peoples in forest management. As regards socioeconomic rights, forestry legislation advocates sharing the benefits derived from the exploitation of forest resources. Several mechanisms are being trialled to this end. For example, annual forestry fees have been introduced in Cameroon, a share of which is paid to local communities, and social provisions, terms of reference and local development funds have been implemented in the Republic of the Congo, DRC and Gabon. In the same vein, community forestry is gradually gaining ground in DRC, following its early introduction in Cameroon, while communal forestry is still in its infancy in the wider Congo Basin.

13.2 The mixed evolution of the rights of local communities in production forests

13.2.1 The remarkable expansion of social forestry in the Congo Basin

The term “social forestry” in this context will be used in its broadest sense. It will be used to identify both strategies to stimulate the active participation of local communities in diversified small-scale forest management activities to improve their living conditions and approaches to forest management that are socially responsible because they respect the rights of local communities and contribute to local development (Wiersum 1999).

In the second half of the 1970s, governments began to recognize that forest management had thus far been focused on serving national interests and those of western companies rather than on the needs of local communities and indigenous peoples (Barnes and Ramsay 1982; FAO 1978; Westoby 1989). The forestry sector had therefore performed poorly in terms of improving the wellbeing of people living in or around forests and had failed to mobilize local capacity to help manage forest resources effectively and sustainably (FAO 1985; Gregersen et al. 1989).

In the 1990s (and following the 1992 Rio Earth Summit), the concept of sustainable management emerged, aimed at improving the well-being of local communities, countries’ economic development, forest sustainability and biodiversity conservation. Local communities are expected to be involved in the forest management process so their rights, ways of life and wellbeing are better understood and protected, and to participate in decision-making (in particular on the boundaries of the blocks allocated to them: community development areas or agricultural or human occupation blocks).

Currently, forestry concessions are managed according to the rules set out in a forest management plan, in which local practices should be recognized and protected. In practice, forest management plans set out actions in support of local communities (through terms of reference that commit the forest manager to respect communities’ usage rights and to help alleviate rural poverty). In some countries, such as Gabon and Cameroon, a share of the taxes paid per cubic metre of wood harvested is also paid to communities to support their development. While local development and poverty alleviation are the purview of the public authorities, the government often withdraws from forest areas, putting a lot of pressure on private operators, which are forced to take its place (e.g. maintaining the road network, building schools and health centres).

There are often conflicts between local communities and forestry concessionaires, but also between communities, when, for example, the financial income from logging is not distributed equally by the local authority (Cerutti et al. 2010; Eteme 2015). Conflicts in forestry concessions are likely linked to the reduction in the area dedicated to subsistence agriculture (even where management plans provide for the designation of areas for these activities: community development areas and agricultural blocks) and traditional hunting and gathering, as well as to weak compliance with social provisions (Buttoud and Nguingiri 2016; Collas de Chatelperron 2005; Tsanga et al. 2020).

Over recent decades, social forestry has been adopted as a new forest management strategy aimed at improving the livelihoods of rural communities (Lacuna-Richman 2012; Moeliono et al. 2017; Sunderlin 1997; Westoby 1989; Wiersum 1999). Social forestry promotes forest management activities that involve local communities, who take on some responsibility for forest management

and benefit directly from their own efforts (Djamhuri 2008; Lacuna-Richman 2012; Moeliono et al. 2017; Von Stieglitz et al. 2001; Wiersum 1999). It is an approach that allows customary knowledge, rules and institutions to be harnessed by integrating them into the management standards, at least to some extent.

Since the 1990s, the discourse and thinking on social forestry has advocated the devolution and decentralization of forest management with a view to ensuring the sustainability of natural resources and alleviating rural poverty. Devolution strives not only to reduce bureaucracy, but also to empower local communities and drive socioeconomic development through community participation in forest management (Arnolds 2001; Larson and Soto 2008; Mayers and Bass 1999; Oyono 2005). These developments in forest management have led to the emergence of three approaches to the implementation of social forestry in Central Africa:

1. Tree harvesting in agricultural areas where landowners (often “informal” or customary) are provided economic incentives, like a guaranteed market and price for the wood produced (Buttoud and Batunyi 2016; Marien et al. 2013). This model is not, however, widely implemented in Central Africa and where forestry legislation does provide for this model, there is a lack of willingness to take advantage of it (Marien et al. 2013; Megevand et al. 2013; Place et al. 2012; Tchoundjeu et al. 2010). In practice, these permits have mainly served the interests of ill-intentioned artisanal and industrial operators seeking to harvest wood fraudulently.
2. The joint management of public woodland with local stakeholders who receive a predefined quantity of the product harvested or other benefits, either free of charge or at an agreed price (Brown 1999; Chambers and Thrupp 1994; Fisher 1995). In Central Africa, this approach mainly involves engaging local communities in managing forests in the permanent domain, in the form of communal forests³ managed by communal authorities or decentralized bodies.
3. Community forestry, which focuses on local communities as the main stakeholders that can ensure the sustainability of forest management. Under this management model, the processes and mechanisms employed must allow those directly affected by the use of forest resources to be involved in decision-making on all aspects of forest management (Hoare 2010; Larson and Dahal 2012). Community forests offer the best example in the Congo Basin of the comprehensive decentralization of forest management to the local community (Diaw et al. 2016; Julve 2007; Oyono et al. 2006).

The implementation of social forestry is currently facing a number of difficulties. An inclusive process was launched in September 2017 to remove the main barriers that prevent it from being effective. The solutions proposed were the subject of broad consultation. The outcome of this collective effort is set out in a policy document entitled “Brazzaville Roadmap for more effective participatory forestry in the context of the 2030 Agenda”. To enable participatory forestry to reach its full potential and be more effective, the Brazzaville Roadmap proposes eight priorities built around four key areas: vision, institutions, support for local and indigenous communities, monitoring and adaptive management.

To this end, governments were invited to (i) make policy choices explicit by clearly defining the objectives of participatory forestry in relation to the environment (natural capital) and to improving livelihoods (social/institutional capital, financial capital); (ii) create an institutional,

³ For a critical appraisal of Cameroonian communal forests, see, for example, Poissonnet and Lescuyer (2005) and Ndangang (2008).

Box 13.1: Barriers to more effective participatory forestry

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Policy, regulatory and institutional frameworks are still incomplete, complex and sometimes inadequate, creating an environment that is not conducive to the realization of the full potential of participatory forestry.

Some countries do not yet have formal mechanisms for recognizing rights or for transferring rights and management responsibilities to indigenous peoples and local communities. This results in confusion over the type and nature of their forest land rights.

