

CHAPTER 1: TOWARDS BETTER GOVERNANCE

This chapter provides an overview of the existing governance framework for forests in the Congo Basin, highlighting its shortfalls and also considering what steps are needed to achieve good, or at least better, forest governance in the region.

The Congo Basin's forests fall under a complex framework of international, regional and national legislation, as outlined in Article 1.1 by Stuart Wilson. This collection of declarations and laws includes sound principles, for example, relating to ecological sustainability and recognition of traditional land and resource rights, particularly at the international level. However, these are often not translated into national legislation or action. Recent and ongoing processes at the regional and national level aimed at improving forest governance have taken some steps forward, for example, in promoting greater participation and transparency in forest management and the consideration of an increasing range of forest values, of which some examples are presented in Article 1.2 by James Mayers. However, there has still not been a sufficiently critical look at the current situation, the status quo remaining largely unquestioned, and certain issues remain very poorly addressed. In particular, the current framework gives little, or no, recognition to the rights of forest-dependent communities, and especially, of indigenous peoples. Despite the existence of numerous international declarations on the rights of indigenous peoples, these have not been translated into effective national legislation or practice, as outlined by Dorothy Jackson and Cath Long respectively in Articles 1.3 and 1.4.

All the articles presented here highlight the need for a more fundamental questioning of the existing governance framework, based as it is on a system of "forest management" which to date has had little success in delivering stated policy objectives, and for the development of

more radical and innovative solutions. Indeed, there is consensus among the authors that what is needed to improve governance is not better implementation of the current legislation, but rather, a process of review and reform. This will need to acknowledge the role that the forestry sector plays in politics, and in particular, its role in political patronage and corruption, as highlighted in Article 1.5 by Simon Counsell and Arnaud Labrousse.

The authors call for greater transparency and free and fair participation in forest management. They also highlight the need for secure land tenure for communities, effective forest governance requiring the recognition and fair negotiation of the various rights and claims to forest land and resources.



Recognition of community land rights is an essential element for good forest governance: one tool that can enable this is community mapping. Photo: Cath Long

1.1 THE INTERNATIONAL PROCESSES RELATING TO THE FORESTS OF THE CONGO BASIN

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This section of the report will briefly review some of the international processes relating to forests and comment on their contribution to addressing the policy problems faced in the Congo Basin and their likelihood of success. It is not an exhaustive list and comments are made from the perspective of the report's overall review of the forest logging concession system and its application in the Congo Basin.

UNFF

The United Nations Forum on Forests (UNFF) was created by the UN's Economic and Social Council (ECOSOC) in 2000. It is the latest incarnation of the high-level, multi-lateral forest policy debate that began in 1994 in the wake of the UN Conference on Environment and Development (UNCED-Rio 1992). The UNFF is considered by governments and UN institutions to be the primary world forum for discussion of forest policy and the exchange of related information. It and its two predecessor forums have consisted mostly of large annual meetings where government delegations have discussed and negotiated non-binding text and relatively broad and weak commitments on a wide range of issues. The question of whether or not to negotiate a legally-binding forest convention has constantly re-surfaced, and has been a constant distraction, but has remained politically deadlocked. The UNFF has also spawned and facilitated a number of country-hosted inter-sessional conferences on a range of more specific and regionally-relevant topics, although follow-up on their recommendations in the central UNFF has been limited. Perhaps the UNFF's main achievement has been the creation of the UN inter-agency Co-operative Partnership on Forests, which has enhanced co-operation and co-ordination among existing forest-related UN institutions.

Apart from the non-binding nature of the UNFF's negotiated agreements, its effectiveness is further limited by: the lack of any compliance mechanism or enforcement authority; the absence of a funding mechanism; ineffective government implementation; sporadic, voluntary reporting on agreed commitments; and little or no mechanism for review or discussion of such reports. Finally, the UNFF has never been a place where specific forest management standards could be promoted or agreed, and the UNFF's relevance to specific forests or regions is somewhat remote.

The DRC began attending UNFF sessions in 2004. It has identified UNFF Country Focal Points (government agency contact persons), filed a National Report with UNFF in 2004, and provided a representative for a panel discussion on African and Congo Basin issues during a UNFF session in 2004.

The Convention on Biodiversity

The Convention on Biological Diversity (CBD) was negotiated and signed at UNCED in 1992. It is a legally-binding treaty with a formal funding mechanism (the Global Environment Facility). It has scientific and technical working groups and has spawned several issue-specific "Work Programmes" including one on forests. The Convention has also facilitated and funded the preparation by most country Parties of national-level Biological Strategies and Action Programmes, which is perhaps the CBD's most substantive product to date. The CBD has several reporting mechanisms and commitments, and active discussion and development of specific implementation targets and performance indicators.

On the other hand, the CBD focuses much of its effort on large meetings and conferences involving perpetual text negotiation, and has no compliance or enforcement mechanisms.

Evidence of effective implementation of national Biological Strategies and Work Programmes has again been sporadic or non-existent, and the CBD Secretariat has provided the Forest Work Programme with little staff support or resources. Any forest-related commitments that governments have made within the CBD arena are non-binding. Few such commitments, therefore, seem likely to be implemented without external pressure by civil society groups. Finally, although CBD discussion of targets and performance indicators is a useful and encouraging contribution to the multi-lateral dialogue, the CBD as a body is ill-equipped to do much about concrete matters such as illegal logging or the development or implementation of stringent forest management standards, or national or region-specific forest ecosystems. In short, without the political will of individual governments, the CBD and its various follow-on commitments are unlikely to be implemented on the ground. The CBD has also never reviewed currently operative models of forest management to determine which are more likely to lead to achieving the Convention's objectives, nor is it ever likely to undertake such a review.

The DRC has signed and ratified the CBD, identified Country Focal Points, submitted two National Reports (1998, 2001), and developed a National Biological Strategy (1998, 2002). However, the DRC failed to submit a report on its implementation of the Expanded Programme of Work on Forests, and in its completed Forest Thematic questionnaire, it was acknowledged that national actions had been extremely limited.

ITTO

The International Tropical Timber Organization (ITTO) was formed to oversee the implementation of the International Tropical

Timber Agreement (ITTA), which was negotiated in 1983. The ITTA was based on the standard "commodity" agreement format, with the addition of a commitment to sustainable management of tropical forests. However, the primary goals of the ITTA and ITTO have always been the promotion of the tropical timber trade. The ITTO is comprised of a weighted balance of "members" representing governments from both tropical timber producing and consuming countries. It collects and disseminates data on the condition of timber producing forests and the economics of the timber market and trade, conducts research and studies, hosts annual meetings where policy is developed and negotiated, and supports projects submitted by producer member governments and funded by consumer members. Since 1987, ITTO has funded more than 700 projects and activities valued at more than U.S. \$280 million. The major donors are the governments of Japan, Switzerland and the USA.

Although in its first two decades the ITTO made grand commitments to achieve sustainable forest management – such as "Target 2000" which established 2000 as the year by which all tropical timber traded internationally should be derived from sustainable sources - it was internally divided, politically reluctant, and hence failed miserably. Nevertheless, it remains the favoured forum for the main actors in the tropical timber trade, and producer governments participate actively and work hard to win funding for their pet projects. While most projects have focused quite clearly on timber-related goals, in recent years ITTO members have broadened their work to include the establishment of protected areas, reduced-impact logging, community participation, and illegal logging and law enforcement. Whereas government agencies were traditionally the favoured project implementers, NGOs are now sometimes included as full implementation

partners. The ITTO has also convened and sponsored multi-lateral and regional policy conferences on subjects that have included forest certification and law enforcement, and helped open the door to the launching of the Forest Law Enforcement and Governance (FLEG) process.

Because of its tropical-country focus and its project-funding mechanism, the ITTO has greater potential to be embraced by tropical governments and hence to influence their efforts on the ground. However, because of its mandate and focus on the timber trade, and its long-standing allegiance to fairly conventional approaches to forest management, it is not an effective agent of change or trend-setter in the field of sustainable forest management. The ITTO has never questioned the ability of the dominant industrial logging concession model to deliver sustainable or equitable forest management. The ITTO could itself be seen as a test as to whether this model could achieve these goals, but if this is the case, it is clear that little progress has been made.

The DRC, together with most other countries in the Congo Basin, is a producer-member of the ITTO.

COMIFAC - Council of Ministers in Charge of the Forests of Central Africa

COMIFAC is an outgrowth of the 1999 Yaoundé Summit of the Central African Heads of State, and its "Yaoundé Declaration". This Declaration was to be implemented by the region's forest ministers via a regional Convergence Plan. The ministers adopted the Convergence Plan and created the Conference of Ministers in Charge of Forests in Central Africa (COMIFAC) in 2000. COMIFAC's mission is to harmonize and co-ordinate the forest and environmental policies of its member countries, and oversee implementation of the Convergence Plan

(basically a strategic planning framework). As such, it considers itself "the only authority of orientation, decision-making and co-ordination of the sub-regional actions and initiatives as regards conservation and sustainable management of forest ecosystems." COMIFAC has also become a "focal point" for the Congo Basin Forest Partnership (CBFP).

At its ministerial meeting, held in Libreville in 2004, this process became known as the "Central Africa Forests Commission", though it retained the COMIFAC acronym. The same meeting also adopted the "Treaty on the Central Africa Forests Commission" in order to gain higher international recognition and qualify for international funding opportunities. The Treaty commits the member states to (among other objectives) "promote and accelerate the industrialization of the forestry sector", with no mention of good governance and transparency in the forest sector, the rights of indigenous peoples, assurance of benefits to local communities, or commitments under the CBD, and with no provisions for prior consultation with civil society or forest peoples. Some NGOs were very concerned, with good cause, that the treaty might proceed in advance of forest law reform, effective implementation and enforcement, capacity building, consultation, etc.

At the second Heads of State Summit, held in Brazzaville in 2005, heads of state resolved to sign the COMIFAC treaty and adopted the Convergence Plan. Thus, the stage was set for the expansion of industrial logging in the Congo Basin in the absence of any analysis of this model's legacy in other countries in Africa or the rest of the world.

The main concern here is the nature of the policies to be harmonised. In Central Africa the "model" often cited for forest legislation is that of Cameroon, which, as the box below explains, has largely failed local people and is anti-poor. Central Africa's forest policies need review

and reform before their harmonisation and implementation, so as to ensure that they avoid forest destruction and alleviate poverty rather than deepening it.

Box 1: The Cameroon Model²

A new forest law was passed in Cameroon in 1994 with support from the World Bank. The new law aimed to increase transparency in logging concession allocation and state capture of forest revenue. Importantly it also created legal provision for community forests. However with the benefit of hindsight, several analyses (including that undertaken by the World Bank's own Operations Evaluation Department) have suggested that this particular intervention was based on an inadequate understanding of the socio-economic forces at play within the forest sector.³ In particular, it failed to recognise the importance of deeply entrenched and conflicting vested economic interests, and did not reflect "the interests of ordinary people", all of which hampered the policy's implementation.

While the increased status accorded to the forest sector is to be welcomed, 'forestry' must be defined in a broader sense than industrial logging, and it must focus on the inclusion of people that depend on the forests. The emphasis in the Plan on the paramilitary and policing aspects of forest management is of particular concern.⁴

CBFP – Congo Basin Forest Partnership

The CBFP was announced during the 2002 Johannesburg Summit (WSSD) to provide direct support for Congo Basin forest management, protection and development initiatives. The CBFP is said to have been based on the 1999 Yaoundé Declaration, and has endorsed the COMIFAC Convergence Plan

and pledged to help implement this. The CBFP involved a partnership among governments and institutions such as the USA, the UK, France, and the European Union, along with the World Bank, ITTO, and several other partners including international NGOs.

The CBFP's main priorities are to: "provide people sustainable means of livelihood through well-managed forestry concessions, sustainable agriculture, and integrated ecotourism programs; help countries develop a network of effectively managed national parks, protected areas, and corridors; and, improve forest and natural resource governance through community-based management, combating illegal logging, and enforcing anti-poaching laws."

