



**Forest Peoples
Programme**

**Implementation of international
commitments on traditional forest-
related knowledge:
Indigenous peoples' experiences in Central Africa**



Dorothy Jackson

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Implementation of international commitments on traditional forest-related knowledge: indigenous peoples' experiences in Central Africa

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Cover photograph: Traditional forest-related knowledge at the crossroads: Baka youth near Djoum.
Dorothy Jackson

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Acronyms

AFF	Annual Forestry Fee (Redevance forestière annuelle)
AFLEG	Africa Forest Law Enforcement and Governance
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung
BINP	Bwindi Impenetrable National Park
CAR	Central African Republic
CFM	Collaborative Forest Management
CBD	Convention on Biological Diversity
CBFP	Congo Basin Forest Partnership
CEFDHAC	Conférence sur les Ecosystèmes des Forêts Denses et Humides de l'Afrique Centrale
COMIFAC	Conference of the Ministers of Central African Forests
CSIR	Council for Scientific Research, South Africa
DBH	Diameter at Breast Height
DRC	Democratic Republic of Congo
DTC	Development Through Conservation
FAO	Food and Agricultural Organisation
FESP	Forest and Environment Sector Programme
GEF	Global Environment Facility
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IFF	Intergovernmental Forum on Forests
IMF	International Monetary Fund
IPDP	Indigenous Peoples Development Plan
IPF	Intergovernmental Panel on Forests
IPP	Indigenous Peoples Plan
IPR	Intellectual Property Right
IUCN	International Union for the Conservation of Nature
MINEF	Ministry of Environment and Forests, Cameroon
MUP	Multiple Use Programme
NBSAP	National Biodiversity Strategy and Action Plan
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organisation
nfp	National Forest Plan
NWFP	Non-wood Forest Product
PfA	Proposal for Action
PNDP	<i>Programme National de Développement participatif</i> (Participatory Community Development Programme)
PRSP	Poverty Reduction Strategy Programme
SFM	Sustainable Forest Management
TFRK	Traditional Forest-Related Knowledge
TK	Traditional Knowledge
UNFF	United Nations Forum on Forests
US	United States
UWA	Uganda Wildlife Authority
WWF	Worldwide Fund for Nature
WSSD	World Summit on Sustainable Development
WWF	Worldwide Fund for Nature
ZICGC	Community Managed Hunting Zone (<i>Zone d'Intérêt Cynégétique de Gestion Communautaire</i>)

Executive summary

A Scope of report

This report looks at progress in implementing the IPF/IFF Proposals for Action on the traditional forest-related knowledge (TFRK) of indigenous ‘Pygmy’ peoples in eight central African countries: Burundi, Cameroon, Central African Republic (CAR), Republic of Congo (Congo), Democratic Republic of Congo (DRC), Gabon, Rwanda and Uganda.

Previous studies on TFRK have noted the holistic and indivisible nature of indigenous and traditional knowledge in the lives of knowledge holders, and that the promotion and development of TFRK and its application in sustainable forest management depends on the holders of traditional knowledge having:

- secure land tenure and use rights
- the ability to practise traditional resource use systems
- recognition of their own representative institutions
- decision-making power over resource use
- prior information and giving their free consent to actions affecting TFRK
- participation in formulation and implementation of forest policy and management
- legal/constitutional recognition of the right to exist as a culturally distinct group within the nation state
- capacity to organise and negotiate.

This report examines the situation of central African indigenous peoples’ TFRK in the context of the above key factors. It first presents an overview of indigenous peoples in central Africa and the social, economic and political environment in which they live. It then considers legal and policy measures that directly address TFRK, followed by an assessment of legal and policy measures relevant to TFRK and what is happening in practice, focussing on the issues of indigenous peoples’ tenure, access and use of forest lands and resources. A section on protection of TFRK is followed by an overview of indigenous participation and representation in TFRK-related policies and programmes.

The information sources include national laws, policy documents and reports that the author was able to obtain, relating to forests, environment, wildlife conservation and land, as well as published and unpublished research, and consultation with indigenous organisations and representatives, NGOs, researchers and project staff. The principal obtainable laws and policies relevant to TFRK, were the forest laws of the eight countries, National Biodiversity Strategies and Action Plans for six countries, the Uganda national forest plan, the Cameroon Forest and Environment Sector Programme, and its associated Indigenous Peoples Development Plan.

B Overview of indigenous peoples in central Africa

Traditionally-living Pygmy peoples have a distinctive egalitarian social structure and hunter-gatherer livelihood strategy that is intimately dependent on the continued maintenance of the forest. They are the holders and users of extensive traditional forest-related knowledge that is the basis of their culture. These Pygmy communities live in areas where they have unrestricted access to forests and the forests are relatively intact. In other parts of the central African forest zone, Pygmy peoples’ livelihood strategies and culture are changing due to enforced sedenterisation and the growing importance of the cash economy, as well as logging, wildlife conservation and infrastructure projects imposed on indigenous communities’ customary lands and which severely reduce their access to forest resources. Pygmy peoples’ hunter-gatherer activities are increasingly constrained, with agriculture and wage labour becoming more important components of their livelihood strategies, although not eclipsing hunting and gathering. As a result, TFRK is being lost, and traditional social institutions are under stress. In the Great Lakes area loss of forest lands is severe, with devastating consequences for the indigenous communities, most of whom have had to abandon their forest-based lifestyle and are now experiencing acute poverty and erosion of culture.

A major factor affecting central African indigenous peoples' ability to maintain and develop their TFRK is that they do not have secure rights to their customary lands, as their lands are not recognised either in statutory law or in the customary law of the dominant settled farming society. External agencies have thus been able to freely appropriate their lands without being obliged to provide recompense. The eight countries in this survey have ratified international human rights conventions that commit them to protecting indigenous culture, lands and livelihoods, but relevant measures have not yet been incorporated into national laws. Officialdom has generally regarded the hunter-gathering way of life as anachronistic and has sought to assimilate indigenous communities into mainstream society. Over much of the region, Pygmy communities are deemed to 'belong' to the neighbouring Bantu villages, and so do not have independent representation in administrative and legal matters. In some countries, indigenous people are not able to freely express their indigenous identity. Throughout central Africa, indigenous peoples experience ethnic discrimination from dominant society, and lack equal access to health, education, employment, wages, justice, representation and participation. The forest lands and resources on which their subsistence economies depend are coming under increasing pressure from expansion of logging and conservation areas and encroachment on forests by the expanding farming population, posing a continuing threat to indigenous peoples' traditional forest-related knowledge.

C Progress of governments in implementing the Proposals for Action on indigenous peoples' TFRK in Central Africa

a) Specific TFRK measures

Official reporting to UNFF and CBD is limited and ambiguous on the extent to which state actions relative to the IPF/IFF Proposals for Action on TFRK are reaching and involving indigenous peoples.

Measures explicitly focused on protecting, maintaining and promoting the traditional forest-related knowledge of indigenous peoples are generally not well developed in the forest and conservation policy initiatives of central African countries. For example, all the eight countries surveyed have produced National Biodiversity Strategies and Action Plans (NBSAPs) within the last five years, but these make scant reference to indigenous peoples and lack specific measures for protecting and promoting their traditional knowledge; neither are key underlying factors such as land security, participation, and free prior and informed consent addressed in a meaningful way.

National forest plans, the mechanism by which governments are supposed to be implementing the Proposals for Action, are not very far advanced in the region. Only Uganda has so far produced a national forest plan. This emphasises social aspects of forestry and its role in poverty reduction. It recognises the value of traditional knowledge of local communities in sustainable forest management, and sets out various measures to promote and protect traditional knowledge. However, the plan is still in the early stages of implementation, and it remains to be seen to what extent the measures proposed will actually benefit Uganda's indigenous peoples.

b) Measures relating to secure tenure, access and use of indigenous forest lands and resources.

i) Land tenure

Many eastern, southern and western African countries are revising land legislation to recognise local landholding systems and provide secure collective rights to land for local communities. In the countries in this survey, however, local communities' rights over their collective and customary lands are not protected in national land legislation, except in Uganda. In the other central African countries, the land belongs to the state, except for a tiny area under individual, private title. Rwanda's land legislation was recently revised, without including specific provisions to address the severe landlessness of the indigenous Batwa. The 1998 Ugandan Land Act, and the 2001-2011 Land Sector Strategic Plan, although progressive in responding to communities' own concepts of land rights and administration of those rights, are unfortunately of limited

benefit to Uganda's indigenous Batwa who have already been dispossessed of their customary forest lands in the name of wildlife conservation. However, Uganda's constitutional provision that the land belongs to the people of Uganda has enabled another hunter-gatherer group, the Benet, to mount a legal challenge to their eviction from the Mount Elgon national park.

ii) Community management of forests

New forest laws in Cameroon (1994), DRC (2002) and Gabon (2001) 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. These measures are potentially positive in enabling communities to gain some security over their forest resources, and thus could contribute to maintaining TFRK; however, experience so far from Cameroon has revealed several problems.

Zoning processes defining the permanent forest estate reserved by the state for logging and environmental protection largely ignored customary tenure patterns, with the result that significant areas of community lands, particularly those of indigenous Pygmy communities, are subsumed in the permanent estate. Pygmy communities can only establish community forests in the non-permanent estate, where all the land is however already claimed by farming Bantu communities. The 5000 ha. maximum size of community forest is too small to sustain the hunting and gathering activities of Pygmy communities. Other problems include the current registration procedures which are complex, costly and require communities to create new administrative structures which do not reflect traditional land management systems, and are easily captured by educated elites; and the emphasis on small-scale timber production requiring technical skills and commercial knowhow that many communities do not have.

Consequently only one Pygmy community has so far been able to set up a community forest in Cameroon, and a handful of others are participating to a limited extent in Bantu community forests. The experience of these communities suggests that the existing community forest model is not yet sufficiently adapted to the context and needs of Pygmy communities to result in sustainable benefits.

Ten years of community forestry in Cameroon have generated much experience, and already some aspects have been modified. This learning should inform the development of the DRC and Gabon community forest programmes, which have not yet started. A major concern however is that implementation of the DRC forest law and zoning process has not so far consulted adequately with local communities with the risk that the local communities, particularly Pygmy communities, will lose customary lands and access to forest resources.

Cameroon's latest forest policy initiative, the 2003 Forest and Environment Sector Programme (FESP) backed by the World Bank, recognises some of the above concerns. The FESP gives greater emphasis to the role of forests in poverty reduction, and to increasing rural community involvement in forest management and decision-making. The Cameroon FESP aims to double the number of community forests in five years, as well as increase community involvement in protected area management, recognise community use rights in protected areas and set up community-managed hunting zones. New wildlife and protected area laws will be developed and the legal and institutional framework for community forestry will be reviewed. Similar FESPs are being developed in Gabon and CAR, with World Bank support. Like the Ugandan national forest plan, it is too early to assess the impacts of these potentially progressive new policies.

Under the World Bank's safeguard policy on indigenous peoples (Operational Directive 4.20) Cameroon has had to produce an Indigenous Peoples Development Plan (IPDP) to ensure that indigenous peoples benefit equally from the FESP and to avoid or mitigate adverse effects on them. This is the first major central African forest policy document specifically addressing indigenous peoples' needs. It contains progressive elements to increase indigenous communities security of tenure over lands and resources, notably providing community forests and/or hunting zones for all indigenous communities, and establishing new forestry regulations which 'legalise indigenous people to utilise their land'. A national policy on indigenous people will also be developed. The implementation measures, however, remain to be worked out and there are currently many uncertainties, for example how the government will address the legal rights of indigenous peoples, how

indigenous lands will be identified and 'legalised', whether this will include lands in the permanent forest estate and how competing Bantu land claims will be dealt with.

iii) Use rights and access to forest resources

Central African forest and wildlife laws permit local communities to continue to exercise a range of different use rights in forests, that can however be annulled by the state. These rights are least restricted in the non-permanent forest estate, and highly restricted or prohibited in protected forest areas. 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 areas. Some protected areas have relaxed restrictions (e.g. Cameroon) or devised new legal provisions (e.g. 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 out of bounds.

The widespread legal restrictions on hunting affect many rural populations, and particularly Pygmy communities whose economies are largely based on sale or barter of forest products, and for whom hunting is a vital element of their cultural identity. The game populations on which Pygmy communities depend are being depleted by uncontrolled commercial poaching to supply the lucrative bush-meat trade and by over-hunting in the restricted areas where hunting is currently permitted.

Cameroon's FESP aims to meet communities' needs for access to wildlife resources through increasing the number of 'community hunting zones', managed by committees elected by the local communities. Quotas will permit a certain amount of commercial hunting. At present there are only a few community hunting zones in the early stages of operation. Most are controlled by a Bantu majority, with very little involvement by Pygmy communities in the management committees. The IPDP linked to the FESP intends that all indigenous communities should acquire a community forest and/or hunting zone to ensure their access to game resources. Implementation measures are still to be developed, and several aspects are not yet defined – for example, how the proposed community hunting zones averaging 250 sq. km. per indigenous settlement will be negotiated with Bantu groups that are likely to claim rights over the same area.

National policies and laws of central African countries are increasingly emphasising community participation in forest management. So far, there is little evidence of genuine collaborative forest management in which power and responsibilities are equitably shared between local communities and the forest management authority. Local community involvement is presently mainly promoted in protected areas, chiefly through consultative mechanisms to facilitate exchange of information with local communities about conservation activities, and regulated access schemes, in which communities are permitted to harvest forest products under regulated conditions. However, Pygmy peoples have so far not benefited equitably from these initiatives. Despite their greater dependence on forest resources and their high population densities around some protected areas, Pygmy communities are severely under-represented on local conservation committees (e.g. Cameroon, CAR) and their participation in regulated access schemes has been hitherto very limited (e.g. Uganda). The low social status of Pygmy communities and the lack of official recognition of their communities and representative bodies makes them vulnerable to being sidelined in forest user groups and committees, unless forest managers develop special mechanisms for their inclusion.

The overall impression gained of the existing access schemes, and the provisions for legal use rights, is that local communities are primarily viewed as extractors and users of forests rather than managers and decision-makers over resources.

iv) Revenue sharing

Many of the central African forest and wildlife laws and policies require logging companies and protected areas to share the revenues and benefits from their activities with local communities. However, lack of equitable revenue-sharing systems means that Pygmy communities have so far received very little benefit. Local dominant groups are able to capture forest taxes and tourism revenues and are the main beneficiaries

of local development projects and amenities, such as schools and health posts that are provided by logging companies or funded from revenues collected by the authorities. This problem is acknowledged by the Cameroon FESP which intends to review the management of and distribution of revenues from sport hunting and forest taxes.

c) Protection of indigenous peoples' TFRK

The loss of Pygmy communities' customary forest lands and access to forest resources, coupled with increasing sedentarisation and reliance on farming to meet basic subsistence needs, is contributing to erosion of their traditional knowledge and cultural practices, particularly among the youth. Measures to stem loss of traditional knowledge through education systems or promoting intergenerational transmission of knowledge are lacking.

Several of the central African countries envisage documenting traditional knowledge, particularly through their National Biodiversity Strategies and Plans. However registries can increase the risk of misappropriation of traditional knowledge from communities if provisions for prior informed consent and proper controls over access and use of the information are lacking.

Under existing legal and policy commitments, most of the central African governments intend to develop access and benefit sharing measures for biological resources and/or protection for intellectual property rights (IPRs), but work is not far advanced. So far, there is no evidence that indigenous knowledge will be specifically addressed. Only the CAR NBSAP and two research protocols developed in Cameroon, but not yet widely implemented, uphold the principle of prior and informed consent; one of these protocols refers to indigenous declarations on knowledge and IPRS.

Central African indigenous peoples are largely unaware of intellectual property rights regimes, or their rights under international human rights law to free prior and informed consent in regard to the use of their lands and resources. Concerted measures to enable indigenous peoples to increase their capacity to deal with these issues are lacking, except for community mapping initiatives (supported by local and international NGOs) through which central African indigenous communities are documenting their knowledge in the form of land use maps. These maps remain the intellectual property of the communities and the supporting NGOs.

d) Indigenous participation and representation

Indigenous peoples have hitherto scarcely been involved in policy decisions and programmes affecting the forests and biodiversity on which they depend. Forestry and conservation initiatives have been, and are being, implemented without adequate consultation with affected indigenous and local communities. Recent policy initiatives such as the national forest plans and FESPs involve more participatory consultations with local communities but only Cameroon's IPDP, produced in order to comply with World Bank lending procedures for the FESP, has involved specific consultation with indigenous peoples.

Existing legal provisions for consulting with local populations on forest management issues such as allocation of concessions and classification of forests are not adapted for reaching mobile, remote and dispersed communities, and often fail to ensure Pygmy peoples' representation and participation in decision-making on a fair and equal basis with members of dominant ethnic communities. Policy measures to ensure the prior informed consent of indigenous communities concerning the use of their lands and resources are lacking.

Indigenous communities' scope for representing themselves to claim their rights and secure their interests is very restricted. Traditionally many Pygmy peoples lack centralised authorities mandated to make decisions on behalf of a wider group, and imposition of new hierarchical structures prescribed, for example, for management of community forests has caused conflicts and divisions within Pygmy communities. Indigenous communities have not yet had enough time and capacity building resources to develop novel institutions to represent themselves and ensure that decision-making is adequately participatory. There are few Pygmy organisations and Pygmy people are scarcely represented in government and local administrative structures,

except in the Great Lakes region. In many central African countries, Pygmy communities are deemed to 'belong' to the local Bantu community, and are thus not formally recognised by local administrations. The IPDP associated with the Cameroon FESP aims to address this problem by giving independent legal status to all indigenous communities, although the mechanism for this is not yet defined.

D Conclusions

The existing legal and policy provisions of central African countries, and the way they have been implemented in practice, have hitherto done little to stem the loss of indigenous peoples' traditional forest-related knowledge caused by the expropriation of their customary lands for logging, protected areas, agri-development and infrastructure projects, and their increasingly restricted access to forest resources. The main obstacles are:

- prejudice and discrimination against indigenous people at all levels in dominant society, resulting in their low social status and their political, economic and social subjugation by other groups
- states' international legal commitments on indigenous peoples' rights to land, culture and livelihoods have not been incorporated into national law
- lack of national indigenous peoples policies providing a coherent framework within which to address indigenous peoples' rights and needs.
- lack of secure tenure and use rights over customary lands and resources for indigenous communities
- lack of clear provisions ensuring the free and informed consent of indigenous peoples prior to actions affecting their lands and resources
- lack of recognition of indigenous communities as autonomous entities with legal and administrative capacity
- lack of equitable representation of indigenous peoples in decisions about forest use
- existing legal and administrative procedures are not adapted to the customary norms and institutions of indigenous peoples.

The only existing mechanisms available for indigenous peoples to obtain legal rights to forest resources, thus providing a more secure basis for their livelihoods and culture, are currently through the Ugandan constitution, land and forest laws, and the community forestry provisions in the forest law of Cameroon. However, so far indigenous communities have virtually unable to access and use these mechanisms. The forest laws of DRC and Gabon also provide for community forestry, but the model to be adopted and implementation mechanisms have not so far been specified.

New policy approaches such as the Uganda national forest plan, and the FESPs of Cameroon, CAR and Gabon potentially offer more scope for responding to indigenous peoples needs through their greater emphasis on social concerns, involvement of local communities in forest management and decision-making and the role of sustainable forest management in poverty reduction. These policies are still in the initial stages of implementation, so it is too early to assess their impacts. Nevertheless, unless targeted measures such as those proposed in the IPDP linked to the Cameroon FESP are implemented to help indigenous peoples overcome the obstacles summarised above, they are unlikely to be able to benefit significantly from these policies, and so secure rights over their lands and resources and maintain their traditional knowledge, culture and livelihood patterns.

E Recommendations

a) Recognition of indigenous peoples

Central African governments should:

- recognise indigenous peoples as rights holders in line with contemporary international human rights and environmental law;
- ratify ILO Convention 169 protecting indigenous peoples rights;
- incorporate international human rights commitments protecting indigenous rights into domestic law and policy.

b) Indigenous land rights

Central African governments should:

- provide unambiguous and secure legal rights for indigenous communities over their customary lands, taking account of their mobile lifestyles and largely non-agricultural economies;
- until mechanisms for assuring secure land rights are in place, ensure that forest zonation in Cameroon, DRC and Gabon, and the classification of production forests and protected areas throughout central Africa, are based on the free, prior and informed consent of indigenous peoples and local communities so that customary lands and resource use are safeguarded;
- provide funding, legal and logistical support to indigenous peoples to prevent their lands from illegal encroachment and appropriation of their resources by external vested interests;
- prohibit the involuntary displacement or resettlement of indigenous peoples;
- establish participatory mechanisms for the restitution of indigenous peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent, in line with the recommendations of the Durban Plan of Action agreed by the Vth IUCN World Parks Congress in September 2003.

International agencies and NGOs should:

- in collaboration with governments, develop participatory land demarcation methods via community mapping and collaborative field studies with indigenous peoples and with neighbouring farming communities, to identify their customary land tenure regimes, livelihood strategies and local priorities, and ensure that demarcated areas are compatible with local land rights and meet indigenous communities' spatial needs.

c) Indigenous peoples' access to forest resources

Central African governments should:

- develop regulatory frameworks giving indigenous and traditional communities authority and decision-making power over forest lands and resources. This will involve the legal recognition of indigenous and traditional communities' own representative institutions, or helping indigenous and traditional communities to develop new management institutions with legal personality, yet underpinned by their customary norms, cosmovisions and values;
- adapt existing community forest schemes to meet Pygmy communities' development needs and administrative capacities in line with their cultural values;
- implement the Durban Plan of Action agreed by the Vth IUCN World Parks Congress in September 2003, in particular outcome 5/key target 8: 'all existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples, mobile peoples and local communities'; and outcome 5/key target 9: 'protected areas shall have representatives chosen by indigenous peoples and local communities in their management proportionate to their rights and interests';
- ensure that indigenous communities' customary, subsistence use of their forests is accommodated in protected areas and permanent forest estates;
- overhaul regulations on hunting to give more control over game resources to local communities, including legalising traditional hunting rights and increasing access of legitimately hunted bush meat to the market,

and empowering local registered hunters to exclude outsiders from their hunting areas. Step up measures to control large-scale commercial hunting activities without undermining subsistence activities of indigenous communities;

- require access and revenue-sharing schemes to safeguard the rights of indigenous beneficiaries and ensure that they receive an equitable share of benefits compared with non-indigenous beneficiaries.

International agencies and NGOs, in collaboration with indigenous communities, should:

- evaluate the benefits and disadvantages to indigenous and traditional communities of community forestry and community hunting zones in Cameroon, including analysis of the underlying issues of indigenous land rights and participation in decision-making. Ensure that their recommendations are incorporated into the government's plans to modify the legal and institutional framework of community forestry under the FESP and to provide community forests and/or hunting zones for all indigenous communities under the IPDP;
- assist indigenous communities with capacity building measures to enable them to participate effectively in new forest management initiatives promoted by government.

d) Protection of indigenous peoples' knowledge

Central African governments should:

- enact measures ensuring the participation of indigenous peoples and organisations in the development of policies and laws on access to genetic material, protection of knowledge and intellectual property rights. These policies and laws should apply a rights-based framework and be based on the principle of prior and informed consent and the right of refusal;
- inform indigenous communities of current and proposed research or bio-prospecting activities in indigenous areas, and ensure that these activities are carried out in accordance with national and international protocols that respect indigenous peoples' rights.

International agencies and NGOs should, in collaboration with governments:

- support indigenous organisations and representatives with training and capacity building on different options for developing systems to protect traditional knowledge, involving cultural exchanges with indigenous and traditional community groups from other regions such as South Africa, India and Panama where indigenous communities have been working on these issues;
- develop appropriate education systems for nomadic forest peoples, learning from initiatives developed with other nomadic peoples in Latin America, Africa and Asia and promote non-formal methods for inter-generational transmission of knowledge.

e) Indigenous participation and representation

Central African governments should:

- strengthen the capacity of their agents to collaborate successfully with indigenous organisations and communities;
- train and recruit indigenous professionals to relevant government departments, government and private sector programmes and projects concerned with forests and biodiversity;
- support capacity building measures for indigenous communities to strengthen their organisations and representatives and enable their informed participation in forest and biodiversity policy and implementation;
- recognise the right of indigenous peoples to represent themselves through their own representative institutions, or new hybrid institutions, and develop new legal and administrative procedures to facilitate this;
- in collaboration with indigenous peoples, develop culturally appropriate procedures to ensure the effective representation, participation and decision-making of indigenous peoples in all aspects of developing and implementing forest and biodiversity-related laws and policy.
- in consultation with indigenous peoples establish platforms for civil society including indigenous representatives to advocate on forest issues and adequate indigenous representation on consultative groups and policy steering committees.

International agencies and NGOs should:

- support indigenous peoples to develop culturally appropriate mechanisms for local indigenous communities to share information and experiences and to organise themselves to deal effectively with outside initiatives impacting on their rights and livelihoods.

1. Introduction

This report is part of a global evaluation undertaken by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests to assess the progress made by governments in implementing the IPF/IFF's Proposals for Action (PfAs) concerning Traditional Forest-Related Knowledge (TFRK) of indigenous and traditional communities. The report also considers other international commitments related to TFRK under the Convention on Biological Diversity (CBD). The Proposals for Action were developed by the Intergovernmental Panel on Forests (IPF) and the Intergovernmental Forum on Forests (IFF) and endorsed by governments in 1997 and 2000 respectively. They include over 70 measures proposed by governments that directly or indirectly relate to Traditional Forest-Related Knowledge. The United Nations Forum on Forests (UNFF) established in 2000 is mandated to facilitate and promote implementation of the Proposals for Action. Traditional Forest-Related Knowledge was one of the themes examined at the UNFF's fourth meeting in May 2004.

This report looks at the situation of central African indigenous peoples' TFRK in relation to key issues emerging from previous studies on TFRK.¹ These studies have noted the holistic and indivisible nature of indigenous and traditional knowledge in the lives of knowledge holders, and that the promotion and development of TFRK and its application in sustainable forest management depends on the holders of traditional knowledge having :

- secure land tenure and use rights
- the ability to practise traditional resource use systems
- recognition of their own representative institutions
- decision-making power over resource use
- prior information and giving their free consent to actions affecting TFRK
- participation in formulation and implementation of forest policy and management
- legal/constitutional recognition of the right to exist as a culturally distinct group within the nation state
- capacity to organise and negotiate.

The analysis focuses on eight central African countries (Burundi, Cameroon, Central African Republic (CAR), Republic of Congo (Congo), Democratic Republic of Congo (DRC), Gabon, Rwanda and Uganda) and draws on examples from other African countries to illustrate specific points.

The report first presents an overview of indigenous peoples in central Africa and the context in which they live. It then looks at government reports, forest laws and biodiversity action plans in the eight countries covered by this report, to determine how governments are directly addressing the implementation of the IPF/IFF proposals for action on indigenous and local communities' TFRK. The report also examines the key issues of land security, access to and use of forest resources which are essential for indigenous peoples to be able to maintain and develop their traditional knowledge. A section on use and abuse of traditional forest-related knowledge is followed by an overview of the critical issue of indigenous participation in matters relating to TFRK.

1.1. Information sources

This report draws on obtainable national policy documents and laws underpinning countries' national forest planning processes including those relating to forests, environment, wildlife and conservation, land, and government reports to the UNFF and CBD. It also looks at the information submitted by governments to the CBD in view of the overlaps between the IPF/IFF Proposals for Action on TFRK and the CBD expanded programme of work on forest biological diversity – which covers implementation of Articles 8j and 10c (see Box 1) and thus addresses TFRK issues – and the CBD's programme of work on Article 8j and related provisions.² The CBD is the agency responsible for traditional forest-related knowledge within the

¹ see, for example, Bokwe et al. (n.d.); UNEP 2003a; 2003b; UNFF 2004

² UNEP 2003c

Collaborative Partnership on Forests, a group of international agencies established to support the implementation of IPF/IFF Proposals for Action and provide expertise and advice to UNFF.

Box 1: Key TFRK-related provisions in the Convention on Biological Diversity.

Article 8j

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices.

Article 10c

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

In addition, this overview consulted national government contacts (UNFF focal points, National Government National Forest Plan (nfp) coordinators, CBD national focal points and CBD Clearing House Mechanism national focal points) as well as published and unpublished research, analysis and reviews, web sites, indigenous organisations and representatives, NGOs, researchers, project staff and others with knowledge of forest policy, TFRK and indigenous peoples in the different countries.

Table 1 summarises the basic government sources of information consulted for the eight focus countries (see Annex 1 for a list of the principal documents). The coverage is uneven due to difficulties in determining what resources exist for each country, and problems in locating and obtaining many documents. In some cases respondents needed special permission to release basic policy documents, which should be in the public domain. The FAO's national forest programme site www.fao.org/forestry and www.fao.org/faolex websites are potentially useful sources of information on national forest planning, but information is lacking or partial for many countries, and many of the links are incorrect.