Community forests are the basis of the most common form of participatory forestry. The exclusionary nature of the model as it is currently implemented prevents it from being applied in areas where there are overlapping rights and uses, including on land traditionally recognized as indigenous peoples' and local communities' within forestry or industrial agriculture concessions, mining areas or where there are oil and gas wells.

Government support for indigenous peoples and local communities is weak, several countries do not have participatory forestry units, and human resources and technical expertise are inadequate.

In the absence of information on the effectiveness of participatory forestry, governments struggle to tailor their policy choices in view of lessons learned.

The entrepreneurial and managerial capacity of local communities is still weak and access to investments, markets and therefore to improved financial capital is limited.

Most countries do not make good use of the Sub-regional guidelines for the participation of local and indigenous communities and NGOs in sustainable forest management in Central Africa.

legal and regulatory environment favourable to participatory forestry; (iii) ensure adequate support from government technical services and civil society; and (iv) periodically assess the scale and effectiveness of participatory forestry.

13.2.2 The mixed record of community forestry

Although community forests are provided for in the legal frameworks of all Congo Basin countries, few have been established and implementing them effectively remains a challenge in most countries (Beauchamp and Ingram 2011; Cerutti et al. 2010; Julve Larrubia et al. 2013; Lescuyer et al. 2019).

While, in theory, community forestry has the potential to drive local development, advances in the normative framework are hampered in practice by the complexity and cost of allocation and implementation procedures. It follows that, under current arrangements, not only are community forests not profitable, but they also facilitate the conduct of illegal activities (Cameroonian community forests are widely suspected of being used as a cover for illegal logging).

Table 13.3: Local socioeconomic impacts of decentralized forest management via community forests

Community forestry assessment criteria	
Involvement of local people in forest management	
Respect for customary usage rights and participation of rural communities in the choice of species and logging areas.	Certain customary rights may be provided for in simple management plans, but their approval ultimately depends on the forest administration responsible for endorsing the management documents (Lescuyer 2006).
Participation of rural communities in logging activities	The logging operations in most community forests are subcontracted to a forestry company (Cuny 2011).
Compliance with agreements entered into by loggers with the local population	Recurring conflicts between customary rights holders and community forest managers (Ezzine de Blas et al. 2009; Oyono 2004, 2005).
Local socioeconomic development	
Employment	Very few permanent jobs
Rural incomes	Incomes from forestry are low once distributed among community members (Beauchamp and Ingram 2011; Cuny 2011; Lescuyer and Essoungou 2013).
Essential needs	Few investments funded by forestry revenues (Cuny 2011; Ezzine de Blas et al. 2009; Lescuyer et al. 2006).

Sources : Authors

An evaluation of 30 community forests in Cameroon highlighted the difficulty of complying with the requirements of the legality grids agreed as part of Voluntary Partnership Agreements (VPAs) under the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) and of ensuring the traceability of the products harvested (Fomou et al. 2017). Community forestry was slower to develop in Gabon (Vermeulen 2008). The number of community forests remains low and practices in the vast majority of them are not legally compliant. In CAR, there has only been one attempt to set up a community forest. The initiative was later abandoned because the project was located in the production block of an Exploitation and Planning Permit (PEA) concession and was in fact unlawful. In the Republic of the Congo, community forestry legislation was only adopted recently and has not yet been implemented. In DRC, around 100 local community forestry concessions⁴ have been awarded over considerable areas in recent years, but almost all depend on external technical and financial support and it is still too early to judge the success of this model, which is very different from others, whose predicted limitations have yet to be proven (Vermeulen and Karsenty 2016).

Data collected over the last decade, mainly in Cameroon, show that this form of logging has produced mixed results when assessed against the key aims of social forestry.

13.2.3 The complexity of implementing traditional usage rights

The adoption of the industrial forestry concession model at the beginning of the 1990s did not fundamentally challenge the usage rights of local people, but did limit them to subsistence practices. Commercial exploitation and deforestation were not permitted, nor therefore was slash and burn agriculture. The rights of indigenous peoples and local communities are recognized and guaranteed

⁴ See, in particular, Vermeulen and Karsenty (2017) and Lescuyer et al (2019) for a description of the type of community forestry specific to DRC.

within forestry concessions based on this narrow conception. The exercise of traditional rights is therefore compatible with the establishment of forestry concessions, but only to a limited extent.

Implementation is proving to be a challenge, as the legal arrangements applicable to usage rights often clash with the legitimacy of local practices. Under current arrangements, the exercise of traditional rights within concessions varies widely between sites. When certified concessionaires strictly enforce the regulations, for example by working to prevent commercial hunting, this is often perceived by local communities as infringing on their usage rights even when the practice in question is unlawful. This results in a paradoxical situation in which local communities perceive their ability to exercise their usage rights in unmanaged or managed concessions favourably because there is little to no regulation of illegal activities (Cerutti et al. 2017).

Conversely, certified forestry concessions are considered to hinder the exercise of traditional rights when managers work to stop practices considered illegal, even if they are merely applying the rules laid down by the government (see Figures 13.1 and 13.2). It should be noted that the interpretation of usage rights is particularly narrow with respect to hunting. For non-timber forest products, interpretations are less well defined: the collection of non-timber forest products for commercial purposes is permitted in certified forest management units, but the harvests must be sustainable, a requirement that is very rarely checked in practice. In any event, it is the responsibility of governments to address the continuing tension between sustainable development objectives and guaranteeing the traditional rights of local and indigenous communities. The new Forestry Code of the Republic of the Congo clarifies the scope of traditional rights in the country, based on an old Gabonese regulation. Article 61 of the Act allows for products obtained in exercise of usage rights to be sold at the local level. While the products covered and the arrangements for their sale are yet to be specified, this is a clear extension of usage rights.

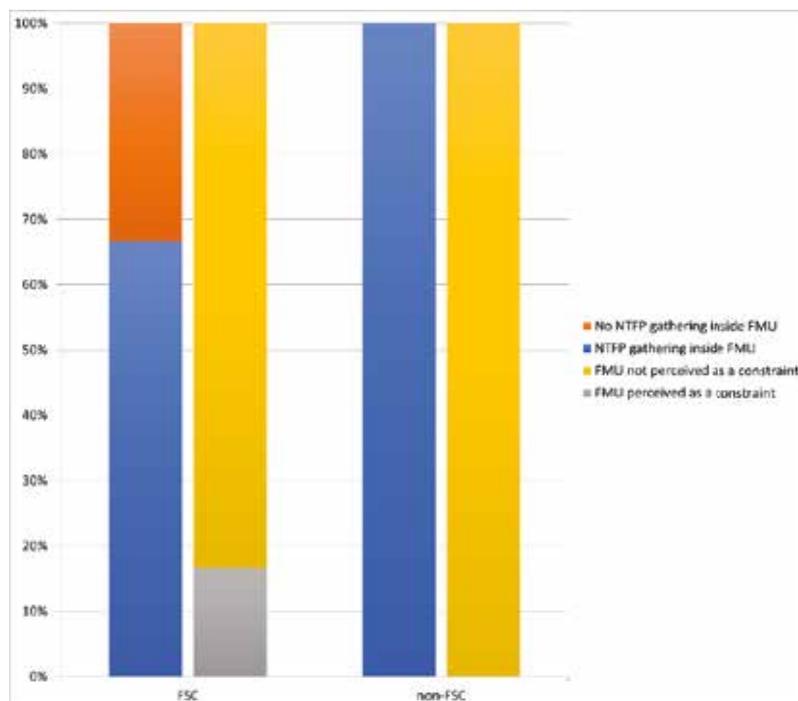


Figure 13.1: Forest management units and the collection of non-timber forest products (Cerutti et al. 2014)