Identified weaknesses of the CBFP to date include its deference to a few large, international NGOs while doing a non-existent job of consulting and involving local and national civil society and indigenous peoples groups; and a failure to devote enough attention to capacity-building within each of the Congo Basin governments and NGOs.

Another approach to provision of financial support to existing regional and national forest initiatives in the Congo Basin has been taken by the UN FAO through its "In Search of Excellence" initiative, launched in 2001 under the FAO/Netherlands Partnership Programme. This is designed to identify and replicate existing examples of effective, high-quality forest management. However, given that it will be using existing operations and models of forest management as its base, the question remains as to how likely it will be to promote a significant shift away from an industrial concessions approach.

² Rainforest Foundation (2003) Forest Law Enforcement and Governance: Rights and Poverty Alleviation in the Congo Basin. ³ Essama Nssah, B. & J.J. Gockowski (2000) Cameroon: Forest Sector Development in a Difficult Political Economy. World Bank, Washington, D.C. ⁴ Rainforest Foundation (2005) Briefing note: Conference of Ministers on Forests of Central Africa (COMIFAC) "Plan de Convergence"

CEFDHAC - Conference on Central Africa Moist Forest Ecosystems (the Brazzaville Process)

CEFDHAC was launched in 1996 under the auspices of IUCN as a very broad discussion forum for consultation, collaboration and exchange among all actors working in the Congo Basin, with the goal of bringing coherence and consistency to the management and protection of the forests of the region. There are ten participating countries.⁵ CEFDHAC is administered by a conference of ministers in Central Africa and national focal points in each participating country. IUCN's Central Africa/Cameroon office is the facilitating agency, or secretariat, of CEFDHAC. The CEFDHAC/Brazzaville Process now hosts biennial conferences as its primary means of bringing parties together.

In co-operation with COMIFAC, an NGO advisory meeting in 2005 recommended setting up a representative task force as a consultative body within CEFDHAC to be in charge of the AFLEG process and to facilitate implementation of the AFLEG Ministerial Declaration, as well as to advise COMIFAC. The resulting AFLEG task force is considered to be the primary means of implementing the AFLEG Ministerial Declaration of 2005.

As far as can be determined, none of the CEFDHAC-sponsored discussions has ever questioned the basic assumptions or conventional models of 'forest management' in the region or its failure to date to deliver the development benefits expected of the forest sector. Indeed, it is unclear what, if anything, CEFDHAC has actually delivered to date.

The Africa FLEG process

The African forest law enforcement and governance (AFLEG) process followed on from its Asian predecessor, and after planning meetings in June 2002, culminated in a ministerial level summit held in Yaoundé, Cameroon in October 2003. This meeting led to the production of a Ministerial Declaration.

The process was started in recognition that widespread failure of forest governance and law enforcement directly undermines any nation's attempt to achieve sustainable economic growth, social equity and environmental protection. Internationally, governments are beginning to acknowledge the high costs of illegal logging, associated illegal trade and corruption in the forest sector.

The declaration itself notes "that in many African countries, some laws relating to forests are inadequately adapted to present conditions and in some cases are unfavourable to the interests of the poor". The declaration also assures us that there will be moves to "consider the legitimate interests of all parts of society when developing forest legislation, including addressing traditional and customary laws and practices, including, *inter alia*, sustainable bushmeat hunting".

Subsequent to the Ministerial meeting it has become apparent that the good will generated is to be picked up in regional forums such as COMIFAC and carried forward through their work programmes. An AFLEG Support Group of active "producer," "consumer" and donor governments was established in May 2004, according to the World Bank website, with the purpose of maintaining momentum for action to implement the declaration, which, two years after the Ministerial, still lacks evidence of concrete results.

⁵ These are: Burundi, Cameroon, Central African Republic, Congo-Brazzaville, Democratic Republic of Congo, Equatorial Guinea, Gabon, Rwanda, Sao Tomé and Chad.

It could be said that the group of "some laws", cited above, includes the concessions model of forest management, especially where this is implemented in weak governance environments. This position is essentially stated in the Ministerial declaration itself and is the reason the Conference took place. The question remains however as to whether the AFLEG support group and the governments themselves have the ability to look frankly at the situation and to consider alternative legal frameworks for forests, a process that should include undertaking research into alternatives through the work programmes of other processes.

EU FLEGT

At the meeting between the UK government and Cameroonian parliamentarians in 2005, it was stated that "the EU FLEGT is now the main co-ordinated mechanism by which European member state governments will address forestry problems in timber producing developing countries".⁶ In an important speech to Chatham House, London in 2006, the UK Minister for Development, Hilary Benn, stated that "The new EU Forest Law Enforcement, Governance and Trade regulation will help to tackle illegal logging in DRC",⁷ in spite of the fact there is no such FLEGT process and, to date, few moves to initiate one.

By reducing market access to timber produced in a blatantly illegal manner FLEGT can be expected to improve the situation on the ground by making these activities less profitable. This has to be welcomed and progress on developing a programme in DRC is eagerly anticipated in the hope that the governance levers are used in the right order – i.e. a pro-poor policy is put in place and the appropriate laws enacted before pressure is brought to bear to surge ahead with enforcement.

What FLEGT will not do is make technically legal logging sustainable. This and other such problems identified above cannot be tackled through FLEGT "voluntary partnership agreements" or indeed by any other "technical fix" based on existing models of exploitation. Hence there is an urgent need to ensure that the FLEGT process does not give credibility to the trade in timber that may be legal technically but produced in a manner that is unsustainable and undermines the rights of local and indigenous peoples.

Synthesis

The first delineation we need to make is between the broader, international, intergovernmental policy forums and those that have been initiated, and operate exclusively, at the regional (i.e. Congo Basin) level.

For the most part, the UNFF, CBD and ITTO tend to resist innovation and change, and operate slowly. Furthermore, they have limited immediate ground-level relevance and a generalized approach to policy-making. With the notable exception of ITTO projects, they have no means of implementation or funding, and the African government members have limited incentives for initiative or implementation. If anything, these governments may resist the recommendations and dictats of these forums because they are the product of a large and diverse collection of interests and may seem like external impositions. On the other hand, the international forums have produced a range of high-level commitments and obligations (albeit mostly non-legally binding) that could represent significant achievements and attract considerable external support if they became a substantive part of the regional processes.

⁶ Chatham House briefing on visit to UK by Cameroonian Parliamentary delegation (2005). Available at: http://www.illegal-logging.info/events/Tropical_Forest_Governance_Meeting_notes_August_05.pdf ⁷ Department for International Development (2006) Speech by the Minister for Overseas Development, Chatham House, 23rd February 2006, London.

The Congo Basin processes, on the other hand, have been initiated in the region, for the most part by a small group of countries themselves, and are very specific in their focus. Therefore, they have a greater potential to generate internal support and buy-in, as well as external funding, and thus to produce results and to do so more quickly. However, these governments tend to resist change, in order to perpetuate existing conventional models of securing rent from the forest sector (either for public or personal gain). It appears to be primarily the lure of significant external funding that provides the incentive to innovate, change, and act. Thus, when these processes can be combined with significant sources of funding, and can work in close co-operation with other parties and processes, the incentive to make initial substantive commitments, and to follow-through and implement those commitments, can be high.

By this analysis, two processes seem most likely to produce results, even more so if these operate in combination: COMIFAC, because it is based on a very high level of government commitment and participation and a formal treaty; and CBFP, because it brings significant external financial support and is designed to facilitate implementation of the COMIFAC suite of commitments. It is an excellent partnership to work from but sadly seems to be rushing towards cementing in place a model of forest management that has singularly failed to deliver development benefits in any country where there is a weak governance framework. By funding these initiatives the donors have demonstrated their alignment with existing policy models, notably in the absence of a critical structural analysis of the logging concessions system and without any evidence that these initiatives can deliver more sustainable forest management or contribute to poverty alleviation.

The key factors for success in the regional initiatives, and with COMIFAC/CBFP, are likely to be domestic pressure and support from civil society together with external pressure and support from international donors and institutions. Thus, transparency and participation will be essential requirements, as well as effective monitoring of implementation. So far, these Congo Basin initiatives have for the most part been weak on these attributes. Nor have they effectively incorporated their member governments' commitments in various international forums, and they have had inadequate feedback loops for continuous improvement. Unless these flaws are corrected, these initiatives will be unlikely to push innovative forest management very far, if at all.

In all of these processes, however, we can see an alignment of national governments with little political will to change a model of forest management that functions in the best interests of the political and economic elites, and a range of international funding agencies that are also unwilling to promote truly innovative solutions that may already exist.

For some African leaders and senior officials, logging concessions provide a means of: converting public goods into private wealth; rewarding political cronies and buying-off political enemies; pacifying rebels and military challenges; or of funding election campaigns. Yet the international community has failed to take any meaningful action against the culprits. In Gabon, it was recently found not only that President Bongo, his family, and every single important government minister holds logging concessions, but also that they had all failed to pay the prescribed taxes and were therefore operating illegally.⁸

⁸ Government of Gabon (2005) *Listes des Permits Forestiers Concernes, Minister de l'Economie des Finances, du Budget et de al Privatisation, Minstere de l'Economie Forestiere des eux, de la Peche, de la Environnement, l'Union, Libreville, 5 mars 2005.*

Governance problems of this nature can only be tackled through determined political action at the highest level, and a willingness to confront some of Africa's most entrenched political elite. The likes of Presidents Biya and Bongo, or their dynastic successors, will need to be challenged, to reform laws and to implement them in a consistent and transparent manner.

This moral bankruptcy on both sides perpetuates the status quo and increases the spread of forest policy models, including through the COMIFAC Plan of Convergence, that have no positive record in the weak governance environments where they are being promoted.

If the governments and donors are serious about achieving the intentions set out in the various declarations mentioned above, the COMIFAC/CBFP partnership arrangement should create the political space and provide the funding for a participative and fundamental evaluation of the industrial forest logging concessions system and the contribution it has made to the development of countries to date. The DRC should opt out of the Convergence Plan as this promotes an inappropriate development model for a country whose forest code is at an early stage of development.

1.2 POLITICAL SUSTAINABILITY: GOVERNANCE AND TRANSPARENCY

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Effective and equitable political systems, that protect and invest in a nation's citizens and environment, have been the seldom-realised right of societies since time immemorial. These days, debates about "good politics" often focus on notions of "governance" and "transparency". Such notions have come to the fore in international attention to forests recently. Box 1 explores some of these notions.

Box 1: Governance and forests: working definitions of awkward "concepts".⁹

Governance is traditionally held to be very close to that of "government" – more or less "what governments do". Over the last decade governance as a term has gained wide currency in a range of contexts – within societies and individual organisations. One simple definition of governance is "the art of steering societies and organizations." A further definition of governance in its societal dimension is: "the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern".¹⁰

Good governance is clearly about getting governance right, but since the "right way" is largely shaped by the cultural norms and values of each particular society or organisation, universal templates for good governance have limited credibility. The UN has suggested that some universal norms and values do apply and has published a list of characteristics of good governance:¹¹ participation, transparency; responsiveness; consensus orientation; equity; effectiveness and efficiency; accountability; and strategic vision. A notion of good governance has the advantage for some in offering a non-partisan discourse on politics.

Good forest governance as a term has evolved similarly to governance in general. It has come to the fore particularly as a result of debates on decentralisation, corruption and illegal logging. It has different meanings for different people and there are few attempts at consensual definition. The Africa Forest Law Enforcement and Governance (AFLEG) ministerial declaration of 2003, for example, does not attempt such a definition. The Forest Governance Learning Group, steered by the International Institute for Environment and Development, has a working definition of good forest governance – "the decisions and actions that remove the barriers and install the policy and institutional systems which spread local forestry success".

"Good forest governance" is clearly necessary for making forest concessions work. Concessions wrap up significant quantities of a society's land and resources and hand them over to third parties for long periods of time. We need to know that this is handled wisely. Yet putting notions of good forest governance into practice at the local level generally remains a distant prospect and therefore the concession system which is the principle object of this "governance" represents a societal asset that is generally being managed in a "sub-optimal" manner. The actual governance of access and control of forest resources often bears little relation to the situation as stated by governments. Regulations and formal institutional mandates rarely determine or secure access and use of resources in accordance with their legislation as such, but create opportunities for negotiating or abusing this. The discretionary enforcement of laws and regulations provides possibilities for monetary and political rent seeking, with the conversion of public forest resources into private wealth being a prime example of this.