Table 1: Sources of information consulted for the eight focus countries

Sources of information	No. of countries
Forest Law	8
National Forest Action Programme (NFAP)	1
Forest Policy	1
National Forest Plan (nfp)	1
nfp-update (FAO web site)	2
Forest and environment sector programme	1
Land sector plan	1
Land act and policy	3
Forest sector reviews and reports	3
National Report to UNFF3, UNFF4	2
Environment Law	3
Wildlife Law	1
National Biodiversity Strategy and Action Plan (NBSAP)	6
2 nd National Report to CBD	6
National thematic reports to CBD	1
Focal Points for: UNFF, nfp, CBD and CBD Clearing House Mechanism (see Annex 1 for list of focal points)	22
Indigenous Peoples Development Plan	1

2. Indigenous peoples in central Africa

Table 2 demonstrates that African indigenous peoples live throughout the length and breadth of Africa. Most are pastoralists or hunter-gatherers, and share some or all of the characteristics of indigenous peoples as identified by external agencies.³ The Working Group on the Rights of Indigenous People/Communities in Africa, set up by the African Commission on Human and Peoples Rights describes African indigenous peoples as follows: they have cultures and ways of life that differ considerably from the dominant society and are under threat; they are dependent on their traditional lands and the resources thereon; they are discriminated against as they are regarded as less advanced than dominant sectors of society; they are often geographically isolated; and suffer from political and social marginalisation.⁴ These elements, and that of self-identification, are consistent with those proposed by several international bodies including the International Labour Organisation, the World Bank and the United Nations Commission on Human Rights. The latter organisation, for example, considers indigenous peoples to be characterised by: a priority in time compared with other peoples in the same area, voluntary perpetuation of cultural distinctiveness, self-identification as indigenous, and experience of subjugation, marginalisation or dispossession.⁵

Table 2: Indigenous peoples of Africa

Region	Indigenous Peoples	Countries
Northern Africa	Imazighe (Berbers), Teda-Daza, Touareg	Algeria, Egypt, Libya, Morocco, Tunisia
Western Africa/Sahel	Bassari , Bororo, Nemadi, Ogoni, Teda-Daza, Touareg, Wodaabe	Burkina Faso, Chad, Mali, Mauretania, Nigeria, Niger, Senegal
Central Africa	<i>* Ba’Aka , Babongo, Bacwa, Bagyeli, Baka, Bakola, Baluma, Bambenjelle, Bambuti, Bangombe, Basua, Batua, Batwa, Benet, Bofi, Bororo, Efe, Ik, Kirdi, Mbororo, Medzan, Mefa, Mikaya, Pokot</i>	Burundi, Cameroon, Central African Republic, Republic of Congo, Democratic Republic of Congo, Gabon, Rwanda, Uganda
Eastern Africa	Boni, Borana , Dahalo, ‘Dorobo’, Elmolo, Hadzabe, Maasai, Ogiek, Oromo, Pokot, Rendille, Samburu, Sengwer, Teda-Daza, Turkana, Tsamako, Tsemal, Waata, Waargee, Yaaku	Ethiopia, Kenya, Somalia, Sudan, Tanzania
Southern Africa	Anikwe, Gana, Griqua, Gui (or G wi, Hai om, Himba, ‡Hoã, Ju ’hoansi, ‡Khomani, Khwe, !Kung), , Nama, Naro, Tshua, !Xóǀ, !Xun	Angola, Botswana, Namibia, South Africa, Zambia, Zimbabwe

* *Central African forest hunter-gatherers (‘Pygmy’ peoples) are shown in italics.*

Sources: Crawhall 2004 ; Dutton (n.d.); Luling and Kenrick (n.d.); African Commission on Human and Peoples’ Rights 2003.

The term ‘indigenous’ is also used variously to refer to African populations in the sense of ‘long-term occupants of a specific area’, ‘local population’, ‘rural population’, ‘native’, ‘non-white’ or ‘inhabitants prior to colonial settlement’.⁶ However, while in a general sense all Africans are indigenous to Africa, and some African populations that are not mentioned in Table 2 may indeed be indigenous as understood in international law, it is important that the situation and rights of marginalised African peoples who have been subjects of internal repression by dominant African ethnic groups, are not obscured by the more general use

³ Indigenous peoples themselves have not sought to define who is indigenous. For a detailed account of the development of the concept of indigenous peoples in Africa see Barume 2000: 32-61

⁴ African Commission on Human and Peoples’ Rights 2003 : 58

⁵ Daes 1996; ILO 1989; World Bank 1992.

⁶ Saugestad 2001; UNEP 2003 a: 10-12;

of the term 'indigenous'.⁷ Indigenous peoples are formally recognised in some African countries, such as South Africa, Cameroon and Morocco, but many governments do not officially acknowledge the existence of indigenous peoples as understood in international law, and some have been taken to task by international treaty monitoring bodies for ignoring the situation of indigenous peoples in their countries.⁸

This review focuses on eight central African tropical forest countries (Burundi, Cameroon, Central African Republic (CAR), Republic of Congo (Congo), Democratic Republic of Congo (DRC), Gabon, Rwanda and Uganda) and their populations of indigenous forest-centred hunter-gatherers, so-called 'Pygmy' peoples, who are:

- considered by many, including the majority of farming groups, to be the prior occupants of forest lands⁹
- have a distinctive social structure, lifestyle and livelihood strategy intimately dependent on the continued existence of forest and the maintenance of its ecological functions
- are the holders and users of much traditional forest-related knowledge that is the basis for their culture
- are experiencing subjugation, marginalisation and dispossession.¹⁰

The term 'Pygmy' is sometimes used in a pejorative sense (this is not the intention here) but is also used by indigenous activists and supporters as a general and widely understood term to emphasise commonalities between the estimated 500,000¹¹ indigenous central African forest hunter-gatherers and former hunter-gatherers (see Table 2) and to distinguish them from other ethnic groups who may also live in forests but who have a greater reliance on farming, and who dominate Pygmy people in economic and political life. Many Pygmy peoples refer to themselves as 'people of the forest' and see themselves as distinct from their settled farming neighbours whom they call 'village people'.¹²

2.1. Overview of the situation of central African indigenous peoples

2.1.1. Forest-centred peoples

Traditionally-living indigenous forest dwelling Pygmy peoples have extensive and detailed knowledge about forest ecology, wildlife, and plants including medicinal plants,¹³ forming part and parcel of their cosmology and their holistic view of the forest and themselves as intimately connected and indivisible. They do not strictly speaking conceive of 'owning' the forest, but as belonging to it and being its guardians. The whole forest is sacred; the spirits of the ancestors and the forest are one and the same being. 'The spirits of the ancestors are in the forests. Spirit and forest are one, inseparable, one always.'¹⁴ Traditionally-living Pygmy peoples typically use forests in a non-exclusive way for their hunting, gathering and small-scale agricultural

⁷ African Commission on Human and Peoples' Rights 2003 : 60

⁸ see for example: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Burundi, 18/09/97, CERD/C/304/Add.42, paras 10,16,21; Concluding Observations of the Committee on the Elimination of Racial Discrimination : Democratic Republic of the Congo. 27/09/96. CERD/C/304/Add.18; Concluding observations of the Committee on the Elimination of Racial Discrimination: Uganda. 21 March 2003. CERD/C/62/CO/11.

⁹ see Vansina 1990, and also Carolis 1977; Lewis 2000; Maquet and Naigiziki 1957; Mateke 1970; Schadeberg 1999; Schumacher n.d.

¹⁰ Although there is cultural diversity between these peoples (including diversity in languages, hunting and child care patterns), commonalities in kinship, marriage and descent patterns, livelihood strategies, elephant hunting rituals and relationships with settled neighbours persist despite the wide geographic separation and different histories of forest hunter-gatherers; see Hewlett (n.d.)

¹¹ this figure is based on the following available population estimates : Batwa (Burundi, Eastern DRC, Rwanda and Uganda): 82,644-126,644; Bambuti (northeast DRC): 30,000; Bacwa and western Batwa (central and northwest DRC) 140,000; Bagyeli, Baka and Medzan (Cameroon): 100,000; Ba'Aka/Bambendjele (CAR, northern Congo, northern DRC) 30,000; Bofi, Bangombe, Baka, Mikaya, Baluma, Batua and Babongo (Congo) 16,500. sources: CAURWA 2004; Jackson 2001, 2003a; Lattimer 2004; Lewis 2000; Luling and Kenrick (n.d.); Nguiffo 2003a; UOBDU 2004.

¹² Lewis 2002a

¹³ Pygmy peoples are renowned in their countries for their medical knowledge. They treat their own people and neighbouring groups, and some wealthy individuals have installed indigenous practitioners in towns where they can have easy access to their services; see Lewis 2000 : 14; Nguiffo 2003b : 199

¹⁴ Kenrick 2004; Nguiffo 2003b : 200

activities. They consider the forest to be a source of abundance providing for all their needs; the forest can be shared with everyone, including villagers, researchers, loggers and conservationists, providing that users respect the resources, and share the resources extracted according to appropriate codes of conduct. The abundance of the forest is maintained by proper sharing between people, and between people and spirits, and by singing and dancing rituals which ensure the support of spirits to help them satisfy all their needs. Economic inequalities within groups are levelled by 'demand-sharing': whoever has more of something than they need must share it with those that don't.¹⁵

Hunter-gatherer societies still leading a traditional life are strongly orientated to meeting present needs, rather than investing labour for returns in the future. They value mobility and are non-hierarchical and egalitarian, having no overall leader. Individuals with recognised skills or experience may be designated positions of social responsibility in relevant situations, but these positions do not give the individual power and authority over others. Their influence is dependent only on their personal persuasiveness. Women have a prominent role in decision-making within the group. Decisions are taken collectively and everyone may voice their opinion, the society is inclusive. Disagreements and problems are often dealt with by avoidance and moving away from the source of difficulty.¹⁶

The boundaries of the territories of traditionally-living Pygmy clans indicate areas habitually used by the clans and their forefathers, according to living memory. The sizes of the territories depend on the size of the group, and the range of habitats needed to ensure sustainable food provisioning, and also reflect historical events such as expansion by warlike Bantu into Pygmy areas¹⁷. In northern Congo, for example, Bambendjele hunting and gathering areas range from 200,000 ha to 600,000 ha with combined Bambendjele and Bantu population densities ranging from 1 to 4.2 people per sq. km. (Table 3). Kinship links and friendly relations with other Pygmy groups enable clans to access to other forest areas. Pygmy territories overlap to greater or lesser extent with the customary lands of farming peoples, who claim exclusive or preferential rights over some forest resources, particularly those nearer to villages.¹⁸ These customary laws are usually respected by Pygmy foragers, in order to avoid conflicts over resources.¹⁹

Table 3: Bambendjele territories in northern Congo

Location	Area of Bambendjele territory (ha.)	Bambendjele population	Bantu population	Persons/sq. km.
Ibamba	199,300	181	50	1.2
Mbandza	223,900	670	273	4.2
Minganga	397,000	293	157	1.1
Berandjokou (Ibenga)	483,100	842	295	2.4
Makao (Motaba)	596,400	324	256	1.0

Source: data kindly provided by Jerome Lewis, personal communication 22.07.04.

As hunting and gathering activities do not visibly transform forest landscapes, Pygmy peoples' territories are not recognised by statutory legal proceedings for the determination of occupancy, resulting in their customary lands being deemed vacant and '*terres sans maîtres*' [lands without masters] and thereby available for appropriation for the state and transfer to other users, such as logging companies. Neither are their ancestral territories recognised under the customary laws of the surrounding farming communities for whom it is the action of transforming or 'developing' the land (*mise en valeur* [put to productive use], see 2.1.3) that confers ownership and use rights.²⁰

¹⁵ Abéga 1998; Bretin 2004; Kenrick 2004; Lewis 2002b: 6, 2004; Van den Berg and Biesbrouck 2000

¹⁶ Abéga 1998; Bretin 2004; Lewis 2000 : 8; Nguiffo 2003a: 202

¹⁷ Jerome Lewis, personal communication 22.07.04

¹⁸ Biesbrouck 1999; Van den Berg and Biesbrouck 2000: 39-41

¹⁹ Jell 1998: 34

²⁰ see Barume 2000: 96-101 for a detailed account of how statutory and customary law discriminate against Pygmy peoples.

Providing they have a sufficiently large area of forest, hunter-gatherers' mobile settlement patterns enable them to manage the distribution of their own populations around forest resources, thereby allowing exploited areas to recover and contributing to sustained forest management. In addition, depleted areas may be marked out, for example, the practice of the Bambendjele of placing leaf cones stuffed with earth on trails leading into poor hunting grounds, to indicate that the area is cursed or populated with voracious spirits.²¹

Hunter-gatherer belief systems are intertwined with resource management systems in complex and subtle ways that have been relatively little studied.²² Among the Bambendjele, *ekila* is a quality that can be ruined by not sharing food properly with people or spirits, by adultery and promiscuity, and by jealousy, resulting in bad hunting for men and lack of success in raising children for women. A good hunter may stop hunting for a while to avoid causing jealousy from other hunters which would thereby ruin his *ekila*. Some animals have big and dangerous *ekilas* and hunters avoid them; the meat of certain *ekila* animals can be harmful. Beliefs about *ekila* inform social relationships, gender roles and human-animal relations and structure the Mbendjele's use of forest resources, ensuring that the Mbendjele experience the forest as a place of abundance²³.

Throughout their history Pygmy peoples have encountered many changes and have shown considerable fluidity in behaviour, while retaining their essential autonomy. Their continuing existence is testimony to the successfulness of their strategies. As pointed out by Kairn Kliemann:

*If the descendants of hunting and gathering peoples continue to exist today as distinct socio-cultural units, it is only because at some point in the past their ancestors chose not to assimilate into the communities they adopted Bantu languages from. If such a choice had not been made, these peoples would have been integrated into agriculturalist communities like thousands of other indigenous peoples the world over whose history is now lost forever.*²⁴

However, Pygmy peoples are now facing unprecedented pressure on their lands, forest resources, communities and social institutions, as described below.

2.1.2. Impacts of the loss of indigenous lands and resources

*Before this was all our forest, our ancestors were all hunters who lived in the forest. Our fathers told us to live in this forest and to use what we needed. Komba [God] made the forest for all of us, but first of all for the Baka. When we see the forest we think 'That is our forest'. But now we are told by the government and the conservationists that it is not our forest. But we are hunters and need the forest for our lives.*²⁵

*[immigrants] are walking in the forest looking for gold [or columbo-tantalite]. They make a big village in the forest. They cut the trees, they do whatever, and it begins to cause the trees of the forest to dry up. Or perhaps, they have their mine there and it ruins that piece of the forest because they will dirty the forest in that area entirely.*²⁶

As a result of sedentarisation campaigns by colonial and post-independence regimes, the drastic reduction of forest areas available to Pygmy communities through logging, farming, development and wildlife conservation projects, and the advent of the cash economy Pygmy peoples are having to find supplementary and alternative livelihoods to their traditional hunting and gathering activities.²⁷

²¹ Lewis 2004: 12

²² An example from Venezuela is given by Colchester et al. 2004

²³ Lewis 2004

²⁴ Kliemann 1999

²⁵ Baka elder, Cameroon, cited in Lewis 2004 : 13

²⁶ Mbuti statement, cited in Tshombe 2001

²⁷ However, in northern Congo, some Mbendjele families have deliberately avoided all contact with the outside world for at least ten years, and there are likely to be many other similar groups in remote forest areas (Jerome Lewis, personal communication 08.09.04)

In some parts of central Africa, notably Rwanda and Burundi and parts of Uganda and DRC, indigenous Batwa people have been completely dispossessed of their forest lands, initially by forest clearance for agriculture and more recently by 'development' projects and protected areas, and can no longer practise forest-based livelihoods.²⁸ The majority are now landless, desperately poor and are at great risk of losing what remains of their forest knowledge. They live in small groups of flimsy huts on the edges of the villages of their neighbours, and depend for their survival on strategies such as wage labour on neighbours' farms, carrying of loads, opportunistic exploitation of natural resources such as charcoal making, crafts such as pottery and basketry, singing and dancing at festivities, and begging. A very few have found employment as community representatives, field workers and staff in indigenous organisations and projects.²⁹

In other countries such as Cameroon, CAR, Congo and Gabon and parts of DRC, Pygmy peoples still have access to large areas of forest, thereby retaining a degree of independence, but these peoples too are facing resource depletion. Many have become increasingly dependent on subsistence agriculture for survival, either working their own plots, or as manual labour for neighbouring farmers. The advent of the cash economy has had some positive aspects in enabling Pygmy people to find jobs with logging companies, on plantations, in towns as gardeners and day labourers, and as guides and assistants in conservation projects, and has thus enabled Pygmy groups to diversify their activities and also gain more economic independence from their neighbouring farming 'patrons'. On the other hand, Pygmy workers are often discriminated against, receiving lower wages and few amenities than workers of other ethnic groups.³⁰ Cash is now replacing barter and payment in kind in the traditional exchange relationships between Pygmy peoples and farming groups (see below) and is increasingly needed to pay for education and health care, and to buy household goods such as salt, paraffin, oil and soap. The increasing reliance of Pygmy people on cash and credit has increased the control of employers and Bantu chiefs, as Pygmy workers become enmeshed in debts which they are never able to pay off or work off.³¹

The demand for bush meat at high prices from logging towns, expansion of logging roads and transport of bush meat by logging trucks, coupled with increasing reliance on modern hunting techniques have increased exploitation of wildlife, both by local communities and by the outside commercial hunters who have invaded their customary hunting territories. Some Pygmy hunters have become involved in the professional bush meat trade. However, the off-take of game by outside commercial hunters is usually significantly greater than that of the local population; for example 10 times greater in one study in south-east Cameroon.³²

The sedentarisation of Pygmy communities into permanent or semi-permanent settlements along the roads results in severe health problems, particularly malaria, respiratory infections due to continual exposure to dust clouds from passing vehicles and a build up of parasite infections due to lack of clean water and sanitary arrangements. In one study in CAR, Ba'Aka people were found to have significantly heavier parasite loads than the neighbouring Bantu.³³

Pygmy groups seeking to gain more control over their lives by establishing themselves as autonomous entities dealing directly with external agencies, rather than through their Bantu 'patrons', are increasingly required to adopt hierarchical administrative structures providing representatives or 'leaders' with whom the agencies can interact, and that, in theory, provide a system for managing incoming money on behalf of the group. These new bureaucratic hierarchies are very different from the traditional egalitarian and fluid social institutions involved in consensual decision-making and the fair distribution of resources among Pygmy group members, and have contributed to erosion of social cohesion. The youth who are more literate, more fluent in official languages and better versed in the norms of dominant society, are propelled into positions of power,

²⁸ De Carolis (1977) gives a vivid account of how the Burundi Twas' forest-based hunter-gatherer economies were forced to adapt to the loss of forests and hunting groups from the late 19th century to the 1970s.

²⁹ Jackson 2003a : 6-10; CAURWA 2004; Nkurunziza 2002; UOBDO 2004.

³⁰ Republic of Cameroon 2003b

³¹ Dkamela 2003

³² according to a 1996 study by the World Conservation Society, quoted in Jell and Schmidt Machado 2002: 189

³³ Lilly 2003

undermining the traditional role of elders. The role of women in decision-making declines, as men acquire new political positions as interlocutors with outside agencies, and begin to adopt the patriarchal norms of neighbouring farming groups.³⁴

The pressures on Pygmy peoples' lands, resources and societies will continue to increase. Civil conflict and population pressure in eastern DRC is causing large-scale population migrations into the Ituri forest in the north-east, and an influx of farmers, cash-crop plantations, miners and large-scale bush meat traders, posing major threats to forest biodiversity and local peoples' livelihoods.³⁵ Destruction of forest resources, especially foods of high symbolic value such as honey and game, affects Pygmy peoples' bargaining powers and leverage in traditional exchange systems, further unbalancing social relations with villagers.³⁶

Furthermore, the state-sanctioned expansion of forest areas designated for logging, conservation and trophy hunting³⁷ is dramatically reducing indigenous forest peoples' access to their forests and resources. Already 450,000 sq. km. in central Africa (almost 11% of the land area) is now categorised as protected areas (IUCN classification I-VI) and half of this area is designated as core protected areas where human activities are generally banned. Many of these protected areas overlap indigenous peoples' lands.³⁸ Protected areas will increase as more funds become available for conservation through initiatives such as the Congo Basin Forest Partnership, which envisages the expansion of protected area landscapes by 550,000 sq. km. With donor support, logging will also increase in countries such as DRC, which is now moving out of a lengthy period of political instability which previously constrained timber exploitation.

Faced with these increased pressures, changing values and market forces, indigenous African peoples are increasingly drawn into a 'middle ground' in which their traditional mechanisms of decision-making and representation need to be adapted to better defend their rights and resources. Experience from other parts of the world indicates that successful outcomes are most often achieved when collective land tenures are secure, when indigenous peoples control the speed and process of negotiation, and deal with outside interests through hybrid institutions, with legal personality, which nevertheless remain underpinned by customary norms, cosmovisions and values.³⁹

2.1.3. Farming peoples

Many of the farming peoples⁴⁰ living in central African forests have lived on their customary lands for many generations and, like Pygmy communities, lack secure legal rights to their lands, enabling them to be taken over by the state for logging and other purposes. However among local administrations and state services there is at least recognition and acceptance of the fact that these communities have customary lands.

Farming peoples also hunt and gather in forests (but to a lesser extent than Pygmy peoples) and consider the forest to be a source of abundance and have spiritual importance.⁴¹ They too have valuable forest knowledge, but they are generally less dependent on forest resources than Pygmy peoples.⁴² Their customary land ownership is based largely on the original transformation of land through forest clearance (*'mise en valeur'*) by the forefathers of a lineage group, through which the families comprising the group acquire exclusive and heritable collective use rights over farm and fallow land and associated forest. Land chiefs may control allocation of land to lineage or clan groups, and within the groups, distribution of rights and

³⁴ Dkamela 2003 ; Jackson 2003a

³⁵ Tschombe 2001

³⁶ Peacock 1984

³⁷ Jell 1998 :12

³⁸ Nelson 2004b : 16

³⁹ Colchester and MacKay 2004.

⁴⁰ the total population of central African forest farmers is not known; however, Schmidt-Soltau (cited in Colchester 2004) gives a figure of 600,000 in Cameroon.

⁴¹ Jell 1998 :13

⁴² e.g. Jell and Schmidt Machado 2002; Liengola Baum 1999

access to resources is based on the socio-political system, family relationships and social status and identity.⁴³ Secondary use rights over parts of the land may be granted to Pygmy groups associated with a clan.⁴⁴

In many cases, present-day farmer 'villages' were artificially created through enforced settlement schemes during the colonial era, resulting in heterogeneous assemblages of lineages which lack social cohesion even though they may present themselves as unified entities when dealing with outside agents. In many of these farming groups, leadership is derived from personal achievements and a person's personal capacity to ensure internal coherence of families and enlarge families' properties including farm land. Such leaders may not be the ones appointed formally as official village leaders or chiefs.⁴⁵

Exchange relationships between central African Pygmy peoples and farming peoples, in which forest products are exchanged for cultivated foods and manufactured goods, have persisted for centuries. In situations where Pygmy groups are able to retreat into their forest domain at will, they are able to retain considerable autonomy in their transactions with the outside world, and through adroit use of interpersonal relationships with farmers, are often largely successful in obtaining the goods that they need from them.⁴⁶ But when Pygmy communities' access to forest is constrained, farmers are able to impose exploitative economic and political relationships on them. In Cameroon, for example, Bantu groups have helped settle Baka near their villages, thereby securing better access to the labour, medicinal knowledge and hunting expertise of the Baka.⁴⁷ Like Pygmy peoples, farming communities also want secure resource rights, greater participation in decisions about forest use and benefits from development programmes. Some are willing to consider joint approaches to development, but underline that if development is only possible at the cost of Pygmy groups, most farming groups could not afford to miss out on this opportunity for economic reasons.⁴⁸

2.1.4. The State

Throughout central Africa, indigenous forest hunter-gatherers are subject to discrimination and marginalisation at local and national levels as a result of their ethnic identity as 'Pygmies' and their forest-based way of life. Discrimination typically consists of negative stereotyping (they are labelled as stupid, dirty, dishonest, backward, subhuman etc.), segregation (they may not be allowed to eat or drink with, or sit next to, other people or use wells at the same time) and abuse of rights.⁴⁹ They have great difficulty in asserting basic citizens' rights – for example, the Ba'Aka were officially declared citizens of CAR only in 1989. In many countries Pygmy people are not able to exercise their citizenship because they do not hold ID cards and birth certificates. This is due to their prohibitive cost (e.g. half the average annual income of Baka and Bagyeli in Cameroon⁵⁰) and the obstructive attitudes of local officials. Without this documentation, Pygmy people are not able to interact on a legal basis with government services, they cannot register to vote or approach local authorities to deal with complaints.

As described above, hunter-gatherers' customary rights to land are generally not recognised in national law or the customary law of dominant society, and the few farm plots that are held by Pygmy households are vulnerable to expropriation by other groups and local authorities.⁵¹ They have poor access to education and health due to poverty, and a very high drop out rate from schools, largely due to poverty and discrimination against Pygmy children. They are paid lower wages than other ethnic groups and have difficulty using the

⁴³ Lavigne Delville 2000; Nelson 2004a; van den Berg and Biesbrouck 2000: 66

⁴⁴ Barume 2000:99-101; Biesbrouck 1999; Van den Berg and Biesbrouck 2000: 39-41

⁴⁵ Colchester 1994a ; Lescuyer 2003 ; van den Berg and Biesbrouck 2000

⁴⁶ Lewis 2002a

⁴⁷ Nguiffo 2003a : 202

⁴⁸ Republic of Cameroon 2003b

⁴⁹ Barume 2000; Jackson 2003a; Kenrick and Lewis 2001; Lewis and Knight 1995; Nkurunziza 2002; Woodburn 1997

⁵⁰ Republic of Cameroon 2003c

⁵¹ CAURWA 2003

justice system and asserting their right to represent and speak for themselves and to participate equally in decision-making in local and national processes.⁵²

Pygmy peoples are one of the most vulnerable groups affected by the decades of armed conflict in the Great Lakes region of Africa, including the Rwandan genocide⁵³ and the ongoing civil wars in Burundi and DRC. The warring factions have inflicted severe human rights abuses on the region's Batwa and Bambuti people, including summary execution, abduction, rape, sexual violence and cannibalism. Violence is often linked to the perpetrators' beliefs that, as forest dwellers, the Batwa and Bambuti have special powers. A frequent justification for rape is the prevailing belief is that sleeping with a Pygmy woman will cure backache.⁵⁴

All the central African countries have constitutional provisions against discrimination, including discrimination on ethnic grounds, and most have provisions for supporting minority and vulnerable groups (see Table 4). However, in practice, Pygmy people experience discrimination and marginalisation on a daily basis.

Through their ratification of international human rights instruments including 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 and the African Charter of Human and Peoples' Rights, central African states have undertaken to protect indigenous peoples' rights to culture, including their traditional economic and subsistence activities, their lands and resources.⁵⁵ For example, the Committee on the Elimination of Racial Discrimination has made clear in its General Recommendation XXXIII on Indigenous People (1997) that the Convention applies to indigenous people, 'many of whom have lost their lands and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.' The Committee confirms that states are required to:

- (a) recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;*
- (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;*
- (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;*
- (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;*
- (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.*

The Committee particularly calls on states to :

*recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.*⁵⁶

These commitments and similar requirements to protect indigenous rights under other international human rights conventions have not yet been incorporated into national law in central African countries. There are signs that some elements are beginning to be incorporated in national policies (see section 4) but generally

⁵² Jackson 2003a :9 ; Nguiffo 2003b: 199

⁵³ Up to 30% of the Rwandan Twa population is thought to have been killed during the 1994 genocide in Rwanda (Lewis and Knight 1995).

⁵⁴ Jackson 2003a; Lattimer 2004.

⁵⁵ CERD 1997a; Committee on the Rights of the Child 2003; MacKay 2001

⁵⁶ CERD 1997a

central African officialdom is not yet ready to recognise and accommodate the distinctive forest-based lifestyle of Pygmy peoples, which is widely considered to be backward. As one conservationist notes:

*...some Pygmies are tiring of their way of life of moving around all the time. As in Ituri they have settled down. The forest is a very hostile environment. . . . Life in the forest is not convenient to them. They are being drawn out towards civilisation. Being civilised means being settled so you can be near health centres and have education facilities. We must help our brother Pygmies to exercise their right to development. Forests are not an appropriate environment for human life.*⁵⁷

Although policy makers are beginning to be aware of the need for special provisions for these peoples, development policies remain essentially assimilationist, encouraging indigenous peoples to become settled and take up farming, in order to 'stabilise' them and integrate them into national society where they can receive the benefits of conventional education and health care.⁵⁸

The sceptical attitude of some people working with Pygmy people contributes to an impoverished dialogue with them:

*... [the people responsible for projects with Baka] see the Baka as opposed to any idea of progress. Convinced in advance of the futility of their efforts, [they] pass up the opportunity for true reflection, and above all, a profound collaboration with the Baka.*⁵⁹

In some countries, Pygmy peoples have difficulty in asserting their indigenous identity, for example in Rwanda. The post-genocide Rwandan policy is to avoid any reference to ethnicity, or to discussions about priority in time of one group versus another, to promote better relations between the two main ethnic groups, the Bahutu and Batutsi, who have battled for political power for many decades.⁶⁰ As a result there are no policies specifically to address the disadvantaged situation of the indigenous Batwa – although unofficially the authorities recognise that the Batwa are particularly vulnerable – and Batwa organisations' campaigns for equal treatment and recognition of their indigenous identity is politically risky.