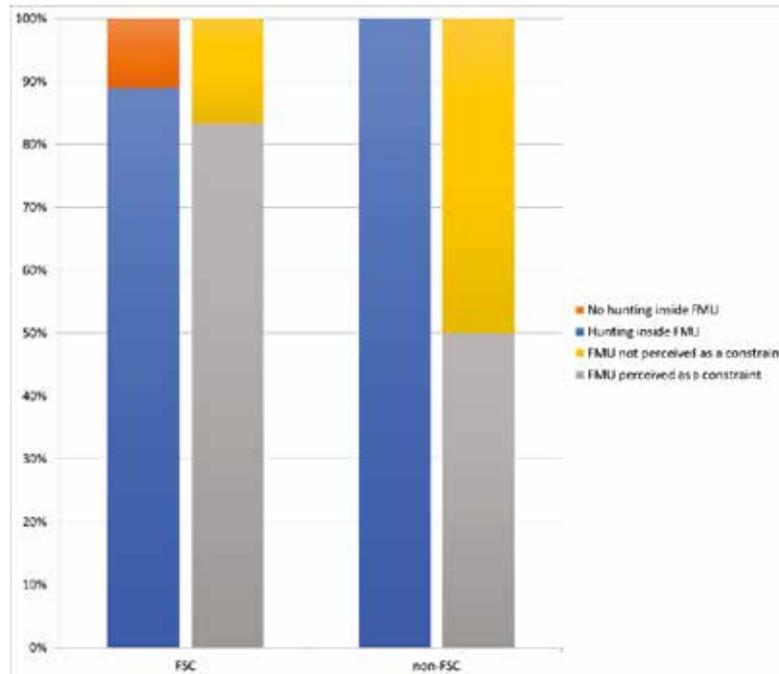


Figure 13.2: Forest management units and hunting practices (Cerutti et al. 2014)

13.2.4 The contribution of logging to local development

In Central Africa, logging is considered one of the main sources of employment in rural areas, contributing directly and indirectly to higher incomes for local and indigenous communities (Lescuyer et al. 2015). As regards poverty alleviation, given that governments often struggle to invest in local development and reduce poverty, various mechanisms have been developed to redistribute the proceeds of industrial logging. These mechanisms take the form of social provisions or local development funds to which companies are required to contribute. Companies may also be required to share the proceeds of forestry and industrial operations through the payment of fees.

Job creation at the local level

In many countries in the Congo Basin, the oil sector is the main contributor to gross domestic product (GDP). In Equatorial Guinea it accounts for 90 percent of GDP, in Gabon for 42.4 percent and in the Republic of the Congo for 64 percent. When compared with the oil sector, the economic weight of the forestry sector may seem low, accounting for 4 percent of GDP in Cameroon, 6 percent in Gabon, 5.6 percent in the Republic of the Congo, 0.2 percent in Equatorial Guinea and 1 percent in DRC. However, this seemingly limited contribution to national economies should be considered in context: the forestry sector is often the second largest contributor to GDP and export earnings and it creates many jobs, a large share of which are in rural areas.

Logging has therefore bolstered various forms of employment in rural areas. In places where the government is often absent, forestry companies often emerge as the sole source of paid employment. Indeed, a substantial proportion of these jobs are held by people from villages bordering logging areas, although, in most cases, they are low skilled (Cerutti et al. 2014; Tsanga et al. 2020).

In addition to industrial logging, the informal artisanal subsector, which is experiencing significant growth in Congo Basin countries, also creates many jobs in rural areas. This subsector has created an estimated 40,000 jobs in Cameroon, 3,000 in Orientale province in DRC, and 2,000 in the Republic of the Congo (Cerutti and Lescuyer 2011; Lescuyer et al. 2011, 2014). The jobs are generally low skilled and most are for labourers, sawmill assistants or machine operators. These jobs are also essentially temporary in nature, given that they are tied to the relatively short period of production operations.

Funding for community-interest projects

Local development funds are innovative mechanisms for local development that bring together local and indigenous communities, local authorities and the private sector (Mbetete et al. 2021). Local development funds were first institutionalized in the late 1990s by the private sector and involved sharing the proceeds of forestry operations with communities whose borders lie at least in part within the concession area (Nguimbi et al. 2010). This practice would go on to be adopted into Gabon's forestry legislation, and later into that of DRC and the Republic of the Congo. Local development funds are built around two foundational principles: (i) forestry companies must contribute a predefined amount to a fund managed by village associations and (ii) the funds obtained must be used to finance community projects identified by local communities and indigenous peoples. The amount of the levy varies from country to country and depends on the annual production and/or commercial value of the species harvested, i.e. XAF 800/m³ in Gabon, XAF 200/m³ in the Republic of the Congo and USD 2-5/m³ in DRC.

The amounts allocated to these redistribution mechanisms can be substantial. Four companies with certified forest management units contribute an estimated average of EUR 55,000 each per year, around EUR 56 per person living around their forest management units (Cerutti et al. 2014). These are sizeable amounts, especially in rural areas where the majority of the population lives below the poverty line.

The social provisions applied in DRC follow a similar trend. Over the past 10 years, forestry companies have contributed approximately USD 7.8 million to the local development funds of 24 concessions. These funds have made it possible to carry out several community-interest projects in the areas of education, health, village water supplies and improving road infrastructure (Tsanga et al. 2022).

There is still a gap between theoretical production forecasts and the amount actually transferred to local communities. One reason for this discrepancy is the reality of logging in the Congo Basin, where the actual volumes logged rarely reach the levels predicted. Before they begin their logging operations, concessionaires conduct inventories to identify all species of commercial value. However, international tropical timber market conditions and various technical barriers at the cutting stage can prevent the entire available volume from being harvested (Tsanga et al. 2017). Another key explanation for this discrepancy relates to the reliability of the production figures reported.