⁹ IIED (2004) Forest governance learning group: Update December 2004. IIED, London. ¹⁰ Institute on Governance (2005) <http://www.iog.ca/> ¹¹ UNDP (1999) Human Development Report 1999 – Globalisation with a Human Face. United Nations Development Programme, New York.

Often, it is people's lack of awareness of the extent of their property and use rights that provides scope for local authorities to define local people's current practices as illegal despite what is enshrined in official documents.¹² While the range of institutions that play important roles in poor people's lives is vast, they are often excluded from participation in governance – being treated with disdain by institutions and having little defence in the face of institutional injustice, criminality, abuse and corruption,¹³ including the allocation of forest rights for logging outside of official procedures and the law.

Yet such situations are increasingly questioned - fragile economies have decreased the ability of leaders to counter public dissatisfaction with the use of state patronage, and civic organisations have grown more effective in their demands for greater resources and public accountability. A focus on improved justice in forest governance is increasingly being called for¹⁴. There is much to learn from the often under-recognised and poorly-connected practical systems of governance to be found in the day-to-day workings of some on-the-ground institutions - forest departments, NGOs, donor-assisted projects, local governments, companies and communities.¹⁵

Challenges are huge – but some countries are making forest governance progress

Recent years have seen some progress in developing forest governance. National policy debate and implementation tends now to involve multiple stakeholders and partnerships, and not merely government and some elites. Policy objectives in many countries have opened up, from an overriding concern with forests as timber resources or land banks for development, to a concern for a wider range of forest goods and services and stakeholder needs. Forest-dependent communities in some countries are beginning to have rights

recognised, to enable them to be effective forest managers. Meanwhile, over the last three years in particular, many international debates have identified better forest governance as a desirable goal. The Africa FLEG ministerial declaration is particularly notable as a political hook for making progress. All of these initiatives have so far only provided building blocks and there is still a long way to go.

¹² Mayers, J. *et al.* (2005) Forest governance and social justice: practical tactics from a learning group approach in Africa. Proceedings of the 17th Commonwealth Forestry Conference, 29 February to 5 March 2005, Colombo, Sri Lanka. Forestry Commission, UK. ¹³ Kaimowitz, D. (2003) Forest law enforcement and rural livelihoods. *International Forestry Review* 5(3): 199-210 ¹⁴ Colchester, M. (2004) Justice in the forest: rural livelihoods and forest law enforcement. CIFOR, Bogor (Unpublished draft); Kazoora, C. & J. Carvalho (2005) Forestry justice: combating illegality for forest-linked livelihoods in Uganda. Sustainable Development Centre, Kampala & IIED, London. ¹⁵ Mayers, J. *et al.* (2001) Forestry tactics: lessons from Malawi's National Forestry Programme. IIED, London; Sithole, B. (2002) Where the power lies: multiple stakeholder politics over natural resources. A participatory methods guide. CIFOR, Bogor.

Box 2. Rising to the tactical forest governance challenge - in Uganda, Ghana and Mozambique

Uganda - Space to tackle some major forest governance challenges has been created by a generally positive process of decentralisation and some high-profile cases of corruption linked to the timber trade to examine some of the practicalities of tackling forestry corruption and improving returns to sustainable livelihoods from better use of the justice system. Proposals currently seeing considerable attention include: an improved timber tracking system; more effective information flow; better forestry integration with the penal code; a light but effective local reporting and rapid response system at source of production and in the domestic trade chain; and a stronger system of adherence and accountability to a professional forestry code.¹⁶

Ghana - Major institutional innovations have been made in Ghana's forest sector in the last three years: competitive bidding for timber utilization has finally kicked in; stumpage prices have begun to reflect market prices; a new log-tracking system is in the pipeline; benefit sharing mechanisms have improved; forestry customer service centres have been set up in many districts; and district forest fora have begun to be effective. Yet major problems threaten to undermine all this. Bad implementation and flagrant abuse of forestry law have created a situation where almost all timber utilisation in Ghana is illegal and the revenue lost to government from this is estimated at about U.S. \$100 million annually. A potential powder keg has been created at community-level by those involved in flouting the law and over-harvesting. Communities have lost confidence in the timber-men and the government is threatening to take matters into its own hands.¹⁷

An alliance is forming - of new civil society voices in forestry and key individuals in the Forestry Commission, Parliament, the Ministry and private sector. A renegotiation amongst stakeholders in forestry is being called for to avert a major crisis and to build on the gains already made. Those involved helped get information into the public domain in gearing up to a national forest forum process in 2005, and encouraged and engaged with the political debate about potential solutions.¹⁸

Mozambique - A National Forest Forum has begun to be effective in Mozambique - and has created momentum around ideas which the prevailing sector-wide programme, ProAgri, can take forward. Reconciling the very different approaches used in the development of new policies for land and for forests has assumed high importance.¹⁹ The process of developing the new land law was highly inclusive of marginalized rural communities and a clear process is now in place whereby communities register their rights, define their group and gain legal personality. The development of forest law on the other hand was a more top-down affair and there is now considerable confusion about how communities can be granted rights to forests and how they can make such rights effective. There is a real danger that communities will disengage from a role in forest stewardship unless the National Forest Forum can install practical mechanisms for their ownership and responsibility.²⁰

¹⁶ Kazooru, C. & J. Carvalho (2005) Forestry justice: combating illegality for forest-linked livelihoods in Uganda. Sustainable Development Centre, Kampala & IIED, London. ¹⁷ Arthur, E. & C. Brogan (2005) Assessment of the impacts of local forest institutions on livelihoods and forests in Ghana. Forest Sector Development Project, Accra & IIED, London. ¹⁸ Danso, E. & K. Opoku (2005) Impacts and legality of forest utilisation permits in Ghana. Civic Response, Accra and IIED, London. ¹⁹ Macqueen, D. & A. Bila (2005) Gleanings on governance: learning from a two-year process of forest policy support to ProAgri, Mozambique. IIED, London. ²⁰ Johnstone, R. *et al.* (2005) Forestry legislation in Mozambique: compliance and the impact on forest communities. Terra Firma, Maputo and IIED, London.

Good governance – a consequence not a precondition of effective action

In the burgeoning literature on good governance and its influence on national macro-economic planning, a common message is that transparency and good governance are key conditions for all good things to follow. Yet even a cursory look at history in many developed countries, regularly branded as pinnacles of good governance, shows that factors now considered preconditions for development were actually consequences of it.²¹ This should give us cause to be wary of attempts to install rigorous systems of forest concession allocation, management and monitoring where the capacity to run them is relatively weakly developed.

Transparency and communications – always worth working on

Transparency is also a consequence, not a precondition, of effective governance action. Yet improving the generation, access and use of information about forest rights, uses and demands is probably the single most important governance tactic needed in even the most challenging environments for good governance. Whether forest concession systems are installed or not, information of this sort is vital – citizens need to know who is using their resources, how they are doing so, and how to make changes if things go wrong. This implies enabling local institutions to improve their capabilities to make information more useful: legal awareness, brokering agencies, advice provision and extension programmes.

Using forestry levers for reform – in the right order

Most problems of governance and forestry are perceived as being governance problems that affect forestry rather than forest governance problems. Greater weight should be thrown behind efforts to achieve wider accountability and equity in decisions that affect the forest

sector, but also behind efforts that recognise the key advantages and "levers" that the forest sector has in contributing to that wider reform. Work in the forest sector shows the importance of the right sequence in governance improvements - e.g. work must be done to secure land tenure or there is little incentive for land-users to collaborate with each other or the state. Forest concession systems can be considered relatively "advanced", or to have "jumped the gun", in their implementation with respect to the rights allocation sequence. They are only likely to work when good foundations of rights, responsibilities and the institutional relationships to make them work are in place, which is not currently the case.

The "real politic" of timber

Social in-cohesion and lawlessness is being created by the way forests are currently managed under the concession system in large parts of Ghana and Cameroon, and some parts of Uganda and Mozambique. In Ghana, it is not surprising that forest communities condone illegal chainsaw men when the big timber companies are operating illegally and violating communities' rights.²² Timber may not be the biggest revenue source but it can be the most accessible for political party financing. Indeed timber revenues can act as political slush funds – which is both a current threat and a potential political opportunity, if for example parliamentarians demand accountability of forest agencies.

Linking the people who can make changes

It is clear that use of the right information in a reasonably free press and some private radio stations can work wonders. There is often a constituency for change (even in apparently intractable institutional situations) – and their influence can be much greater than their numbers. There are many links amongst innovative individuals that can be built on, using astute tactics. Despite forest staff being

²¹ Grindle, M. (2002) Good enough governance: poverty reduction and reform in developing countries. Kennedy School of Government, Harvard University.
²² Danso, E. & K. Opoku (2005) Impacts and legality of forest utilisation permits in Ghana. Civic Response, Accra and IIED, London.

accused of collusion, they are still preferred as the first point of call by the public in seeking justice in Uganda.²³ In Mali, forest agents were seen as the most common instruments of state repression in rural areas ten years ago – but today this has been largely turned around.²⁴

Untying the legal knots around communities and local enterprise

Forestry seems to have more regulations than most sectors. Almost anything sensible that people at the local level want to do is illegal. Regulations are overloaded and much injustice is created, often in the name of sustainability. Double standards seem to prevail – management plans are demanded of small communities but repeatedly avoided by big companies. These double standards need to be addressed - communities are increasingly rejecting commonly used notions like “a sense of ownership” and “a seat at the table” – they generally want full ownership and control. How these double standards are addressed is another matter, as the concession holders are precisely those who are in league with the decision makers who have the power to ensure that, for the sake of both parties interests, the double standards are perpetuated.

Care with the "law enforcement" agenda

Good forest governance is not the same thing as law enforcement. Indeed enforcement of current laws is in some contexts irrelevant or, at worst, highly detrimental to poor people. Laws frequently prop up existing exploitation systems, particularly the concessions system, denying the rights and blocking the potential of poor people at local level.²⁵ Corruption thrives in such environments. The current international drive to combat illegal forestry could do more harm than good if social justice is not brought centre-stage. Some of the momentum for preventing illegal forestry needs to be converted into real capacity for targeting the major abusers of forest and land laws,

correcting unfair legal frameworks, including the industrial forest logging concessions system, and ensuring their even-handed implementation. Governance approaches that effectively address these problems must therefore involve fundamental rights, institutional roles, policy sticks-and-carrots, and systems by which decisions are actually implemented and monitored.

Conclusions

Governance systems should be able to run a country's forest concessions such that they look after the forest and deliver hefty and equitable returns to its citizens. But good examples of this are the exception rather than the rule. Concession systems on paper rarely exist in practice. Rather what we see is concession allocation as the exercise of political favour and concession management as the exercise of political power. The forests, and those who depend on them locally for their livelihoods, are rarely the beneficiaries. Better development and use of information, and investment in the capacity for accountability, can make inroads into even the most opaque and unjust concession systems. But, ultimately, alternatives generally need to be found. Such alternatives place local control at their heart – with governance by negotiated rights and responsibilities, and management by simple agreed principles and open procedure.

Recommendations²⁶

- Local institutions should be enabled to improve their capabilities to provide and disseminate relevant information that includes access to, and application of, information about forest rights, uses and demands.