⁵⁷ DRC conservation representative, cited in Nelson and Hossack 2003: 107

⁵⁸ Abéga 1998: 70-72; CERD 1997b: para 39; Jackson 2003b

⁵⁹ Abéga 1998: 116

⁶⁰ *The Economist* 2004

Table 4: Constitutional provisions promoting protection of indigenous peoples and recognition of their rights

Burundi	Transitional Constitution 2000	<ul style="list-style-type: none"> • ‘Deliberate promotion of disadvantaged groups, particularly the Twa, to correct the existing imbalances in all sectors.’ • The Government must provide special assistance for the protection, rehabilitation and advancement of vulnerable groups. • Three places are reserved for Batwa in the senate.
Cameroon	Constitution 1996	<ul style="list-style-type: none"> • ‘The State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law.’
CAR	Constitution 1995	<ul style="list-style-type: none"> • The state guarantees ‘the security of persons and goods, protection of the weakest, notably vulnerable people, minorities, and the full exercise of liberties and fundamental rights.’
Congo	Constitution 2000	<ul style="list-style-type: none"> • ‘The right to culture and to respect for the cultural identity of each citizen is guaranteed.’
DRC	Transitional Constitution 2003	<ul style="list-style-type: none"> • All ethnic groups and nationalities living in DRC since independence have equal rights and protection under the law.
Gabon	Constitution 2000	No provisions
Rwanda	Constitution 2003	<ul style="list-style-type: none"> • The state shall provide special measures for the survivors of genocide, the disabled, the indigent, the elderly and other vulnerable groups. • Seats for eight representatives of ‘historically marginalized communities’ [deemed to include the indigenous Batwa] are reserved in the Senate.
Uganda	Constitution 1995	<ul style="list-style-type: none"> • ‘Minorities have a right to participate in decision-making and have their views taken into account in the making of national plans and programmes.’ • ‘The State shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies.’ • ‘Every effort shall be made to integrate all the peoples of Uganda while at the same time recognising the existence of their ethnic, religious, ideological, political and cultural diversity.’ • Every person has the right to practise and promote their culture in community with others. • ‘The State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom.’

2.1.5. African regional processes

Following the end of the Cold War in the early 1990s, the ideology of states providing ‘foreign assistance’ to Africa broadened out from the need to keep friendly governments in power and more towards promoting democratic reforms and sustainable development. In the last 10 years, the eight central African governments in this survey have promulgated new constitutions (Table 4) generally moving towards increasing accountability and sharing of power. Political instability and internal or external armed conflict nevertheless continue to afflict DRC, Congo, CAR, Rwanda, Burundi, and Uganda. Over the past decade, conflict and poor economic performance and governance in much of central Africa have contributed to donor disillusion resulting in decreased bilateral development funding, while lending by the World Bank and IMF has increased, focussing on economic liberalisation, privatisation and increased macro-economic efficiency through Structural Adjustment Programmes. This has created many problems, including exposing weak economies to globalisation, dismantling of services that benefited the poor, increased unemployment in the public sector and the capture of privatised sectors of the economy (particularly high-value resources such as timber and minerals) by corrupt or incompetent patronage networks.

Donors and lenders are now shifting to disbursing funds through economic planning frameworks placing greater stress on poverty reduction and involvement of civil society in economic planning (Poverty Reduction Strategy Programmes - PRSP) and budgetary support to governments that are deemed to be moving towards good governance, rather than project-based funding. Some commentators argue however that these PRSPs

cannot address poverty effectively as they retain essentially the same liberal economic underpinnings of Structural Adjustment Programmes. Nevertheless national forest policies and programmes are now increasingly set within a poverty-reduction framework (e.g. Uganda, Cameroon), potentially shifting the objectives from forests as a source of foreign exchange revenue for the state towards increasing the benefits of forests for citizens and rural communities.

Although good governance is high on the agenda of international donors, and has been espoused by continental African bodies such as NEPAD (see below), effective and robust accountability mechanisms are still largely lacking and civil society has remained essentially passive rather than an influential force in government planning and decision-making – although this is now beginning to change in some countries, e.g. Uganda, Cameroon.

Over the last ten years several continental and regional initiatives have been instituted that aim to foster increased civil society participation in decision-making about central Africa's forests, within the context of promoting sustainable forest management, poverty reduction, conservation of wildlife and increased revenues from natural resources:-

The **Conférence sur les Ecosystèmes des Forêts Denses et Humides de l'Afrique Centrale (CEFDHAC)**, an inter-governmental ministerial forum, was launched in 1996 to promote harmonisation of forest policies and sustainable use initiatives between central African countries. IUCN provides the secretariat. As a regional framework for foreign funding CEFDHAC has been now overtaken by COMIFAC and the Congo Basin Forest Partnership (see below) and the initiative was weakened by internal struggles for political control in its early years. However, it is more open to direct dialogue with civil society than COMIFAC. Initially social aspects of forests were virtually absent in CEFDHAC deliberations, but with increasing participation of indigenous peoples⁶¹ (initially facilitated by international NGOs) CEFDHAC has come to recognise the role of indigenous peoples in sustainable forest management. The 4th CEFDHAC Conference in 2002 recommended that the livelihoods of central African indigenous peoples should be secured and legal frameworks for collaboration between private sector and indigenous and local communities in the management, use and marketing of forest products should be developed. Since then, under the auspices of CEFDHAC, IUCN has been working to foster dialogue with indigenous peoples, and between indigenous peoples and governments, in several central African countries and is establishing an indigenous peoples' network under CEFDHAC. Indigenous representatives feel this will strengthen their voice in CEFDHAC, although the network is not controlled by indigenous people. At CEFDHAC meetings indigenous peoples have called for their participation in protected area management to be substantially increased and for legal provisions to ensure that they receive an equitable share of revenues from protected areas and natural resource exploitation.⁶² At the 5th CEFDHAC meeting in 2004 indigenous issues were given some prominence through a parallel roundtable on the role of indigenous peoples in sustainable forest management in central Africa.

Based on the Yaoundé Declaration of 1999 agreed by central African forest ministers as a framework for sustainable forest management, the governments of Cameroon, DRC, Chad, CAR, Congo, Gabon and Equatorial Guinea have agreed to coordinate action on sustainable ecosystem management in the Congo through the **Conference of the Ministers of Central African Forests (COMIFAC)**. Objectives of COMIFAC include harmonising forest policy, expanding protected areas to 30% of land area within 10 years, increasing participation of rural populations in ecosystem management and retaining areas sufficient for their economic, social and cultural development, and controlling commercial poaching and other unsustainable forest exploitation. The COMIFAC's Convergence Plan for 2003-2005 intends to, *inter alia*, 'carry out forest zonation while respecting the territories of indigenous populations, notably those of Pygmies' and increase involvement of local populations in sustainable forest management, including increasing the share of forest revenues 'to the local populations, including Pygmies.' However, African activists consider that the Convergence plan does

⁶¹ Declaration by the Indigenous Peoples of Central Africa to the 2nd Conference on Central African Moist forest Ecosystems (CEFDHAC), cited in World Rainforest Movement 2002 : 23-24

⁶² IUCN-CEFDHAC 2003, 2004

not adequately address issues of poor governance in the forestry sector and suffers from lack of political will.⁶³

COMIFAC and its Convergence Plan were adopted as a key foundation by the **Congo Basin Forest Partnership (CBFP)** announced at the Johannesburg World Summit on Sustainable Development (WSSD) in September 2002, backed mainly by the United States and also France, United Kingdom, Japan, South Africa and Germany. The CBFP aims to promote partnership between governments, civil society and private sector for sustainable management of forests in Cameroon, CAR, Congo, Gabon, DRC and Equatorial Guinea, through support for community-based forest management, sustainable agriculture, improved timber harvesting, ecotourism, enforcement of laws against illegal logging and poaching and supporting a regional network of national parks, protected areas and wildlife corridors. US funds of some US\$ 50 million during 2002-2005 are earmarked for 11 key 'landscapes' in the Congo Basin, that will increase the area under protection by some 500,000 sq. km., potentially further restricting access of indigenous peoples to forest resources.

The **New Partnership for Africa's Development (NEPAD)** is an inter-governmental initiative launched in October 2001 promoting good governance as a key factor for the development of African countries' economies.⁶⁴ It aims to foster democracy and human rights through accountability, transparency and participatory governance, and monitor governments' progress through a Peer Review Mechanism. Some civil society organisations have commented that NEPAD is a soft method of re-colonising Africa through globalisation and neo-liberal economics, contains little new in terms of policies or actions, is a top down process lacking mechanisms for meaningful civil society input, and risks creating competition with ministries and agencies for funding by implementing its own projects and programmes.⁶⁵ NEPAD intends to protect indigenous (i.e. African) knowledge through collaboration with the World Intellectual Property Organisation (WIPO) on intellectual property rights regimes. NEPAD's Environmental Action Plan seeks to increase community participation in policy development and sustainable forest management and promote devolution of forest ownership and management; it recognises the importance of traditional/indigenous knowledge in health, poverty reduction and the environment. The Environmental Action Plan includes a list of forest projects proposed by central African environmental ministers in June 2003 including the elaboration of a land use plan that 'secures the territories of indigenous populations', and mechanisms to 'increase the revenues obtained by local populations, including Pygmies, from the exploitation of forest and fauna resources'.⁶⁶ However, these projects do not appear on NEPAD's December 2003 list of priority environmental projects, and therefore may not be carried out.

The **Africa Forest Law Enforcement and Governance (AFLEG)** process is being co-ordinated by the World Bank and funded by the governments of the United Kingdom, France and the United States. It involves all African governments, and aims to strengthen their capacity for forest law enforcement, in particular concerning illegal logging and hunting, associated trade and corruption. Environmental and human rights NGOs are concerned that many existing forest laws do not protect forest peoples' lands and subsistence activities, and that enforcement of current laws would only intensify pressure on forest communities by making them illegal users of state-owned natural resources.⁶⁷ Despite a negotiation process that excluded civil society inputs, some of these concerns were incorporated by AFLEG's first ministerial meeting in October 2003 which committed AFLEG to consider *inter alia* traditional and customary laws and practices when developing forest legislation and to take measures to ensure that property and usufruct rights, including traditional forest-related knowledge, are fully respected. Actions to implement these commitments are however not clearly set out.

⁶³ Nguiffo 2003c

⁶⁴ NEPAD 2001

⁶⁵ Climate Network Africa 2003; de Waal and Tajudeen Abdul Raheem 2004.

⁶⁶ UNEP 2003d

⁶⁷ CED et al. 2003; Colchester 2004

3. Specific actions on TFRK

3.1. Official reporting

Country reports to UNFF

Voluntary national reports to the UNFF give countries an opportunity to report on their progress in implementing proposals for action. Only three African countries (Algeria, Sudan and DRC) submitted reports to UNFF4. Four African countries (Algeria, Burundi, Kenya and Mauritius) submitted reports to UNFF3 and none to UNFF2.

UNFF4 report guidelines request, *inter alia*, information on countries' implementation of Proposals for Action on TFRK, in particular activities to research and apply TFRK to sustainable forest management, and to develop protection regimes and benefit sharing for TFRK.

In relation to TFRK, DRC's UNFF4 report briefly states that studies on the protection and maintenance of TFRK are underway. They will include cataloguing traditional knowledge and assessing capacity building and financial needs to maintain this knowledge and integrate it into national strategic plans relating to biodiversity, but there is no mention of how TFRK issues will be incorporated in forest planning. The report does not elaborate the modalities of these studies or how indigenous and local communities are to be involved. Benefit sharing studies are also reported to be in progress.

Contact/focal points

Of the eight countries in this survey, only Congo and Uganda had UNFF focal points (Annex 1). It is noteworthy that of the 22 focal points contacted for UNFF, nfp, forest policy and CBD-related information, only four replied, and none were able to provide information, citing lack of time to respond or lack of information. In the countries surveyed, focal points thus appear to have limited scope for increasing information sharing on forest and biodiversity issues between governments and civil society.

Country reports to CBD

Parties to the Convention on Biological Diversity are invited to submit voluntary reports on various aspects of their CBD-related work. The format of the 2nd National Report to CBD requires countries to answer questions about their implementation of Articles 8j and 10c (which focus on traditional knowledge and cultural practices (see 1.1), using a multiple choice system in which countries tick relevant boxes and write additional comments if they wish. This format generates some ambiguities due to generalised and overlapping questions. For example, indigenous and local communities embodying traditional lifestyles are regarded as a single group in certain questions, and lumped with the private sector in others, thereby making it impossible to assess specifically how indigenous peoples are benefiting. The questions asked are qualitative and process-orientated and do not permit an in-depth or objective assessment of a country's achievements.

Bearing these factors in mind, Box 2 shows general conclusions from an analysis of the twenty-four 2nd National Reports submitted by African countries to the CBD, including six reports from the eight central African countries examined in this survey. At the time of the report (May 2001) few African countries had undertaken advanced or substantial measures to implement Article 8j. While many had undertaken some measures or were considering measures, it is not clear how substantial these were and whether they would meet countries' commitments under the CBD. The Article 8j programme of work was not being implemented vigorously. Documentation and information sharing between countries concerning their experiences of implementing Article 8j was limited. Participation of representatives of indigenous and local communities in CBD working groups and meetings, or in official delegations, was very limited, yet countries generally considered they were facilitating the full and effective participation of indigenous and local communities in the implementation of the Convention – this must therefore be via mechanisms other than participation in meetings and perhaps refers to their implication as beneficiaries and receivers of information. Though traditional knowledge was a high priority for these countries, resources were not available, or were not being allocated.

Box 2: Progress by African countries in implementing articles 8j and 10c, as reported in their in 2nd National Reports to the CBD.

This synopsis is based on the twenty-four 2nd National Reports submitted to the CBD - six from central African countries (Burundi, Cameroon, CAR, Republic of Congo, DRC and Uganda) and 18 from other African countries (Benin, Burkina Faso, Botswana, Djibouti, Eritrea, Ethiopia, Gambia, Guinea Bissau, Madagascar, Mali, Malawi, Mauritius, Morocco, Namibia, Niger, Senegal, Tunisia, Zimbabwe).

- (Q103,104) Implementation of Article 8j is a high priority, but resources are lacking.
- (Q10 5) Almost all responding African countries say they are doing something to respect, preserve and maintain knowledge innovations and practices of indigenous and local communities, but none have comprehensive measures in place.
- (Q107) The majority are in the early stages of working on legislation and strategies to implement Article 8j, or are not developing strategies.
- (Q120) Most countries have taken some measures to promote conservation and maintenance of knowledge of indigenous and local communities but the central African countries are doing less.
- (Q 112,113,114, 115) The CBD's Programme of Work on Article 8j is not being carried out vigorously by African countries.
- (Q121) Most countries, except central African countries, are starting Traditional Knowledge registers.
- (Q123) Clearinghouse mechanisms are not yet being used effectively to enable indigenous peoples and local communities to make informed decisions concerning release of information about their traditional knowledge.
- (Q106) Most countries are in the early stages of developing measures for equitable benefit sharing of indigenous peoples and local communities' knowledge, or are not working on this issue.
- (Q108,109, 118,119) Experiences on implementing Article 8j are not yet being documented or widely shared.
- (Q 111,112, 116, 117) Direct participation of indigenous peoples and local communities in meetings and CBD business is very limited but most countries, except central African countries, say they are facilitating indigenous participation in implementation.
- Art 10c (Q141,148) Most countries report some measures in place to protect and encourage customary use of biological resources and are developing mechanisms to involve 'indigenous peoples and local communities and the private sector' in sustainable use initiatives.
- Art 15 (Q 222,226) Measures for equitable benefit sharing between states and development of guidelines and practices on benefit sharing are non-existent or weakly developed.
- (Q 369) The participation of stakeholders, including indigenous communities, in the Forest Biodiversity Programme of work is limited.

3.2. National laws and policies on forests and biodiversity

Since the revision of the Cameroon forest law in 1994, Congo, Gabon, DRC and Uganda have followed suit. Burundi, CAR and Rwanda still retain forest laws from the 1980's and early 90's. National Forest Plans are supposed to be the mechanism for implementing the UNFF Proposals for Action. They are envisaged as 'a socio-political dialogue process between all relevant stakeholders concerned with forests' involving a broad, cross-sectoral process to formulate and agree on coherent strategies and action plans and methods of implementation, monitoring and evaluation.⁶⁸ So far only Uganda has produced its National Forest Plan; the other countries are still in the planning and development stage. National Forest Action Plans (NFAPs) developed during the early 1990s remain components of forest policy in some countries. All of the countries have produced National Biodiversity Strategies and Action Plans (NBSAPs) during the last five years (Table 5).

⁶⁸ BMZ 2002

Table 5: National forest laws and policies, and National Biodiversity Strategies and Action Plans

	Forest Law	NFAP	NFP	NBSAP	FESP
Burundi	1985		Plans	2002	
Cameroon	1994	1995	Plans	1999*	2003
CAR	1990		Plans	2000	In prep
Congo	2000	1995	Plans	2002	In prep
DRC	2002	1990	Plans	2000, 2002	
Gabon	2001	1999	Plans	1999	In prep
Rwanda	1988	1994	Plans	2003	
Uganda	2003		2002	Draft	

* to be revised under the recently initiated Forest and Environment Sector Programme.

With World Bank support, Cameroon, Gabon, CAR and Congo have recently started developing Forest and Environment Sector Programmes (FESP) as frameworks within which to coordinate environment and forest sector legislation, strategies and planning, and giving greater emphasis to social concerns. (Table 5). Cameroon's FESP has been published; the others are still in draft but apparently follow the same logic.⁶⁹ The Cameroon FESP emphasises the role of forests in poverty reduction and aims for sustained improvement in the lives of forest-adjacent communities and the participation of local populations in decision-making with continued devolution of forest management to local communities (Box 3), however, does not refer to indigenous peoples or explicitly to TFRK. It is seen as a mechanism for addressing COMIFAC objectives (see 2.1.5). In line with World Bank policies on indigenous peoples, the FESP has produced an Indigenous Peoples Development Plan (Box 11). This plan is possibly the first central African forest policy document specifically addressing indigenous peoples' needs.

Box 3: Forest and Environment Sector Programme, Cameroon

Cameroon's 10-year Forest and Environment Sector Programme (FESP 2003), co-funded by the World Bank, aims to ensure the 'conservation, management and sustainable exploitation of forest ecosystems so as to meet the local, national, regional and global needs of present and future generations', and to 'improve the living standards and conditions of rural dwellers through the sustainable management of forest ecosystems.' The programme will work in 26 priority 'landscapes' targeted for gazettement and improvement of management effectiveness.

The programme has five components covering environmental regulation and information management, management of production forests, protected area and wildlife management, community forest resources management and a cross-cutting component on institutional strengthening, training and research. A key objective of the FESP is sustained improvement in the lives of forest-adjacent communities and the participation of local populations in decision-making with continued devolution of forest management to local communities.

The following provisions are of particular relevance to indigenous peoples:

- develop environmental regulations and carry out impact assessments
- completion of the zoning plan classifying forests into permanent and non-permanent forest
- creation of new protected areas to expand the protected area from 14% to 17% of the land surface
- recognition of use rights of local populations in protected areas
- participatory protected area and hunting zone management including (i) design and adoption of new-regulations, (ii) support to community involvement on protected area management, (iii) support to community management of hunting zones, and (iv) community consultation & training

⁶⁹ Kai Schmidt-Soltan, personal communication 28.09.04

- design and implementation of protected area management plans including (i) design and implementation of a national bush meat control strategy, (ii) surveillance of protected areas and hunting zones
- design and implementation of new wildlife trade and review of tourism management, development and revenue retention in protected areas
- design and adoption of new wildlife and protected area law or regulation
- review of the legal and institutional framework for community forestry
- doubling the number of community forests in five years.

The FESP itself does not mention indigenous peoples. Although it potentially enhances opportunities for local communities in general, many of the components e.g. zoning and community forestry (see 4.3), creating of new protected areas (4.4) and provisions on hunting (4.5.1), also have potentially negative impacts on indigenous peoples, or indigenous peoples may not be able to benefit equally. Although the programme does not envisage the need for any involuntary resettlement of people, the measures could result in loss of lands used traditionally by Pygmy communities. The FESP has thus triggered the World Bank's safeguard policy (Operational Directive 4.20) on indigenous peoples, which requires an Indigenous Peoples' Development Plan (IPDP) to be prepared to ensure that indigenous people benefit from the FESP and to avoid or mitigate potentially adverse effects on them (see Box 11 for details of the IPDP).

Source: Cameroon FESP 2003a; World Bank 2003; Republic of Cameroon 2003b

Based on the documents consulted, central African forest policies and laws have incorporated few measures explicitly aimed at identifying, recognising, respecting and maintaining TFRK or inventorying, cataloguing, retrieving and applying TFRK, and advancing its use for SFM as set out in the Proposals for Action. Uganda gives most attention to this subject (see Box 4), recognising the value of traditional knowledge and resource use mechanisms and proposing building on existing local institutional mechanisms, skills and knowledge, traditional resources and land management systems via its National Forest Plan and other policy mechanisms. This level of consideration of traditional knowledge and local community concerns reflects the more participatory nature of the development of Uganda's forest policy and National Forest Plan, which involved local level consultations across a range of social backgrounds, livelihood studies in nine areas and reviews of 44 forestry initiatives.⁷⁰ However, indigenous forest peoples such as the Batwa were not consulted directly.

Box 4: Measures to promote traditional knowledge in Ugandan policy.

Uganda's policies describe indigenous knowledge (in the broad sense of knowledge held by local communities) and its value for development and forestry, for example: .

... indigenous knowledge has not been recognised as a vital development tool and there has been little demand for research into this area. Local people use indigenous knowledge to make a living in many environments, including forestry. There is an increasing need to incorporate indigenous knowledge practices in all sector development plans. In forestry, indigenous knowledge is important in resource management systems and extension service provision. It is based on sacred controls, pragmatic rules, civic contracts and initiation of new controlling institutions and rules. Some sacred forests are put aside for prayers, rituals and traditional ceremonies and as burial grounds. Pragmatic controls exist in agreed social rules to promote the conservation of forest resources. Civil norms exist, such as taboos and myths which have implicit rules on forest conservation, the "do's" and "don'ts" in forest reserves and game parks. Indigenous knowledge research can deepen the understanding of these processes and norms and explore their application to the sector's development (National Forest Plan).

⁷⁰ Geller and Khaukha 2003

Uganda's Forest Sector Review and National Forest Plan note the lack of research and information about TFRK: for example, an adequate description of traditional forest management practices is lacking, there is little data on the use and availability of non-wood forest products, the use of bush meat is significant but unrecorded, and indigenous knowledge has been neglected as a development tool.

Proposed measures that would promote traditional knowledge include:

- Protect historical and cultural interests of people resident in wildlife conservation areas, and elements, objects and sites in the natural environment which are of cultural significance
- Integrate traditional knowledge for conservation of biological diversity with mainstream scientific knowledge
- Protect traditional uses of forests which are indispensable to the local communities and are compatible with the principle of sustainable development; particularly support customary users and owners in the reinstatement of traditional systems of management and control
- Regulate resource management on common lands through traditional community institutions; protect customary land and resource use rights; pastoral groups to have secure access and user rights to traditional grazing areas and water
- Incorporate national biodiversity priorities in forest operations: *The involvement of local communities in the protection of biodiversity resources is important for their conservation and development.... It...involves an increased understanding of indigenous knowledge, innovations and practices. Forest conservation programmes will integrate such knowledge, and ensure the recognition of customary use of biological resources along with traditional cultural practices. This will also encourage the development and use of indigenous and traditional technologies, and develop the equitable sharing of benefits arising from the use of such knowledge, innovations and practices.*
- *Where customary forests are considered to have significant subsistence, economic, environmental or cultural value, or where there is a history of communal management through traditional systems of regulation and control, a local community may decide to formally register ownership.*
- Indigenous knowledge research will contribute to the development of the forest management sector .

Source: Environmental Management Policy (1994); Environmental Statute (1995); Forest Policy (2001); Forest Sector Review (2002); National Forest Plan (2002); Wildlife Statute (1996)

References to traditional knowledge occur more frequently in National Biodiversity Strategies and Action Plans (NBSAPs) than in forestry laws and planning, because of greater national awareness of commitments under articles 8j and 10c of the CBD, which countries are encouraged to implement through the CBD's programme of work on Article 8j and the expanded programme of work on forest biological diversity. According to the 2nd National Reports to the CBD, central African countries, except Burundi, consider this area of work to be of high priority.

However, central African NBSAPs do not provide a strong policy framework for protecting, promoting and developing the TFRK of central African indigenous peoples. Table 6 outlines how six of the eight central African countries in this survey deal with traditional knowledge issues within their NBSAPs. The NBSAPs do not differentiate between indigenous peoples and local communities, or propose specific measures concerning indigenous peoples' knowledge : only two countries (CAR, Gabon) mention indigenous peoples, and only in passing. Three countries (Congo, DRC, Gabon) include introductory remarks about respect for knowledge, innovations and practices of local and indigenous groups being one of the guiding principle informing approaches to biodiversity conservation but do not elaborate how this will be achieved. Traditional knowledge is mentioned mainly under objectives relating to sustainable resource management and conservation (Cameroon, CAR, DRC) and to developing the economic potential of biological resources including non-wood forest products (NWFP) (CAR, Cameroon, DRC).

The most common actions proposed by the NBSAPs in relation to traditional knowledge are compiling information on traditional knowledge through research and workshops (Cameroon, CAR, DRC, Gabon) and assessing the economic and cultural value of NWFPs, usually within a context of income-generation

(Cameroon, CAR, Congo). Other actions concern supporting traditional practitioners (CAR, Congo, Rwanda) and increasing public awareness (CAR, Gabon). None of the countries propose measures to ensure that knowledge holders control access and use of their knowledge, and only Cameroon explicitly mentions that traditional knowledge will be compiled and promoted with the participation of knowledge holders. None of the NBSAPs link the promotion of traditional knowledge to secure land tenure, although Gabon makes this point indirectly, noting that decentralisation allows greater application of traditional management methods and that the role of the population in biodiversity conservation will depend on better definition of property rights and the legal obligation of the state to protect those rights. CAR also notes that biological resource management requires integration of property and use rights in legislation and strengthened community control over access and management of resources. Only CAR refers to upholding the principle of the free, prior and informed consent of the ‘parties’ when developing legislation on access to biological resources and benefit sharing, but does not specify who these parties will be.

Table 6: NBSAP approaches to Traditional Knowledge in six central African countries

Principles adopted	No. countries
Indigenous peoples mentioned	2
Respect for knowledge, innovations and practices of indigenous and local groups cited as a guiding principle	3
Knowledge holders control access and use of knowledge	0
Knowledge holders participate in actions proposed	1
Traditional knowledge is linked to secure resource tenure	(2)
Free prior and informed consent	1
Supporting traditional knowledge will contribute to:	
Sustainable forest management, management of protected areas and flora and fauna, reforestation	3
Promotion of local participation in biodiversity conservation	2
Promotion of indigenous and local knowledge	1
Sustainable and economic use of biological resources including NWFP	3
Actions proposed	
Record and document traditional knowledge	4
Support traditional practitioner groups	3
Increase public awareness and information about traditional knowledge and practices	2
Assess socio-economic and other values of biological resources, impacts of their use, develop income-generating activities	3

Source: NBSAPs of Cameroon, CAR, Congo, DRC, Gabon (incomplete document), Rwanda. NBSAPs of Burundi and Uganda could not be obtained.

3.3. Acknowledgement of the traditional knowledge and rights of indigenous peoples

In the forest and biodiversity policy documents consulted, central African governments made few explicit statements explaining their understanding of indigenous peoples’ traditional knowledge and rights within the national context (see Box 5) and little specific reference to indigenous peoples. The Gabon NBSAP describes the population as comprising named ethnic groups ‘and the pygmies’. CAR’s Biodiversity Action Plan refers to Ba’Aka indigenous populations as stakeholders and its Thematic Report to the CBD on Benefit-Sharing affirms the existence of indigenous groups notably Ba’Aka Pygmies and M’Bororo pastoralists, ‘as well as other groups native to certain regions’. The Uganda National Forest Plan recognises that the ‘Abayanda (Batwa) who were evicted from Mgahinga and Bwindi Forests [have experienced] a significant loss of cultural identity’.

Box 5: Examples of policy statements recognising indigenous peoples' knowledge and traditional practices.

CAR

...respect for the cultural identity and social organisation of local and indigenous people is essential to maintain their knowledge, innovation and practices.

NBSAP (2000).

DRC

In the past the ancestors knew how to conserve and preserve natural resources keeping a balance between their use and their conservation. These practices, adapted to local cultural contexts, have mostly been abandoned in favour of so-called modern practices, which have also demonstrated their limitations. Hence the importance of documenting them, building on them and giving them value again.

[commenting on lack of implementation of article 8j-related measures] *The application of [article 8j] requires explicit political will to take into account knowledge and other practices of indigenous and local communities that have a positive impact on the sustainable management of resources. Furthermore, the backward image of these practices in public opinion must be improved via awareness-raising campaigns, training and information provision.*

2nd National Report to CBD (2001).

Gabon

It is necessary to take into consideration traditional cultural practices, use them and preserve them, with the combined support and participation of [local] populations and public and private actors.

The Gabonese public recognises the role of indigenous peoples and local populations in the protection and use of biodiversity...(rest of document section corrupted)

NBSAP (1999).

Rwanda

The Batwa are recognised by the Rwandan people and the international community as a group that has conserved nature for a long time . They have thus a rich 'knowledge/traditional practice' in conservation which should be valued and promoted.