The relevant regulations do not oblige private companies to allow communities or civil society to verify their declared volumes, which can be problematic.

While local development funds have certainly made it possible to carry out many social infrastructure projects, evidence of whether they have improved the living standards of local people is still anecdotal. These mechanisms only produce tangible results in certified forestry concessions and a minority of managed concessions. Some companies do not fulfil their social obligations and, where they do implement the required mechanisms, communities rarely receive the full amount of funding expected (Tsanga et al. 2020). Indeed, the management bodies responsible for local

Table 13.4: Funding for social provisions in DRC: Forecast and actual amounts, 2015–2020 (24 concessions)

Year	Forecast amounts	Amounts invested	%	Gap (USD)
2015	5,677,878	2,067,007	36	3,610,871
2016	2,902,490	1,616,219	56	1,286,271
2017	5,892,046	2,466,632	42	3,425,414
2018	325,552	217,782	67	107,770
2019	2,027,252	350,766	17	1,676,486
2020	3,497,149	1,091,631	31	2,405,518
Total	20,322,367	7,810,037	38	12,512,329

Source: Tsanga et al. (2022)

development funds often replicate poor governance practices at the local level, including poor project identification, misappropriation of funds, diversion of equipment and overcharging for projects (Tsanga et al. 2017).

The success of local development depends primarily on the government. When its sovereign functions are transferred from public authorities to private companies in the forestry sector, questions arise about legitimacy and the capacity of such companies to perform this role. This transfer of responsibility brings to mind the “state within a state” phenomenon – when governments transfer their sovereign powers to the private sector –, which has already been observed in several Congo Basin countries. It is not clear whether the private sector has the expertise to manage complex development problems when the government itself has been largely unsuccessful (Cerutti et al. 2017; Tsanga et al. 2017).

The relative impact of forestry licence fees on local development

Forestry licence fees are one of the key innovative mechanisms for redistributing a share of the revenues from industrial logging to local stakeholders like municipalities and communities neighbouring concession areas (Bigombe Logo 2003; Topa et al. 2009). This approach aims to bolster local development funding and reduce rural poverty. However, several assessments of this mechanism and its effects on local development in practice have found that it is relatively ineffective and inefficient, and it has proven to be inequitable (Assemble-Mvondo et al. 2015; Cerutti et al. 2010; Oyono et al. 2009). Indeed, in a context characterized by systemically weak governance, a predatory political and administrative elite has co-opted the stated objectives of this mechanism.

13.3 Outlook for the rights of local and indigenous communities in production forests

13.3.1 Outlook for community forestry

In the wake of the 1992 Rio Conference, community forestry emerged in the Congo Basin as an “unidentified forest object”. This forest management model is the direct product of international

processes and a modest offshoot from the industrial concession model. In its current configuration, community forestry is characterized by formal management, boundaries not tied to customary boundaries, an institutional structure not suited to local governance structures and weak financial viability.

Despite these challenges, community forestry remains a potentially attractive way to include indigenous peoples and local communities in domestic wood value chains. The African construction sector is forecast to grow significantly by 2050, by which time the continent is expected, according to the United Nations, to have a population of around 2.5 billion. Over the same time period, the population of the Congo Basin is expected to more than double to approximately 274 million people (UN-DESA 2017). Population growth on this scale will lead to significant demand for housing in urban and rural areas by 2050, 80 percent of which has not yet been built (World Green Building Council, Africa Partners 2020). The predicted boom in the construction sector is a major opportunity for job creation, the development of new skills and sustainable growth through greater use of wood as a construction material (World Green Building Council, Africa Partners 2020). The materials most commonly used in the African construction sector today (iron and cement) account for an average of 11 percent of emissions (Vussonji and Makeka, 2021). Wood can be used as an alternative to these traditional materials to reduce emissions from the real estate sector, provided that the wood comes from legal and sustainable sources, which is very rarely the case.

Community forestry could play a major role in this segment of the market. The aim here is not to satisfy demand for wood from urban Central African markets in its entirety, which would be unrealistic considering the volumes consumed, but to position the wood produced by community forests in existing market segments that are concerned about the legality and sustainability of products (Lescuyer et al. 2016). Whether this is feasible depends on the limited technical and financial capacity of local and indigenous peoples. As a start, governments will have to overhaul existing legal frameworks to address the triple challenge of access to legal status, profit margins and the low sensitivity of national markets to questions of sustainability, and finally issues around the legality of timber sources.

The revision of legal frameworks in the context of VPAs offers opportunities to improve the legality and traceability of the products produced by this sector and to increase their presence on national timber markets. Legal reforms must therefore be accompanied by concrete measures to transform national demand for timber. One notable development on the path to improving the legality of timber on national markets is the decision taken by the Government of Cameroon in 2020 to require project managers to source legal wood for public construction projects.

While individual public bodies consume relatively little wood, this measure could influence the behaviour of other actors, particularly those in the private sector (Lescuyer et al. 2016; Tsanga et al. 2020b). This could be achieved in several ways, as described below.

Make existing community forestry more credible

To improve the credibility of community forestry it will be necessary to substantially improve governance (Fapa Nanfack et al. 2019). This will require the effective enforcement of existing laws, anti-corruption efforts and the development of technologies to combat fraud.⁵ Initiatives do already exist to teach communities how to detect and document cases of illegality themselves. This type of

⁵ Such as the traceability of products from community forests with the support of those allocated the forests. See, in particular, Fomou et al. (2017): <http://communitytimbertracks.prosyjob.co/wp-content/uploads/2018/12/Rapport-de-letude-SVCL-6.pdf>.

approach is a step in the right direction, as it empowers communities and reduces their dependence on the government and civil society (Same et al. 2013).

In the Republic of the Congo, ad hoc initiatives have attempted to align customary rights and titles (community forest areas). Other civil society actors advocate approaches focused on developing a business and economic model that supports communities to “formalize and professionalize their business activities sustainably and thereby improve the livelihoods of small and medium-sized forestry businesses.” On this point, all initiatives aimed at training and empowering communities, particularly in relation to their economic capacity, are worthwhile. Better market integration, market information and access to finance are also crucial (Beauchamp and Ingram 2011), as is greater collaboration with major forestry concessions and capital investment (Minang et al. 2019).

Strengthen the position of community forestry in international processes

Efforts to link community forestry to emerging processes rooted in international commitments on climate change and deforestation are attracting growing support from NGOs and international organizations. The Paris Agreement adopted under the United Nations Framework Convention on Climate Change (UNFCCC), for example, emphasizes the role of sustainable forest management and anti-deforestation efforts in nationally determined contributions (NDCs). Considering this, community forestry has been incorporated into NDC mitigation measures submitted by Cameroon and CAR (Nkuintchua 2018).