²³ Kazoora & Carvalho (2005) *op.cit.* ²⁴ Cisse, M. & M. Allen (2005) *L'impact socio-économique et environnemental de l'exploitation forestière au Mali – le cas des marchés ruraux de bois. SOS Sahel International, Mali & IIED, London.* ²⁵ Colchester, M. et al. (2006) *Justice in the forest: rural livelihoods and forest law enforcement. Forest Perspectives 3, CIFOR, Bogor.* ²⁶ These recommendations are explored in more detail in: IIED (2004) *Forest governance learning group: Update December 2004.* IIED, London. Available at: http://www.poptel.org.uk/iied/docs/flu/FGLG_Update_December04.pdf

- Legislation should be drafted (or revised) in a way that does not prejudice local peoples' rights or result in double standards being applied to local people and the industrial sector.
- Greater weight should be thrown behind efforts to achieve wider accountability and equity in decisions that affect the forest sector. Work must be done to secure land tenure or there is little incentive for land-users to collaborate with each other or the state.
- Some of the momentum for preventing illegal forestry needs to be converted into real capacity for targeting the major abusers of forest and land laws, correcting unfair legal frameworks, including the industrial forest logging concessions system, and ensuring their even-handed implementation.

1.3 ADVANCES IN LEGISLATION RECOGNISING INDIGENOUS PEOPLES' RIGHTS IN CENTRAL AFRICA: A COLLISION COURSE WITH INDUSTRIAL LOGGING CONCESSIONS

DOROTHY JACKSON, FOREST PEOPLES PROGRAMME, UK

Indigenous peoples' rights to self-determination, to consent to activities that affect them, to culture, their traditional economic and subsistence activities, and their lands and resources are protected by several human rights treaties such as:

- The International Covenant on Civil and Political Rights
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Rights of the Child
- Specialised instruments such as ILO Convention No. 169²⁷
- The UN Declaration on Indigenous Peoples.

The African Charter of Human and Peoples' Rights protects the rights of all peoples to existence, to self-determination, to freely dispose of natural wealth and to economic, social and cultural development of their own choice and in conformity with their own identity.²⁸ This has particular relevance to the use and allocation of forest resources upon which many millions of people depend for their subsistence and cultural survival. Forest zoning and the allocation of industrial forest logging concessions in the Congo Basin is currently one of the greatest impingements on the realisation of the objectives of these international treaties.

Eight central African countries (Burundi, Cameroon, CAR, Congo, DRC, Gabon, Rwanda and Uganda) although having signed these internationally binding agreements, with the exception of ILO 169, have not so far incorporated them into national legislation in order to protect indigenous rights. All eight

countries also have constitutional provisions against discrimination, including discrimination on ethnic grounds, and most have provisions for supporting minority and vulnerable groups. The Rwandan and Burundi Constitutions are exceptional among central African countries in making provision for special representation of indigenous people in the senate.²⁹

Legal versus customary rights

Traditional land holding systems based on collective rights are still the main form of land management in Africa. Recognising this, many eastern, southern and western African countries are revising land legislation to deal with the complex overlap of different types of tenure. Customary land rights and collective tenure are now recognised in the land policies and laws of 11 eastern and southern African countries.³⁰ Land reforms are often linked to changes in forest policy and law – at least six African countries now have provisions for communities to own forests with sole power over access and use of the forest.³¹ However, specific legal protection for indigenous peoples' land rights is still poorly developed – there are some provisions for pastoralists in eight countries³² and with the exceptions of South Africa and Namibia, hunter-gatherer territories have virtually no protection in law, other than by adopting the structures set up for administering land tenure for settled farming communities.³³ In South Africa the indigenous #Khomani San used the Restitution of Land Rights Act (1994) to regain part of their traditional lands now overlain by the Kgalagadi Transfrontier Park – however the San's access and use of their lands is still controlled by conservation managers.³⁴ In 2003 the Nama, an indigenous pastoralist Khoe people, used the same act and constitutional provisions to secure their land claim in the Richtersveld. In this case the Court also followed aboriginal title precedents from other jurisdictions including Privy Council decisions.³⁵

²⁷ Committee on the Elimination of Discrimination (1997) General Recommendation XXIII (51) concerning Indigenous Peoples. Adopted at the Committee's 1235th meeting, on 18 August 1997. CERD/C/51/Misc.13/Rev. ²⁸ MacKay, F. (2001) The African Commission on Human and Peoples' Rights: What it is and how it works. Forest Peoples Programme, Moreton-in-Marsh. ²⁹ The Burundi post-transition Constitution adopted in 2005 provides for 'three people of the Twa ethnic group'. The Rwandan Constitution (2003) provides for presidential nomination of eight representatives of 'historically marginalized communities'. Only one of the Senators nominated is a Twa person. ³⁰ Kenya, Tanzania, Uganda, Ethiopia (Amhara state), Malawi, Mozambique, Zimbabwe, Lesotho, Swaziland, South Africa and Botswana (Alden Wily, L. (2003) Forest Governance Lessons from Eastern and Southern Africa. Presentation to the Africa Law Enforcement and Governance [AFLEG] Ministerial Conference in Yaoundé, Cameroon, October 13-16, 2003). ³¹ Gambia, Tanzania, Uganda, Lesotho, Senegal and South Africa. In Nigeria, Malawi, Burkina Faso, Namibia and Mali communities can own forests but don't have sole decision-making power (Alden Wily (2003a) *op.cit.*) ³² Ethiopia, Tanzania, Kenya, Lesotho, Botswana, Niger, Mauritania and Mali (Alden Wily, L. (2003) Governance and Land relations: a review of decentralisation of land administration and management in Africa. IIED, London. UK).

In Central Africa, local communities' collective and customary land rights are protected only in Uganda, under the Constitution, which vests ownership of the land in the citizens of Uganda, and under the 1998 Land Act. These protections are however negated by statutory provisions permitting the Ugandan government to appropriate customary lands "in the public interest." As a result, indigenous peoples such as the Batwa and the Benet have been evicted from their collective and customary lands in national parks.³⁶ The Benet people are now suing the Ugandan government for violation of their constitutional rights to land in the Mount Elgon National Park.³⁷ In the other Central African countries, local land rights and regulatory systems are not legally recognised, and the state retains ownership of the land (except for a tiny area under individual, private title) giving an ambiguous status to local landholding systems. Currently, land legislation offers little scope for protecting indigenous collective land rights in these countries.

Changing national legislation

In theory, new forest laws in Cameroon (1994), DRC (2002) and Gabon (2001) offer some scope for indigenous peoples to gain more control over their lands and resources. These laws give local communities the right to manage areas of forest as community forests over a defined time period, and retain the benefits and products of the forest for themselves. The forests remain under state ownership and can be re-appropriated. Community forests have not yet been implemented in DRC and Gabon but experience so far shows that the model, as implemented in Cameroon, is not compatible with indigenous "Pygmy" communities' traditional resource management practices and aspirations, and they have been unable to use the legislation to secure access and control over their lands and resources. Indeed, many are worse off because the zoning process to define areas eligible for

community forests has placed indigenous hunting and gathering grounds out of bounds in the permanent forest estate, this designated for allocation as industrial forest logging concessions and environmental protection.

The wildlife and forest laws of Central African countries determine local communities' rights regarding forest use. These rights are least restricted in the non-permanent forest estate, and highly restricted or prohibited in protected forest areas. Violations of the laws are punishable by fines or imprisonment. Where hunting is permitted, it often has to be done using traditional methods and for non-commercial use only. These restrictions particularly affect Pygmy communities whose forest resources are often concentrated in protected forest areas and whose economies are based on trading game and forest products. Some protected areas have relaxed restrictions (e.g. Lobéké National Park, Cameroon) or devised new legal provisions (e.g. Dzanga Sangha Reserve, CAR) permitting indigenous communities to practice subsistence activities in parts of the forest. However, such measures do not compensate for the large areas of forest resources that are now legally out of bounds to indigenous communities.

Currently, the Central African initiatives that specifically address indigenous peoples' concerns are policy-based rather than legislative, namely the Indigenous Peoples Development Plans (IPDPs) being developed in conjunction with World Bank-funded Forest and Environment Sector Programmes (FESPs) in Cameroon, Gabon and CAR, under the requirements of the World Bank's safeguard policy on indigenous peoples (OD4.20). The Cameroon IPDP aims to increase indigenous communities' security of tenure over lands and resources, notably providing community forests and/or hunting zones for all Cameroon's indigenous communities, and establishing new forestry

³³ For example, the Hadzabe of Tanzania (Madsen, A. (2000) *The Hadzabe of Tanzania: land and human rights for a hunter-gatherer community*. IWGIA, Copenhagen) ³⁴ Dutton, S. & F. Archer (2004) *Transfrontier Parks in South Africa*. *Cultural Survival Quarterly* 28 (1)

³⁵ <http://www.constitutionalcourt.org.za/Archimages/762.PDF> ³⁶ Kenrick J. (2000) *The Batwa of South West Uganda: World Bank Policy on Indigenous Peoples and the Conservation of the Bwindi and Mgahinga National Parks*. *Indigenous Perspectives* 3(1) Tebtebba Foundation, Baguio City, Philippines. ³⁷ Okwaare Otto, S. (2004) *The fight for land rights of a minority people: the case of the Benets of Mount Elgon in eastern Uganda*. In: *Update: Innovative Methodologies for Assessing the Impact of Advocacy*. Issue 4, March 2004. ActionAid.

regulations which "legalise indigenous people to utilise their land". A national policy on indigenous people will also be developed in Cameroon. The implementation measures, however, remain to be worked out and there are currently many uncertainties, particularly the compatibility of the IPDP with existing legislation: for example, how will the government address the legal rights of indigenous peoples, how will indigenous lands be identified and "legalised", will these lands include lands in the permanent forest estate and how will competing Bantu land claims be dealt with?³⁸

Conclusion

Central Africa is far behind other regions of the world with regard to recognition of indigenous peoples' rights. In the Americas for instance, 19 countries adopted constitution provisions protecting indigenous peoples' rights in the period 1985-2003. Fourteen American states have ratified ILO 169 since 1990. Nine countries in Asia also adopted legislative or constitutional measures during this period. At the same time, international human rights law has also sharpened its focus on indigenous peoples' rights and a distinct body of law confirming their individual and collective rights has emerged and been consolidated.

This body of law is still evolving and strengthening, and applies equally to Central Africa as to other regions of the world. While the African Commission on Human and Peoples' Rights has taken some important first steps with regard to indigenous peoples in Africa, including recognising the existence of indigenous peoples as legal entities with rights in Central Africa, there is still much to be done in terms of amending domestic law and practice so that it meets these standards. Currently, however, forest zoning at the landscape level or at the logging concessions' level, that does not

acknowledge existing rights and customary land use practices is in direct opposition with the legislative advances in international fora. The allocations of logging concessions can also be in direct contravention to national legislation that is designed to protect indigenous and other peoples' rights.

Recommendations

Central African governments should recognise indigenous peoples' as rights holders in line with contemporary international human rights and environmental law. This would include the following measures:

- Ratifying ILO Convention 169 protecting indigenous peoples' rights;
- Incorporating international human rights commitments protecting indigenous peoples' rights into domestic law and policy;
- Upholding existing constitutional and legal provisions for the support of vulnerable groups and minorities who are marginalised in decision-making, including the allocation of industrial logging concessions, and developing additional measures to protect their rights.

Central African governments should provide secure legal rights for indigenous communities over their customary lands. Until such mechanisms are in place, zoning processes for classification of production forests and protected areas should be based on the free, prior and informed consent of indigenous peoples and local communities so that customary lands and resource use are safeguarded.

Participatory community mapping projects should be implemented as they can assist indigenous peoples and neighbouring farming

³⁸ For detailed information on central African legislation and policy affecting indigenous peoples see: Jackson, D. (2004) Implementation of international commitments on traditional forest-related knowledge: indigenous peoples' experiences in Central Africa. Forest Peoples Programme, Moreton-in-Marsh.

communities to identify their customary lands and ensure that demarcated areas are compatible with local land rights and meet indigenous communities' spatial needs.

Central African governments' regulatory frameworks should be modified to support indigenous and traditional communities' decision-making power over their forest lands and resources, for example, by legal recognition of communities' own representative institutions, or helping them to develop new management institutions with legal personality, yet underpinned by their customary norms and values.

Regulations should accommodate indigenous communities' customary subsistence use in protected areas and permanent forest estates. Hunting regulations should be reviewed to strengthen measures to combat large-scale commercial hunting, while giving more control over game resources to local communities, including legalising traditional hunting rights, increasing access of legitimately hunted bushmeat to the market, and empowering local registered hunters to exclude outsiders from their hunting areas.