Draft NBSAP (2000). This statement was deleted from the final version (2003)

The draft version of the Rwanda NBSAP (2000) made specific reference to the knowledge of the indigenous Batwa (see Box 5) proposing that management of protected areas should be strengthened by involving local populations, including by 'the promotion and valorisation of the knowledge of the indigenous people, the "Batwa", in wildlife conservation' and specifying in the action plan the recruitment of Batwa as trackers, guides and guards, and the resettling of Batwa close to protected areas. The draft NBSAP says: 'Tourism creates employment and including Batwa among staff associated with protected areas would be beneficial for them...' However, these recommendations were do not appear in the final version of the Rwanda NBSAP (2003). The inclusion of pro-indigenous measures in the draft was most likely because a Batwa representative participated in the relevant workshop, and was able to argue for Batwa interests to be incorporated.

4. Central African indigenous peoples' ownership, access and use of forest lands

4.1. Moves towards more secure community land rights in Africa .

...legal pluralism lies at the heart of the tenure issue. The assertion of state ownership gives an ambiguous legal status to local landholding systems (rights and regulatory mechanisms), oscillating between denial and mere tolerance. Having recognised this, the challenge for new policies is to do away with the gross inadequacy of tenure legislation, to give legal recognition to existing rights and to build links between local landholding systems and formal law. (Lavigne Delville (2000) writing on the conflicts between formal law and customary land rights in francophone west Africa).

Reviews of the knowledge, innovations and practices of indigenous and traditional communities, and of traditional forest-related knowledge have highlighted the importance of secure tenure in order for communities to be able to maintain and promote their traditional knowledge and for this knowledge to contribute effectively to sustainable resource management.⁷¹

Despite the efforts of governments and donors to promote free market models of land ownership including the conversion of customary tenure to individual freeholds and individual land titling, local landholding systems based on collective land rights continue as the main form of land management in rural Africa, alongside modern tenure legislation. The range of customary systems is very diverse and evolves as communities adapt to changing local situations. Reviews of different systems of forest management in southern and eastern Africa have shown that local forest custodianship is undermined by lack of secure protection of customary and collective land tenure as group property rights. In contrast, secure collective rights to land conferring ownership of forests have been found to provide a stable foundation for the community to maintain or develop sustainable management, increase accountability to their own constituency, and counter the problems of open access that are often associated with common pool resources. Where communities' interests are ignored or limited to user rights only (benefit- and revenue-sharing approaches, licensing schemes), communities tend to become subordinate beneficiaries, providers of labour, extractors and rule followers, and vulnerable to fluctuations in markets, to competing commercial forces and to withdrawal of extraction permissions.⁷² In contrast, moving from a needs-based approach to a rights-based approach, in which power is shared or given to local communities and they have authority to decide the use of the forest, these communities are more likely to find it in their interests to retain the area as forested and develop long-term management systems for the common property.⁷³

A number of African countries, particularly in eastern, southern Africa and western Africa, are examining new ways of dealing with the complex overlapping of customary tenure, colonial legal precepts derived from English common law and the French *Code Civile*, and post-independence statutory land tenure regimes. This is part of a wider trend towards increased democracy and decentralisation of power and the development of more inclusive norms in the governance of society and its resources, in both anglophone and francophone countries, and in many countries is closely linked to reforms in forest policy and law.⁷⁴ The reforms to property rights commonly encompass three types of change: clarification that state tenure over national properties is less that of private right than of trusteeship for the national population, recognition and legal protection of customary rural land rights and common-hold tenure regimes, and decentralised land administration and dispute resolution. These reforms encourage the state to be more publicly accountable

⁷¹ UNEP 2003a; 2003b; UNFF 2004.

⁷² for example, the Zambian forest department's decision in 1999 not to renew beekeeping and pit-sawing licences to user groups in the Muzama initiative, whose tenure rights to a commonage of 800,000 ha. of prime *miombo* woodland were not secure. The forest department reallocated the area to more lucrative commercial activities.

⁷³ Alcorn et al. 2002; Alden Wily 2003a; Alden Wily and Mbaya 2001: ix- 26; Amanor 2004

⁷⁴ Texier 2002

and make it much more difficult for the state to override local interest and draw more forest estate under government control, or for political elites to exploit the legal system to acquire forest lands to the detriment of holders under customary rules.⁷⁵

Customary land rights and collective tenure are now recognised in the land policies and laws of 11 eastern and southern African countries.⁷⁶ At least six African countries now have provisions for communities to own forests and have the sole power to decide how the forest is used and who uses it. (Table 7). The implementation of these provisions is most advanced in Tanzania (Box 6) and Gambia.⁷⁷

Table 7: community forest ownership and decision-making power

Community as owner of forest	Community as sole decision-maker re how forest used and who uses it	Country
Yes	Yes	Gambia, Tanzania, Uganda, Lesotho, Senegal, South Africa
Yes	No	Nigeria, Malawi, Burkina Faso, Namibia, Mali
No	Yes	Zanzibar
No	No	Cameroon, Ethiopia

Source: Alden Wily 2003b: 19, 23

Box 6: Community forest ownership in Tanzania.

The Tanzanian land law (1999) and the forest law (2002) give communities the legal right to own and manage their forests. (Note that these reforms build on villagisation programmes in the 1970s, which took land administration away from customary holders and vested it in the newly created ‘villages’ through the village councils elected by village members, which have executive and legislative powers.) So far more than 500 Village Forest Reserves have been created on communal lands. Taking two of these as examples, the Mgori forest and the Duru-Haitemba forest, initial assessments showed a decrease in erosion and fires and local corruption, and increases in game and bees, as well as increased transparency and accountability within local communities. The application procedures are relatively simple, villages set their own access rules and levy fines that are enforceable in the courts – providing that the district council has approved the village’s bye-laws – and decide the type and quantity of products to be harvested. Communities are also legally accountable for fulfilling their forest management commitments. As this is a community-driven process, few villages have so far invested in the expense of formal impact assessment, but so far there is widespread conviction that village-based management has improved forest quality and peoples’ lives. However, in some cases the benefits of community management in terms of significantly increased incomes have been slow to accrue, placing stresses on poor communities that cannot afford to forego short-term income.

Source: Alden Wily and Mbaya 2001:266-268, Alcorn et al. 2002; Kajembe et al. 2003; Ministry for Natural Resources and Tourism, Tanzania, 2003; Liz Alden Wily, personal communication 29.06.04

New land policies and laws in eastern, western and southern Africa provide specific support for the land rights of pastoralists in Ethiopia, Tanzania, Kenya, Lesotho, Botswana, Niger, Mauritania and Mali, but there are no provisions to specifically ensure secure land rights for hunter-gatherers apart from some limited provisions in

⁷⁵ Alden Wily 2003b: 3; Lavigne Delville 2000

⁷⁶ Kenya, Tanzania, Uganda, Ethiopia (Amhara state), Malawi, Mozambique, Zimbabwe, Lesotho, Swaziland, South Africa and Botswana, see Alden Wily 2003b :17

⁷⁷ World Rainforest Movement 2002 :97-98

South Africa, Botswana and Namibia.⁷⁸ In general, hunter-gatherers have to move towards a settled, agrarian economy in order to benefit from the new legal forms of community land rights.⁷⁹

4.2. Lack of legal land rights for central African hunter-gatherers

Among the central African countries covered in this report, customary and collective land rights are legally protected only in Uganda (Box 7). In the other, francophone, central African countries, the state retains ownership and authority over all land, except the tiny proportion held under private individual title. Customary tenure or collective rights, except for rights to village trees in DRC, are not legally recognised.

Box 7: Legal provisions for customary and collective land ownership and forest management in Uganda.

Under Uganda's 1995 Constitution and 1998 Land Act all land is vested in the citizens of Uganda but, under the Constitution, government may acquire land in the public interest (providing compensation is paid) and hold it in trust for the people. Uniquely among central African countries, only thirty percent of forest lands are under Ugandan government control. The remaining 70% is in private ownership, including customary ownership which is legal in Uganda, whether or not it is registered and titled. Collective land ownership can be legally registered, e.g. by forming a communal land association that can determine legitimate users and exclude unwanted ones, and that has licensing and enforcement powers. Occupants who have used land for 12 years or more prior to the coming into force of the Constitution, unchallenged by the registered owner, are considered lawful occupants. Land management has been decentralised giving local authorities autonomy over government land holdings in their jurisdiction. However, implementation of the new land law is very slow due to the high costs of creating new institutions for administration and dispute resolution.

Uganda's Land Sector Strategic Plan (LSSP) aims to reduce land insecurity among vulnerable groups including hunter-gatherer groups and pastoralists, through more equitable distribution of land access and ownership, increased access to justice in land cases and increased awareness of land rights. The LSSP plans a programme of systematic land demarcation in specific areas based on local demand, with communities deciding how they want to deal with family rights, group rights and rights to common land. People will have free access to dispute resolution throughout the process and special support will be provided for vulnerable groups. To date, the Ministry of Lands has undertaken three pilot demarcations (none however with forest peoples) which have apparently succeeded in decreasing local conflict and clarifying land rights.

Ugandan forest policy makes clear linkages between sustainable resource management and security of land and resource tenure and aims to protect customary land and resource use rights. The 2003 Forest Law allows communities to create their own protected forest areas (Community Forests) on their lands and to apply to co-manage government forest reserves.

Sources: Alden Wily 2003c; The Land Act, 1998; Land Sector Strategic Plan 2001-2011: Utilising Uganda's Land Resources for Sustainable Development; Clarissa Augustinus, personal communication 1.07.04.

Among the central African countries covered by this survey, only Uganda (Box 7) and Rwanda have recently updated their land policies and legislation. Rwanda's land reform process seeks to address the acute land shortage resulting from a very high rural population density, and the multiplicity of competing land claims due to the return of large numbers of former exiles and refugees. The land policy promotes individual (family) titling, transfers of land will require consent of all family members, and the state has the right to consolidate small plots into larger plots and confiscate land if it is not used properly. Research by NGOs and the state

⁷⁸ Alden Wily 2003c : 61- 65; Marcus Colchester, personal communication 14.07.04

⁷⁹ e.g. the case of the Hadzabe of Tanzania, see Madsen 2000

indicate that communal tenure systems have more-or-less collapsed since independence and more recently as a result of the genocide, but remnants remain, for example, shared use of certain valley wetlands; these systems however are not recognised in the new legislation.⁸⁰ The land law stipulates that 'People, who have been denied their rights to land ownership, shall be given land by the Government' (Article 96) but no special provisions have been made for the largely landless Batwa, who lost their forest lands through agricultural clearance, agri-development, commercial forestry projects and the creation of protected areas.⁸¹ Article 96 appears primarily to apply to people who fled Rwanda in 1959, and have since returned to find their land taken by others. While there are provisions for pasturing animals thereby recognising Rwandan herders' needs, no special measures are envisaged to safeguard access to marshland clay for the many Batwa who have turned to pottery as a livelihood strategy.⁸²

The lack of legal protection for hunter-gatherer lands has enabled them to be expropriated for logging, development and conservation throughout central Africa. Thus, Uganda's land reforms, while progressive in providing security for communities that are still living on their customary lands, are of little benefit to forest hunter-gatherers such as the Batwa in southwest Uganda whose customary lands were finally expropriated through the gazettement of the Mgahinga, Bwindi and Echuya forests as protected areas in 1991. Batwa became squatters on the lands of neighbouring farming communities.⁸³ Their access to the forest remains highly restricted, severely affecting their ability to practise their traditional forest knowledge and resource management systems, denying them access to important spiritual sites⁸⁴ and threatening their cultural survival (Box 14). The Batwa's loss of their lands and resource base has made it very difficult for them to secure basic survival needs, resulting in severe poverty and hardship.⁸⁵ A resettlement and land purchase scheme established by the Mgahinga and Bwindi Impenetrable Forest Conservation Trust (MBIFCT⁸⁶) had provided an average of 0.5 ha per household for less than half of the 400 landless Batwa households by mid 2002.⁸⁷ MBIFCT regretted that much of this land was of poor agricultural quality.⁸⁸ NGOs and private individuals are now also assisting the Batwa with land purchase.

The Ugandan government recognises the negative impacts of gazettement, but continues to maintain it as a policy measure:.

Guidelines on eviction and compensation will protect rights, minimise suffering, improve or restore income, living standards and productivity levels of those affected by gazettement or degazettement. These will pay special attention to indigenous people, the landless and female-headed households who, if displaced, may not be protected by national compensation legislation. Where feasible, the possibility of rationalising boundaries will minimise the disruption to people's lives and to maintain their access to forest resources. (Uganda National Forest Plan 2002).

The example of the Batwa is just one of many instances in which protected areas have expropriated indigenous customary lands and displaced resident populations resulting in severe impoverishment, nutritional deficiency, impaired health and cultural collapse.⁸⁹ A recent study of 12 parks in six central African countries found that the expulsion of Pygmy communities without consultation or compensation was a common feature of most of the parks analysed, and noted that even though most resettlement schemes have

⁸⁰ Liversage 2003

⁸¹ Griffiths and Colchester 2000: 25

⁸² CAURWA 2003; Jackson 2003a; LandNet Africa Rwanda Chapter 2003

⁸³ Kenrick 2000; Zaninka and Kenrick 2002

⁸⁴ Bwindi/Mgahinga Conservation Area General Management Plan 2001-2011 :7

⁸⁵ Jackson 2003a, b

⁸⁶ The Trust was set up in 1995 with capital of US\$ 4 million, provided by the GEF (Adams and Infield 2003).

⁸⁷ Mgahinga and Bwindi Impenetrable Forest Conservation Trust tourist brochure (n.d. but after June 2002).

⁸⁸ Bwindi/Mgahinga Conservation Area General Management Plan 2001-2011 : appendix F. The management plan intends to continue and improve the land purchase scheme.

⁸⁹ see for example: Colchester 1994b; Nelson and Hossack 2003

failed, 'resettlement is still the most common option used to deal with people who happen to live in African national parks.'⁹⁰

So far central African Pygmy peoples have not organised in a major way to challenge governments and conservation organisations about the violation of their customary rights by protected areas and to demand restitution, in accordance with international law, of their lands, territories and resources.⁹¹ However, in 2003, the indigenous Benet hunter-gatherers who were evicted from Mount Elgon National Park in 1972, sued the Ugandan government for violation of their constitutional rights to land. The legal action was supported by the Uganda Land Alliance and Act!onAid Uganda. A ruling from the High Court is awaited; meanwhile the Uganda Wildlife Authority is seeking an out of court settlement with the Benet, in which a limited area of the park would be returned to the Benet provided they abided by certain environmental conditions.⁹² This case sets a precedent for legal action to secure hunter-gatherer land rights. Similar legal challenges could be an option for the Ugandan Batwa. One of the few other examples of restitution of hunter-gatherer lands in Africa is that of the †Khomani San in South Africa (see Box 8).

Box 8: Restitution of San lands, South Africa.

In 1996, under the South African Restitution of Land Rights Act 1994, the †Khomani San initiated a claim to their traditional lands now overlain by the Kgalagadi Transfrontier Park. A settlement in August 2002 gave the †Khomani San community 25,000 ha. inside the park with 8,000 ha. still owed to them. They also received 40,000 ha. outside the park; however this area is 60 km. away and effectively inaccessible for the transport-less San. Despite the legal restitution of †Khomani San lands, conservation managers still control access and use, preventing the †Khomani San from managing their lands within the park as a living history where elders can pass on their knowledge, skills, and traditions to youth.

Source: Dutton and Archer 2004

Although Pygmy peoples do not have legally recognised ownership of their customary lands, central African governments are implementing a range of administrative and management initiatives that give local communities varying degrees of security of access and control over forest resources. The following sections assess how these schemes are benefiting Pygmy communities.

4.3. Community management of forests

4.3.1. Cameroon

Cameroon was the first central African country to decentralise forest management and permit communities to manage their forest resources, regulated by the 1994 forest law, the decree of application (1995) and the Manual of the Procedures for the Attribution, and Norms for the Management of Community Forests (1998). Cameroon's forests are classified into a non-permanent forest estate and a permanent estate. The non-permanent estate consists of private forests (belonging to individuals) and forests which are available for use by communities. It comprises buffer zones allocated around villages and a zone five km. wide along the roads. Farming can only occur in this zone. All other areas are subsumed into the permanent forest estate, consisting of protected areas and production forests managed by the state, and council forests, managed by local government. The zoning plan approved by the state in 1995 envisages nine million ha. in the permanent estate (six million ha. as production forests), and five million ha. as non-permanent forest.⁹³

⁹⁰ Cernea and Schmidt-Soltau 2003; Schmidt-Soltau 2003

⁹¹ MacKay 2002

⁹² Okwaare Otto 2004; Rita Aciro Lakor, personal communication 2.07.04

⁹³ Lescuyer 2003

In the non-permanent zone, communities can apply to manage community forests, of up to 5000 ha. for renewable 25 year periods, providing the community is legally registered, recognised as the customary holder of the forest area in question and produces a five-year simple management plan approved by the forestry service. NGOs and the forest service usually play a major role in developing the management plan. Since 2002, timber extraction in community forests cannot be subcontracted to logging companies, but the communities must exploit the forest themselves using light machinery. Communities also now have the right to pre-emptively reserve areas designated for logging through sales of standing volume, for future community forests.⁹⁴ However, the multiplicity of administrative regulations and legal mechanisms for community forest operations has caused considerable confusion, and opportunities for bribery.⁹⁵ Although subcontracting logging to outsiders is forbidden, it is still occurring in some community forests. By 2003, 50 community forests had been registered. Cameroon's Forest and Environment Sector Programme (FESP, 2003 Box 3) aims to strengthen community forest activities and double the number of community forests in five years.⁹⁶

The state remains the principal authority over the land and can retake control of community forests. Nevertheless community forests are potentially useful methods through which communities can gain some security over their lands and resources, increasing the scope for maintaining and developing traditional cultural practices and TFRK.

The Cameroon authorities have adopted an experimental approach to community forests and sought to adapt procedures in the light of experience. However, the zoning plan defining the non-permanent estate where community forests may be established, remains essentially fixed, although technically it is still only a draft.⁹⁷ The remaining un-zoned areas will be completed under the FESP. Many reports have noted the problems caused by building a community forestry programme on a zoning plan that has not taken account of communities' customary lands and their use of forests for hunting, fishing and NWFP collection (Box 9). The zoning process has ignored customary tenure patterns, reduced community access to forest resources, increased pressure on resources and has not taken into account the characteristics of traditional resource management systems. A central issue is that Pygmy groups claim customary rights in permanent forest areas, where community forests are not permitted, while the non-permanent estate, where community forests may be established, is under Bantu customary ownership.

Box 9: Community forestry in Cameroon.

Effects of forest zonation on indigenous and local communities

- The 1994 forest law does not recognise customary tenure and local peoples' property rights in forest areas; forest lands have been nationalised even though local people occupy them and are practising long-term customary use of forest resources through traditional cultural practices .
- The zoning of forest lands into permanent forests and multiple use zones which are available for forest clearance, including farming, was done with very little input by local communities.
- The 'best' forests are allocated to the permanent estate or to logging, rather than to the multiple use zone.
- Classification of state forests only provides compensation for loss of physical investments (houses, fields, plantations), but not rights as such. Hunter-gatherers' physical investments are much less tangible than those of farming communities, so they lose out in compensation schemes.
- Zoning ignored the existing customary resource rights of Bantu communities and Bagyeli and Baka Pygmy communities as well as customary resource management methods which treat cultivated forest areas, fallow, secondary and high forest as a multiple use environment in which hunting, fishing and NWFP collection are combined. Both the permanent estate and the surrounding non-permanent

⁹⁴ Lescuyer 2003

⁹⁵ Lescuyer 2003:33

⁹⁶ Republic of Cameroon 2003

⁹⁷ Lescuyer 2003

estate /multiple use zone need to be considered at the same time when developing management strategies.

- Key resources, particularly those used by Pygmy groups, have become absorbed in the permanent estate or are being competed for by loggers and Bantu communities in the communal forest zone.
- The multiple use zone is too small to provide community forests for more than a fraction of local communities.
- Insecurity about rights has led Bantu communities to assert exclusive use rights in their resource areas, reinforce boundaries and in some cases clear land to pre-emptively claim rights before rules are imposed; these measures reduce access to forest resources for indigenous Bagyeli and Baka communities whose customary lands overlap with Bantu lands.
- Local populations are allowed to harvest forest products (except protected species) in the permanent forests for personal use only. Traditional hunting (using only plant materials) for personal use is permitted except in forests designated as protected for environmental reasons and buffer zones. These restrictions deny the reality of hunter-gatherer economies which are based on trading of forest products with farming communities. Harvesting rights can be withdrawn in the public interest.
- Mapping of community resource use has shown that Pygmy communities need areas larger than the maximum community forest area of 5000 ha. (see Table 3 for examples), and access to permanent forest to satisfy their resource requirements and reduce depletion of resources. Some resources are found a long distance away, requiring seasonal movements. The subsistence hunting areas of many Bantu villages tend to be smaller than those of Pygmy groups, but may also exceed 5000 ha.
- Although Baka and Bagyeli use areas overlap with Bantu areas, and Bantu may distribute some of their clan's collective resources to them through fictive clan relationships, Baka and Bagyeli are much more dependent on forest products than Bantu. Baka and Bagyeli tenure arrangements and resource management systems are different from Bantu and need specific regimes.

Problems with community forestry procedures.

- Most local communities, and Baka and Bagyeli communities in particular, lack the human and financial resources to deal with the lengthy and complex procedures of applying for a community forest. These include, for example, the necessity for a 2% inventory of all trees over 40 cm DBH, and other requirements often exceeding those demanded for commercial forestry operations.
- Penalties for illegal activities are far-reaching and could result in cancellation of the community forest. In contrast, logging companies rarely have their licences revoked.
- The creation of most community forests has required external finance and support.
- Traditional community institutions are not legally recognised. The legally recognised village-level types of organisation proposed as managers of community forests are artificial constructs and do not correspond to the user groups that actually manage forest resources – traditionally Bantu resource allocation and control is done by heads of lineages, not by the village as a whole. Neither do they adequately represent all the interest groups within Bantu villages, particularly not the local Bagyeli and Baka groups.
- Baka and Bagyeli camps are not considered by Bantu and national administrations to be communities in their own right, which could apply for community forests, but as belonging to Bantu villages. The low social standing of Baka and Bagyeli and their weaker political organisation means that they are marginalised in decisions of the wider community during the application for a community forest, in managing it and in the sharing of benefits.
- The complex administration of community forest procedures can easily be captured by educated elites, who seek key posts in the registered associations, and have the information and financial resources to do deals with private forestry companies, to the detriment of the forest environment on which the local community and indigenous peoples depend.
- Management plans focus on income generation from timber resources, requiring a type of resource extraction and community organisation that is alien to most Bagyeli and Baka groups.

Sources: Alden Wily 2003a; Amanor 2004; Bretin 2004; Colchester 2004; Djeumo 2001; Djoh 2003; Efova 2004; Egbe 2001; Jell 1998; Klein et al.2001; Lescuyer 2003; Lescuyer et al. 2001; Ndamu 2003; Nelson and Tchoumba 2004; Nguiffo 2003a; Van de Berg and Biesbrouck 2000

Currently there is one case of a Baka community forest in south-east Cameroon and a handful of cases in which Pygmy groups are participating in Bantu community forests. So far, Pygmy communities have not had equal opportunities to benefit from the 1994 forest law and establish their own community forests, because their settlements and their customary lands are not officially recognised as separate from Bantu settlements and lands. Experience so far indicates that the community forest concept and procedures, with their emphasis on timber production, are not sufficiently adapted to the context and needs of Pygmy communities to ensure sustainable benefits (Box 10). The institutions prescribed by law for the management of community forests involve hierarchical structures that appear to have accelerated the unravelling of traditional egalitarian Baka social norms and processes.⁹⁸ However, by acquiring their own community forests Pygmy communities can gain the official recognition as communities in their own right that they seek. Although the present community forest model is problematic for Pygmy peoples, securing control over some of their forest resources potentially gives them a breathing space in which to develop more culturally appropriate management systems.⁹⁹

Box 10: Baka involvement in community forestry in Cameroon.

Moangué le Bosquet: a Baka community forest

The 'village' of Moangué le Bosquet was established in the 1970s by a catholic mission that negotiated lands from the local Bantu chiefs and encouraged the Baka of different settlements around Lomié, south-east Cameroon, to move to the Moangué site. The resulting unusually large Baka settlement of 1,000 people and 12 clans, was informally recognised by nearby Bantu communities as the customary holder of the land and was thus able to apply for a community forest in its own right.

The Bosquet Baka Community (COBABO) was granted its community forest in 2000, covering 1,805 ha. of natural moist forest and managed by a village development committee. The objective was to generate their own revenues from timber harvesting. The initiative was supported by local and international NGOs that helped COBABO develop a simple management plan and implement it. The area was divided into a northern and a southern primary forest zone for small-scale timber harvesting using mobile saws, and a central zone for housing, agriculture and non-wood forest product collection. The Baka community decided that only the inhabitants of the village should have rights of entry and use in the forest. Hunting, fishing, gathering and NWFP collection would require prior authorisation from the community. New farms and hunting were banned in the two primary forest zones.

The community forest has not so far delivered significant or lasting benefits to the Moangué Baka. Their technical skills are not adapted to using and maintaining mobile saws, there have been difficulties in implementing the simple management plan and the newly installed hierarchical management structure has not resulted in equitable distribution of timber sales revenues between Baka families. It appears that the concept and means of implementation of the community forest project were alien to the Baka, and did not mesh with their customary forms of forest resource use and social institutions. However, the situation was complicated by the artificially large size of the community which overwhelmed the traditional systems adapted to managing relations between relatively small numbers of people, and created its own tensions.

Despite these problems, the community forest has met the Baka's primary objective of securing use rights over an area of forest including the legal rights to defend their forest against incursion and, as importantly, is linked to the recognition of the Baka as a distinct polity in their own right. Although the mode of exploitation of the community forest is currently along conventional market-orientated lines, it has created a space in which forms of socio-economic development that are more consistent with Baka cultural identity could be explored.

⁹⁸ Dkamela 2003

⁹⁹ Bretin 2004

The following three examples are of Baka communities that are participating in community forests established on Bantu customary lands.

Gorilla tourism

Prior to 2001, Koungoulou and Karagoua villages (south-east of Dja Wildlife Reserve in southern Cameroon) began procedures to establish community forests to develop income generation from gorilla tourism. The community forest applications were in the name of the Bantu community, without Baka having a formal role. The area is within an existing logging concession.

Local hunters, including indigenous Baka, were chosen by villagers to form tracking teams to follow gorillas in order to find out if they could be habituated. Of the 20 hunters tested, only three, 2 Bantu and 1 Baka, were good enough to keep up with the gorillas. Tracker salaries paid by the NGO-funded project brought initial revenue into the communities. After 6 months of tracking, the gorillas showed clear signs of habituation. Through local controls, villagers were able to prevent all hunting in the gorilla habituation area, even without assistance of forestry officials, resulting in increased wildlife or reduced wariness of wildlife towards humans in the area. This contrasted with the nearby Dja National Park, where officials were unable to control hunting. The forest service asked the villagers to come up with a proposition for the legal status of the block of forest where the habituation trial took place.

However, as a result of escalating costs, in part due to neighbouring villages also claiming payment from the project for not hunting the gorillas, the external funders withdrew, resulting in the collapse of the project. Funders felt that the project was expensive for the potential conservation benefit and that the gorillas were potentially vulnerable to determined hunters, placing doubt over the sustainability of the enterprise. From the community point of view the project was however quite successful – they were strongly motivated, believing in the potential for tourism and did manage to prevent hunting in the area until the project closed.

CODEVIR community forest

In 2002, four contiguous villages, comprising two ethnic groups- the Baka and the Nzimé – established a 4,100 hectare, natural moist forest community forest in the multipurpose zone of eastern Cameroon (Lomié District, Nzimé-Nord Canton). The area had been previously illegally logged by a forestry company. Forest fees and member subscriptions funded the setting up of the community forest. The area was divided into one agricultural and residential area (1000 ha.) and three forest sectors, with an annual, low impact, harvesting output of 500 cu.m. using mobile saws. The sector closest to the Dja reserve was periodically closed off to hunting and felling to allow regeneration and repopulation by wildlife. Certain trees such as *moabi* (*Baillonela toxisperma*) and wild mango were protected. New fields were prohibited in primary forest zones. Basket-making and *moabi* oil extraction were identified as commercial possibilities. The statutes and rules of CODEVIR reinforced disciplinary measures against infringements of use rights.

Problems included:

- The village committee did not reflect local power structures, which re-emerged when money entered the village
- The communities comprised different subgroups who did not share information
- Baka and Nzimé were not used to managing money
- Tensions between using revenues for immediate needs of community members and investing them in community development activities
- Marginalisation of Baka and women in decision-making and share of revenues.

Ngola and Achip Community Forest

The 4,200 hectare moist forest in Lomié district, eastern Cameroon was established in 2002 by the communities of the Ngola and Achip villages for small-scale timber production, NWFPs, micro-projects and ecotourism. It was managed by the *Balagbo, Pa'a, Bamouh Bankoho, Baka and Bodja Family Association*. Two primary forest areas were harvested on a rotation length of 24 years producing 1000

cubic metres per year. The activities were carried out exclusively by the community members, who supervised the exercise of use rights.