Many studies have also analysed the potential of community forestry under REDD+ in relation to sustainable forest management, conservation, reducing degradation and increasing carbon stocks. Clarifying and securing land rights – key elements of REDD+ projects, alongside livelihood benefits, income generation and job creation (Bernard and Minang 2019) – can support effective community forestry.

Community forests are covered by VPAs and are required to ensure the legality of their timber production, which they struggle to do, particularly in Cameroon. Simplifying the relevant regulations and building community capacity are essential if these forests are to become a legal source of timber for the national market (Julve et al. 2013) and the VPA process to have positive knock-on effects.

Moreover, several Central African countries have joined the African Forest Landscape Restoration Initiative (AFR100), which aims to restore 100 million hectares of deforested and degraded landscapes on the continent by 2030. This mammoth effort will depend on the participation of local communities, but initiatives are still at too early a stage to make any assessments and what place community forestry will have in the process has not yet been clarified.

Finally, providing incentives for the creation of commercial value chains for community forestry products is one way to ensure the sustainability of community forestry (Meier-Dörnberg and Karmann 2015). In particular, the Forest Stewardship Council (FSC) and Fairtrade have partnered to ensure that access to certification and its benefits are accessible to small-scale foresters and community forests. Programmes have been set up for small-scale foresters seeking to develop rational long-term management practices. These programmes propose measures to reduce costs and improve their market access. However, this approach is far from straightforward and has not yet been trialled in Central Africa. All initiatives seeking to anchor community forestry in international processes bolster its credibility and may one day contribute to the development of alternative sources of income for the communities involved.

Review the normative framework

The overview presented above highlights the mixed results of community forestry in the Congo Basin over the past 20 years. The first forestry laws governing community forestry were the subject of criticism on several fronts: they were seen as over restrictive, in that they did not allow for genuinely inclusive management, they only granted limited rights to the community allocated the forest and they limited where community forestry could be carried out (Cuny 2011; Julve 2007; Vermeulen et al. 2006). While not directly related to the normative framework, other problems like corruption and misappropriation in the management of community forests, as well as the top-down approach to local development assistance, have hampered the initial efforts and dampened early enthusiasm for this approach (Joiris et al. 2014). Reconsideration of these issues, driven by the advocacy efforts of civil society, have on occasion led to these laws being revised, with the participation of civil society, local and indigenous communities and the private sector, to improve the equity and effectiveness of forest management.

DRC offers a case in point. Community forestry was gradually formalized through a participatory system that was unique in the region. The resulting local community forestry concessions grant ownership of land to local communities in perpetuity on the basis of custom. They allow for multiple uses of the forest as a space within which several socioeconomic and environmental activities can take place (Vermeulen and Karsenty 2016). This approach has made it possible to move beyond the myopic focus on silviculture and timber sales seen in the community forestry models adopted in other countries (Billiard 2019), to the detriment of the actual development needs of the community.

All countries would benefit from and should follow this new approach to community forestry that seeks to secure access to resources and their sustainable management, that promotes greater recognition of customary law as underpinning community forestry, that has more flexible governance structures better suited to Central African societies and that is complemented by a favourable tax regime. Any changes should be made through inclusive processes, avoiding the pitfall of “piling rules atop rules” and “complexity on complexity” (like the revision of the manual of procedures for allocating and establishing management rules for community forests in Cameroon). Governments must therefore have the courage to review these texts in depth.

Furthermore, as highlighted in the paragraph on the Brazzaville Roadmap, most countries do not yet have formal mechanisms for recognizing rights or for transferring rights and management responsibilities to indigenous peoples and local communities. This is another vital area where countries are encouraged to make progress.⁶ The need to promote and secure the rights of communities is acknowledged in various international and national texts adopted by Central African countries, which pay particular attention to the recognition of customary land rights (Billiard 2019). For civil society, formal recognition of communities’ customary land rights could contribute to forest conservation and local livelihoods, but is also a question of social justice, especially in cases where communities managed the forest long before the government claimed ownership of it (RRI 2017). However, the recognition of customary rights comes with its own issues, namely that customary law in Africa favours elites and discriminates against women (Kenfack Essougong et al. 2019; Kusters and Graaf 2019), indigenous peoples and migrants (Vermeulen and Karsenty 2017).

⁶ See, in particular, the Mapping For Rights programme: <https://www.mappingforrights.org/>

Social forestry as the overlapping of uses and rights

The overriding aim of guaranteeing the rights of local and indigenous peoples to forest land is to prioritize their allocation of areas over which they have exclusive rights, possibly accompanied by ownership rights over the land. Community forestry epitomizes this exclusivity of land rights in that it rejects the intervention of any other actors in areas assigned to this form of forest management. This follows a similar logic to industrial forestry concessions, in which third parties are not permitted to intervene beyond exercising usage rights. The forestry sector in the Congo Basin is therefore characterized by the division of forested land into mutually exclusive areas. Recent developments in community forestry and the forestry concession model do, however, suggest that the “exclusive rights” approach to forested land is coming to an end.

It is therefore now time to rethink the forest governance model to focus more on coordinating the various possible uses of the forest at the forest block scale and less on the separation of areas (Karsenty and Vermeulen 2016). With regard to social forestry specifically, securing the rights of communities and ensuring the development of economic activities does not necessarily imply ownership of the land or the right to exclusive use. Karsenty and Vermeulen (2016) propose a “Concessions 2.0” governance model that allows spaces and uses to overlap and the joint development of economic activities by local populations and concessionaires via a joint decision-making platform.

A new model of community forestry for the future

Despite widespread rhetoric of community empowerment and participation, community forestry is often promoted from the top down by organizational stakeholders (often funders) who impose their own values and sophisticated management tools (Hajjar et al. 2013; Maryudi et al. 2012; Pokorny et al. 2010). A bottom-up approach that takes into account the current needs, wishes and realities of communities can produce support systems that are better designed than those imposed from outside (Hajjar et al. 2013; Malla et al. 2003; Thoms 2008).

After 20 years of experimentation, we need to replace the existing conceptual model – which is focused on transformation and built around an idealized vision of what community forestry could achieve – with an approach based on local knowledge and the actual practices of the local people.

The proliferation of local institutional arrangements also runs the risk of being poorly understood and considered unnecessary by the communities themselves. Efforts to improve the governance of shared forest resources could be a case of “supply without demand”: the governance gap that community-based resource management seeks to close is not necessarily experienced as such by the communities themselves, especially if the governance practices proposed fail to reflect communities’ way of life and knowledge. A more pragmatic approach would be to define some broad governance principles for community management, allowing each community to choose its own criteria for implementing them. Under the new model, community forestry would become a financially viable option for communities and reduce the cost of institutional procedures and institutional arrangements (Lescuyer et al. 2019).