1.4 LAND RIGHTS AND FORESTS: THE IMPACT OF THE CONCESSION SYSTEM CATH LONG, RAINFOREST FOUNDATION, UK

Any formal forest management system, whether depending on industrial logging concessions or any other management structure, involves land use planning as its basis. And with land use planning should come consideration of the land rights and tenure of the communities and peoples living in and depending on those forests.³⁹

There is fairly widespread agreement that a failure to consider and address land rights and tenure in any land use regime in an appropriate manner, suited to local circumstances, invariably has a negative impact:⁴⁰ increasing poverty⁴¹ and the likelihood of insecurity and conflict,⁴² reducing external investment,⁴³ increasing environmental destruction⁴⁴ and contravening basic human rights commitments.⁴⁵ Thus, an evaluation of any forest management system must include an examination of its land use planning and its consideration of land rights.⁴⁶

This paper will demonstrate that, as it is structured today, the industrial logging concession model as a means for forest management institutionalises and entrenches the denial of customary and local land rights and consequently lays the basis for the kind of long term problems listed above. As White and Martin explain, "this approach to public forest land management has often led to environmental degradation, social instability and insecurity, and additional financial burdens on cash-starved governments."⁴⁷

In most tropical countries with substantial forest resources, national legislation defines forest lands as distinct from agricultural lands and, frequently, forests are defined as the property of the state⁴⁸ whilst agricultural lands are subject to private and common property tenure regimes. Thus, in formal legal terms, right from the outset, forest communities are effectively dispossessed.⁴⁹ To take a concrete example from a forest area: in Ituri, in Eastern DRC, there is not one hectare of land that is

not subject to one or other customary property regime,⁵⁰ yet much of the forest land is described by local decision makers as being effectively vacant and forest exploitation has taken place there over many years with no reference to forest community rights – and no benefits accruing to those forest communities.

At present, this dispossession of forest communities is the case in every Congo Basin country, where the national legislation establishes land tenure regimes in which the state is the landowner and the traditional landowners or rights holders are granted merely user rights, and even those are relatively limited.⁵¹ States are the landowners and are presumed to manage land and forests in the best interests of their citizens. However, as Daley and Hopley point out, "Where states hold radical title to land (whether in whole countries, as in much of Africa...), rights may be notionally allocated for the wider public good through the granting of leases or concessions to foreign investors or transnational corporations (for mining, logging, tourism etc.), yet questions frequently arise about who actually benefits from these arrangements".⁵² As indicated in Article 1.5 of this report, there are structural reasons why those that actually benefit will almost invariably be national political and economic elites.

Even in those countries where new legislation has been developed that supposedly assigns greater rights to communities, the administrative procedures involved are so onerous and complicated that very few communities genuinely have access, and the restrictions on where and how they can have access bear little relationship to the pre-existing traditional land rights.⁵³

³⁹ Contreras-Hermosilla, A. & C. Fay (2005) Strengthening forest management in Indonesia through Land Tenure Reform: Issues and Framework for Action. *Forest Trends*; White, A. & A. Martin (2002) Who owns the world's forests? *Forest Trends*; Wells, A. *et al.* (2006) Public Goods and Private Rights: the Illegal Logging Debate and the Rights of the Poor. ODI Briefing 9 ⁴⁰ Alden Wily, E. (2006a) Land rights reform and governance in Africa: How to make it work in the 21st Century? UNDP discussion paper. ⁴¹ Alden Wily, E. (2006b) The Commons and Customary Law in Modern Times: Rethinking the Orthodoxies In: *Land Rights for African Development: From Knowledge to Action*. CAPRI Policy Brief. ⁴² Vlassenroot, K. & C. Huggins (2004) Land, migration and conflict in Eastern DR Congo. In: *Report of the conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction*. African Centre for Technology Studies (ACTS). p.19 ⁴³ Augustinus, C. & K. Deininger (2006) Innovations in Land Tenure, Reform and Administration in Africa. In: *Land Rights for African Development: From Knowledge to Action* CAPRI Policy Brief. ⁴⁴ White & Martin (2002) *op.cit.* ⁴⁵ CELCOR/ACF (2006) *Bulldozing Progress: Human rights abuses and corruption in Papua New Guinea's large scale logging industry*; Ratner, B (2004) *Environmental Rights as a Matter of Survival*. Human Rights Dialogue: Environmental Rights. Spring 2004 ⁴⁶ Mayers, J. & S. Vermeulen (2002) Power from the Trees: how good forest governance can help reduce poverty. IIED Briefing Paper. ⁴⁷ White & Martin (2002) *op.cit.* ⁴⁸ White & Martin (2002) *op.cit.* ⁴⁹ *Forests Monitor & World Rainforest Movement (1998) High Stakes: The need to control transnational logging companies: a Malaysian case study*; Peluso, N.L. & Vandergeert P. (2001) Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia, and Thailand. *The Journal of Asian Studies* 60: 761-812. ⁵⁰ *Reseau Ressources Naturelles (2007) Evaluation des Impacts Environnementales des Concessions Forestières*. DRC

This simplified picture misses the enormous complexity of land rights: throughout Africa, the layers of colonial and post-colonial legislation on land, land use and forests overlap with a vast range of traditional systems of land ownership and control.⁵⁴ These systems are slowly becoming better understood by decision makers, particularly in dryland areas, but not, as yet, in the forest regions of the continent.

Key questions and issues which have arisen in discussions of land rights and land use planning in other areas of Africa include:

- Confusions between private property, common property and open access systems.⁵⁵ Most African land rights systems include some form of common property, which sets clear rules and guidelines on land ownership and access rights for a limited group of people. This is absolutely different to an open access regime, in which everyone has access and no-one has control over that access. The confusion between common property and more complex land control regimes and an open access system is frequently used as justification for the extinction of rights in areas of biodiversity importance, particularly by conservationists.⁵⁶
- The challenge of developing systems which take into account the diversity of traditional rights and control of land and natural resources and the fact that these traditional systems have interacted with and been influenced by colonial and post-colonial formal legal land tenure regimes.⁵⁷
- The powers and functions of "customary authorities".⁵⁸ In the context of forests, this is particularly important, as frequently, hunter-gatherer societies who do not have assigned "customary leaders" end up being ignored in favour of more hierarchical neighbouring communities who do. (An interesting case study that illustrates how one government has tried to tackle the

challenge of different rights regimes within one system is that of Niger, where pastoralists and settled agriculturalists have overlapping rights. There, the "Code Rural"⁵⁹ gives priority to pastoralists concerning resource rights in their "home areas", and recognises collective user rights for pastoral resources. As such, pastoralist rights are not exclusive, but they do have priority. There are also clauses recognising the equality of customary law with statutory legislation and acknowledging the role of traditional chiefs in conflict resolution).

- The dangers of granting individual private titles to land,⁶⁰ particularly that which is traditionally managed with a type of common property regime.⁶¹
- The dangers of formal titling of customary lands, even if designed to recognise traditional ownership, which unless dealt with extremely carefully can strengthen the position of the title holder in relation to all the other people who also have a range of access and use rights to the same lands.^{62,63,64}

What information we do have on land and resource use and occupation in the Congo Basin forests has been summarised by Hoare,⁶⁵ who points out that the areas of land on which forest-based communities depend vary enormously in their extent, and that control over these is complex and varied. Systems of forest rights include hunter-gatherer resource control rights – clans have non-exclusive permission rights, these implying the need to obtain the free consent of the rights holders before using a forest area for any particular activity. They also include the tenure and use rights of agricultural communities, which may involve land for cultivation and settlements, along with hunting and collecting rights in more extensive areas of forest surrounding them. These two sets of rights and understandings

⁵¹ See table 1, p.5 in White & Martin (2002) *op.cit.* ⁵² Daley, E. & M. Hobley (2005) Land: Changing Contexts, Changing Relationships, Changing Rights. DFID Briefing Paper. ⁵³ In Cameroon, the community forestry legislation restricts community forests to 5,000 ha, an area that is too small for many forest dependent communities' needs, and the bureaucratic hurdles created are such that communities are not able to gain a community forest title without extensive external support – both financial and advisory. In an example from outside the Congo Basin, the Kenyan Forest Act of 2005 also purports to promote community ownership and management of forests, but does not do so in a way which will genuinely facilitate community access. (Kenya Land Alliance Land Update 5(2), 2006) ⁵⁴ Ellsworth, L. (2004) A Place in the World: A Review of the Global Debate on Tenure Security. Ford Foundation. ⁵⁵ Wily (2006a) *op.cit.* ⁵⁶ Chapin, M. (2004) A Challenge to Conservationists. *World Watch Magazine* 17(6) ⁵⁷ Cousins, B. & A. Claasens (2006) More than simply "socially embedded": recognising the distinctiveness of African land rights.; *Forest Trends* (2002) Strategies for strengthening community property rights over forests: Lessons and opportunities for practitioners. ⁵⁸ Cousins & Claasens (2006) *op.cit.* ⁵⁹ Palmer, R. (2004) Oxfam and land in post-conflict situations in Africa: Examples from Zimbabwe, Mozambique, South Africa, Rwanda and Angola. In: Report of the Conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction. African Centre for Technology Studies (ACTS) ⁶⁰ Quan, J (2003) Reflections on the development policy environment for land and property rights, 1997-2003. Background Paper for International Workshop on Fundamental Rights in the Balance: New Ideas on the Rights to Land, Housing & Property. IDS, UK.

of forest use overlap one another and have, at times, complemented one another.

Important to note, but which has been left out of all the forest zoning plans currently in place in Central Africa, are the widely differing areas that different communities depend upon to maintain their lifestyles. According to the current literature, these range from as little as 0.5 – 3 hectares of cultivated land per household in some agricultural communities, to 15 – 520 km² of hunting area for agricultural communities, while hunter-gather communities may use between 120 – 4831 km² of land to meet their livelihood needs.⁶⁶

In addition, it should be noted that most land tenure legislation depends on some form of “improvement” of land – implying permanent cultivation – that does not apply in the case of shifting cultivation or of hunting and gathering. Even those communities who do practice some form of long term agriculture on the same area of land frequently also depend on a much wider area of forest to complete their livelihood needs, including hunting and the harvesting of non timber forest products. Frequently, agricultural communities also depend on exchange with hunter-gatherer communities for essential forest products, and so in effect depend on a much broader forest area than that implied by examining their own direct land use.

These nuances of land ownership and control are not borne in mind in any of the current forest legislation in the Congo Basin and are certainly not reflected in the legislation concerning logging concessions. Consequently, forest lands are allocated to a resource use which can have major impacts on forest communities without those communities’ rights having been taken into account.

Part of the problem is that the professionals involved in taking decisions are coming from an almost entirely economic, formal forestry or biological perspective.^{67,68} Many decision makers appear to view the forests as “forests vacant and without master”, as much of Cameroon's forest land was defined under the French colonial legislation of 1950. However, these forests have been home to many people for thousands of years, and still are today.⁶⁹

The most common model of land use planning in forest countries tends to be that of zoning: the geographical division of forest areas into different use and access regimes. In the most comprehensive review currently available, Hoare gives an account of forest zoning as a tool for forest management and land use planning and makes some key recommendations based on the experience of four countries.⁷⁰ Each of these countries operates some form of logging concession system, with Cameroon and Indonesia having the most extensive timber concessions – and the poorest results from their forest management.