Sources: Bretin 2004; Djoh and van de Wal 2001; Dkamela 2003; Efoa 2004; FAO 2003; Samuel Nguiffo, personal communication 24.08.04; Filip Verbelen, personal communication 24.06.04; Maryvonne Bretin, personal communication 14.09.04

Recognising that structural inequalities are preventing indigenous people from benefiting equitably from its new Forest and Environment Sector Programme, with its increased emphasis on community forestry, the Cameroon government has approved an Indigenous Peoples Development Plan (IPDP). The plan contains many progressive elements, committing the government to establishing equal legal conditions for all settlements of indigenous peoples, providing community forests and/or hunting zones (see 4.5.1) for all indigenous communities, and, perhaps most radically, establishing new forestry regulations which legalise indigenous people to utilise their land. A national policy on indigenous people will also be developed (Box 11). The implementation measures, however, remain to be worked out and there are currently many uncertainties, for example how indigenous lands will be identified and legalised, and how the government will address the legal rights of indigenous peoples.¹⁰⁰ It remains to be seen how the proposed hunting zones averaging 250 sq. km per indigenous settlement¹⁰¹ will be negotiated with Bantu groups that are likely to claim rights over the same areas. There is still a question as to whether the community forestry model and current procedures for legally registering settlements are sufficiently adapted to indigenous resource management systems and social institutions, whether the coordination structure proposed for the IPDP is appropriate, and whether the political will really exists to implement the plan in its entirety. In view of the problems identified so far (see Box 9, Box 10) much more extensive discussions are needed with Cameroon's indigenous peoples to ensure that these potentially far-reaching reforms are appropriate and implemented with their full consent and involvement.

¹⁰⁰ RACOPY 2003

¹⁰¹ Republic of Cameroon 2003b:32

Box 11: Indigenous Peoples Development Plan for the Forest and Environment Sector Programme, Cameroon.

Under the terms of the World Bank's financial support for the Forest and Environment Sector Programme, Cameroon is required to produce an Indigenous Peoples Development Plan (IPDP) in accordance with the World Bank's Operational Directive OD4.20 on indigenous people. The IPDP must ensure that indigenous people will benefit from the project and that potentially adverse effects on them are avoided and mitigated. The IPDP must give particular attention to 'the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.' OD4.20 requires that

- there is a clear borrower government commitment to adhere to the Bank's policy
- acceptable mechanisms are in place to ensure indigenous participation in the full project cycle
- an indigenous peoples' component is developed which
 - makes an assessment of the national legal framework regarding indigenous peoples
 - provides baseline data about the indigenous peoples to be affected
 - establishes a mechanism for the legal recognition of indigenous peoples' land rights
 - includes sub-components in health care, education, legal assistance and institution building
 - provides for capacity-building of the government agency dealing with indigenous peoples
- establishes a clear schedule for fitting actions related to indigenous peoples into the overall project, with a clear and adequate budget
- final contracts and disbursements are conditional on government compliance with these measures.

The FESP poses particular risks to indigenous Pygmy communities, due to the lack of legal recognition of their communities as entities independent of neighbouring Bantu communities (see 6.2) and their lack of legal access to the forest. These risks include loss of control over their traditional forest lands that provide two thirds of their subsistence and income and are the basis of their cultural and social system; increased marginalisation in Cameroonian society; reduced support from governmental services; reduced capacity to defend their legal rights; remaining dependents of other ethnic groups and loss of cultural and social identity.

The Cameroon government has approved the following activities for the IPDP linked to the FESP, to be implemented during a period of at least 10 years:.

Establish equal legal opportunities

- * Establish the necessary capacities to implement an IPDP following OD 4.20.
- * Establish equal legal conditions for all indigenous people (ID-cards).
- * Establish equal legal conditions for all settlements of indigenous people (village).
- * Establish community forests and/or communal hunting zones for all indigenous communities.
- * Establish new forestry regulations, which legalise indigenous people to utilise their land.
- * Establish a national policy on indigenous people.

Establish equal technical opportunities

Provide indigenous people with technical capacities to participate actively in natural resource management.

Provide the relevant Government of Cameroon staff and other stakeholders with technical capacities to cooperate successfully with indigenous people.

Promote research on indigenous people and provide space for information on indigenous people.

Establish equal financial opportunities

- * Adjust the distribution patterns of the forestry revenue to provide indigenous people with the necessary funds to participate in activities and decision making processes.

Establish equal organisational opportunities

Facilitate the representation of indigenous people in all forest related decision making bodies.

Facilitate priority access for indigenous people to forest related job opportunities.

Establish a participatory monitoring and evaluation system for the IPDP.

Equal cultural opportunities

- * Sensitize the Baka, Kola and Aka on the risks of the development process.
- * Assist indigenous associations in capacity building to preserve traditional knowledge, culture and livelihood patterns.
- * Foster the creation of forums for communication and exchange between indigenous peoples and other ethnic groups and accompany this process of mutual understanding.

The cost of these activities over 10 years are budgeted at US\$1.98 million.

A second IPDP has been prepared for Cameroon's Participatory Community Development Programme (French acronym: PNDP), also funded by the World Bank. This IPDP includes the asterisked activities above, plus the following additional activities: assisting indigenous people to establish local development plans and participate in communal development plans; offering indigenous peoples subsidised development projects and access to employment opportunities within the PNDP; assisting indigenous people in decision-making and to establish independent bodies to coordinate activities; establishing a participatory monitoring and evaluation system and indigenous participation in the various PNDP committees. Training in intercultural communication will be provided to civil servants and local government officials working with indigenous people. The cost of this IPDP over 10 years is budgeted at US\$3.5 million.

Both plans recognise that indigenous peoples currently lack capacity to implement these measures, and envisage training to strengthen organisational, technical and financial capacities. There will be further consultation with indigenous communities to refine the plans and set up the implementation and monitoring mechanisms. Implementation of two IPDPs will apparently be coordinated, but they will remain separate initiatives due to their different sectoral focus and line ministries.

Republic of Cameroon 2003b, 2003c; Kai Schmidt-Soltau, personal communication 28.09.04

4.3.2. Gabon and DRC

Gabon and DRC have recently introduced laws that include provisions for community forestry. Under Gabon's 2001 forest law, 12 million ha. of forests will be allocated to the permanent forest estate (including 4 million ha. for protected areas) and 10 million ha. to a 'rural forestry zone', comprising strips of forest 5 km. wide along public transport routes, where communities can apply for community forests.

The 2002 DRC forest law recognises that people live within the forests, and implicitly recognises their right of occupation, but not of ownership. A zoning process will delimit the permanent and non-permanent estates. Local communities can apply for a forestry concession on their ancestral lands providing these are in the non-permanent estate, but not if they are in areas of the permanent forest estate, which is destined for logging. Details of how community forests will be established and managed in DRC and Gabon are presently unclear, as supplementary legislation has yet to be enacted. NGOs in DRC are concerned that preparations for zoning of up to 60 million ha. of DRC's forests are advancing without any significant consultation with local communities and indigenous peoples (see 6.1), potentially affecting some 300,000 Pygmy people, and 35 million people in total (World Bank estimates) who inhabit or depend to some extent on the forest for their survival.¹⁰²

¹⁰² Rainforest Foundation UK 2004a, b

4.4. Collaborative forest management

Another form of community management of forest lands, which could potentially assist the maintenance and development of traditional forest knowledge, is through collaborative forest management in which power and responsibilities are shared between local communities and external forest managers. In central Africa such initiatives are so far mainly associated with protected areas, rather than production forests. Conservation agencies are moving towards implementing internationally-agreed conservation guidelines that require increased participation of local communities in protected area management and recognition of indigenous peoples' rights.¹⁰³ So far, the practical application of these guidelines has mainly concerned the relaxation of restrictions on use rights by indigenous communities in parts of protected areas, and the creation of consultative committees to facilitate community involvement in conservation objectives. Despite these positive moves, Pygmy peoples' participation is worryingly low in comparison with their greater dependence on protected area resources and their high population densities around some protected areas. Pygmy communities are under-represented on conservation committees, and local social norms make it very difficult for those that are members to represent themselves and speak freely when Bantu are present, thus severely limiting their ability to defend their own interests (Box 12).

In Uganda 'collaborative forest management' (CFM) will comprise 'a negotiated process in which all share rights, roles, responsibilities and returns, for the sustainable management of forest resources'. It will be promoted through national guidelines for CFM, jointly agreed management plans, meaningful participation of local communities, increased access to information, increased transparency and democracy in decisions about the permanent forest estate and capacity building of communities. CFM agreements will be implemented through licences agreed between government institutions and local community institutions, setting out the relationships, rights, roles and returns for each of the parties.

Particular attention will be focused onensuring that the poorest and most vulnerable members of communities benefit from CFM agreements. This will require care to ensure that women, and poor and marginalised groups are brought into community institutions and planning and decision-making processes, and that their rights of access and flow of benefits are ensured under CFM arrangements. (Uganda National Forest Plan, 2002).

A measure of the success of this approach will be the degree to which indigenous communities have genuine equity within CFM initiatives, and their satisfaction with the process.

Box 12: Lobéké and Boumba-Bek-Nki National Parks, Cameroon.

Lobéké National Park (43,000 ha, gazetted 2001) and the adjoining Boumba-Bek (648,000 ha) and Nki National Parks form part of WWF's 'Jengi' project, in the south-eastern corner of Cameroon, covering 27,000 sq. km. or 12.5% of Cameroon's land area. The Lobéké, Boumba-Bek and Nki National Parks were established on lands used by local communities and Baka people, without adequate prior consultations.

*We didn't know anything about it; but we learned that the government had set boundaries. We didn't agree with this because from the start they had not told us anything and when setting these boundaries they did not inform us, as they should have done.*¹⁰⁴

During consultations by WWF, GTZ and MINEF (Ministry of Forests and Environment) with communities concerning the delimitation of the park, Baka objected to the proposed boundary. Rather than changing the boundary, the agencies secured Cameroon government approval for a small part of the protected area to be managed under a controlled access regime, where Baka and Bantu can carry out subsistence fishing

¹⁰³ Nelson and Hossack 2003

¹⁰⁴ Pelembiyé Dieudonné, Baka Pygmy from south-east Cameroon, April 2001, cited in Ndameu 2003 :231

and gathering of certain products. However, Baka remain opposed to the rest of the zonation which has placed extensive areas of forest that were traditionally used by their forefathers out of bounds to them. Around Boumba-Bek, the Baka would like the boundaries delineating the village occupation zones to be moved back, so that they can maintain secure access to the areas where they collect forest products and have their farm plots. Notwithstanding the conservation agencies' initial positive response to Baka needs, ongoing assessments by local NGOs indicate a widespread lack of information and awareness among the Baka population about the park project.

Large areas of the forest outside the parks are already rented out to safari companies, making them off limits to local communities. A zoning process was also imposed on the area around the parks to attribute it to different sets of stakeholders, for example, as village hunting territories, logging concessions and community forest zones, with a range of different management mechanisms.

Almost no Baka are involved in the management of park resources or park decision-making. Some are employed as guides and porters for tourists and researchers, and some work for the WWF camp. Their interactions with outsiders using them to tour the park are controlled by MINEF; there are questions about accountability, although clients are supposed to pay the Baka directly.

The conservation agencies have established a range of committees to monitor biodiversity and oversee hunting in community hunting zones. 'Committees for development and conservation of the environment' were formalised with GTZ support in 1997 and were supposed to promote socio-economic development and involvement of villagers in management of natural resources and conservation, but most functioned to coordinate and represent the interests of the population, and improve housing and agricultural production. This is of relatively little interest for Baka, whose main interests are maintaining their forest way of life.

Baka are severely under-represented in the various committees despite their greater reliance on the forest to secure their needs. Sixty-five percent of the population in Moloundou district which borders Boumba and Lobéké is Baka, yet less than 10% of the local members of the management committee of ZICGT9, a communal hunting zone (see 4.5.1) that adjoins Moloundou town and the Boumba river, are Baka. Baka are not considered as a separate community with the right to submit grievances autonomously during consultations. For example, at meetings of the Boumba Bek Contact Group, set up to discuss the Boumba-Bek park and receive complaints, the submissions only presented the perspectives of the Bantu who are deemed to speak for all the local population. Allocation of revenues from safari hunting activities in village hunting territories is controlled by MINEF. Most ends up in the hands of government and local elites; very little of these revenues reach the Baka.

Source: Jell 1998; Jell and Schmidt Machado 2002 ; Ndameu 2003; Nelson and Gami 2003 ; WWF 2002, 2004a; John Nelson, personal communication 28.4.04

4.5. Community access and use rights

Under central African statutory laws local communities are permitted to exercise certain customary use rights in forests (summarised in Annex 2). These rights are prohibited or highly restricted in forests set aside for conservation or wildlife protection. Use rights, except hunting and fishing, may be permitted in other forests designated for less stringent environmental protection but only for personal, non-commercial or subsistence use. In all the central African countries surveyed in this report, use rights are permissive, subject to management plans and possible further restrictions or annulment by state officials.

Use rights in production forests tend to be less restricted, and may include farming and hunting (using artisanal methods), again generally only for subsistence use, and subject to provisions of management plans or under licence. However, customary use rights in logging areas can be extinguished through payment of an indemnity to the affected people (e.g. DRC). Some commercial uses may be permitted (e.g. CAR). In the non-permanent forest zones rights may also be restricted (e.g. Cameroon, DRC). In Gabon, Cameroon and

Uganda (and implicitly in DRC) communities have full use rights in their own community forests, subject to management plans which must be approved by the forest service.

The use rights of Pygmy communities are further constrained by customary laws of Bantu communities who claim forest resources, particularly those near their villages, for example, highly prized wild mango trees. As a result, Pygmy hunters and foragers are obliged to range further into the forests to obtain these products.¹⁰⁵

4.5.1. Hunting

The legal prohibitions on hunting and fishing, and on the sales of forest products, discriminate particularly against Pygmy communities whose economy is largely based on sale or barter of forest products including game. These prohibitions deny the validity of hunting as a suitable economic activity and an essential element of traditional culture and forest knowledge. The legal requirement for traditional hunting methods, e.g. using materials of vegetable origin (Cameroon), is outdated, as most hunters now use wire snares, and guns when these are available. Many protection forests and logging concessions are patrolled by 'eco-guards' who exact punishment and confiscate game killed by Pygmy hunters for subsistence needs, but who turn a blind eye to the activities of commercial bush meat hunters whose well-organised, and often heavily armed, activities have much greater impact on wildlife.¹⁰⁶ Under the new DRC forest policy, the penalty for exercising use rights in classified forests in violation of the law is imprisonment of 2 months to 1 year and/or a fine of up to 50,000 Congolese francs (US\$ 130), a heavy penalty for cash-poor forest people, but not much of a deterrent to commercial hunters.

Local community access to wildlife resources is further reduced by trophy hunting (safari) zones set up throughout central Africa, which for the most part benefit only the local elites. In CAR, for example, 47% of the country (270,000 sq. km.) is designated for sport-hunting, encompassing almost all CAR's protected areas.¹⁰⁷ These sport-hunting zones are generally much larger than the community hunting zones set up around national parks to manage local community hunting (e.g. CAR, Box 13) over which Pygmy peoples have relatively little influence anyway due to their marginal involvement in management committees and revenue-sharing systems (e.g. Cameroon,).

The depletion of game resources caused by too many local people hunting over small areas, forest destruction through logging, and the uncontrolled extraction of bush meat by outsiders is of deep concern to Pygmy communities:

During my father's time we hunted with dogs and traditional weapons. I love the forest where I hunt; I know it perfectly, inside and out.... Do you know why there are no more animals in the forest? If you know, tell me. I know that what makes animals run from the forest, is the people who are cutting the fruit trees on which these animals feed. There used to be only one road up to Campo. Even I could not reach that place, there was only forest. There were all types of animals, elephants, gorillas and so many others. Now that forest exploitation has started, all the trees have been destroyed – a lot of noise, hunting with firearms and the animals have fled. Now it is just an open area. These are the people who brought guns which destroyed the animals in large numbers. We only hunt with nets, dogs and spears. It is only near Nyabisen where there are still animals. On the other side of the Ntem we are stopped from hunting. If we have to hunt around our houses what can you catch? I don't understand why we are told to stop hunting; how will we survive? ¹⁰⁸

The Bagyeli wish to hunt throughout the Campo-Ma'an reserve in south-west Cameroon, on the grounds that restricting hunting areas will result in over-exploitation of wildlife. They have called for the systematic withdrawal of fire-arms from the conservation area because they believe there are too many guns in

¹⁰⁵ Jell 1998: 12

¹⁰⁶ Nguiffo 2003b:207, 212; Owono 2003 :252

¹⁰⁷ National Strategy for the Conservation of Biological Diversity in the Central African Republic. First version, January 2000.

¹⁰⁸ statement by Henri Nleme, Bagyeli hunter from the Campo-Ma'an area of south-west Cameroon in: Nelson and Hossack 2003: 264

circulation.¹⁰⁹ Baka around the Dja Reserve in southern Cameroon have also complained about the uncontrolled proliferation of commercial hunting by outsiders.¹¹⁰

In eastern Cameroon, NGOs in collaboration with MINEF, are experimenting with Community Managed Hunting Zones (Zone d'Intérêt Cynégétique de Gestion Communautaire, ZICGC). These are essentially management agreements between local communities and the authorities. The ZICGC can be larger than the maximum area for a community forest (5000 ha.) and is managed by an elected committee implementing a management plan drawn up by the community and approved by the authorities. Non-community members can be legally excluded. Hunting in ZICGCs is not limited to subsistence activities only – there can be an agreed amount of hunting for sale, subject to quotas. At present there are only a handful of ZICGCs in the early stages of operation. Most are controlled by a Bantu majority, but in one case local and international NGOs are supporting Baka to have a more equitable role in the establishment and running of the ZICGC. The establishment of ZICGCs has incurred considerable opposition from local authorities, politicians and officials who are involved in illegal bush meat trading and do not wish to cede control over these resources to local communities.¹¹¹

Building on local knowledge and capacity by legitimising traditional hunting rights and integrating local hunters into national trade channels, rather than criminalising them, may be one of the most effective incentives for local hunters to adopt sustainable practices and counteract outside bush meat extractors.¹¹² The Mt Cameroon Project Limbe is an example where local communities have been empowered to reduce the activities of external commercial bush meat traders, through legal recognition of community wildlife management institutions and simplified procedures enabling local hunters to be legally registered and legitimately entitled to carry out their trade.¹¹³

Cameroon's Forest and Environment Sector Programme incorporates these new approaches to increasing local community benefits from wildlife resources. It aims to create 30 community hunting zones over 5 years, redistribute sport hunting revenues to local communities and examine ways of formalising the bushmeat trade and increasing its profitability, while stepping up anti-poaching controls. Under the FESPs Indigenous Peoples Development Plan, all indigenous communities are supposed to acquire a community forest and/or hunting zone.

The Dzanga-Sangha Dense Forest Special Reserve in southwest CAR is an example of a protected area that has sought to accommodate traditional hunting practices of Ba'Aka, particularly net-hunting, and other subsistence resource use, and to enable Ba'Aka to obtain tourism revenues from their traditional hunting, gathering and cultural activities. To support these progressive moves, the conservation authorities negotiated a new category of protected area with the CAR government, in order to legalise use rights within the conservation area. However, despite the project's good intentions, the Ba'Aka's ability to maintain traditional cultural practices and use of biological resources has been compromised by the heavy pressure on forest resources from other local communities and logging activities (Box 13).

¹⁰⁹ Owono 2003: 256-257

¹¹⁰ Nguiffo 2003b: 210.

¹¹¹ Lescuyer 2003; Simon Counsell and Cath Long, personal communication 13.08.04

¹¹² Lescuyer 2003

¹¹³ Akumsi 2003

Box 13: Ba'Aka access to forest resources and employment in the Dzanga Sangha reserve, Central African Republic.

The Ba'Aka people (also known as Bayaka, Biaka) live in the southern part of CAR, in the forest zone bordering Congo, Cameroon and DRC. The numbers are estimated between 8,000 and 20,000. The groups living in the western areas also call themselves Bambendjele and cross over the border into northern Republic of Congo.

3.2 million ha., or 86% of the forest region, has been allocated to logging companies. The advent of logging and production of cash-crops such as coffee has weakened exchange relationships between Ba'Aka and non-Ba'Aka patrons, as Ba'Aka can now be paid directly for their labour. In 1992 some 35 Ba'Aka had jobs with the local logging company, being particularly useful for tree identification, however being paid less than the minimum wage. Logging camps, diamond-miners and the influx of commercial bush meat hunters along logging roads have depleted game, causing conflicts within Ba'Aka communities between traditional Ba'Aka community net hunting and the more recently instituted individual snare hunting. Snare hunting is a response to a depleted game population. Net-hunting requires just as many nets to catch the few remaining animals, but the catch is smaller, and as it is shared out each person receives less. Animals caught in snares however belong to the individual. Logging also threatens traditional Ba'Aka resources such as caterpillars that are found on emergent *Sapelli* (*Entandrophragma cylindricum*) and other trees throughout the region.

Depletion of forest resources, as well as the development of a local market economy, has contributed to the Ba'Aka's increasing sedentarisation, acculturation and reliance on agriculture and the cash economy; some Ba'Aka have become involved in the commercial bush meat trade. In this situation, Ba'Aka are at an economic disadvantage compared with non-Ba'Aka, getting lower prices for their forest products and labour, and having less easy access to markets. Ba'Aka are losing many of their forest skills, for example: there is less crossbow hunting and almost no spear hunting. Forest crafts such as making bark cloth, which require a substantial commitment and training, are being lost. Some Ba'Aka have been able to benefit economically from their culture, especially their beautiful, complex, polyphonic and polyrhythmic singing, which has been promoted by, amongst others, Louis Sarno, a musicologist married to an Aka woman. In 2003, the Ba'Aka troupe 'Nzamba Lela' travelled to London to perform a concert and workshop to celebrate the 80th birthday of the composer György Ligeti, whose own work has been strongly influenced by Ba'Aka music.

The Dzanga-Ndoki National Park (1220 sq. km.) and its buffer zone the Dzanga-Sangha Dense Forest Special Reserve (3159 sq. km.) were gazetted in December 1990. The protected area is in the extreme south-west corner of CAR on lands traditionally occupied by Ba'Aka and Sangha-Sangha people. One of the main conservation attractions is a salt lick where tourists can watch elephants.

The *Société de Bois de Bayanga* logging company (French-owned) has a 307,600 ha concession in the area, and the area had been already logged by a Yugoslavian company in the 1970s and 80s. The logging town now has a population of over 5,000, drawing in people from neighbouring countries, and creating enormous pressure on the forest through the demand for bush meat. The buffer zone also includes two safari hunting concessions, where local people are not allowed to hunt, but do so clandestinely. The lucrative sport-hunting fees are paid to the provincial authorities and do not reach the local population. The logging company is operating without a management plan and has attempted to sway public opinion against conservation activities. Efforts were made to move the logging company towards sustainable logging, through certification, but these did not succeed. Closing down the logging operations would be very unpopular locally due to the loss of jobs. The discovery of significant diamond deposits in the reserve has attracted new immigrant settlements. There is high political involvement in granting of forestry permits, in poaching rings and mining interests, and little political will to prosecute commercial poachers.

The project was funded by the World Bank, WWF, and US and German governments and managed by WWF, the CAR Ministry of Environment, Water, Forests, Hunting and Fishing and GTZ/LUSO. The aim of the project is to protect biodiversity by managing the Dzanga-Sangha forest for multiple use, involving improved wildlife monitoring and protection, reduced negative effects of logging and increased revenues from environmentally sound practices and tourism. The Dzanga-Ndoki National Park remains a strictly protected core area, where only ecotourism and research may be carried out. The protected area was declared, and the zonation established, without consultation with the local people. On the other hand, the project worked with the CAR government on legal reforms to create a new protected area category of Special Forest Reserve which permits traditional subsistence activities of the local population within the buffer zone. However, the issue of land rights of the Ba'Aka and other local communities was apparently not addressed.

In 1999 approximately 1500 Ba'Aka lived in the buffer zone area together with at least 3,000 non-Ba'Aka. Net-hunting (done by Ba'Aka), gathering, limited cultivation and hunting with registered guns (predominantly a non-Ba'Aka activity) are permitted in the buffer zone, but overall the project has reduced the area available to Ba'Aka for hunting and gathering. In addition they face increased competition from the non-Ba'Aka's hunting and fishing activities, and commercial bush meat extraction, and do not gain sufficient economic returns from net-hunting and other subsistence activities. Some Ba'Aka have become involved in hunting with unregistered guns and snare hunting which are illegal in the reserve. The project encouraged Ba'Aka to clear land for fields to stake their claims to land through the *mise-en-valeur*-based customary land rights system. Almost all Ba'Aka now have fields, but these are too small for self-sufficiency in food production, and are easily bought up by non-Ba'Aka for a pittance. Elephant damage to fields affects both Ba'Aka and non-Ba'Aka food production.

Infant mortality among the Ba'Aka is very high with a death rate of one in four infants compared to the central African average of one in 10, but Ba'Aka attendance at government health centres is very low. Sedentarisation has caused health problems due to infectious diseases and poor sanitation - some of the Ba'Aka 'camps' now have 300-400 people. A health programme trained Ba'Aka health care assistants and promoted traditional Ba'Aka cures such as for chigoes, but was wound up due to insufficient Ba'Aka participation. One Ba'Aka health worker was placed in the local health centre, with the aim of encouraging more Ba'Aka to attend. The Ba'Aka have to pay a symbolic fee for consultation, but medicines are free or subsidised by the project.

Ba'Aka are considered to be the best trackers, and Ba'Aka men are employed as trackers, patrols, and research informants. Some have been employed for many years and earn salaries of 30,000 CFA (approx US 55\$ per month), compared with the 600 CFA daily wage labour rate. Ba'Aka men and women also put on displays of dances, net-hunting, food and plant gathering for tourists, but visitor numbers have been depressed by the repeated periods of civil unrest in CAR and would have to increase dramatically for the Ba'Aka to earn reasonable incomes. As the Ba'Aka don't speak French, tourist visitors to their villages and camps are accompanied by non-Ba'Aka guides, who control the exchange not necessarily to the Ba'Aka's benefit. Forty percent of tourist revenues go to a village association, which includes Ba'Aka people, and is used for local projects such as water pumps, while another 50 per cent pays the salaries of local employees of the park and reserve.

The project facilitated the establishment of the Committee for the Development of Bayanga, which was meant to represent all interest groups and influence decision-making. Ba'Aka were included as a matter of 'political correctness' but were not accepted as equals or able to play a role. The Committee became captured by political interests and was closed down in 2000. While project policy was initially to involve Ba'Aka 'as much as possible' in conservation and sustainable development activities, their participation has in effect been limited to providing labour in return for material rewards, and they are not involved in decision-making about conservation activities – their incentive for maintaining activities when material rewards cease is therefore low.

Sources: Carroll 1998, 2003; Culshaw 2003; Doungoube 1992; Kretsinger 1993; Lilly 2004; Noss 1997; Ntiamao-Baidu et al. 1998; Axel Bruckmann, personal communication 09.07.04; Ana Kretsinger, personal communication 28.06.2004; Danielle Renner, personal communications 18.11.1999 and 30.06.2004.

4.6. Access schemes

As we have seen above, under central African legislation, customary land rights and use rights are annulled or highly restricted in central African forests managed for biodiversity and environmental protection. However, some protected areas have developed regulated access schemes, which although often presented as collaborative management, are essentially schemes for controlled sharing of forest benefits with the surrounding communities. Communities that have been evicted from these protected areas, and have had their customary rights extinguished, are offered back a limited set of use rights in exchange for cooperation in protecting the area. Sometimes, compensatory rural development activities are provided to the displaced communities to mitigate the impacts of the loss of use rights, for example the education, water and farming projects set up for communities evicted from the Volcanoes and Virunga protected areas in Rwanda and DRC.

The needs-based approach of these schemes often results in a contest between local people and the forest managers about the local peoples' share of the forest resources. Local people become resentful about the managers taking a larger share of forest products or using the community to do management, monitoring and protection work for little return. In these situations, local people see their roles as users and extractors, and try to bend the rules and maximise off-take, with a consequent danger of over-exploitation.¹¹⁴ Such schemes are especially risky in degraded or high biodiversity forests, whose regeneration and maintenance depends on the sustained and effective commitment of local communities to long-term sustainable use of forest resources.

It is in these access schemes that forest managers tend to show greatest interest in communities' traditional forest-related knowledge, in order to identify forest products which can be harvested under regulated conditions or domesticated, for commercial sale to generate incomes, thereby 'taking pressure off the forest'.

Despite recognition of Pygmy peoples' dependence on forest resources, access schemes may not benefit them as much as other local groups, because of their low social status and their consequent marginalisation in the planning, implementation and monitoring of the schemes. Box 14 describes such a situation for the Batwa people of the Bwindi Impenetrable National Park in Uganda, who did not benefit significantly from the Bwindi regulated access scheme, despite their contribution of their exceptional forest knowledge to the design of the scheme, and the recognition by programme planners that special attention should be given to involving the Batwa. These deficiencies have been acknowledged in the latest management plan for the Bwindi and Mgahinga national parks, and some remedial measures have been proposed.

¹¹⁴ Alden Wily and Mbaya 2001; Amanor 2004:15

Box 14: Batwa participation in access agreements, Bwindi Impenetrable National Park, Uganda.

The forests and savannah of south-west Uganda have been occupied for ca 32,000-47,000 years, originally probably by Batwa hunter-gatherers, who practised subsistence livelihoods and may have manipulated vegetation and wildlife with fire. Agriculture began about 2000 years ago, with the arrival of Bantu-speaking peoples with iron-smelting technology. Forests were cleared for farming and pasture. The Batwa developed economic relations with farmers, exchanging forest game for cultivated starchy foods, but continued to rely primarily on the forests to meet their livelihood and spiritual needs. The Bwindi forest became a Forest Reserve in 1932, part of a large forest which extended west into Democratic Republic of Congo. About one hundred Batwa were living nomadically in the forest in 1961. Batwa were evicted during the 1960s, but continued to have relatively free access to forest resources until shortly after the Bwindi Impenetrable National Park (BINP) (321 sq. km.) and Mgahinga National Park (34 sq. km.) were gazetted in 1991 when enforcement measures were stepped up. The land around the Park is customarily owned by local farmers and has now been almost completely cleared of forest. The Batwa, whose land was in the forest, became squatters on farmers' lands and labourers on their fields in exchange for food.