As regards financial sustainability, there is consensus on the need for start-up support from governments and other partners in the form of seed capital, access to subsidized training and technical assistance, and support to navigate complex bureaucratic systems (Humphries et al. 2018), without communities becoming reliant on this support as a form of income. Secondly, it is crucial to analyse how local production systems can be integrated into sustainable and profitable value chains (Ezzine de Blas et al. 2009). Thirdly, conducting an analysis of potential financial

performance before launching a project would prevent communities and their partners from attempting to conduct activities that will not prove profitable in the medium term.

Considering the costs involved, community forestry will only thrive if there are pragmatic and cost-effective ways to exploit forest resources. Conversely, the overall impact of community forestry on local livelihoods will be limited as long as communities have to bear the exorbitant cost of creating and managing a community forest. The cost of establishing and operating a community forest is largely attributable to the various committees that must be established in the community to manage this system. In DRC, for example, the level of bureaucracy required by local community forestry concessions exceeds that required in other Central African countries, where organizational difficulties are already a major weakness (Karsenty et al. 2010, unpublished manuscript). These regulatory provisions are generally justified by the desire to avoid decentralization being abused by external public or private actors to misappropriate the profits derived from the exploitation of forest resources (Jacquemot 2010). However, the complexity of local institutional arrangements undermines the effectiveness of this approach, forcing a significant share of revenue to be spent on maintaining the institutional system at the expense of investments for the well-being of the community, without even preventing misappropriation by elites.

These costs are now borne almost entirely by external donors. Unless national regulations are simplified, this dependence on external funding will prevent most rural communities from engaging in community forestry and could encourage illegal practices to cover these costs, as experience in Cameroon has clearly shown (Cuny 2011; Lescuyer et al. 2016).

13.3.2 The future of social forestry

The Brazzaville Roadmap highlighted the need to pilot new models of social forestry, beyond the classic “community forestry” model. Some avenues have not yet been explored, or at least not in detail, in relation to (i) co-management arrangements (participatory forestry at the household level, at the extended family level or at administrative levels other than the municipality or central government), (ii) participation arrangements (greater sharing of management and, above all, of the decision-making process), (iii) more rights to land or the financial viability of the arrangements envisaged. Other new models have been proposed (Vermeulen 2017; Vermeulen and Karsenty 2016), including the “household agroforestry” model. Given that households are the main unit responsible for slash and burn agriculture (a major cause of deforestation and degradation in many places) and that they have the right to claim customary land rights (the right of the axe), it would make sense to develop a specific type of participatory forestry for households. The idea would be to prevent land saturation and permanent clearing of forest cover by assigning certain households the rights to sufficient space to guarantee their long-term access to a mosaic landscape typical of shifting agriculture (fields-forest fallow-secondary forest) and the many goods and services it provides. Household agroforests could cover an area of 25 ha per household, as a single unit, within a radius of 5 km around villages, that cannot be transferred outside the household and must be bequeathed as a single unit (to avoid future fragmentation). These areas would provide land for growing cocoa, coffee and food, and for forest fallows. A minimum level of forest cover would have to be maintained (around 50 percent) and all products, including those resulting from improvements to the land, would be the property of the household. This would offer a form of “quasi land title”, conditional on maintaining productive mixed forest cover. The timber could be harvested using traditional methods, as a private enterprise, with an annual quota.

Household agroforests are just one example of how the concept of social forestry could evolve. We have chosen this model to illustrate this point primarily to demonstrate that we need to be inventive and bold to reinvigorate communities' participation in forest management, by offering new opportunities with the aim of finding innovative solutions for the benefit of local communities and indigenous peoples.

13.4 The status of community rights in production forests

13.4.1 Community rights under the protected area regime

Central Africa's protected areas grew massively during the second half of the twentieth century. Currently, the subregion has 315 protected areas covering an area of approximately 1,011,770 km² (OFAC 2020). Countries such as the Republic of the Congo, CAR and Sao Tome and Principe have already classified more than 30 percent of their national territory as protected area and others such as Cameroon, Gabon and Equatorial Guinea should achieve this level in the medium term (Proces et al. 2020). This trend is set to continue as the COMIFAC Convergence Plan calls on countries to strengthen the network of national and cross-border protected areas by 2025, ensuring that it is representative of all land and water-based ecosystems. This will require them to increase the number and size of national and cross-border protected areas in the medium term.

Some of these protected areas are not strictly protected and local communities are permitted to use natural resources according to their customary practices (e.g. non-commercial hunting and fishing, collecting non-timber forest products, etc.). However, when implementing planned increases to the area protected, countries should pay particular attention to coexistence with local communities and indigenous peoples to ensure their rights are not dramatically curtailed. This is particularly important when strict protection frameworks are envisaged, such as under International Union for Conservation of Nature (IUCN) category II,⁷ an international standard for rigorous biodiversity protection (Doumenge et al. 2015).

Indeed, under strict protection frameworks (primarily national parks), tenure rights over customary land are not recognized, even where national laws require community participation in the establishment of specific conservation areas and guaranteed access to these areas for subsistence or cultural purposes. Sometimes the overlapping or coexistence of national and international laws is a source of tension (see Box 13.2).

In some cases, customary rights are recognized if indigenous peoples are established before a protected area is created. In CAR, for example, Article 17 of the 2008 Forestry Code states that "usage rights shall not be exercised in strict nature reserves and national parks. If indigenous peoples are

7 IUCN Categories:

- Ia (Strict Nature Reserve)
- Ib (Wilderness Area)
- II (National Park)
- III (Natural Monument)
- IV (Habitat or Species Management Area)
- V (Protected Landscape or Seascape)
- VI (Protected Area with Sustainable Use of Natural Resources)

Box 13.2: Situation of the rights of Baka indigenous peoples around the Dja Faunal Reserve in Cameroon

Fernande Abanda Ngono

The Baka who live around the Dja Faunal Reserve, like most indigenous forest peoples in Cameroon, have been forced to settle along roads and trails since colonial times. Compared with other local communities who are able to claim their customary land rights by showing that they have developed their traditional territory, these indigenous peoples, because of their nomadic lifestyle and their lack of interest in land ownership, are more vulnerable to the impacts of insidious natural resource management policies, particularly those relating to protected areas.