The lessons from these cases are as follows:

- Zoning is not solely a technical exercise – it is extremely political;
- Zoning has rarely, if ever, been based on “micro-level” assessment of actual tenure and traditional rights regimes: more likely, it will have been largely based on remote sensing data, which can identify major categories of vegetation, but cannot, of course, identify tenure boundaries.
- As a consequence of this, all too often, timber interests are given priority over all other forest uses;

⁶¹ This has been noted throughout the world, not only in Africa. For example, in the case of Latin America, it has been explained that “policies favouring individual resource privatisation have resulted in high environmental and welfare costs”. Richards, M. (1997) Tragedy of the Commons for Community-Based Forest Management in Latin America? *Natural Resource Perspectives* 22. ODI;⁶² Richards (1997) op.cit.;⁶³ For a good example of this from Côte d'Ivoire, where a well-intentioned land reform process that was supposed to recognise customary rights ended up creating further conflicts and power imbalances, see: Van den Brink, R. et al. (2006) Consensus, Confusion, and Controversy Selected Land Reform Issues in Sub-Saharan Africa. World Bank Working Paper 71.
⁶⁴ A succinct account of the dangers of ascribing titles to traditional land rights is given in: Nyamu-Musembi, C. (2006) Breathing Life into Dead Theories about Property Rights: de Soto and Land Relations in Rural Africa. IDS Working Paper 272; Pottier, J. (2004) Land Tenure and Land Reform in Sub-Saharan Africa: Towards a research agenda. In: Report of the conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction. African Centre for Technology Studies (ACTS); ⁶⁵ Hoare, A.L. (2007) Integrating Local Peoples’ Land Use Strategies with Forest Management Practices in Central Africa. Rainforest Foundation;⁶⁶ For a detailed explanation of the origins of these figures and the caveats required when comparing them, refer to: Hoare, A.L. (2006) Divided Forests: Towards a fairer zoning of forest lands. Rainforest Foundation.

- Zoning exercises frequently omit or underrate the needs and rights of local communities, particularly of indigenous peoples;
- Zoning is often based on inaccurate or inadequate data;
- Zoning exercises need to be part of a wider integrated land use planning process;
- Genuine participation of all stakeholders at every stage in a zoning process is critical;
- Crucial to fair and effective zoning is good forest governance and clear and unambiguous legislation.

Zoning, in the way it is currently implemented in forest concession systems, implies a division of forest use between timber production, conservation and community use, usually understood to be agriculture. However, as we have seen above, the reality of forest use and control patterns as they have developed in forest areas are far more complex and nuanced than that.

These challenges must be faced by governments of forest countries and their donors.⁷¹ Quite apart from the impacts on the forest, the communities and the economy, which have been explained in the introduction to this paper and in the rest of this report, governments and donors have legal obligations.⁷² Around the world, governments are increasingly being held to account for violations of the rights of their citizens.⁷³ In a landmark case in 2001, the Inter American Court of Human Rights declared that, in the case of a logging concession granted by the Nicaraguan government on the Mayagna peoples' lands, "the community's rights to property and judicial protection were violated by the government of Nicaragua when it granted concessions to a foreign company

without either consulting with the community or obtaining their consent."⁷⁴ This was the first case taken to the Inter American Court specifically on land rights and forestry, but it is unlikely to be the last. The African Charter on Human and Peoples' Rights also contains clauses protecting land rights of African peoples and when the African Court on Human Rights becomes operational, it too may well be finding itself dealing with legal cases concerning the violation of human rights.

Given the social, economic, environmental and legal imperatives towards taking land rights into account, there is real impetus to take a fresh approach to forest management. Future land use planning in forests must consider the multiple use value of forests and the complex systems of forest access, ownership and control rights. This will involve a painstaking process of mapping and understanding forest use and control rights of the communities that depend on the forests, which will vary from area to area, and group to group. It will also involve the facilitation of negotiation of forest use with those rights holders and other interested parties: facilitation that allows the forest users and rights holders to grant or refuse permission without being coerced into accepting what is effectively offered as a *fait accompli*.⁷⁵

The Democratic Republic of Congo could set an exciting precedent for forest countries by being the first country to take this approach and to develop a forest land use planning system that recognises the critical role of local and indigenous peoples in forest management and which puts them at its centre, rather than legislating and zoning people out of the forest and into poverty.

Recommendations

- Land use decisions that will have a major impact on resources in the Democratic

⁶⁷ For example, it is suggested that: "The parameters for allocating land are neither entirely economic nor exclusively biological. Decisions must be guided by the factors of comparative economic advantage, availability of land for other uses and the political orientation of policy makers. However, since most forest products are important in the sense that they are commodities rather than prime necessities of life (such as major food items), forestry's case for land allocation is invariably of a lower priority than agriculture. It must therefore compete as an equal partner with other potential land uses." Adeyoju, S.K. (1983) Striking a balance in land-use planning. *Unasylva* 142;⁶⁸ Louman, B. et al. (2006) Science and Forest Concessions;⁶⁹ Estimates suggest that Bantu agriculturalists have been occupying large areas of forest for 2000 years and the hunter gatherer peoples of the Congo Basin region for longer still (Vansina, J. (1990) Paths in the Rainforests: Towards a History of Political Tradition in Equatorial Africa. James Curry, London.)⁷⁰ Hoare (2006) *op.cit.*; The four countries examined are: Australia, Brazil, Cameroon and Indonesia;⁷¹ Daley & Hobley (2005) *op.cit.* ⁷² ODI (2003) Rights-based Approaches. Keysheet 18. ⁷³ Wells et al. (2006) *op.cit.* ⁷⁴ Mayagna (Sumo) Awas Tingni Community v. Nicaragua ⁷⁵ In field research in DRC in 2006, it was found that for all current logging titles in operation, there was either no community consultation whatsoever, or that what consultation was carried out was information rather than consultation: a representative of the holder of the title would arrive in one or more villages with representatives of local authorities, frequently with some of them armed, and

Republic of Congo should not be taken before there is a better understanding of land rights, both statutory and customary. This must account for the varying extent of land requirements, including those for hunting and gathering, and the multiple rights regimes that operate in forest areas.

- Any national zoning plan should not over-emphasise timber production, but must take into account the multiple use nature of forests.
- A participatory land use "micro-mapping" and planning process must be initiated, taking as a starting point the identification of forest user rights and traditional ownership and control of land.
- Support should be provided to forest communities participating in any land use planning or negotiation so that they can negotiate on an equal basis.

would tell people that a title had been granted. *Reseau Ressources Naturelles (2007) op.cit.*

1.5 THE POLITICAL ECOLOGY OF THE AFRICAN LOGGING CONCESSION SYSTEM AND THE COMPLICITY OF INTERNATIONAL DONORS

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African logging concessions are usually seen as units of forest management. However, this paper argues that they are better seen as a kind of currency in a larger system of power politics and exploitation. This paper sets out to explore these issues in more detail, starting with a brief history of the relationship between logging companies and power interests in parts of the Congo Basin.

Independence and dependency

Okoumé, found in the western forests of what was then French Equatorial Africa, started to be used for the manufacture of cigar boxes in the 1880s.⁷⁶ The timber's value in the manufacture of plywood led to wider exploitation. During the early part of the twentieth century, under French colonial rule, logging expanded inland and southwards from the coastal zone, with labour being brought from dispersed villages throughout the hinterland (and, indeed, imported from elsewhere, such as Cuba). Setting a pattern that continues today in much of the region, the allocation of "concessions" to local people often simply led to "sub-contracting" of felling rights to foreign companies.

Also setting a pattern that continues to the present day, concessions – and consequently land and power – were concentrated in the hands of a small number of "proprietors", mostly French companies. In 1939, according to Colchester,⁷⁷ 66% of the 1 million hectares under logging concession in what is now Gabon were held by just seven companies. Sixty years later, twelve (mostly foreign-owned) companies

controlled more than half of the nearly 12 million Gabonese hectares under concession. According to Colchester, logging interests played a key role when French Equatorial Africa was broken up and the new west-central African states were created:

"In Gabon, French interests played a determining role in selecting the future leadership. The long-standing alliance between the Mpogwe coastal elite, [...] the coastal Fang *evolué* led by future Prime Minister Leon Mba and French loggers formed the nexus of power. The loggers poured money into Mba's election funds for the Territorial Assembly in 1957 in order to head off the leadership bid [...] headed by the more democratically inclined Jean-Hilaire Aubaume. A key figure from the French side was logger Roland Bru who threw his support behind Mba and became a prominent advisor to Mba after independence and even secured an official post in the government."⁷⁸

The dissolution of the Gabonese National Assembly by Mba in 1964 – and the protection provided by the French military to Mba to establish a one-party state – allowed the convergence of independent state and foreign private interests to continue unabated. As is explored below, the consequences of this are still very evident in the relationship between state and the logging industry today.

Timber and power

Given this long history of inter-relationship between logging companies and power elites in some African countries, it is hardly surprising that the role of logging as a means of raising tax revenue or creating jobs is fairly marginal compared with its other, usually critical, functions within the complex of "state" and elite actors' interests that characterizes most sub-Saharan African neo-patrimonial regimes.

⁷⁶ Colchester, M. (1994) *Slave and Enclave: the Political Ecology of Equatorial Africa*. World Rainforest Movement, Penang, Malaysia. ⁷⁷ Colchester (1994) *op.cit.*

⁷⁸ Colchester (1994) *op.cit.*

Such functions of logging concessions are many and varied, and include:

- Enriching the Presidential family and his extended clan;
- Rewarding political and business cronies for services rendered;
- Financing "election" campaigns;
- Encouraging loyalty among high and middle-ranking military and police officials;
- Extending a traditional power base;
- Placating or co-opting potential political rivals or opponents;
- Playing off over-zealous business and political elites against one another;
- Supplementing the legal income of senior members of government, often including the Forestry Minister and his senior staff;
- Facilitating the trade and supply of bushmeat and ivory (National Parks and "wildlife reserves" can also fulfil this function);
- Legitimising "forest sector investments" of international donor agencies such as the World Bank;
- Camouflaging unlicensed and illegal extraction of other precious resources, such as diamonds and gold;
- Developing infrastructure and services in favoured areas, such as the President's or a Minister's home region;
- Repopulating rebellious or unstable regions with pro-regime families;
- Facilitating troop movement into border areas;
- Creating border incidents;
- Sedentarising nomadic peoples, such as Baka hunter-gatherers;
- Maintaining close relationships with political, business, military or intelligence elites and political parties and the Freemasonry lodges of ex-colonial powers;
- Promoting détente with a neighbouring power dynasty;
- "Reimbursing" regional allies for military assistance;
- Providing a means to embezzle foreign aid;
- Creating a pretext for international conservation initiatives, the funds of which can also be embezzled;
- Gaining international respectability for promoting "sustainable resource management";
- Laundering the proceeds of international crime;
- Supporting "charitable" foundations;
- Purchasing weapons.

It is beyond the scope of this short study to look at any of these in detail – though the possible examples of each are numerous and consistently depressing⁷⁹ – what follows are two case studies relating to some of the first items on the list.

The case of Cameroon

It is worth quoting at length a briefing prepared for the British government which set out in candid terms how some of the factors listed above become manifest in the way the forest sector works in one country, Cameroon:

⁷⁹ Labrousse, A. & F.-X. Verschave (2002) *Les pillards de la forêt: exploitations criminelles en Afrique*. Agone.

"The DF [Department of Forestry] has long had the reputation as a lucrative posting for civil servants due to its gate-keeper role in allocating timber concessions. A focus on commercial timber exploitation continues to dominate the concerns of DF personnel, as in MINEF [Ministry of Environment and Forestry] more generally, and issues of social forestry are a minority interest at best. At present, key senior postings in the DF... are in the hands of persons with connections to President Biya (who are usually members of the Bulu-Beti-Fang ethnic block). It is these senior civil servants, along with the influential members of Biya's ruling CPDM party presently benefiting from forestry revenues as political perquisites, who are most immediately threatened by the spirit of the 1994 Forest Law... Indeed, so important is the forest sector as a source of financial perquisites that, at times, in the recent past, the allocation of timber concessions has been (illegally) carried out at the level of the Prime Minister's office or the Presidency, without reference to the usual inter-ministerial technical committee".⁸⁰

With the benefit of hindsight, and the work of independent forest observers Global Witness, it appears that the 1994 Forest Law proved to be little obstacle to the interests of Cameroon's political elite.⁸¹ Unsurprisingly, the report's authors concluded that "In such circumstances, changes in the Government of Cameroon's approach to the forest sector will not be easy to achieve, but are clearly crucial for the sustainable management and conservation of Cameroon's forests".