The Uganda Wildlife Authority (UWA) began the Multiple Use Programme (MUP) in 1993, supported by CARE-Uganda Development through Conservation (DTC) project, as a basis for reducing negative relations between the park and local people resulting from the tightening of control and enforcement measures by the park. It was designed as a 'high value, low impact' initiative with a small number of people harvesting limited volumes of 36 medicinal plants and 21 basketry species. Registered beekeeping associations were also allowed to operate in the park. Local communities could not negotiate what products to harvest, as these were identified in advance by UWA, based on assessments of sustainable production and community off-take. Local resource specialists, including Batwa, assisted with this research. Local level consultations focussed on securing local peoples' consent to this classification, and then working with them to identify who would be allowed to harvest products, from where and in what quantities. Although the initiative is presented as 'collaborative management' the communities are not in fact involved in management but in licensed resource extraction.

By 2001, all the area available for multiple use in BINP (20% of the total area) had been allocated but only to half of the 24 parishes bordering the park. 'Forest societies', community institutions and new Community Protected Area Committees provided channels for dialogue between parks and communities. Memoranda of Understanding between UWA and individual parishes listed the people allowed to harvest each resource permitted, and the quantities and timing of harvesting.

The need to address issues relating to the Batwa was identified during pilot trials of the MUP in 1993 when problems of Batwa social exclusion were noted. For example, community leaders claimed they had included names of Batwa on the lists of resource users, but had not. The team carrying out local consultations did not push for great Batwa inclusion at that time to avoid compromising the building of trust with the wider community.

An assessment in 1992 of resource use and management issues relating to multiple use zoning in BINP documented the high level of knowledge about use and management of forest species among local specialist users and traditional experts, and noted that 'Batwa people in particular... have a rich knowledge of bees, plants favoured by bees and hills that provide the best sites for placing of productive hives.'

Batwa collect honey from several species of Trigonalid (stingless) bees, they know which trees provide resin and/or nesting sites for Trigonalid hive construction and that Trigonalid honey sometimes causes diarrhoea because it is made from plants with toxic pollen.

The assessment noted further:

Much of this knowledge is of use not only to beekeeping, but also to forest ecology in general....Trigonid stingless bees ...are valuable specialist pollinators of certain tree species, yet most knowledge about this important aspect of forest tree biology has not been documented by formally trained scientists, but is unrecorded knowledge held by Batwa honey-hunters...The DTC project should consider giving special attention to involvement of the Batwa in beekeeping activities. They are extremely knowledgeable about bees. Few Batwa own land, and this would give successful beekeepers an opportunity to earn money from the sale of honey from the forest.

In view of the problems faced by the largely landless Batwa, the 1992 assessment emphasised.

...the valuable role that Batwa people can play in research on forest ecology and in inventory work as 'parataxonomists'...Involvement in forest conservation, beekeeping, research and eco-tourism activity as specialist guides and conservation staff can provide an alternative means of income from a remnant of the forest their forefathers formerly occupied. At least for some, income through these activities could enable land acquisition and a continued link with the forest.

The same researcher reiterated these concerns in 1999:

It is crucial that any forest conservation/NWFP harvest programme take the specific needs and roles of the pygmy peoples, who are the ancestral inhabitants of these forests (e.g. Baka, Mbuti, Batwa) into account. ...Firstly it is important to work with them as an important forest-user group...involved in the bush-meat trade [and] at the lower end of the commercial marketing chain for many timber loggers and for NWFPs...Secondly throughout the region, they also place a great cultural and religious value on some species which can exceed the barter or commercial value of those NWFP species (e.g. Dioscorea) [forest yams]. Thirdly this is an issue of cultural survival. In the Bwindi-Impenetrable National park base, the Batwa...have faced an historical situation where encroachment of Bantu agriculturalists over many centuries.... has cleared the forest and built up to a situation today where there is strong social pressure against the Batwa having access to farmland. At the same time, the game resource that was a major barter source had been overhunted, timber overexploited and they had lost access to large areas of the forest for harvesting purposes.

It is thus disturbing that an external evaluation of the MUP in 2001 found that after seven years, the Batwa's participation in the MUP remained very limited. This fact was noted by almost all the stakeholders – raising the question of why the donors, government agencies and project managers had not taken effective measures to support Batwa and promote their inclusion, as well as benefiting from their valuable forest knowledge.¹¹⁵ The evaluation report noted:

*Despite recognition of their history and the rights and priorities accorded to them by legislation and local programming support, the Batwa remain on the fringes of the Multiple Use Programme. Their reluctance to participate appears to be changing and their involvement in local institutions is increasing, but it is widely accepted that **their specific needs must be addressed**, and that the regulatory framework provides adequately for this. Key to their participation is not only **their right to collect a wide range of resources, but also their right to visit sacred areas in the forest beyond multiple use zones, and further recognition of their considerable knowledge of the forest and its resources.** (emphasis added).*

Recommendations for the next 10-year park management plan, drawn up through participatory consultations with stakeholders by the evaluation team included: capacity building for community groups to increase their negotiating ability with regard to MOUs; changes in scope and content of MOUs, with more attention to community needs and increasing their role in management of resources and

¹¹⁵ Batwa have still not been integrated into local herbal medicine associations or beekeeping associations. For example, the Kisoro beekeeping association, a strong and successful group, says Batwa are not included as members because they know nothing about beekeeping (Chris Kidd, personal communication 16.03.04)

enforcement; increased range of resources that may be harvested; community involvement in data collection to assess sustainability of harvesting and simplified data collection protocols. The stakeholders also recommended:

Batwa deserve and should receive special attention. Their particular interests and needs should be identified and incorporated in MOUs, with consideration of access to areas outside of multiple use zones for non-consumptive purposes (e.g. to ceremonies at sacred forest sites).

The latest (2001-2011) management plan for BINP and Mgahinga notes that 'The Batwa genuinely feel that their needs have been marginalised in the [multiple use programme], and yet the costs they incur due to creation of the park are greater than for other community members'. Pro-Batwa actions proposed in the management plan include creating a special category of employees, enabling Batwa to be employed by UWA as trackers and guides despite their lack of formal educational qualifications. Following a review of the multiple use programme, the feasibility of allowing Batwa access to wild yams, honey and fish will be considered, and whether they can be trained in sustainable harvesting methods. Monitoring and research will 'tap into indigenous knowledge (e.g. of Batwa)'. A decision has not been made as to whether Batwa will be allowed official access to cultural sites for spiritual purposes. These intentions go some way towards the recommendations noted above, but given the entrenched marginalisation of the Batwa, much will depend on the level of institutional and managerial commitment to addressing the Batwa's special needs.

Sources: Bwindi/Mgahinga Conservation Area General Management Plan 2001-2011; Cunningham 1996, 1999; Davey et al. 2001; Wild and Mutebi 1996.

4.7. Revenue sharing

Central African laws and policies envisage more equitable sharing of the benefits flowing from exploitation of forest resources in favour of local populations. Uganda's forest policy, for example, proposes using forest revenues to provide health, educational or other facilities directly to the poorest of the poor in forest areas who due to marginalisation 'are unlikely' to be able to access benefits equitably.

In Cameroon forest revenues are shared directly with local communities. Under the forest law and associated legislation, local communities receive 10 percent of the Annual Forestry Fee (AFF) (*redevance forestière annuelle*) – a tax levied on the surface area of a permit for standing sales of volume or for a forest management unit (logging concession). Another forty percent of the AFF is designated for the district council where the logging occurs. The loggers pay the amount of AFF destined for the communities to the local council which redistributes it to beneficiary communities for projects promoting socio-economic development. Every beneficiary community is supposed to have a Forestry Fee Management Committee to manage the 10% of AFF destined for the communities. The Committee is supervised by the administrative authorities and chaired by the local mayor, and comprises civil servants, local elected representatives and six people chosen by the villagers themselves. Loggers must also pay communities an 'informal' tax of 1000 CFA (approximately US\$ 1.5) per cubic metre of wood felled as sales by standing volume. The informal tax is either paid to the local council or directly to the population in cash or kind.¹¹⁶

The AFF and informal tax amount to appreciable sums of money potentially benefiting the communities. However, mayors and local elites have tended to control decision-making about use of funds, and much of the revenue has ended up at inappropriate destinations with little benefit to local communities in terms of coherent social infrastructures.¹¹⁷ Pygmy communities lack their own representative bodies recognised by the local authorities, and are deemed to 'belong' to the Bantu communities. As there are no formal mechanisms to ensure that they receive a share of forest revenues, they are dependent on the goodwill of Bantu chiefs.

¹¹⁶ Lescuyer 2003:19-24

¹¹⁷ Lescuyer 2003: 21-23

Consequently virtually none of this logging money reaches Pygmy communities.¹¹⁸ Cameroon's Forest and Environment Sector Programme intends to review the systems for managing logging tax revenues.

In Congo, 50% tax levied on forest concession areas goes to a special treasury fund for development of the regions. Similar provisions in the DRC forest law require 25% of the surface tax to be returned to the province and 15% to the next lower administrative level, the *territoire*, where the company is operating. These funds are to be used for basic infrastructure of relevance to communities. Similarly, in Uganda 40% of Forest Department revenues goes to the District local government, on the premise that benefits of forests on reserved land should accrue to the people. However, Districts see this money as another income stream, rather than using it directly for community or forest-related activities. Notwithstanding the redistribution of forest revenues to local administrative entities, as Pygmy people are not represented in local administrations they have no say over how these funds are used.

In Cameroon, Congo, DRC and Gabon, logging companies are supposed to provide social amenities such as schools, roads and health posts for the benefit of rural communities – but in practice they often fail to do so. Pygmy people may in any case not be able to benefit from these facilities due to poverty or discrimination.¹¹⁹ Local people are usually unaware of conditions in management agreements defining the obligations of logging companies towards local communities, the activities of the logging company, or the penalties that should be imposed for infractions. They are thus not able to fulfil a potentially useful role of helping forest services hold loggers to account.¹²⁰

In some cases, as in the Dzanga-Sangha reserve (Box 13) Pygmy people benefit directly from tourism in the protected areas established on their lands through employment and through a share of tourist revenues paid directly to the community. However, generally few Pygmy people are employed by protected areas. Two Batwa guards are currently employed at Bwindi Impenetrable National Park, Uganda.¹²¹ In 2001, several dozen Batwa were employed in the Kahuzi-Biega National Park, DRC; four as trackers, the rest as labourers, in road maintenance and other unskilled jobs.¹²² Even these low level jobs are important in alleviating the extreme poverty of Batwa communities around the park. In Rwanda, three Batwa were employed in the Volcanoes National Park, and four in Nyungwe Natural Forest.¹²³

The competing funding needs of the national government, wildlife authority and local park management mean that frequently only a small share of the tourist revenue from national parks and other protected areas is available for the affected communities.¹²⁴ In Rwanda, for example, only 10% of tourist revenue from gorilla parks is disbursed, and only to the district level, not to the local communities.¹²⁵ Tourist revenues are usually not paid to the communities directly but disbursed for local development projects, as around the Bwindi national park (Box 13). Despite the adoption of revenue sharing schemes by many conservation programmes, the historical rights of indigenous communities originally occupying protected areas are given scant attention, and certainly not prioritised.¹²⁶ In cases where tourists give money directly to local communities, Pygmy communities have little control over how this money is shared out, and they may only get a small proportion of the tourist spend (see Box 15). The development projects implemented using tourist revenues may have only limited benefit for Pygmy communities if they cannot access schools and health

¹¹⁸ Djoh 2003; van den Berg and Biesbrouck 2000: 27-28; Republic of Cameroon 2003b; Albert Barume, personal communication 13.3.04

¹¹⁹ Ngoy Isikimo 2003; Republic of Cameroon 2003c

¹²⁰ Nguiffo 2003d

¹²¹ Chris Kidd, personal communication 13.04.04

¹²² Kapupu 2003

¹²³ Kalimba 2003

¹²⁴ Adams and Infield 2003

¹²⁵ Kalimba 2003:77

¹²⁶ Adams and Infield 2003

centres and other community infrastructure due to poverty and discriminatory treatment from the managers of these facilities.¹²⁷

Box 15 : Batwa experience of revenue sharing in Uganda.

The Revenue-Sharing programme is a statutory requirement under the 1996 Wildlife Statute, which requires protected areas to share revenue with the surrounding communities. However, communities around the Bwindi Impenetrable National Park were not consulted about the percentage of revenue that should accrue to them. Under the 1996 Wildlife Statute, Bwindi communities are now entitled to receive 20% of gate fees, whereas before they received 8% of all revenue from gorilla tourism (gate fees plus the much larger trekking fees) which was about three times more remunerative. Money is disbursed as community development projects, such as schools, health posts and roads. By 2001 over \$100,000 had been shared out for 21 community projects, more than any government contribution to rural development in the area.

The indigenous Batwa benefit from such community projects to the extent that they are able to access them – for example, most are too poor to attend health posts. Tourism initiatives in the region offer an opportunity for Batwa communities to earn money directly from visitors to protected areas, but in many cases they are unfairly exploited. Tourists at the Bwindi Impenetrable National Park pay \$5 each to go on a walk that includes a local orphanage, a school, a banana brewery, traditional healers of the Bakiga ethnic group, and a Batwa dance and drumming performance. Each month, half of the tourist income is given to the managers and implementers of the walk. Of the remaining 50%, the Batwa community receives 30% (i.e. 15% of the total tourist income). The monthly payments handed over to the Batwa community are typically between 10 and 20\$, which has to be divided between 20 Batwa adults and children, so that in the end each adult may receive less than \$1 per month. The Batwa have no way of assessing whether they do in fact receive the correct proportion of the tourist fees, and feel that the allocation is in any case unfair as the tourists are more interested in meeting the Batwa than in the rest of the walk. Batwa women have realised that a more lucrative sideline is the sale of baskets direct to tourists, earning \$2.5 per basket. Even then the Batwa sometimes get cheated: tourists have reported instances where these additional earnings have been confiscated by the local tour guides.

Source: Adams and Infield 2003; Jackson 2003a ; Laird 2002; Schuurman 2003

¹²⁷ Lewis 1999; 2000

5. Protection of indigenous knowledge

5.1. Loss and abuse of indigenous knowledge

*Indigenous knowledge, being an integral part of our heritage, defines our distinct identities as Indigenous Peoples. This is endowed to us by nature and bestowed by our ancestors. We denounce the loss of Indigenous Knowledge noting the extensive exploitation of our cultures and traditional knowledge systems and we urge governments, tourism sectors and other key players to devise a participatory mechanism, which safeguards, develops and protects our heritage from misuse and misappropriation.*¹²⁸

The loss of lands and the restrictions on access to forest resources that have been described above make it increasingly difficult for central African indigenous peoples to practise and maintain their traditional forest-related knowledge. As a result of increased sedentarisation and consequent reliance on farming, some Baka youth in south-eastern Cameroon are losing their ability to recognise forest animals or know the plants they need for an independent life in the forest, and, compared with older Baka, have reduced geographic knowledge of traditional Baka territories.¹²⁹ Some Bagyeli youth don't know how to make snares from vines or where the traditional hunting territories are.¹³⁰ Batwa people in Rwanda and Burundi have been denied access to their forests for three or more generations, and have had to develop alternative livelihoods around wage labour, pottery and begging. Consequently the forest knowledge of most of these Batwa communities has been lost. Ironically the loss of forest knowledge following Batwa peoples' forced exclusion from protected areas then becomes a further reason for continuing to restrict their access to the forest.¹³¹

Forest-related knowledge is not valued greatly by dominant society, and is generally ignored by the education system. While a few mission schools are available exclusively for Pygmy children¹³² most central African school terms and teaching modules are not adapted to the hunting and gathering calendar, with the result that children may have to leave school to return to the forest and harvest important resources. School curricula do not include traditional forest related knowledge and initiatives to reinforce the intergenerational transmission of TFRK are lacking.¹³³ If indigenous children are lucky enough to get sponsorship to enable them to attend school, it will often be a boarding school where they are removed from the environment in which TFRK is valued and relevant. Although Pygmy communities lament the negative impacts of formal education systems on traditional knowledge systems and social and cultural norms,¹³⁴ they also see education as crucial for improving the status and socio-economic condition of their people.

For the most part, central African indigenous traditional knowledge holders are merely suppliers of information, often for initiatives that ultimately dispossess them of their resources and rights. Protected area planners rely heavily on indigenous guides and informants when they are assessing forests for their potential for biodiversity conservation. Ironically the biodiversity revealed by indigenous peoples later becomes the reason for excluding them from forest resources.¹³⁵

*Ba'Aka men and women's knowledge of the forest allows them to guide visitors through a tropical forest that, to the uninitiated, appears green but barren; with the aid of Ba'Aka interpreters it is shown to be an extraordinarily diverse source of food, medicines and building materials.*¹³⁶

¹²⁸ Declaration by indigenous peoples from Tanzania, Uganda, Kenya, Sudan, Botswana, Namibia and Ethiopia, meeting in Arusha, August 21st 2003

¹²⁹ Jell 1998: 11; Jerome Lewis, personal communication 25.3.04

¹³⁰ Owono 2003: 260

¹³¹ Barume 2000:75

¹³² Republic of Cameroon 2003c

¹³³ Abéga 1998: 95-100

¹³⁴ Dkamela 2003

¹³⁵ A survey of 200 African ethnobotanists showed that almost 50% of the ongoing ethnobotanical research was being carried out in protected areas i.e. areas that likely to be occupied by indigenous people. (Höft and Höft (n.d.))

¹³⁶ Ntiamao-Baidu et al. 1998 : 29

While Ba'Aka men and women's knowledge of the forest is cited as crucial for the ecotourism, public health and research components of the Dzanga-Sangha project in CAR, overall their livelihoods have become less secure, except for a few individuals with specialised jobs as trackers and research assistants (see Box 13).

Indigenous knowledge is gathered by protected area managers and community development programmers seeking to commercialise or domesticate non-wood forest products. Examples of forest products prized by Pygmy peoples and being commercialised include caterpillars and leaves of *koko* (*Gnetum africanum*) in the Ngotto reserve in CAR,¹³⁷ and *Dioscorea* yams in the Kahuzi-Biega National Park in DRC.¹³⁸ While this may generate incomes, it can also be part of a strategy to 'take pressure off the forest' that involves weakening peoples' ties with the forest.

Professional hunters and poachers recruit Pygmy men as hunters and guides, and loggers employ them as tree spotters, thereby using indigenous knowledge to remove valuable products that are key resources for Pygmy communities.¹³⁹ Despite their many years of knowledge and experience, Pygmy people are generally regarded as unskilled workers and are paid only a manual wage for their services. They frequently sell their forest products at below market prices. The factors driving Pygmy peoples into such disadvantageous relationships include poverty and the need for cash, the belief that the forest is there for all and can be shared, and their expectation of a fair portion of the returns. Some Pygmy representatives are now calling on forest authorities and conservation managers to exert more control over commercial poachers and make better use of Pygmy knowledge and skills to protect forest areas.¹⁴⁰

Central African indigenous peoples have very little control over how their information is documented, stored or accessed by those who have collected it. They are generally not informed about research findings, or how their information is being used by others in management of forest resources.¹⁴¹ Indigenous organisations are largely unaware of new approaches and thinking in relation to protecting traditional knowledge, or the different options that have been used by indigenous peoples elsewhere.

One promising new development with considerable potential for empowering indigenous peoples in the validation, use and control of their knowledge is community-based mapping. Through mapping, indigenous peoples can themselves document their knowledge, resource use and cultural values attached to the forest, with a view to securing their livelihoods. In Cameroon, Pygmy communities have been trained by NGOs to map their use of the forests where they live. With technical support they have already produced digitised maps of their traditional hunting and gathering areas, and areas of cultivation. As the maps are produced they are refined with local communities and discussed with local government authorities. The final maps remain the intellectual property of the indigenous communities and supporting NGOs, and are a focal point for discussions on land tenure and access rights over areas from which indigenous communities are excluded by forest zoning or protected areas, and areas where Bantu and Pygmy land and resource claims overlap.¹⁴²

¹³⁷ FAO 2003

¹³⁸ Chantal Shalukoma, personal communication, 28.04.03

¹³⁹ Ndameu 2003 :221

¹⁴⁰ Nguiffo 2003b; Owono 2003

¹⁴¹ Bokwe et al.(n.d.)

¹⁴² Poole 2003

5.2. Policies and measures to protect central African indigenous knowledge and resources

Most indigenous peoples are dependant on the forest. They do not see Mother Nature as a commodity with a mere commercial value, which could be bought, sold and overexploited in the name of so-called 'development', with the aim of extracting only economic benefits. The latter is the vision of many institutions, and governments.

*Our vision of the forest recognises that she represents cultural and spiritual values for indigenous peoples. She is the distinct and vital source of their knowledge. She holds their sacred sites and rituals, which must be protected and considered as belonging to their heritage, as well as the heritage of humanity. Their traditions are inseparable from their lands and their forests.*¹⁴³

Indigenous organisations challenge the assertion that genetic resources are the sole property of the state (as claimed by Cameroon for instance), and that the state should be the primary authority giving consent to their exploitation, as for example stated in CBD article 15(5). They maintain that their traditional knowledge is intricately associated with particular flora and fauna and ecosystems and that access to such biological resources within their ancestral territories for research or other purposes should be subject to their free prior and informed consent, as set out, for example, in the Akwé: Kon guidelines for the conduct of impact assessments on indigenous territories.¹⁴⁴ The indigenous position is consistent with international law under which state sovereignty does not mean that states have absolute political or legal freedom, but that they must respect the human rights of their citizens.¹⁴⁵ States' implementation of CBD provisions must be in conformity with international human rights agreements which, *inter alia*, uphold the rights of indigenous peoples to freely dispose of their natural wealth, to have secure rights to their means of subsistence and to participate in and consent to activities that affect them.¹⁴⁶

African indigenous peoples have noted the inappropriateness of northern intellectual property rights in relation to the cultural and political norms of African indigenous peoples and the vulnerability of indigenous crafts and culture to commercial exploitation by outsiders, for example, through tourism or recording of their music. They want their ownership rights to forest resources to be recognised and to receive a greater share of benefits from commercial exploitation of their resources, knowledge and culture. They stress the need for capacity building of indigenous communities to increase their understanding of issues of intellectual property rights and free prior and informed consent to enable them to protect and sustain traditional knowledge, medicine and resources.¹⁴⁷

Some African groups are calling for indigenous-led documentation of traditional knowledge as a way of protecting traditional knowledge.¹⁴⁸ Other indigenous commentators are cautious about relying on registries to protect knowledge, as they may fail to capture the holistic nature of traditional knowledge systems by focussing narrowly on utilitarian or economically valuable species and associated knowledge so resulting in a superficial check-list approach.¹⁴⁹ Registries can become a mechanism to extract traditional knowledge from communities if they are not protected through transparent procedures to ensure the free, prior and informed consent of people contributing their knowledge, and proper procedures for agreeing access by others to the knowledge held. The globalisation of communications has made it easier than ever to place confidential material, such as indigenous peoples' sacred or specialist knowledge, in the public domain, particularly the

¹⁴³ Indigenous Peoples' statement on social and cultural aspects of forests presented by Sinefasi Makelo from DRC to the UNFF4 Multistakeholder dialogue, May 2004.

¹⁴⁴ CBD 2004

¹⁴⁵ Forest Peoples Programme 2004a: 1

¹⁴⁶ Forest Peoples Programme 2004a: 2-3

¹⁴⁷ Nairobi Declaration of the 2nd African Indigenous Women's Conference, 14-17 April 2004, Declaration by Indigenous peoples from Tanzania, Uganda, Kenya, Sudan, Botswana, Namibia and Ethiopia, meeting in Arusha, August 21st 2003

¹⁴⁸ Nairobi Declaration *op.cit.*

¹⁴⁹ CBD 2004

Internet, where indigenous customary laws governing access and use of this information cannot be enforced, thus enabling it to be freely appropriated.¹⁵⁰ The UN and human rights NGOs have concluded that the best means of securing indigenous peoples’ rights to their heritage are through secure land rights, recognition of indigenous peoples’ own representative institutions and the exercise of indigenous customary intellectual property laws.¹⁵¹

According to documents consulted, policy and legislation to regulate access to biological resources and protect local peoples’ knowledge have not yet been implemented by central African governments, although draft policies apparently exist in Uganda and Cameroon. Table 8 shows measures proposed by eight central African states to regulate access to biological resources and protect intellectual property rights. The need for prior informed consent is stated explicitly only in the CAR NBSAP (but who should give this consent is not specified) and in policies guiding research activities, such as the Limbe Botanic and Zoological Gardens Policy on Access to Genetic Resources and Benefit-Sharing and the WWF draft policy for research in protected areas in Cameroon.¹⁵² These protocols include provisions that would increase indigenous peoples’ control over access and use of their knowledge and resources. The WWF policy attaches statements by indigenous organisations on best practice in research with indigenous peoples. Unfortunately, despite their progressive nature, there is little indication so far that Pygmy peoples have benefited from these research policies. The Limbe Policy has been used mainly around Mt. Cameroon, and it is unclear whether the WWF policy has been implemented to any great extent in conservation areas in the east and south of Cameroon. As far as could be ascertained by this survey, central African governments are not yet promoting specific measures to increase indigenous peoples’ capacity to negotiate a fair share of benefits resulting from the exploitation of their traditional knowledge.

Table 8: Measures to regulate access to biological resources and protect intellectual property rights (IPRs) in eight central African countries

Country	Measures proposed
Burundi	
2 nd report to CBD	<ul style="list-style-type: none"> No legislation or measures relating to access or IPRs, no work planned
Cameroon	
NBSAP	<ul style="list-style-type: none"> promote bio-prospecting revise policies and laws on access and benefit-sharing improve mechanisms for redistributing revenue from biological resources among stakeholders
Forest Law	<ul style="list-style-type: none"> all genetic resources belong to the state, their exploitation requires prior state authorisation and sharing of benefits with the state
Environmental Management Framework Law	<ul style="list-style-type: none"> scientific exploration and biological and genetic resource exploitation to be done under conditions of transparency and in close collaboration with national research institutions and local communities, and should be profitable to Cameroon. Exploration and exploitation should be done under the conditions stipulated by the international conventions relating thereto, duly ratified by Cameroon, especially the Rio Convention of 1992 on Biodiversity.
The Limbe Botanic and Zoological Gardens Policy on Access to Genetic Resources and Benefit-Sharing	<ul style="list-style-type: none"> Research activities must honour the letter and spirit of relevant international laws concerning biodiversity and traditional resource rights Free prior and informed consent of local communities, right of veto Research must be designed for benefit sharing with communities (e.g. fee payments, training, equipment, return of results in useful format for community) and achievement of community sustainable use objectives code of behaviour for researchers
WWF Cameroon draft policy for ethical research in protected areas	<ul style="list-style-type: none"> communities have the right to decline participation in research researchers must obtain proof of prior, informed consent from named ethnic groups living in the research area researchers must respect culture, traditions and customary law

¹⁵⁰ Daes 2003

¹⁵¹ Daes 2003; Simpson 1998

¹⁵² Laird 2002: 142; Laird and Tonye Mahop 2001

	<ul style="list-style-type: none"> • there must be clear mechanisms for benefit sharing • Appended documents, to which research relationships should adhere in letter and spirit, could include indigenous peoples’ statements and declarations such as the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous peoples (1993), Kari-Oca Declaration and the Indigenous Peoples’ Earth Charter (1992), Indigenous Peoples Biodiversity Network: Indigenous Peoples, Indigenous Knowledge and Innovations and the Convention on Biological Diversity (1996).
CAR	•
NBSAP	<ul style="list-style-type: none"> • Hold workshops to draw up benefit sharing system • include IPRs to be included in a new environmental law. • incorporate prior informed consent in any legislation on access to biological material.
Congo	•
2 nd report to CBD	• Some measures in place (legal, administrative and general policy measures)
DRC	•
UNFF4	<ul style="list-style-type: none"> • work is planned on access and benefit sharing which will involve identification of resources involved, the current access modalities and who controls access.
2 nd CBD report	<ul style="list-style-type: none"> • no action being taken to ensure fair sharing of results of research and development • no action on access and benefit sharing. • current legislation provides no controls over access to biological resources and needs revision.
Gabon	•
NBSAP	• no laws or measures relating to IPRs, no work planned
Rwanda	•
NBSAP	• mechanisms for defence of IPRs to be developed
Uganda	•
National Environment Statute	<ul style="list-style-type: none"> • will issue guidelines and prescribe measures for the sustainable management and utilization of genetic resources of Uganda for the benefit of the people of Uganda • guidelines will include appropriate arrangements for access to the genetic resources of Uganda, by non-citizens of Uganda including the fees to be paid for that access • guidelines will include the sharing of benefits derived from genetic resources originating from Uganda;

The experiences of the San of South Africa illustrate one case in which African indigenous people have been able to counter bio-piracy and negotiate benefit-sharing agreements using conventional patent-based concepts of intellectual property rights (Box 16). The San had collected oral histories documenting traditional San resource use and knowledge, and used this information to support their claim for recognition of their collective intellectual property rights to *Hoodia*, a plant with appetite and thirst-suppressing qualities, and a share of royalties in the commercial development of *Hoodia*. While the San consider their successful negotiations to have empowered them to make more informed decisions about their intellectual property and ways to protect it, others in the indigenous movement consider that the patenting of property rights over life forms takes power and knowledge away from indigenous peoples and is another form of colonisation by the North. They are concerned that commoditisation of biodiversity and indigenous knowledge will have negative impacts on indigenous livelihoods and that local communities using the same knowledge may end up competing to assert their intellectual property rights.¹⁵³

¹⁵³ Ramdas and Ghotge 2003

Box 16 Indigenous people secure benefit-sharing agreements in South Africa.