The management plan does not give them any specific rights over this protected area, which established artificially fixed borders for their ancestral territories following its creation in 1950. The management plan grants all the communities neighbouring the Dja reserve the right to engage in traditional agricultural activities in a specific area of the reserve called the “contractual usage rights area” (MINFOF). This area adjacent to the Dja reserve is available for non-industrial agricultural uses and communities are allowed to collect non-timber forest products there. On the other hand, traditional hunting and fishing can only be carried out if there is an agreement between the local communities and the conservation services managing the reserve or under annual agreements provided for in the planning documents.

The case of the Dja Faunal Reserve also illustrates the potential tension between the rights of indigenous peoples under international conventions not recognized by a given country (in this example, Cameroon has not ratified ILO Convention No. 169), on the one hand, and the protected area status enshrined in the country’s environmental codes (here, Cameroon’s) and by UNESCO’s World Heritage status. Approaches that alleviate these tensions should be adopted wherever they exist, to ensure that the rights of indigenous peoples are fully recognized and – where appropriate – fair and equitable compensation is provided.

Customary territorial rights go hand in hand with communities’ right to participatory and joint management. The Baka peoples therefore have the right to participate in the management of the Dja reserve, i.e. by sitting on the governance bodies established for this purpose. On this point, there has been considerable progress in the legal arrangements. Decision of the Ministry of Forests and Wildlife (MINFOF) No. 03300/MINFOF/SG/DFAP of 28 April 2008 on the organization of the Dja reserve provides for two seats for representatives of the Baka peoples on the advisory committee, one of the reserve management bodies. The advisory committee’s mission is to propose ways of involving local people in the implementation of the management plan and to identify and propose priority socioeconomic measures to the Dja reserve management committee.

established before an area is classified as a protected area under Article 9 of this Code, arrangements shall be made to preserve their rights to harvest and practice subsistence hunting and traditional fishing, provided that such activities do not affect their integrity, the interests of other communities or the environment.” In such cases, it is necessary to understand, explain and specify what the legislator defines as “established”, to prevent human rights violations. The same applies to provisions on compensating communities for violations of their rights due to the establishment of a protected area; however, the available data needs to be improved and regularly updated to enable us to assess the extent to which these provisions are implemented.

Examples like this lead some authors to assert that the dominant philosophy enshrined in Central African conservation policies is highly focused on the need to protect charismatic animal species, while neglecting traditional social structures and natural resource management systems (Pyhälä et al. 2016). However, conservation approaches that give local communities a greater role, in terms of access to their traditional resources or participation in the management of protected areas, do exist and are becoming more common worldwide, although they are not widely used in Central Africa. This management model, under which areas are called “conservancies”, is very widespread in southern and eastern Africa. It makes it possible to reconcile greater use of natural resources by local communities with biodiversity protection.

13.4.2 The impact of the protected area regime on community rights

If we can make one recommendation at the start of this section, it would be to improve data and knowledge on the impacts (both socioeconomic and environmental) of the legal provisions on protected areas in Central Africa and of nature conservation measures that seek to promote the sustainable development of surrounding landscapes. Several regional and global analyses have been conducted, including a study of 306 protected areas in 45 countries in Africa and Latin America (Wittemyer et al. 2008), which shows that population growth around these conservation areas was almost twice as high as that observed in other rural areas. One explanation for the attractiveness of protected areas suggested by the authors is tied to the conservation projects carried out there, and more specifically to the international funds allocated to them, to the activities carried out and the infrastructure developed, to economic opportunities and access to road networks, to their safety in times of conflict and to the greater abundance of natural resources.

This general pattern could however become more complex if specific situations are considered, especially given that, generally speaking, the participation and consultation of local communities has historically been very weak in the establishment of protected areas. The requirement to obtain free, prior and informed consent enshrined in the Convention on Biological Diversity and recently incorporated into the 2020 Forestry Code of the Republic of the Congo is being mainstreamed in new conservation initiatives. Other possible improvements can be made in relation to governance, tenure management and human rights. As regards governance, governments still favour a centralized, monolithic management model for protected areas, even though it can lead to repressive forms of wildlife protection and the criminalization of local people, which can be a source of conflict (Mayen Ndiong et al. 2021). The emergence of a mixed governance model, such as public-private partnership, brings with it an approach that is more respectful of the rights of local and indigenous peoples. Nevertheless each situation should be judged on its own terms – with local and indigenous peoples – before one form of governance or another is chosen.

As regards land tenure, forced population displacement due to the establishment of a protected area has been documented in some cases (Brockington and Igoe 2006) and should be replaced by tenure management approaches that are negotiated with customary rights holders, to avoid displacement and restrictions on access to ancestral lands. Where appropriate, resettlement measures and fair compensation must be negotiated and agreed with rights holders, including indigenous peoples, to avoid any negative socioeconomic impact. Restrictions on access to and the sale of natural resources, for example, can risk causing food insecurity and impoverishment (Cernea and Schmidt-Soltau 2003b, 2003a).

As regards human rights, both NGOs and governments increasingly promote conservation centred around respect for the rights of indigenous peoples and local communities. This approach is, for example, taken by the Congolese Institute for Nature Conservation (ICCN), which is holding discussions on how to set up a streamlined system for handling complaints from communities neighbouring protected areas and, more broadly, on the establishment of a framework to ensure compliance with international human rights law (European Commission 2021).

Despite this shift in conservation thinking, problematic situations persist. In 2019, BuzzFeed published a report on human rights abuses perpetrated by ecoguards in protected areas co-managed or supported by the World Wide Fund for Nature (WWF) in Cameroon (Lobeké, Boumba Bek and Nki Parks), Republic of the Congo (the process of creating Messok Dja Park) and DRC (Salonga National Park).⁸ Key criticisms included the conservation organization's decision to work with partners who have a history of violence and abuse against indigenous peoples and local communities, and the weak application of the principle of free, prior and informed consent.⁹ A panel of independent experts charged with investigating the accusations found that WWF was not directly involved in the abuses uncovered. Weaknesses were, however, identified in the procedures designed to prevent abuse and ensure compliance with the NGO's human rights commitments related to activities in protected areas (Pillay et al. 2020).

A new paradigm for the management of protected areas that advocates the professionalization of the rangers appears to be beneficial for wildlife. The ecoguard roles at Zakouma National Park, for example, have been professionalized, which has made park border areas more secure and enabled several large mammal populations to be maintained and even increased. However, ecoguards' activities – including whether they are armed – must always be properly supervised and monitored to prevent, at all costs, the deterioration of relationships with local communities, who continue to hold legitimate rights to land and resources in protected areas.

13.4.3 Innovative approaches to the governance of conservation forests

A major concern for the management of protected areas is reconciling the objectives of effective biodiversity conservation and upholding the human and land rights of rural communities (Karsenty et al. 2021). The quest for efficiency has, over time, led some Central African countries to trial new ways of managing protected areas, such as delegating responsibility to conservation NGOs and, more recently, to private companies, through public-private partnership (PPP) agreements.