Despite the known problems with the forest sector in Cameroon, international funding has continued to pour into the country; one estimate suggests that, during the 1990s, at least U.S. \$75 million in foreign assistance was given for forestry and conservation projects, excluding possibly large components

of regional programmes and non-project funding, such as sectoral adjustment credits.⁸²

One of the latter proved to be particularly contentious, and illustrative of how the role of logging concessions as currency within patron-client power relationships is not something international donors are willing to take on. In the spring of 1999, the World Bank was preparing release of the second tranche of a U.S. \$180 million structural adjustment credit to Cameroon. Among conditions for disbursement were forestry-related reforms including revised criteria for awarding permits and the hiring of an independent observer of concession auctions. Although these conditions had not been met in June 1999, the Bank nevertheless proceeded to release the credit that month.⁸³

The Bank's (privately stated) "justification" was that, because of the importance of the logging industry to the political stability of the country, the Bank would have to allow the "status quo" to prevail. As has been noted by one observer, "By wavering at a critical point in the negotiations, [the Bank] avoided provoking a possible political crisis."⁸⁴ One suggestion is that the Bank's decision not to challenge mal-administration by the Cameroonian Government was provoked by French government concerns about the likely impact on French logging interests in the country.⁸⁵ Another is that the Bank feared political instability would result in the Biya regime defaulting on its foreign debts, which at that point stood at around U.S. \$1 billion owed to the World Bank Group alone.⁸⁶ Whatever the specific reasons, it is clear that the entrenchment of political interests within the Cameroonian logging industry rendered ludicrous any hope of harnessing the sector for development. And this was before the logging career of Paul Biya's son really began to take off.

⁸⁰ Burnham, P & S. Sharpe (1997) Political, Institutional, Social and Economic Dimensions of Cameroon's Forest and Conservation Sectors, University College, May 30, London. ⁸¹ Global Witness (2005) Forest Law Enforcement in Cameroon; ^{3rd} Summary Report of the Independent Observer, July 2003-February 2005, London. ⁸² Rainforest Foundation UK / CED (2000) Cameroon's Forests and the International Community. Unpublished Briefing Paper. ⁸³ Labrousse, A. (2000) *Le silence de la forêt: réseaux, mafias et filière bois au Cameroun*, L'Harmattan. ⁸⁴ CARPE - Central African Regional Programme for the Environment (2001) The World Bank, Conditionality, and Forest Sector Reform. The Cameroon Experience. ⁸⁵ CARPE (2001) *op.cit.* ⁸⁶ World Bank (2005) Cameroon at a Glance.

Reviewing its performance over the period 1980-99, the World Bank's Operations and Evaluations Department concluded that:

"The Bank made several strategic mistakes in Cameroon. First, it relied too heavily on the executive branch of the government to deliver on the promised reforms. Second, in both agriculture and forests, the Bank neglected the creation and dissemination of knowledge and information that was crucial for policymaking and implementation...Third, the Bank rightly recognized institutional weaknesses in Cameroon, but preferred to rely heavily on technical assistance to deal with the issue... Finally, the Bank... did little to gather [local communities'] views and to design mechanisms that would ensure that those views were taken into consideration. The Bank should have made a truly participatory approach a cornerstone of the policy-based lending program.

Overall, the interventions of the Bank inside and outside the forest sector in Cameroon were relevant to its strategic objectives, but they were neither efficacious nor efficient".⁸⁷

The case of Gabon

International interventions in "forestry reform" in some countries are invariably used for political purposes by the beneficiary regime. Thus, in November 2005, a mere two weeks before the "re-election" of Omar Bongo, the world's second longest-serving dictator after Fidel Castro, the World Bank approved a loan of U.S. \$15 million "to support the Government of Gabon's efforts towards improved management of natural resources", including forests, fisheries and biodiversity. According to Laurent Debroux, Task Team Leader, "Policies and actions supported by this operation focus on transparency and accountability, on protecting the environment, strengthening law enforcement, ensuring

equitable sharing of revenues, and fostering public participation."⁸⁸

Whether or not Bank funds were directly used by the Bongo regime for "election" purposes, the Bank's support undoubtedly provided an air of legitimacy to the corrupt Gabonese regime. Earlier in the year, Gabonese civil society had called attention to the extensive logging interests controlled by President Bongo himself, his family, most senior Ministers (including the Environment Minister) and many other government officials as well as MPs.⁸⁹ It was also revealed that non-payment of forestry taxes, including by the President, his son and most of the political logging elite, was depriving the Gabonese "treasury" of FCFA 8 billion (U.S. \$12.2 million),⁹⁰ or nearly as much as the World Bank was shortly to provide as a loan in order to "ensure equitable sharing of revenues".

Institutionalising "corruption"

As is noted above in the case of Cameroon, the national forest administration was (and is) considered as a coveted location for "*fonctionnaires*", because of the lucrative opportunities it offers for graft, corruption and patronage. Because of this, it is unsurprising that most African Departments of Forestry, Ministries of Water and Forests etc, are all largely or wholly articulated around the allocation of forestry concessions, in which power is centralised and often directly subordinate to political interventions motivated by personal interest.

One important consequence of this is that, whilst well-adapted to the purposes desired by the ruling elites and patrons, the forestry institutions that have evolved to serve the African logging industry are wholly unsuited to the purposes of "sustainable forest management", or of bringing about rural development, empowerment of poor people, or protection of the environment. On the contrary, all of these constitute a serious

⁸⁷ Essama-Nssah, B. & J.J. Gockowski (2000) Cameroon: Forest Sector Development in a Difficult Political Economy. World Bank, Washington, D.C. ⁸⁸ World Bank (2005) Gabon Receives U.S. \$15 Million for Natural Resources Management. Press Release, November 15. Washington, D.C. ⁸⁹ Labrousse, A. (2005a) *Le roitelet de la forêt*. Available at: www.bdp.gabon.org/content/view/1405/71/; Greenpeace (2005) Letter to Commissioner Jose Manuel Baroso, 20th June, Brussels.

⁹⁰ Labrousse, A. (2005b) *Les mauvais payeurs de la forêt gabonaise*. Available at: www.bdp.gabon.org/content/view/1651/71/; Greenpeace (2005) *op.cit.*

impediment to the task of converting the public good of forests into private wealth and power.

One striking example of this is, again, Cameroon. A senior World Bank official admitted in the late 1990s to one of the authors of this article that, of the millions of dollars that the Bank was considering investing in the forest sector of Cameroon at the time, the best investment would be to spend a mere U.S. \$1 million in pensioning off every Forest Department official, from the lowest technician to the Minister, in order to rid the administration of corruption and to start again from scratch. As detailed above, what actually happened was quite different. Apart from the long-term damage this probably led to – in terms of continued illegal logging, political domination of the forest sector, and environmental damage – the Bank's failure to seek implementation of reforms:

"may have inflicted broader damage. According to outside observers, there are younger foresters in Cameroon who seem concerned about greater efficiency and transparency, but if they are not supported and encouraged by outside pressure, they could well be subverted by the corrupting influence of their seniors. Every time the government is allowed to get away with breaking the law, the prospects for real change diminish, and the hopes of this group of professionals fall."⁹¹

In this sense, then, it can be seen that not only has the World Bank perpetuated institutions that are structurally linked to the logging concession system – and thus to the vested interests of the political elite, rather than for the purpose of advancing rural development – but that they have also served to encourage institutional corruption.

The legacy of this continues to be felt in Cameroon. During the mid 1990s, Britain's Overseas Development Administration (ODA,

and then the Department for International Development, DFID) attempted to implement a programme to "operationalise" the provisions of Cameroon's 1994 Forest Law relating to the establishment of community forests. This required, firstly, establishing a clear set of rules for the allocation of community forests – which had never been undertaken by the Cameroonian government – and secondly to establish a unit within the Forest Department to administer the community forests.

Community forests, as defined in Cameroon's law, are of extremely limited size (maximum 5,000 hectares) and duration (15 years renewable for a further 15). Further, they can only be established in the limited areas of "non-permanent" forest, thus excluding them from areas designated as forestry concessions (*Unités forestières d'aménagement*, UFA). However, subsequent to the passing of the 1994 Forest Law, these non-permanent forest areas were becoming increasingly important to the political machinery as a means of allocating short-term, "cut-and-run" logging rights, or "*ventes de coupes*". The forest administration thus worked actively to oppose the implementation of community forests.

ODA/DFID thus found that the Forest Department consigned their community forest project team to a "very small office", and that one of the personnel assigned by the government to the project was "widely known as being extremely difficult to work with".⁹² The task of developing the specific procedures for the allocation of community forests proved to be extremely difficult, partly because of inconsistencies in the relevant laws,⁹³ but also because of the sheer difficulty in "moving documents up the hierarchy for approval".

DFID staff concluded that "in this context it became clear that certain individuals [in the Forest Department/MINEF] could be termed,

⁹¹ CARPE (2001) *op.cit.* ⁹² DFID (n.d.) Community Forestry Development Project, Briefing Memorandum. Report (October 1995 - June 1997) and Work Programme. ⁹³ Djeumo, A. (2001) The Development of Community Forests in Cameroon: Origins, Current Situation and Constraints. *Rural Development Forest Network Paper* 25b. ODI, London.

at best, indifferent to community forestry". Even this proved to be something of a generous assessment; following 5 years of work by the British government, Cameroon's Minister of Forests, at a stroke, deleted the Community Forest Unit from his Ministry's organogramme, and it was only after intense pressure from donors that it was re-instated. As a result of effective institutional resistance, by December 2001 (some 7 years after the passage of the Forest Law) only 17 areas of forest (totalling less than 85,000 hectares, equivalent in size to one logging concession, of which there are dozens) were under community management in full conformity with the new procedures.⁹⁴

Despite this awful record of obstruction, Cameroon's community forest department is the only institution within the region which has actually allocated a community-based forest management unit.

This example illustrates that the institutions that now administer the "forest sector" in parts of Africa are not only primarily articulated around industrial logging but are also directly opposed to any use of forest resources – such as community forests – that might hold developmental benefits. This is because logging remains linked to the vested interests of senior political figures, and so more development oriented forestry would potentially jeopardise the absolute discretion that those political figures have had in using forests as a means of patronage.

The role of the international community

The international community has played an important role in establishing and perpetuating the politics of "logging-patrimony" as described above. Probably the most important way in which donor countries promote oligarchic logging is by providing political, military,

economic and diplomatic support for the oligarchic regimes it is designed to serve. Usually, such support is unofficial, private or covert.⁹⁵ International financial institutions (IFI) provide additional support in three main ways:

- By providing lending devoid of forestry reform conditionality;
- By providing ineffective or misguided forestry reform and project lending; and
- By providing private sector forestry-related investments.

Each of these is considered in turn below.

The "missed opportunities" - lack of sector reform conditionalities

Recent examples of failure to use possibilities for reform include International Monetary Fund lending to Gabon and to Congo-Brazzaville in 2004.

Gabon "no-conditionality" on aid in 2004

The IMF's May 2004 U.S. \$102 million Stand-By Arrangement to Gabon contained no components designed to increase transparency in the forestry sector. Of the five Gabonese public servants whom Fund staff reported having met with in Libreville to finalize the loan – the President, the Prime Minister, the Presidents of the National Assembly and Senate, and the Finance Minister – three are known to be directly involved in the logging industry.

The Finance Minister's Memorandum of Economic and Financial Policies, of 6 May 2004, quoted approvingly by the Fund, states that "a rigorous follow-up of tax payments by concession holders and termination of noncompliant concessions" had been "implemented in 2004." As was to be shown by the review of concession tax payments in 2005 (referred to elsewhere in this paper), this was entirely inaccurate.