South Africa is the third most biologically diverse country in the world, with between 250,000 and 1 million plant species, a large proportion of which are endemic. A biodiversity act was enacted in September 2004 requiring prior informed consent and a benefit-sharing agreement to be developed with holders of traditional knowledge where their knowledge is used for bio-prospecting. South Africa's Council for Scientific Research (CSIR)'s policy on bio-prospecting however does not require prior informed consent, merely saying: 'In drawing up bio-prospecting agreements, we will take account of the rights, interests and practices of indigenous peoples...the scientific and technological partnership ...will permit communities to benefit from their indigenous knowledge.'

Hoodia gordonii, *H. currorii* and *H. Lugardii* are succulent plants long used by the indigenous San people of southern Africa to block hunger and thirst during hunting and gathering activities. The account of a Dutch ethnobiologist concerning the traditional use of *Hoodia* as an appetite suppressant was published in 1937:.

This is the real ghaap of the natives who use it as a substitute for food and water. The sweet sap reminds one of licorice and, when on one occasion thirst compelled me to follow the example of my Hottentot [San] guide, it saved further suffering and removed the pangs of hunger so efficiently that I could not eat anything for a day after having reached the camp.

In 1963 CSIR started investigating *Hoodia*, and in 1982 CSIR isolated the appetite-suppressant agent, a steroidal glycoside dubbed 'P57'. In 1996 CSIR began filing patent applications around the world to protect its invention of pharmaceutical formulations related to P57. CSIR licensed the rights to further research, trial and eventually commercial exploitation first to Phytopharm in the UK, and thence to Pfizer Inc in the USA. CSIR did not consult with the San prior to obtaining a patent on *Hoodia*. Initially none of the projected royalties to CSIR were ear-marked for sharing with the holders of traditional knowledge. The project was approved by the government despite violating government policy on prior informed consent.

When the San discovered, in 2001, that CSIR had patented the active ingredient of *Hoodia*, they started their own action to defend their intellectual property rights. For several years they had been collecting oral testimonies from San throughout the region, which enabled them to prove that the San had a long history of use of *Hoodia* forming part of their traditional knowledge. The poverty-stricken San chose not to challenge the ethics or legality of the patent, but to negotiate a share of the financial benefits. The South African San Council and the CSIR signed a memorandum of understanding in which the CSIR formally stated that the San are the owners of the traditional knowledge associated with the human uses of the *Hoodia* plant. However, the issue of other peoples in the region, such as the Nama, Damara and Topnaar, who also use *Hoodia* has not been resolved. The CSIR, as the patent-holder and licensor of rights, also signed a benefit-sharing agreement with the San, in March 2003, to take effect if the plant reaps success in the marketplace. The core terms of the agreement are that the San will form a 'San Hoodia Benefit-Sharing Trust' which will, in the event of the continued success of the clinical trials and commercial release, receive 8% of all milestone payments paid to the CSIR over the next three years (predicted to be about US\$ 1.5 million) and 6 % of all royalty payments received by CSIR for the duration of the patents. As CSIR's royalty income is itself only a fraction of the royalties accruing to the pharmaceutical companies, the amount designated for the San is estimated to be less than 1% of the overall royalties.

The San confirmed the principle that their intellectual heritage is collectively owned by all the San, and that financial benefits would not be restricted to the 1500 =Khomani San living in the Northern Cape, where *H. gordonii* principally grows, nor to the 7,000 San of South Africa. The San-owned regional networking organisation WIMSA agreed that future revenues deriving from *Hoodia* would be shared equally by the 100,000 San in all countries in which they live, namely South Africa, Namibia, Botswana, Angola, Zambia and Zimbabwe. San also insisted on access to CSIR-held information, and the CSIR agreed that the

Department of Arts, Culture, Science and Technology would provide information to the San on the patenting of all South African plants internationally.

The San called on the South African government to support indigenous communities who are directly responsible for the creation, maintenance, custodianship and development of their own indigenous knowledge, and to uphold commitments to formal consultation on protection of biodiversity and benefit-sharing. The San also called on commercial concerns to stop using images of San in their adverts without their prior consent and without ensuring that they also benefit, financially or otherwise.

The San stand to benefit from the agreements with CSIR only if commercialisation is successful. Failure to secure their prior, informed consent at the start of the project meant that the San were obliged to negotiate post-hoc, resulting in several inequitable aspects of the agreements. For example, the intellectual property relating to the CSIR patent for P57 remains vested exclusively within CSIR; the San thus have no right to claim co-ownership of patents or products. They are unable to use their knowledge of *Hoodia* in any other commercial application, for example, in non-patented herbal medicines which are less lucrative, but also less commercially risky and thus would possibly be a more viable means of realising financial benefits in the long run. The San also cannot claim benefits from the dozens of *Hoodia*-based products emerging on the market, which blatantly use San traditional knowledge in their promotion. The San will have to share any benefits with third party claimants. None of the royalties are specifically earmarked for conservation of the *Hoodia* resource, nor do non-financial compensatory mechanisms such as training, education and capacity-building play a significant role in the agreements. However, by focussing on maximising financial compensation, the San can decide themselves how to use funds for their development activities.

Although Pfizer has recently pulled out of commercialising the *Hoodia* patent (due to a shift in their commercial strategy) thirty other pharmaceutical companies have applied to take over Pfizer's role. The San Benefit Sharing Trust was registered in August 2004; the San have elected the Trustees and have agreed in principle how the money will be divided. As noted by the San's lawyer: 'Managing this process will entail immense challenges for a San leadership largely foreign to the notions of strict budgets and financial controls, but no alternative exists but to develop a democratic yet stable institution capable of responding fairly and openly to the challenge.'

Source: Chennells 2003; Geingos V. and Ngakaeaj M. 2002; Kxao Moses †Oma 2003; Laird 2002; Stephenson 2003; Wynberg 2004; Roger Chennells personal communication 12.07.04

6. Consultation, Participation and Representation

6.1. Indigenous consultation and participation in policy development and forest management

Except for a few individuals who have participated in international meetings, general public awareness of government commitments under UNFF and CBD is extremely low and participation of civil society generally in the environmental planning and policy of central African countries is very limited.¹⁵⁴ Members of civil society often have difficulty accessing information about government policies and laws, ongoing initiatives and proposed activities.¹⁵⁵

*...some informants within government organisations required an authorisation from the ministry in charge of forests in order to be able to provide any kind of information. They argued that the issue of biodiversity is very sensitive and cannot be released without authorisation.*¹⁵⁶ (Cameroon).

*In a welcome act of 'transparency' the minister provided the authors and other NGOs with the texts of 16 implementation instruments of the forestry code.*¹⁵⁷ (DRC).

Forest policy in central Africa has tended to be developed at national level by experts drafting documents in consultation with government officials, donors, international financial institutions such as the World Bank and large international NGOs, followed by national validation workshops at which draft documents are presented for discussion and endorsement. International policy processes and environmental and human rights conventions have so far not been well integrated into national forest planning.¹⁵⁸ Hitherto, rural forest dwellers have had little substantive input to central African forest policy processes, and their needs and interests have not been sufficiently addressed. However, recent policy developments such as the Ugandan forest policy (see 3.2) and the Forest and Environment Sector Programmes being developed by Cameroon, CAR, CAR, Congo and Gabon (Box 3) are more bottom-up. In particular, the World Bank funding of the FESP in Cameroon has required the government to consult directly with indigenous peoples in order to produce a mitigation plan (Box 11).

Development of NBSAPs in central Africa has, to varying degrees, involved public consultation at regional and local workshops (e.g. Cameroon, Gabon), and sometimes rural appraisals (CAR). However, the funds allocated to local consultations in project budgets financed by international agencies such as the Global Environment Facility tend to be a fraction of those destined for international experts and running costs.¹⁵⁹ Despite the high priority given by indigenous peoples to the protection of forest biodiversity, there appear to have been few specific consultations with indigenous communities and organisations during the development of NBSAPs.

Most policy documents consulted referred to the need for increased local community and NGO participation in forest policy and management, but with widely different concepts of what is meant by participation. Concepts included: giving people information, sensitisation/education of local communities about the importance of biodiversity conservation and the need for their active participation, setting up local conservation committees (Rwanda NBSAP 2003), taking decisions after consultation with concerned parties or public debate (Cameroon Environmental Management Law 1996), local participation in decision-making, local representation in decision-making bodies and giving responsibilities to local communities (Cameroon FESP 2003). The impression gained is that the type of participation envisaged is mostly of a 'passive' nature

¹⁵⁴ Tchoumba 2002

¹⁵⁵ Nguiffo 2003d

¹⁵⁶ Tchoumba 2002 : 7

¹⁵⁷ Nsosso 2003 41

¹⁵⁸ Diss 2003; National Environment Management Authority, Uganda, 2002

¹⁵⁹ Griffiths 2004

i.e. transmission of information to local communities and consultation, with few explicit measures for joint decision-making and initiation and control of activities by local actors. However, indigenous communities scarcely benefit even from this minimal level of participation, remaining very poorly informed about programmes directly affecting them.¹⁶⁰

Box 17 gives examples of measures proposed in the forest laws of five central African countries for consulting with local communities about forest use. The central African forest laws and policy frameworks do not appear to have articulated the principle of obtaining the informed consent of indigenous communities prior to decisions that affect their customary rights over and access to forest resources. This omission is at odds with contemporary international law (including implicitly Articles 20 and 21 of the African Charter on Human and Peoples' Rights) which upholds the right of indigenous people to give or withhold their consent to activities affecting their lands, territories and resources.¹⁶¹

Box 17: Provisions in the forest laws of five central African countries for consultation with local populations about forest use .

Under the Cameroon forest law (1994) and associated legislation, the gazetting of state forests must take account of the local populations, who retain their normal use rights except if these are deemed contrary to the objectives of the forest, in which case they are extinguished and compensation must be paid. Public notices inform villagers of the proposed gazettelement and MINEF is required to visit all the villages concerned to inform people about the classification procedure and how they can submit claims. A classification committee then decides on villagers' claims. Management plans for forest concessions drawn up by logging companies must take into account the traditional rights of resident populations (determined through socio-economic surveys), specify what social amenities the company will provide and describe the mechanisms set up for resolving conflicts with local populations. Local populations must also be represented on the body responsible for the management plan.

The Gabon forest law (2001) stipulates that classification or declassification of the permanent forest estate will proceed via provincial classification committees (their composition is not specified), and that the Ministry will collaborate with local populations to define the boundary and the customary rights that can be exercised within the boundary. Further regulations will set out the details.

In Congo, local workshops are supposed to be held to obtain local views on the forest zoning plan. Congo wants to popularise its forest law (2000), so local people are aware of its contents. Under the forest law, local people will be consulted prior to classifying forests and defining permitted use rights, but the law does not detail the consultation mechanism. Concession management plans are supposed to incorporate socio-economic findings, define how use rights will be regulated and what measures are needed in favour of the communities.

CAR's 1990 forest law does not require logging management plans to involve consultation with local populations. Classification of forests other than national parks or integral natural reserves is announced by radio and posting of public notices after the decision has been approved by ministers. A public enquiry is then held to obtain opinions of the parties affected.

Under the DRC forest law (2002), national and provincial consultative committees will advise on development of forest policy and laws, classification or declassification of a forest and on national or provincial forest planning. Their composition and mode of functioning are yet to be defined. The classification of forests and agreement of forest concession management plans requires consultation with adjacent communities. Allocation of forest concessions must be preceded by a public enquiry, the modalities of which are to be defined in a ministerial order.

Source: forest laws of Cameroon, CAR, Congo, DRC and Gabon; Lescuyer 2003.

¹⁶⁰ Nguiffo 2003a:207

¹⁶¹ Colchester and MacKay 2004; Forest Peoples Programme 2004b; MacKay 2004

According to DRC's report to UNFF4, DRC forest policy reforms (backed by World Bank funding and FAO technical support) envisage active participation of local communities and NGOs in forest management and greater consultation with them but to date there has been virtually no public consultation on development of the national forest plan and public awareness of the 2002 forest law is very limited.¹⁶² So far, it appears that no Indigenous Peoples Development Plan has been produced, although World Bank involvement would normally require this. The mechanisms for implementing the forest law are to be set out in supplementary regulatory texts; hence it is crucial that these texts incorporate meaningful input from representatives of the local communities and indigenous peoples who will be most affected by the law. Under pressure from a DRC civil society coalition, the number of civil society representatives on the steering committee set up to oversee the FAO forest reform project and comment on proposed supplementary legislation was increased from two to five – three representatives of environmental groups, one representative of a platform of development NGOs and one person representing indigenous interests. Several draft ministerial orders and decrees setting out details of implementation of the forest law, including *inter alia*, procedures for allocating concessions and carrying out the public enquiry (see Box 17) have been transmitted by FAO to the Steering Committee. However the private sector representatives appear to be seeking to slow down the process of considering these texts by not issuing comments.¹⁶³

The methodology and criteria for the zoning of DRC's forests have been discussed only with state departments and the private sector, but not with civil society. Once the zoning plan has been produced, consultations with local communities in pilot provinces will be undertaken to agree the definitive borders of forest concessions and conservation areas¹⁶⁴ i.e. local communities will be asked to respond *post-hoc* to a pre-decided process for dividing up their forest lands; this is likely to result in similar problems to those of the Cameroon zoning process. DRC environmental and civil society groups are deeply concerned that the implementation of the forest law will fail to ensure proper controls over logging companies and will ignore the rights of local communities and indigenous peoples. They are calling for a moratorium on enactment of implementation measures until there has been genuine civil society consultation, and have appealed to the President of the World Bank to ensure that the new forest policy genuinely addresses the needs of DRC's indigenous and local communities.¹⁶⁵

Where legislation has been enacted to increase local consultation about forest use, these procedures frequently do not reach indigenous communities. For example, under the Cameroon forest legislation, local communities have 30-90 days to object to proposals for classification and use of a given forest.¹⁶⁶ However, information dissemination is via official notices in administrative centres and through the media – these may reach certain sectors of the settled Bantu population, but are not appropriate for semi-nomadic Baka and Bagyeli communities, as most are illiterate, lack radios and do not visit administrative centres. The meetings that MINEF is supposed to hold with each affected village (Box 17) are often held with groups of villages to save time, and no special provisions are made to meet with Pygmy communities. Compensation for loss of customary rights through classification of forests is only permitted for operating plantations, sacred sites and areas with land title deeds; in these cases, the authorities' most common response is to shift the boundary of the classified forest, rather than give financial compensation. The average decrease in the permanent forest estate as a result of local community claims is 15%.

These provisions provide little practical recompense to local communities, particularly Pygmy communities, whose customary forest resources are subsumed within gazetted forests. Similarly, consultations on forest management plans happen very late in the forest management cycle, and the reality is that local populations cannot exert any real influence on logging companies.¹⁶⁷ The commissions established to consider the claims

¹⁶² Open letter from DRC civil society organisations to the DRC Minister for the Environment, Waters and Forests, the World Bank Resident Representative and the FAO Representative, 12.02. 2004 <http://www.rainforestuk.org>

¹⁶³ Lionel Diss, personal communication 13.09.04

¹⁶⁴ DRC's report to UNFF4

¹⁶⁵ technical note issued by DRC civil society organisation CENADAP following a video conference with the President of the World Bank, 8 July 2004.

¹⁶⁶ Lescuyer 2003 :13-15

¹⁶⁷ Lescuyer 2003 :15, 20

of local communities are composed of local government agents and 'local traditional authorities'. Thus, the only way in which Pygmy peoples can be represented is through the Bantu heads and elites of the village to which local Pygmy camps are deemed administratively to belong. Baka people complain that they are regarded simply as labour and other actors decide what is best for them, highlighting the need for new mechanisms to enable Pygmy groups to represent themselves and be formally recognised by the authorities (see 6.2).¹⁶⁸

The Indigenous Peoples Development Plan (Box 11) developed by Cameroon under its Forest and Environment Sector Programme, in compliance with the World Bank's policy on indigenous people, is one of the few instances of specific consultation with indigenous peoples. The preparation of this 10-year IPDP and the closely related IPDP for Cameroon's community participation programme involved altogether 14 days of field consultations with Pygmy communities and representatives. The progressive measures of the IPDP include establishing equal legal opportunities for indigenous people and new forestry regulations to legalise their use of their lands, as well as a national policy on indigenous peoples. As noted previously (section 4.3.1), much more extensive consultations with Cameroon's indigenous peoples are needed to flesh out the mechanisms proposed, and ensure that they are appropriate and can be implemented in practice.

Cameroon's Bagyeli people have so far failed to benefit from another IPDP associated with the World Bank-funded Chad-Cameroon oil pipeline project, that crosses Bagyeli lands. The IPP was developed without adequate consultation with indigenous peoples and is now being used to disburse funds via non-indigenous associations for projects that have been developed without consulting the Bagyeli.¹⁶⁹ Box 18 describes the efforts of the Bagyeli to secure meaningful consultation in the development of management plans for the Campo Ma'an National Park, established as a result of the oil pipeline project.

¹⁶⁸ Bretin 2004; Djoh 2003

¹⁶⁹ Forest Peoples Programme 2004c; Nelson et al. 2001

Box 18: Consultation with Bagyeli communities affected by the Campo Ma'an National Park, Cameroon.

Campo Ma'an National Park in the Ocean department of south-west Cameroon was established in 2000 as an environmental offset to mitigate the environmental impacts of the Chad-Cameroon oil-pipeline. GEF provided funds for preparatory work leading to the establishment of the park. The 250,000 ha. park lies within a 770,000 ha. forest management unit which contains four logging concessions and 61,339 ha. of agro-industrial plantations, and which overlies Bagyeli hunting and gathering areas. A 216,701 ha. village zone, 5 km. wide along the main roads, is designated for home gardens, cash crops and planted trees.

Some Bagyeli communities' livelihoods had already suffered as a result of the allocation of logging concessions on their land, prior to the establishment of the park, which was also done without consultation with Bagyeli. One Bagyeli settlement was burned down by forest guards and several communities suffer conflictive relationships with nearby Bantu villages opposed to their settlements. Initial mapping by the Dutch NGO SNV documented locations of some Bagyeli communities and hunting camps. A draft management plan developed by MINEF in 2001 addressed to some extent the concerns raised by Bagyeli during participatory consultations supported by local and international NGOs. It recognised the importance of indigenous knowledge and of community participation in implementing the management plan, due to the heavy reliance of local and indigenous communities on forest resources. However, this management plan was withdrawn, and the Worldwide Fund for Nature (WWF) became the new conservation manager along with MINEF, who retain official responsibility for the UTO and are responsible for the enforcement of the plan. Since then Bagyeli have had little involvement in WWF/MINEF consultations with local communities concerning a new management plan.

Demarcation of Campo-Ma'an is now under way, and Bagyeli communities are concerned that the new park management plan will severely limit community resource rights in the buffer zones or 'community managed' areas as well as the core area of 2500 sq. km. During 2002-3, five Bagyeli communities in the northern part of the Park mapped their traditional resource areas using GPS technology, with technical support from local and international NGOs. The maps document in detail the extent of Bagyeli customary resource rights, showing that 70-80% of resource areas of some communities are now located in the park. In addition, areas used by Bagyeli communities outside the forest are under heavy pressure from employees of the rubber plantation, and even if they were to settle and become farmers as some forestry officials desire, the available land outside the park is already claimed by Bantu communities. Bagyeli representatives presented the maps to local authorities and government services, who are now supportive regarding the need for further discussion on Bagyeli land rights and review of the access rights for Bagyeli to the Campo Ma'an park.

At a recent meeting with conservationists, facilitated by local NGOs, the Bagyeli reiterated their wish for their customary use rights to the forest to be respected. However, the conservationists remain adamant that the existing regulations must be upheld:

Why don't all the Pygmies be sedentary like in Nyamabande so that hunting can become a secondary activity for them? The government has made a lot of commitments at the international level to protect our forest, and if we're not respecting those commitments we are going to be sanctioned. We have a lot of constraints to manage.

Source: FAO 2003; Handja and Tchoumba 2003; Nelson and Gami 2003; Nelson and Tchoumba 2004; Owono 2003; WWF 2004b; Justin Kenrick, personal communication 21.07.04

6.2. Indigenous representation

In most of the central African area, Pygmy peoples do not have representative bodies. Traditionally, many Pygmy communities lack centralised authorities mandated to make decisions on behalf of the wider group. Indeed their lack of centralised authorities should be interpreted as an adaptive strategy that has suited their mobile foraging economy and allowed them to evade the impositions of their farmer 'patrons'.¹⁷⁰ Today, state officials, development agencies and conservation bodies are imposing processes which require quick decision-making, something that is ill-suited to customary norms. Pygmy groups are gradually responding to this challenge by developing novel institutions to represent themselves. In the meantime, external agents need to recognise that more time and resources for capacity building are needed if Pygmy rights are to be respected and decision-making is to be adequately participatory. The Indigenous Peoples Development Plan (IPDP) linked to Cameroon's Forest and Environment Sector Programme (Box 11) aims to assist indigenous peoples in capacity building; it is one of the few government policy commitments in this area. It is crucial that indigenous peoples are given enough time to adapt their own customary representative institutions to deal with the further development and implementation of the IPDP.

In many parts of central Africa, Pygmy communities are not officially recognised as distinct entities, making them vulnerable to misrepresentation by other ethnic groups claiming to speak for them. With very few exceptions¹⁷¹ they are not represented within local and national government and administration. Their widespread lack of ID cards, due to the onerous bureaucratic procedures and costs, means that they cannot represent themselves to the authorities without reprisals, travel freely or register for voting.¹⁷² The lack of bottom-up consultation, the logistical difficulties of contacting mobile and remote groups and the dominant society's lack of interest in, or even opposition to, Pygmy participation (e.g.Box 14) has meant that the rights and interests of Pygmy peoples have been ignored or sidelined in policy and law making. The failure of existing structures to ensure that indigenous peoples are equitably represented in decisions about forest use shows that the needs of Pygmy communities cannot be addressed using the same mechanisms as their farming neighbours.¹⁷³ New strategies need to be developed to enable Pygmy people are able to contribute their views effectively. Box 19 describes an example where this was achieved, through provision of adequate advance information and support to Pygmy participants, and offering the option of separate Bantu and Pygmy discussion groups to enable Pygmy representatives to speak freely and maintain their negotiating positions.

¹⁷⁰ Turnbull 1965

¹⁷¹ The Burundi government includes one female Batwa MP and three Batwa senators. Batwa are beginning to be selected for positions in the lowest levels of local government administration in Rwanda.

¹⁷² RACOPY 2000

¹⁷³ Republic of Cameroon 2003b

Box 19: An experiment with multiparty negotiations on forest zoning in Cameroon.

In August 2000, Tropenbos Cameroon Programme facilitated a consultation with interested parties to define the uses and boundaries of a 42,500 hectare area of forest in SW Cameroon. Four separate interest groups were asked to consider, and modify, four possible maps based on zoning plans, environmental laws and ecological and socio-economic data and giving different emphasis to timber production, biodiversity conservation and traditional agro-forestry use.

- The Bantu group chose a central production forest of 12,000 ha while retaining a large area for multiple use, in order to be able to maintain traditional activities.
- The Bagyeli group called straightaway for the whole 42,000 ha to be given over to multiple use, so that their traditional hunting and gathering activities would not be restricted.
- The NGO/administration/researcher group chose a central 7000 ha production forest to bring roads, local development and income, and a 500 ha protection forest to conserve one fragile ecological site, surrounded by an extensive multiple use zone.
- The local authority group (divisional officer, mayors and group leaders) wanted a 33,000 ha multiple use zone and a 9,500 ha protection forest. They rejected production forests because logging enriches outsiders only, disturbs social relations especially for the Bagyeli, and only generates short-term developmental benefits.

During further discussions based on digitised maps of these scenarios, the Bagyeli stuck to their preference for the whole area to be a multiple use zone enabling traditional resource use, but the other groups came round to the local authority view that a protection forest was needed to conserve resources and local communities would not benefit enough from production forests. Community forests in the multiple use zone would enable villages to exploit timber resources under their control and for their benefit. The Bagyeli representatives finally accepted this scenario, because most of the area would continue to be under traditional resource use and therefore accessible to them for traditional livelihood activities. They felt they would be able to tacitly continue to use the protected areas because Bagyeli use is inconspicuous and temporary, in contrast to the more destructive use of forest resources by other groups.

Lessons learned regarding indigenous consultation and participation:

- Forest Department discussions with rural communities are usually based on the forest use plans fixed by the zoning plan. Effective participation however requires that people have the right to reject forest zoning that undermines livelihoods, or else get the plan changed. Consultative negotiations in which each party can influence the final boundaries of forest zones have social legitimacy.
- Involvement of local communities requires lengthy preliminary work to gather and disseminate information, and enable them to understand the contexts that different parties are operating within.
- Bagyeli can participate and negotiate effectively despite their marginalised status providing that
 - their communities receive information and explanations in culturally appropriate ways in advance, and are assisted to meet and discuss with each other beforehand so they can present a coordinated position at the negotiations
 - Bagyeli and Bantu work in separate discussion groups within the same meeting
 - there is adequate translation and provision of additional information during the meeting by people trusted by the Bagyeli.
- Bagyeli strongly oppose any formalisation of the forest boundaries, reject production forest because of their poor relations with loggers and reject protected forest because it infringes their semi-nomadic lifestyle and restricts access to game.

The final proposal agreed by the participants was submitted to the Ministry of Forests (MINEF) but to date has not been implemented, due to the fact that it differs from the government's forest zoning plan for the area. Officially, the national zoning plan is a draft, and thus in principle can be modified. In practise MINEF is unwilling to accept anything other than marginal changes to zone boundaries. However, there is a possibility that the forest zoning plan drawn up through the local consultation described above can be reconsidered when the area comes up for formal gazettelement.

Source Lescuyer et al. 2001; Guillaume Lescuyer, personal communication 3.08.04

In Cameroon, NGOs are testing the possibility of using existing legal mechanisms to enable Baka communities to represent themselves, by supporting a handful of Baka communities to obtain the status of *chefferie du troisième degré* (3rd degree chieftaincy). This is the lowest level of administration and, while the *chefferie* cannot establish local by-laws and is only applicable to sedentary communities, it associates a designated population with a designated geographical space which would give the Baka protection from summary eviction by Bantu. The other potential benefit for Baka is that the *chefferie* is the official body representing the community, thereby enabling Baka to have formal representation at district level, and legal entitlement to a share of the forest taxes levied on logging companies (see 4.7).¹⁷⁴ The practical consequences and impacts of the *chefferie* system on Baka are yet unknown, as these initiatives are very new. Cameroon's IPDP under the FESP is committed to giving legal status to all indigenous settlements, but it is not clear whether this will be through *chefferies*, other existing legal mechanisms, or novel mechanisms. As noted above, it is important that the further consultations planned on the IPDP give Pygmy communities enough time and support to set out their own views of structures and systems that would be appropriate for the legal recognition of Pygmy settlements.

Indigenous organisations are most numerous in the Great Lakes region, where the Batwa have created NGOs and community-based organisations to represent the interests of their communities and engage with policy makers. It is perhaps no coincidence that it is in this region, where the Batwa have lost almost all their lands and are suffering severe poverty and deprivation, that the first organisations emerged to seek solutions to the Batwa's severe problems. In Burundi Batwa are represented in government, by a Batwa MP and three Batwa senators. In Rwanda, the constitution provides for eight seats for 'representatives of historically marginalised communities'. Four of these have already been allocated, but Rwanda's President recently confirmed that early in 2005 he will nominate Batwa representatives to fill the remaining Senate posts, in a bid to involve them in the mainstream politics of the country.¹⁷⁵

In the Great Lakes countries, indigenous representatives are being invited more frequently to discussions and workshops, providing an opportunity for their perspectives to at least be listened to, if not incorporated into final decisions.¹⁷⁶ In some cases indigenous organisations have themselves arranged consultations with community members in order to solicit their opinions and feed their concerns back to policy makers. For example, eastern DRC indigenous organisations brought a statement on protected areas from local indigenous communities to the World Parks Congress held in Durban in 2003 and are actively informing and consulting with indigenous communities about DRC's 2002 forest law.

¹⁷⁴ Simon Counsell and Cath Long, personal communication 13.08.04

¹⁷⁵ "Kagame to appoint Batwa Senators", New Times newspaper, No. 587, Kigali, 20-21 September 2004.

¹⁷⁶ Jackson 2003c

7. Conclusions and recommendations

The existing legal and policy provisions of central African countries, and the way they have been implemented in practice, have hitherto done little to stem the loss of indigenous peoples' traditional forest-related knowledge caused by the expropriation of their customary lands for logging, protected areas, agri-development and infrastructure projects, and their increasingly restricted access to forest resources. The main obstacles are:

- prejudice and discrimination against indigenous people at all levels in dominant society, resulting in their low social status and their political, economic and social subjugation by other groups
- states' international legal commitments on indigenous peoples' rights to land, culture and livelihoods have not been incorporated into national law
- lack of national indigenous peoples policies providing a coherent framework within which to address indigenous peoples' rights and needs.
- lack of secure tenure and use rights over customary lands and resources for indigenous communities
- lack of clear provisions ensuring the free and informed consent of indigenous peoples prior to actions affecting their lands and resources
- lack of recognition of indigenous communities as autonomous entities with legal and administrative capacity
- lack of equitable representation of indigenous peoples in decisions about forest use
- existing legal and administrative procedures are not adapted to the customary norms and institutions of indigenous peoples.