The involvement of non-state actors, mainly conservation NGOs, in biodiversity protection is based on the belief that these actors are able to manage areas more effectively in the face of government failures, that their involvement confers credibility in the eyes of donors and that they are better able to secure sustainable funding (Scholte et al. 2021). These suppositions are similar to those underpinning managed forestry concessions.

Public-private partnerships give a robust mandate to the non-state actors to whom management is delegated. The government retains a formal presence in governance mechanisms, but operational management is handled entirely by the non-state partner, which is granted decision-making

8 <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>

9 <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>

Box 13.3: Practical and innovative tools for analysing and strengthening communities' rights around the sustainable management of natural resources: Case study of the Sustainable Wildlife Management (SWM) Programme

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As highlighted in this chapter, forest and wildlife management in Central Africa is governed by multiple legal systems and rules operating simultaneously at different levels (national and international obligations, statutory and customary law). The resulting complex and sometimes divergent sets of rules can significantly weaken the governance of natural resources and even the rule of law, often to the detriment of the people who depend on these resources for their livelihoods.

Intervening in this area, the SWM Programme is one of the first large-scale conservation initiatives to put rights-based approaches into practice. As regards social safeguards, the SWM Programme aims, at all its sites (including those in the Republic of the Congo, Gabon and DRC in Central Africa), to: complete risk and opportunity analysis grids on the rights of project stakeholders, in the light of the human rights situation in each country; establish a free, prior and informed consent protocol and a framework complaint management mechanism that can be adapted to different contexts; develop planning and monitoring tools, and tailored communications materials. Site teams and local partners are trained to use these tools and are helping to improve them through practice.

In parallel, the SWM Programme is undertaking a technical review of relevant legal issues. This work has led to the development of a tool kit to facilitate a holistic cross-sectoral evaluation of the legal frameworks governing the various aspects of hunting and fishing value chains. These tools address both gender-related issues and the substantive and procedural rights of members of local communities, indigenous peoples and marginalized groups. Available via the legal hub on the SWM website (with results from SWM pilot countries), these complementary and interdependent tools make it possible to:

- Map the relevant legal framework;
- Consider how to transpose relevant international instruments into national law;
- Analyse the level of alignment between sectoral legislation and identify potential gaps;
- Clarify the relationship between statutory law and customary law;
- Identify barriers to implementation and/or enforcement.

By using these different tools to implement a community rights-based approach, the SWM Programme aims to promote participatory, inclusive and evidence-based processes, including by working on normative frameworks, legislation and customary law, to enable and support the effective management and sustainable use of wildlife and its habitat.

autonomy and some flexibility when it comes to administrative and financial arrangements (European Commission 2015; Scholte et al. 2021). Although public-private partnerships delegate responsibility for the management of protected areas to non-state actors, it is important for governments to maintain ownership and mixed boards of directors could be established to balance private and public power.

In some cases, certain sovereign functions like law enforcement and anti-poaching initiatives might also be transferred to non-state actors (Scholte et al. 2021). The African Parks Network model, under which the non-state actor assumes full responsibility for all aspects of running a protected area, countering any threats and managing all revenues, is illustrative of the tacit privatization of conservation (African Parks Network 2021). The draw of this approach for governments that lack the resources or capacity to manage these areas is clear; nevertheless, governments must be mindful of the risk that their own interests and those of rights holders will be marginalized. It is therefore important that PPPs establish discussion, awareness and information-sharing forums with these stakeholders, in which local people are included and have a formal vote on issues in which they share an interest.

In Central Africa, 13 protected areas are managed under this model, with the majority managed by the South African NGO African Parks Network (APN), followed by Wildlife Conservation Society (WCS) and WWF. This new model is widely praised by international conservation NGOs, as well as by some donors, for whom PPPs are a way to involve local communities in the management of protected areas and improve their incomes. In the case of the Odzala-Kokoua park in the Republic of the Congo, the public-private partnership arrangement has helped to increase the participation of all stakeholders, in particular local communities, in the management of the park (Mayen Ndong et al. 2020).

In addition to public-private partnerships, there are compelling new initiatives that view biodiversity conservation as the management of a resource for the benefit of local communities, such as the Sustainable Wildlife Management Programme. With this in mind, NGOs and major programmes have sought to align their approaches to community relations (complaints management mechanisms, free, prior and informed consent, gender mainstreaming, etc.). The Central African Forest Ecosystem (ECOFAC) programme is working on reforms to more effectively incorporate these concerns, following the model of EU programmes in DRC that have made similar changes.

Conclusions

The inclusion of indigenous peoples in forestry and conservation policies can no longer be overlooked by those operating in the sector, whether conservation organizations or logging companies. Over the past three decades, public and private initiatives supported by technical and financial partners have gradually strengthened the role of local communities and indigenous peoples in forest management. On this front, subregional and national legal and policy frameworks have become significantly denser. Legal instruments have, among other things, laid down participation, the consideration of usage rights, benefit-sharing and free, prior and informed consent as fundamental requirements for the responsible management of natural resources. The implementation of these provisions by private operators, in particular certified operators, has had some tangible success through the construction of infrastructure projects with socioeconomic benefits.

Such legal progress remains precarious and implementation in practice is often challenging given that some local communities lack the required managerial capacity. Current trends in development

planning, land-use planning policies and the consolidation of ultra-liberal forest management approaches in the subregion, as well as land grabbing by national elites, suggest that the irrevocable legal recognition of community and indigenous forest rights is being sidelined. In the Congo Basin, occasional outbreaks of violence linked to efforts to claim these rights coupled with a deep and legitimate desire for (sometimes unsustainable) development are an ongoing concern.

And yet, there is another better possible path and future. First and foremost, enabling conditions for this optimistic scenario and public political dialogues could complement the necessary reforms, as part of processes that are genuinely inclusive of local and indigenous peoples' demands. Secondly, national land-use plans, which may use different names, could map the customary lands of village communities and – as far as realistic – the territories on which indigenous peoples depend for their livelihoods (allowing for several uses in the same space). This would not threaten governments' sovereignty over forests and land, but it would allow for local and indigenous peoples' rights to be mapped and finally recognized. Thirdly, land titles, or any other means of irrevocably securing the forest lands of local and indigenous peoples, could be gradually assigned, on a case-by-case basis. It is a compromise scenario, but a win-win one that should appease the most vindictive few at the local level and remove a thorn in legislators' and policymakers' side. These various possibilities underscore the need to better account for the diversity of customary rights in forest land management and to put the government back at the centre of forest management, with regulations tailored to realities on the ground.