⁹⁴ Brown, D. *et al.* (2003) Governance Reform in the Forest Sector: A Role for Community Forestry? Paper prepared for the XII World Forestry Congress to be held in Quebec City, Canada, September 2003. ⁹⁵ The interface of African logging with parallel bureaucracies and unaccountable politics is, roughly, the subject of: Labrousse & Verschave (2002) *op.cit.*

Congo "no-conditionality" on aid in 2004

Recent IFI aid to the regime of Denis Sassou Nguesso has been characterized by the total absence of forestry conditionality.⁹⁶ In October 2002, a World Bank audit of the Congolese logging sector highlighted massive unofficial "parafiscality" payments and other transfers by concessionaires in the North of the country. The following spring, Bank-proposed forestry tax hikes were rapidly reduced after complaints from powerful multinational loggers. In a 20th March 2003 letter to the German Foreign Affairs Ministry sub-director, the director of *Congolaise industrielle des bois* (CIB) had stated that the new tax rate represented "a spoliation" and "a *de facto* expropriation." He reminded his reader that his firm's "legitimate interests [...] are also those of the Federal Republic of Germany."

Soon after the Bank's retreat on forest sector fiscal policy in 2003, the IMF put an end to years of stormy relations with the Congolese government by approving an U.S. \$84 million Poverty Reduction and Growth Facility (PRGF) arrangement. This immediately triggered debt cancellation or relief by the Paris Club and announcements of future aid by the World Bank and the African Development Bank.

In its 105 page PRGF staff report, the IMF devotes only a few lines to the logging sector, including the laconic: "The staff noted that the forestry sector held good promise for economic diversification and poverty reduction."⁹⁷ Whatever the "promise", the reality was more what could have been expected in such a notoriously corrupt regime: the IMF staff report states that "While significant progress has been made in centralizing revenues at the treasury, forestry tax revenues (which represent about 6 percent of non-oil revenues) have yet to be transferred to the treasury."

Forestry reform and project lending: the bottomless pit for donor money

Given the importance of logging concessions as the "grease in the cogs" of political patronage, graft and corruption in all Congo Basin countries,⁹⁸ it is hardly surprising that internationally funded projects to provide "technical assistance" to improve the "performance" of African forestry concessions have proved to be such spectacular failures. A few examples, of the many possible, can be used to illustrate the point.

Gabon sectoral programmes for forests and the environment (1992 - 2005)

The Bank's first sectoral *Projet Forêt et Environnement* (PFE) (1992-2002; U.S. \$22.5 million) contained a U.S. \$4.06 million "Natural forest and plantation management" component. If the "impact" of this pilot project was "slightly less important than expected," according to the Bank's December 2002 Implementation Completion Report, "nevertheless, the management plan produced by the PFE [...] was sold to a forest operator in 2000 by the forest administration, and therefore has not been produced in vain." This assessment is later restated with an intriguing caveat:

[...] 250,000 hectares of forest management plan in the south [E]stuary were developed in 1999 (the management plan produced by the PFE was sold to a private company. *However, its selling price is not officially known*) [...]. (emphasis added)

In fact, the Bank had recommended that this concession be awarded by public auction.⁹⁹ The beneficiary firm was the French-owned *Compagnie du Komo*, whose apparent links to the Gabonese presidency include a 25% share of the *Banque gabonaise et française internationale* (BGFIBANK), whose Board

⁹⁶ For this section, see: Labrousse, A. (2005c) *Le bois sacré de la CIB*. Available at: <http://www.mwinda.org/article/boissacre.doc> ⁹⁷ International Monetary Fund (2004) Country Report No. 04/232. Staff Report for the 2004 Article IV Consultation and a New Staff-Monitored Program. 12 May 2004, Washington, D.C.

⁹⁸ And elsewhere: in Côte d'Ivoire, Togo, Guinea, etc. ⁹⁹ "The amount of the transaction between the forestry administration and the enterprise was kept secret; the logging permit had not been awarded by public auction as the Bank had recommended." (CERNA (2000) *Réformer la fiscalité forestière au Gabon: Les constats de départ*. September 2000.)

Chairman is also President Bongo's assistant cabinet director.¹⁰⁰

Hardly surprisingly, improvement in terms of "transparency" of Gabon's forest sector has proved to be elusive. An April 2004 Bank memo called for the immediate halt of title awards in Gabon in the absence of public auction "so as not to render impossible the implementation of this [auction] system should it prove effective".¹⁰¹ It stated that this would extend a moratorium the Bank apparently believed was already in place since "2002-2003." In fact, some 100 titles had been awarded since 2002, including 58 since the Bank's recommendation in April 2004. On 2 August 2004, Gabonese authorities awarded the second of two permits to the Indian multinational Olam International Ltd., a raw materials conglomerate in which the World Bank had recently invested U.S. \$50 million. The Presidential decree banning new titles appeared seven days later.

Despite the consistently disappointing results of previous Bank forays into Gabon's forest sector, a second sectoral project – the *Programme sectoriel forêts et environnement* (PSFE) – was agreed in March 2005. The programme document worries that the "perception of the outside world will be that the PSFE is linked to the logging of primary forests in Central Africa, even if the PSFE doesn't finance logging [...]."¹⁰² The external world can be forgiven for misunderstanding: according to the programme document, the PSFE "is in effect a program designed to attract new private investors [...]." One of its tasks is "providing businesses with wood-market and environmental services-market tendencies in order to improve competitiveness." One of the "general indicators" of this program's success is the "number of forestry-sector private enterprises created." The AFD will be complementing the PSFE by seeking to ease access to private credit for loggers "previously barred access to existing credit lines."

Zoning and management plans in Gabon

In 2001, the International Tropical Timber Organisation undertook evaluations of two of the projects the organisation had earlier funded in Gabon. The first of these was a U.S. \$1.7 million project to develop and implement a management plan in the Bokoué forest reserve, a mosaic of already-logged forest, some of which had been converted to farmland, remnant forest, and okoumé plantations. The evaluation found that, as well as the "management plan", actually only consisting of a timber inventory (and which ignored the interests of any local stakeholders), the whole exercise was:

"hampered by the lack of operational management plans. Furthermore, a logging company has been given a long-term permit to exploit the Bokoué forest without complying with the good practices that the project sought to establish...As this permit was allocated *outside the usual channel*...it can be stated that the management plan initiated by the project has had limited impact, as it failed to enhance accountable resource procedures" (emphasis added).¹⁰³

The second of the ITTO projects cost U.S. \$1.8 million and aimed to establish a forest zoning and mapping plan for Gabon's "First Forest Zone" (the coastal region logged continuously since the 1880s). Whilst the zoning project was technically well exercised, the evaluators found that it:

"did not fully accomplish its prime aim of adoption of a land use plan... because the final decision by the relevant authority has been delayed. The institutional framework for implementing land use zoning was not well established."

¹⁰⁰ Labrousse (2005b) *op.cit.* ¹⁰¹ For this paragraph and next see: Labrousse (2005a) *op.cit.*. Translations in this section are those of the authors. ¹⁰² Government of Gabon (2005) *Ministère de l'Economie Forestière, Cabinet du Ministre, Cellule de Coordination du Programme Sectoriel Forêts, Pêches et Environnement, Programme sectoriel forêts et environnement* (PSFE). DRAFT Programme Document, Version 1 March 2005, Libreville. ¹⁰³ Gasana, J.K. (2002) *The Good and the Bad of Projects*, ITTO Tropical Forest Update 12/2.

In short, these two projects, which absorbed more than U.S. \$2.5 million in international donor funds, essentially failed to achieve their objectives because of lack of political will and interference in the legal process of concession allocation.

"Certifying" the uncertifiable

In 1995, the European Commission (EC) agreed to finance a WWF Belgium project entitled "Promotion of Sustainable Forest Management and certification in timber producing countries of west and central Africa". According to WWF, the project, which ran from January 1996 to February 1997, would:

"promote sustainable forest management in West and Central Africa through the "definition and development of forest product certification schemes". The Terms of Reference of the project cover the work required for the preparation of a framework for certification in selected countries of West and Central Africa. The methodology to be followed under the contract was to start with the implementation of the program in one pilot country (Cameroon), then to incorporate lessons learned and replicate the model in some selected countries of West and Central Africa".¹⁰⁴

However, the results of the project were not encouraging. According to the final report of the project:

"In the context of West and Central Africa, certification is and will only be one of the tools which can potentially help towards the goal of achieving SFM in the region. A lot of issues regarding certification need to be resolved, especially regarding the institutional framework... Few companies will make investments toward better forest management, if they are not forced to do so. Most importantly in this context, is the application of well-elaborated forestry regulations within the

countries themselves, coupled with sufficient controls by the Forest Services."¹⁰⁵

Despite these findings, WWF applied for, and was awarded, €2.2 million of funding from the European Commission for a second, larger phase of the project entitled "Promotion of sustainable forest management and certification in timber producing countries in the Congo Basin". The project was originally designed to run for three years from April 1998, but was extended until the end of March 2002.

The results of the second phase of the project also proved to be very disappointing. An independent evaluation of the project carried out for WWF and the EC found, perhaps unsurprisingly given the political context in which the project was operating, that the project had had "insufficient impact", "insufficient viability", that its "effectiveness" was "not noted or not measurable", and that the "efficiency" of the project was "very insufficient".¹⁰⁶ It transpired that some of the companies with whom WWF had formed "partnerships" under this project had been involved in illegal logging activities.¹⁰⁷

Despite the findings of this evaluation, the European Commission agreed a third, even larger, phase of the project, entitled "Network of partners for the sustainable management of forests in Central Africa". The project is costing European taxpayers a further €3 million.

However, after nearly 8 years and more than €5 million having been spent on this series of projects, not a single logging company has yet gained certification as a result.¹⁰⁸ As noted in the report of the original project, the problems lay squarely in the "lack of control" of the forest sector: as this chapter explains, the "control" certainly exists, but only in terms of exploiting the role of logging concessions as means of political patronage, rather than in terms of forest management.

¹⁰⁴ WWF (1997) Promotion of Sustainable Forest Management and Certification in Timber Producing Countries of West and Central Africa, Final Report, EC-Project B7-5041.95.8/VIII June 1997, Brussels. ¹⁰⁵ WWF (1997) op.cit. ¹⁰⁶ Tractebel/Seca (2003) Evaluation finale du projet, Promotion de la gestion durable des forêts et de la certification dans les pays producteurs de bois du bassin du Congo, Synthèse. ¹⁰⁷ Apele, S. (2002) Tail wags the dog, Unpublished.

¹⁰⁸ At the time of writing, the only company certified in the region is the Dutch company Wijma, in Cameroon, but this has not been involved in the WWF project.

Private sector forestry loans

Examples of whereby international funding has been used directly to support private interests in the Congo Basin forest sector include:

- The IFC's U.S. \$2.1 million investment in the Congo Basin's most notorious log transport company United Transport Cameroon (UTC) in 1994 and 1997;¹⁰⁹
- The IFC's U.S. \$807,000 investment in the Cameroonian logging company and transporter Sodetrancam in 2003;¹¹⁰
- The IFC's U.S. \$50 million investment in the Indian-owned raw materials trader and Gabonese logger Olam International in 2004;¹¹¹
- The World Bank's financing procurement of at least 100,000 railroad sleepers from Cameroonian illegal loggers in 2003;
- The World Bank's financing of U.S. \$39.6 million in public works contracts awarded to the parent company¹¹² of Congo-Kinshasa logger Safbois in 2002-05. Safbois is an American-owned firm, both of whose concessions were awarded after the May 2002 moratorium on the award or renewal of logging permits, according to the most recent official list of Congolese logging titles.¹¹³

Conclusions

The authors have presented just a few specific examples to illustrate how the function of African logging concessions as political capital tends to exceed their putative role as vectors of economic growth, much less sustainable development.

It is seriously misguided to approach the dynamics of logging as a technical forestry issue while ignoring its wider role of political legitimation.

Furthermore, where senior political figures and their crony administrations reap enormous financial and political profits from the logging industry, it is deeply cynical to pretend to promote "reform" of forestry in the absence of quite thoroughgoing political change.

¹⁰⁹ Labrousse (2000) *op.cit.* ¹¹⁰ Labrousse & Verschave (2002) *op.cit.* ¹¹¹ Labrousse (2005a) *op.cit.* ¹¹² Singly or as the member of a consortium.

¹¹³ *La Référence Plus* (2005)