The only existing mechanisms available for indigenous peoples to obtain legal rights to forest resources, thus providing a more secure basis for their livelihoods and culture, are currently through the Ugandan constitution, land and forest laws, and the community forestry provisions in the forest law of Cameroon. However, so far indigenous communities have virtually unable to access and use these mechanisms. The forest laws of DRC and Gabon also provide for community forestry, but the model to be adopted and implementation mechanisms have not so far been specified.

New policy approaches such as the Uganda national forest plan, and the FESPs of Cameroon, CAR and Gabon potentially offer more scope for responding to indigenous peoples needs through their greater emphasis on social concerns, involvement of local communities in forest management and decision-making and the role of sustainable forest management in poverty reduction. These policies are still in the initial stages of implementation, so it is too early to assess their impacts. Nevertheless, unless targeted measures such as those proposed in the IPDP linked to the Cameroon FESP are implemented to help indigenous peoples overcome the obstacles summarised above, they are unlikely to be able to benefit significantly from these policies, and so secure rights over their lands and resources and maintain their traditional knowledge, culture and livelihood patterns.

The following sections summarise the problems and progress in implementing measures to protect, maintain and promote indigenous peoples' traditional forest-related knowledge in central Africa, and conclude with recommendations.

7.1. Specific actions on TFRK

Information presented in Sections 3.1 and 3.2 shows that within the central African region, there is little objective and detailed official information on states' progress in meeting IPF/IFF Proposals for Action to promote, support, protect and encourage the use of traditional knowledge and customary practices of indigenous peoples and traditional communities in the management and use of forest resources. It is difficult to assess progress from the existing national reporting systems set up by UNFF and CBD; these lack objective indicators and benchmarks, and do not provide disaggregated information on different actors' (e.g. private sector, local communities and indigenous peoples) involvement in, and benefits from, state-

implemented measures. National contact points and focal points are also largely unable to furnish relevant information.

Based on the official reports, laws and policies consulted, governments are just beginning actions specifically directed at TFRK and its application in SFM in the African countries sampled. Most countries are still at the stage of planning to document TFRK. TFRK is seen primarily as a biodiversity issue and is not mainstreamed within forest policies and laws, or integrated across sector planning; Uganda provides a notable exception. In general NBSAPs don’t deal with traditional knowledge in a holistic way, but in terms of documentation, research and economic benefits. Indigenous peoples are more or less invisible within policy and legal frameworks, with virtually no recognition of their traditional knowledge and how this could be applied in sustainable forest management. While some promising new policies and plans exist e.g. Uganda, issues of indigenous and local communities’ consent to the use of their TFRK are not dealt with in a meaningful way.

The UNFF should

- revise report formats to include bench marks and objective indicators, and recommend that governments provide specific qualitative and quantitative information on how they are working in collaboration with indigenous peoples to implement TFRK-related Proposals for Action and other international commitments.

Central African governments should

- improve public access to legal and policy documents and progress updates on policy initiatives
- mainstream use of TFRK for sustainable forest management within forest and biodiversity policies and legislation with clear links to secure tenure rights, prior informed consent and promotion of sustainable cultural practices.

7.2. Recognition of indigenous peoples

As noted in CBD reports, indigenous peoples, and the traditional biodiversity-related knowledge they are the holders of, cannot thrive without legal/constitutional recognition of their right to exist and to function as a culturally distinct group within the nation state.¹⁷⁷ Sections 2.1.4 and 3.3 of this report showed that while most central African countries have constitutional measures protecting minorities or vulnerable groups, and Cameroon’s constitution specifically protects the rights of indigenous peoples, in practice Pygmy peoples’ cultural identity is under threat throughout central Africa. Their right to exist as formally recognised indigenous peoples is not secure; indeed in Rwanda, it has been politically dangerous for the Batwa to assert their indigenous identity and rights. A notable exception is the commitment in Cameroon’s Indigenous peoples Development Plan to ensure legal recognition for all indigenous communities, which will enable them to engage with the state independently of their Bantu neighbours, to whom they are currently deemed to ‘belong’.

Domestic legislation and policy in central African states have not yet adequately incorporated the international human rights instruments they have ratified, and which uphold, *inter alia*, the rights of indigenous peoples to exercise their culture, to have secure rights to their means of subsistence and to participate in and consent to activities that affect them (2.1.4). Central Africa’s indigenous Pygmy peoples continue to be discriminated against and socially, economically and politically marginalised.

Central African governments should

- recognise indigenous peoples as rights holders in line with contemporary international human rights and environmental law;
- ratify ILO Convention 169 protecting indigenous peoples rights;
- incorporate international human rights commitments protecting indigenous rights into domestic law and policy.

¹⁷⁷ UNEP 2003b:31

- uphold existing constitutional and legal provisions for the support of vulnerable groups and minorities who are marginalised in decision-making, and develop additional measures to protect their rights where necessary.

7.3. Indigenous land rights

Secure rights to land and natural resources are crucial for indigenous and traditional communities to be able to practise sustainable customary resource use and cultural practices on their lands in the long term and thereby protect, maintain and develop their TFRK. Secure land rights and prior informed consent are the basis for indigenous peoples to negotiate with governments about the management of their lands.

Central Africa's indigenous Pygmy peoples' lands are recognised neither by the state nor by the customary land tenure regimes of rural African communities (see sections 2.1.1 to 2.1.22.1.4). This makes their territories and resources particularly vulnerable to expropriation for logging, development and wildlife conservation. The expulsion of indigenous communities from protected areas is common throughout central Africa, and has resulted in landlessness, poverty and cultural collapse. Indigenous peoples have not received compensation for the loss of their lands, despite constitutional and other statutory provisions guaranteeing the right of citizens to property, and to compensation if the property is expropriated.

Governments in eastern, southern and western Africa are embarking on reforms in land law that recognise and legally protect the local land-holding systems of rural communities, and constrain the state to be more publicly accountable (see section 4.1). In many countries these land reforms support contemporaneous reforms in the forest sector to devolve forest management to local communities. While African intergovernmental bodies' have made commitments to respect central African indigenous Pygmy peoples' territories (section 2.1.5), only Uganda recognises the collective and customary land rights of local communities and gives them legal protection (section 4.2). Elsewhere in central Africa the main mechanism proposed for indigenous people to gain legal rights to customary forest lands is through new forest laws, under which the state can grant community forests but only outside the permanent forest estate which the state assigns to itself for logging and environmental protection through a zoning process that so far has not taken indigenous and local community customary land rights adequately into account (4.3 and next section).

The IPDP developed by Cameroon in association with the FESP includes progressive measures to establish 'new forestry regulations, which legalise indigenous peoples to utilise their land' (Table 11). This is, to date, the only central African forest policy commitment on indigenous lands, and thus sets a valuable precedent. However, it is unclear whether the new legal rights will include indigenous lands that are now subsumed in the State's permanent forests, or how the government will address the international legal issues around indigenous land rights. IPDPs are expected in CAR, Gabon and Congo, where FESPs similar to the Cameroon policy are being developed, potentially opening up space for indigenous peoples in much of central Africa to start discussing their land claims with government. This will provide an opportunity to review and adapt national legislation to ensure that there is a coherent legal framework for all forms of land use, including forestry, supporting secure and unambiguous land tenure for local communities, and assisting the resolving of conflicts over land claims. The experience of other African countries in tackling these issues should be fully exploited.

Central African governments should:

- provide unambiguous and secure legal rights for indigenous communities over their customary lands, taking account of their mobile lifestyles and largely non-agricultural economies;
- until mechanisms for assuring secure land rights are in place, ensure that forest zonation in Cameroon, DRC and Gabon, and the classification of production forests and protected areas throughout central Africa, are based on the free, prior and informed consent of indigenous peoples and local communities so that customary lands and resource use are safeguarded;
- provide funding, legal and logistical support to indigenous peoples to prevent their lands from illegal encroachment and appropriation of their resources by external vested interests;
- prohibit the involuntary displacement or resettlement of indigenous peoples;

- establish participatory mechanisms for the restitution of indigenous peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent, in line with the recommendations of the Durban Plan of Action agreed by the Vth IUCN World Parks Congress in September 2003.

International agencies and NGOs should:

- in collaboration with governments, develop participatory land demarcation methods via community mapping and collaborative field studies with indigenous peoples and with neighbouring farming communities, to identify their customary land tenure regimes, livelihood strategies and local priorities, and ensure that demarcated areas are compatible with local land rights and meet indigenous communities' spatial needs.

7.4. Indigenous peoples' access to forest resources

Sections 4.3 to 4.7 of this report examine a range of legal provisions and management schemes which give local communities varying degrees of access to, and control over, forest lands and resources, although not outright ownership.

Community forests

Cameroon, Uganda, DRC, Gabon and CAR are reforming forest policies and laws to decentralise control over forest resources and give local communities legal rights to manage (but not formally own, except in the case of Uganda) community forests (see section 4.3). This is a positive development, potentially enabling communities to continue traditional cultural practices and customary use of forest resources and thereby maintain their traditional knowledge.

However, in the absence of legal recognition of traditional and indigenous communities' land rights, the community forestry model developed in Cameroon since 1994 is built on a technocratic forest zonation process that has not taken into account the distribution of customary lands or indigenous and traditional communities' use of forests for hunting, fishing and NWFP collection (see section 4.3). Civil society activists in DRC are concerned that the forest zoning process currently underway there will also ignore customary rights of indigenous and local communities. In Cameroon, Pygmy communities claim customary rights in the areas zoned as permanent forest, where community forests are not permitted. Currently they cannot establish community forests in the non-permanent forest estate because that land is under customary Bantu ownership. Furthermore, their traditional resource use patterns and social organisation are not adapted to the requirements of the current model of community forestry. As a result Pygmy peoples' involvement in community forestry in Cameroon has so far been marginal. Nevertheless community forests are currently the only mechanism through which they can secure legal rights over at least some of their resources. The Cameroon IPDP linked to the FESP (Box 3, Box 11) is committed to establishing community forests for all Pygmy settlements over the next 10 years. However, implementation has not yet started, and it remains to be seen whether community forests will adequately secure indigenous communities' customary land rights and sustain their economic and social development.

'Collaborative management'

In the central African countries surveyed, forest and biodiversity policies are giving greater emphasis to 'collaborative management', i.e. the involvement of local communities in management of forests that are under state control. Protected area managers are increasing their efforts to engage with the communities adjacent to forest national parks and reserves, whose customary land and use rights have generally been curtailed through restrictions on access imposed by the parks. In a few instances (CAR, eastern Cameroon) conservation managers have allowed Pygmy peoples to practise subsistence activities in designated zones within protected areas (section 4.4 and Box 13, thereby enabling them to continue, to some extent, their traditional resource use patterns and cultural practices such as net-hunting. Such schemes however do not compensate Pygmy communities for the large areas of forest that are placed out of bounds. Local communities' inputs, particularly those of Pygmy communities, to forest management decisions remain very limited (section 4.4). Despite their greater reliance on the forest, Pygmy people are severely under-

represented in local community forest management and monitoring committees. Within the committees, Pygmy representatives have difficulty in promoting their viewpoint, given their low social status and the lack of recognition of their communities and representative bodies.

Access schemes

Traditional subsistence use rights in forests are legally permitted in most of the central African countries surveyed, but are highly restricted in protected forests, and can be further limited or annulled in other forests by the state. Restrictions on hunting impact severely on Pygmy communities, whose economies are largely based on sale or barter of forest products, and for whom hunting is a vital element of their cultural identity (section 4.5). Pygmy communities are concerned that game is being depleted by too many people hunting in the permitted areas, while large-scale bush meat extraction by well-organised commercial interests remains rampant in Pygmy hunting territories, and large areas of forest land are set aside for trophy hunting by national and foreign elites. Ongoing experiments, as in Cameroon, legitimising traditional hunting rights in community-managed hunting zones, with some provision for sale of game killed, may help to give local communities more control over their wildlife resources, and become lawfully involved in the bush meat trade. The Cameroon IPDP linked to the FESP intends to provide community hunting zones for all indigenous communities, but how these will be established and negotiated with Bantu communities has not yet been identified.

Some protected forest areas have established controlled access schemes for communities whose customary rights in the forest have been extinguished. In return for their cooperation in protecting the area, communities are offered back a limited set of access and use rights, enabling them to harvest forest products under regulated conditions (section 4.6). Such schemes provide some opportunities for registered individual resource users to continue to practise their forest knowledge, but do little to maintain the holistic and collective traditional knowledge of indigenous forest communities. Furthermore, even in cases where Pygmy peoples' detailed and extensive forest knowledge is documented and valued by protected area planners, and their access to forest resources and spiritual sites is recognised as crucial for their cultural survival, they have not benefited equitably from access schemes (e.g. Uganda). In part this is due to the social exclusion of Pygmy people by dominant local communities, and their consequent lack of adequate representation in user groups.

Revenue sharing

Lack of appropriate and equitable revenue-sharing processes means that Pygmy peoples receive very little of the revenues and benefits flowing from exploitation of their forest resources by logging companies and tourism in protected areas. Local dominant groups are able to capture forest taxes and tourism revenues and are the primary beneficiaries of local development projects and amenities, such as schools and health posts that are provided by logging companies or funded from revenues collected by the forest managers and local government authorities (section 4.7). Cameroon's FESP intends to review the management of and distribution of revenues from sport hunting and forest taxes.

Central African governments should:

- develop regulatory frameworks giving indigenous and traditional communities authority and decision-making power over forest lands and resources. This will involve the legal recognition of indigenous and traditional communities' own representative institutions, or helping indigenous and traditional communities to develop new management institutions with legal personality, yet underpinned by their customary norms, cosmovisions and values;
- adapt existing community forest schemes to meet Pygmy communities' development needs and administrative capacities in line with their cultural values;
- implement the Durban Plan of Action agreed by the Vth IUCN World Parks Congress in September 2003, in particular outcome 5/key target 8: 'all existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples, mobile peoples and local communities'; and outcome 5/key target 9: 'protected areas shall have representatives chosen by indigenous peoples and local communities in their management proportionate to their rights and interests';

- ensure that indigenous communities' customary, subsistence use of their forests is accommodated in protected areas and permanent forest estates;
- overhaul regulations on hunting to give more control over game resources to local communities, including legalising traditional hunting rights and increasing access of legitimately hunted bush meat to the market, and empowering local registered hunters to exclude outsiders from their hunting areas. Step up measures to control large-scale commercial hunting activities without undermining subsistence activities of indigenous communities;
- require access and revenue-sharing schemes to safeguard the rights of indigenous beneficiaries and ensure that they receive an equitable share of benefits compared with non-indigenous beneficiaries.

International agencies and NGOs, in collaboration with indigenous communities, should:

- evaluate the benefits and disadvantages to indigenous and traditional communities of community forestry and community hunting zones in Cameroon, including analysis of the underlying issues of indigenous land rights and participation in decision-making. Ensure that their recommendations are incorporated into the government's plans to modify the legal and institutional framework of community forestry under the FESP and to provide community forests and/or hunting zones for all indigenous communities under the IPDP;
- assist indigenous communities with capacity building measures to enable them to participate effectively in new forest management initiatives promoted by government.

7.5. Protection of indigenous peoples' knowledge

Rather than helping indigenous peoples to use their traditional knowledge to secure sustainable livelihoods and maintain cultural vitality, outside agencies have often exploited indigenous knowledge in initiatives that will ultimately dispossess them of their rights and reduce the availability of forest resources that they depend on (section 5.1). Pygmy peoples' forest expertise has enabled some of them to be employed as trackers, guides and research assistants in protected areas that will subsequently restrict forest access, and as tree spotters by logging companies that damage forest structure and ecology. Some Pygmy hunters have been recruited by commercial poachers for their hunting expertise. Their knowledge is not valued sufficiently in the market economy, for instance, they get lower wages than other ethnic groups and frequently have to sell forest products and game at less than market value. Traditional forest-related knowledge is seen less as a reason for handing over forest management to those who possess that knowledge, than as a useful commodity for forest and biodiversity planners to use in implementation of their policies and programmes.

Pygmy peoples' traditional livelihoods and cultural practices are being eroded with the loss of their customary forest lands and access to forest resources, coupled with increasing sedentarisation and reliance on farming to meet basic subsistence needs. The loss of forest skills and knowledge is seen first among the indigenous youth, who spend less time in the forest than their parents and more time in schools, conforming to dominant culture and exposed to education curricula that do not value forest knowledge. In the Great Lakes region of central Africa, landless indigenous communities expelled from protected areas and natural forest are now several generations removed from their forest-dwelling forebears, and have been unable to maintain the inter-generational transmission of knowledge.

Most of the central African governments have plans to develop equitable access and benefit sharing of biological resources and/or protection for intellectual property rights. However, legal and policy measures are not yet in place. The principal policy measures increasing indigenous peoples' control over access and use of their knowledge, and upholding the principle of prior and informed consent, are research protocols developed in Cameroon, but these have not been widely implemented (section 5.2). Pygmy peoples are largely unaware of intellectual property rights regimes, or their rights under international human rights law to free prior and informed consent in regard to the use of their lands and resources. Capacity-building measures to enable indigenous peoples to deal with these issues are lacking, except for community mapping initiatives (supported by local and international NGOs) that are now enabling central African indigenous communities to document their land use, under their own control, and use accurate maps to start a dialogue with government authorities about their land rights.

Central African governments should:

- enact measures ensuring the participation of indigenous peoples and organisations in the development of policies and laws on access to genetic material, protection of knowledge and intellectual property rights. These policies and laws should apply a rights-based framework and be based on the principle of prior and informed consent and the right of refusal;
- inform indigenous communities of current and proposed research or bio-prospecting activities in indigenous areas, and ensure that these activities are carried out in accordance with national and international protocols that respect indigenous peoples' rights.

International agencies and NGOs should, in collaboration with governments:

- support indigenous organisations and representatives with training and capacity building on different options for developing systems to protect traditional knowledge, involving cultural exchanges with indigenous and traditional community groups from other regions such as South Africa, India and Panama where indigenous communities have been working on these issues;
- develop appropriate education systems for nomadic forest peoples, learning from initiatives developed with other nomadic peoples in Latin America, Africa and Asia and promote non-formal methods for inter-generational transmission of knowledge.

7.6. Indigenous participation and representation

Forest and biodiversity policy development in central Africa has been essentially top down with weak involvement of civil society, although reforms to decentralise control over forest resources in some countries are accompanied by broader provisions for consultation and participation e.g. Uganda, and recently Cameroon under the 2003 FESP (section 6.1). Despite regional intergovernmental processes aspiring towards more inclusive processes and participation of civil society (section 2.1.5), the political space for indigenous peoples to advocate for their rights is currently very limited and they are easily out-manoeuvred by competing interests seeking access to their resources. Forest and conservation initiatives have been, and are being, pushed ahead without adequate consultation with affected indigenous and local communities, and without measures to ensure that their rights are upheld e.g. DRC, Cameroon. Forest policy development and biodiversity strategic planning has not generally involved adequate consultation with indigenous peoples; comprehensive livelihood studies, social/poverty assessments and baseline studies are generally lacking. Uganda and Cameroon are notable exceptions. In Uganda, extensive consultations and field studies (although not directly with forest peoples) informed forest policy development resulting in policies that are more cognisant of rural community concerns, and the roles of cultural practices, traditional resource management and customary institutions. The IPDP developed by Cameroon under its FESP appears to be the only forest policy document to date specifically addressing indigenous issues. However, these policies have yet to be implemented, and their benefits to indigenous communities remain to be seen.

Existing procedures and systems for consulting with local populations on forest management issues such as allocation of concessions and classification of forests are not adapted for reaching mobile, remote and dispersed communities, and often fail to ensure Pygmy peoples' representation and participation in decision-making on a fair and equal basis with members of dominant ethnic communities (section 6.1 and 6.2). Policy measures to ensure the prior informed consent of indigenous communities concerning the use of their lands, territories and resources are lacking. Even where Pygmy communities are relatively organised and have set up meetings with forest authorities and conservationists to discuss their customary rights, the authorities' prevailing ideology that the Pygmy way of life is primitive, and they will inevitably have to 'modernise' by becoming farmers, has blocked constructive dialogue.

Pygmy communities' scope for representing themselves to claim their rights and secure their interests is very restricted. Traditionally many Pygmy peoples lack centralised authorities mandated to make decisions on behalf of a wider group. Imposition of new hierarchical structures prescribed, for example, for management of community forests has caused conflicts and divisions within communities (2.1.2). Indigenous communities have not yet had enough time and capacity building resources to develop novel institutions to represent themselves and ensure that decision-making is adequately participatory. There are few Pygmy organisations

and Pygmy people are scarcely represented in government and local administrative structures, except in the Great Lakes region. In many central African countries, Pygmy communities are deemed to 'belong' to the local Bantu community, and are thus not formally recognised by local administrations (section 6.2). Cameroon's IPDP under the FESP aims to give independent legal status to all indigenous communities, although the mechanism for this is not yet defined.

Central African governments should:

- strengthen the capacity of their agents to collaborate successfully with indigenous organisations and communities;
- train and recruit indigenous professionals to relevant government departments, government and private sector programmes and projects concerned with forests and biodiversity;
- support capacity building measures for indigenous communities to strengthen their organisations and representatives and enable their informed participation in forest and biodiversity policy and implementation;
- recognise the right of indigenous peoples to represent themselves through their own representative institutions, or new hybrid institutions, and develop new legal and administrative procedures to facilitate this;
- in collaboration with indigenous peoples, develop culturally appropriate procedures to ensure the effective representation, participation and decision-making of indigenous peoples in all aspects of developing and implementing forest and biodiversity-related laws and policy.
- in consultation with indigenous peoples establish platforms for civil society including indigenous representatives to advocate on forest issues and adequate indigenous representation on consultative groups and policy steering committees.

International agencies and NGOs should:

- support indigenous peoples to develop culturally appropriate mechanisms for local indigenous communities to share information and experiences and to organise themselves to deal effectively with outside initiatives impacting on their rights and livelihoods.

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Annex 1: Policy and legal documents consulted

Country	Document	National contacts
Burundi	<ul style="list-style-type: none"> Décret-loi n° 01/02 du 25 Mars 1985 portant code forestier Décret-loi n° 1/010 du 30 juin 2000 portant code de l'environnement 2nd CBD report (2001) 	(no UNFF focal point) Nfp coordinator CBD focal point= CHM focal point
Cameroon	<ul style="list-style-type: none"> Loi N0 94/01 du Janvier 1994 portant Régime des Forêts, de la Faune et de la Pêche, and implementation decrees : Décret No. 95/531 du 23 Août 1995 fixant les modalités d'application du régime des forêts, and Décret No 95-466-PM du 20 Juillet 1995 fixant les modalités d'application du régime de la faune. Loi N° 96/12 Du 5 août 1996 portant loi-cadre relative a la gestion de l'environnement Draft National Biodiversity Strategy and Action Plan (1999) National Forestry Action Programme (1995) Forest and Environment Sectoral Programme (May 2003) 2nd CBD report (n.d.) Indigenous Peoples Development Plan IPP86 	(No UNFF focal point) (No nfp coordinator) CBD focal point CHM focal point
CAR	<ul style="list-style-type: none"> Loi No. 90.003 portant code forestier centrafricaine (1990) National Biodiversity Strategy and Action Plan (2000) Report to CBD on access and benefit sharing (2000) Report to CBD on forest ecosystems (2000) 2nd CBD report (2000) L'Etude prospective du secteur forestier en Afrique (Forestry Outlook Study for Africa, FOSA) 	(No UNFF focal point) Nfp coordinator CBD focal point CHM focal point
Congo Republic	<ul style="list-style-type: none"> La Loi n° 16-2000 portant Code forestier (2000) 2nd CBD report (2001) National Biodiversity Strategy and Action Plan (2002) 	UNFF focal point Nfp coordinator CBD focal point CHM focal point
DRC	<ul style="list-style-type: none"> Loi 011/2002 du 29 août 2002 portant code forestier Report to UNFF4 (2004) National Biodiversity Strategy and Action Plan (2002) 2nd CBD report (2001) nfp update on FAO website 	(No UNFF Focal point) Nfp coordinator CBD focal point CHM focal point
Gabon	<ul style="list-style-type: none"> Loi No 016/01 portant code forestier en république gabonaise (2001) National Biodiversity Strategy and Action Plan (1999) FAO/EC : Expériences de la mise en œuvre des programmes forestiers nationaux au Gabon (2003) 	(No UNFF Focal point) Nfp coordinator CBD focal point CHM focal point
Rwanda	<ul style="list-style-type: none"> Loi no 47/1988 du 5 décembre 1988 portant organisation du régime forestier National Biodiversity Strategy and Action Plan (2003) Draft National Biodiversity Strategy and Action Plan (2000) 	(No UNFF Focal point) (No nfp coordinator) CBD focal point CHM focal point
Uganda	<ul style="list-style-type: none"> Forest Policy (2001) Land Sector Strategic Plan (2003) National Environmental Management Policy (1994) National Environmental Statute (1995) National Forest Plan (2002) Forest Sector Review (2001) 2nd CBD report (2001) The National Forestry And Tree Planting Act (2003) Nfp-update on FAO website Wildlife Statute 1996 	UNFF Focal point Nfp coordinator CBD focal point =CHM focal point

Annex 2: use rights in forests classified for different purposes

		Government land								Non-government land/private land		
		Permanent forest estate				non-permanent estate						
		Protected forests			Production forests							
Burundi	1985 forest law	Protected areas: use rights may be permitted if compatible with the objectives	natural forests and woodlands no use rights in principle, but may be permitted by forest service eg firewood, wood for canoes								local authority woodlands and plantations- no use rights	
Cameroon	1995 forest law	Integral ecological reserves, national parks, zoological gardens, game ranches - no use rights	Wildlife reserves and sanctuaries and buffer zones: Collection of forest products (except protected species) for domestic use only, but rights can be annulled if they conflict with the purpose of the forest. Traditional hunting may be permitted subject to regulation by management plan		hunting using traditional methods (materials of vegetable origin) of defined species and quotas for domestic use only; collection of forest products (except protected species) for domestic use only.		community forests: no restrictions, except on protected species	community hunting zones: no restrictions except protected species				
CAR	1990 forest law	integral natural reserves and plantation zones: no use rights	national parks, recreational forests, buffer zones: dead wood, medicinal plants, food, timber for construction, crafts and canoes for personal use; commercial harvesting of shea, kola, kapok, rattan. But national parks and recreational forests only permit activities necessary for management and conservation. Public access may be restricted	faunal reserves: agriculture and public access are regulated	agriculture permitted but may be restricted, no restrictions of forest products harvested							

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Congo	2000 forest law	use rights as in non-permanent forests may be recognised in legal instruments establishing the forest, or in management plans			forests of communes or other local or territorial collectivities: use rights as in non-permanent forests may be recognised in legal instruments establishing the forest, or in management plans	wood for construction or domestic use, dead wood, plants of cultural, medicinal or food value, hunting, fishing, bees, pasture animals , collection of forage					
DRC	2002 forest law	National parks, integrated natural reserves, botanical gardens and plantation zones: no use rights	all other classified forests : adjacent populations only may collect wood, dry grass, fruits, food, medicinal, plants, gums, resins, honey, caterpillars, snails, frogs, wood for house construction and crafts, for domestic use only, subject to management plan; areas may be set aside for temporary farming by adjacent communtiy		use rights for adjacent populations, except agriculture, subject to management plans		'protected forests' including community forests: anyone can practise agriculture, and enjoy all other use rights for personal use. Agriculture may be prohibited if damaging to the forest				

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Gabon	2001 forest law	no use rights			collection of dead wood		Community forests in 'rural forest zone': collect forest products, artisanal hunting and fishing of non-protected species, collection of water and forage, animal pasture and subsistence agriculture				
Rwanda	1988 forest law	No use rights or activities permitted unless authorised by tourism and national parks authority									
Uganda	2002 National Forest Plan , 2003 Forest Act				Forest reserves: no use rights except under permit/licence subject to management plan . Except in strict environmental protection forests, dry wood and bamboo may be collected for personal domestic use			<u>Wildlife Protection areas</u> National parks: Only traditional/ ceremonial and medicinal plants under permit. Wildlife reserves : as above plus hunting/wildlife farming under permit	<u>Wildlife management areas</u> Wildlife Sanctuaries: partial restrictions on livestock, farming, wood, trad/ceremonial/ medicinal. Community Wildlife Areas: as above plus hunting	Private/custodial land : no restrictions except licence required for use of 'reserved tree' species	

The existing legal and policy provisions of central African countries, and the way they have been implemented in practice, have hitherto done little to stem the loss of indigenous peoples' traditional forest-related knowledge (TFRK).

Focusing on the indigenous and traditional communities of eight central African countries, this detailed report examines the issues surrounding TFRK and assesses the progress made to date by the governments who have given their endorsement to reform.

Forest Peoples Programme
1c Fosseway Centre, Stratford Road
Moreton-in-Marsh, GL56 9NQ, UK
Tel: +44 (0)1608 652893, fax: +44 (0)1608 652878

email: info@forestpeoples.org
<http://www.forestpeoples.org>