

Biodiversity Regulations, Legal Protection and Enforcement of Community Rights in Cameroon

Dr Marcelin Tonye Mahop

Centre for Commercial Law Studies
Queen Mary, University of London
13-14 Roy Goode House
Charterhouse Square
London EC1M 6AX
Email: t.m.marcelin@qmul.ac.uk

Abstract.

Current forestry and environmental regulations in Cameroon have provisions addressing community rights and the interests of local communities in the context of access to plant genetic resources for scientific and commercial purposes. However, the appropriateness of the legal protection of the community rights as enshrined in the existing regulations is questionable. The arguments pursued in this article are based on data gathered from the existing literature and interviews conducted during fieldwork from early autumn through late December 2003 in Cameroon and since then, these data have been updated through regular contacts with policy actors and other collaborators in Cameroon. In fact, the situation assessed in 2003 has been unchanged until date. This article explores the existing biodiversity-related legal instruments in Cameroon in relation to the interests and protection of community rights. It finds that there are some opportunities under the existing biodiversity-related regulatory framework for the establishment of workable regulatory options addressing communities' interests and protecting their rights in the manner reflecting communities' expectations. Furthermore, the article suggests a practical avenue for effective enforcement of community rights in Cameroon. This article concludes by stating that, sustainability and conservation of biological resources can be successfully achieved on the ground through substantial commitment of local communities if their rights are properly enshrined in workable biodiversity regulatory measures in Cameroon.

1- Introduction

The 1992 Rio Convention on Biological Diversity¹ ratified by Cameroon on 10th October 1994 defines biological diversity as the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.² The focus of this article is on plant diversity, as the use of plant genetic resources and associated traditional

¹ Convention on Biological Diversity (Rio de Janeiro, 5 June 1992)

² *Ibid*, Article 2.

knowledge nurtured and held by local communities³ by scientific and commercially oriented bodies is at the heart of many bioprospecting activities. Therefore, in this article, the CBD definition of biological diversity is used as our guide in the assessment of Cameroon's richness in biological and cultural diversity.⁴

Cameroon is a country rich in biological and cultural diversity. The country's flora comprises 8000 plant species among which 156 are endemic to Cameroon and 45 are specifically endemic to the Mount Cameroon area.⁵ In respect of Cameroon's cultural diversity, the statistics provided below derive from the last ever comprehensive national demographic census that took place in 1998. From that census, the population of Cameroon was estimated at 14 millions with 2.3 % annual growth rate. There are approximately 200 ethnic groups practising about 286 national languages.⁶ Other accounts indicate that Cameroon's plant diversity richness is under serious threat due to overexploitation of natural resources including timber and Non Timber Forest Products (NTFPs).⁷ On the other hand, the country's cultural diversity richness is also weakened by the gradual loss of local languages due to the huge migration of youngsters to the major cities in search of modern jobs. From the perspective of some elders and traditional healers based in remote areas, modernisation is a serious threat to the preservation of traditional knowledge. Youngsters who migrate in the cities hardly encourage their children to speak local languages making it difficult for traditional healers and other specialists holders of the traditional medicinal knowledge related to plant genetic resources to be passed on to younger generations.

This article addresses a right-based approach to biodiversity conservation, stressing the key role of traditional communities in conservation and sustainability if their customary rights are properly protected at the national level. The main assumption upon which the analyses herein is based is that, "*traditional communities can play a more effective role in biodiversity conservation and can address their*

³ This article has opted to avoid the debate on terminology in relation to the definition of local communities. In this respect, it uses, indiscriminately, the terms 'local communities'; 'traditional communities'; 'traditional societies'; 'local populations' to identify the populations living in villages and other remote forested areas whose livelihoods depend a great deal on forest resources and their associated traditional knowledge. These terms should be understood as 'local communities' as defined by the African Model Law as: "human populations who live in distinct geographical areas. They generate, use, manage and pass on their biological wealth, knowledge, innovations and practices, which are governed by their own customary laws whether written or orally transmitted". See Article 1 of African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources. Organisation of African Unity (now African Union)/Scientific Technical and Research Commission (Ouagadougou, July 1998).

⁴ A comprehensive review of the biological diversity of Cameroon is provided by Fomete, T. and Tchmou, Z., "La Gestion des Ecosystemes Forestiers du Cameroun a l'Aube de l'An 2000", (*Yaounde: IUCN, Vol. 2, 1998*).

⁵ Thomas, D. W. and Cheek, M., "Vegetation and Plant Species on South Side of Mount Cameroon in the Proposed Etinde Reserve", (*Project R.B.G Kew / Gov. Cameroon/ ODA., 1992*)

⁶ It has to be said that more recent studies of local languages in Cameroon suggest that, out of the 286 national languages, 279 are said to be living languages, 3 are second languages without mother tongue speakers and four are said to be completely extinct now. These statistics were confirmed by one senior researcher of the Cameroon International Linguistic Society in October 2003 in Yaoundé.

⁷ It is estimated that between 1,000 and 2,000 km² of forest cover is lost in Cameroon every year. According to FAO (1997), the forest cover of Cameroon moved from 202,440 km² in 1990 to 195,980 km² in 1995 representing an annual loss of 1,290 km². FAO, "Situation des Forets du Monde", (FAO, 1997).

basic livelihood needs using plant genetic resources in a sustainable manner, if their customary rights are appropriately protected under the national biodiversity related regulatory instruments". The article starts by providing a brief on the meaning of the biodiversity or customary rights of rural communities as the community rights which require legal protection in Cameroon. It then discusses the emerging opportunities under the existing regulations that can be used as the platform for the development of tailor-made and workable regulatory measures protecting the rights of traditional communities and addressing their expectations and interests. Thereafter, the article discusses a realistic approach to the enforceability of the community rights and concludes.

It is important to note that, in this article, there is no special focus on community rights in relation to any of their specific form of knowledge such as traditional medicinal knowledge, traditional ecological knowledge or traditional farming knowledge. As such, this piece does not discuss specifically issues of farmer's rights vs. plant breeders' rights as covered under international treaties such as the 2001 FAO International Treaty of Plant Genetic Resources for Food and Agriculture (FAO ITPGR).⁸ Obviously, the article refers recurrently to medicinal plants and associated traditional medicinal knowledge of local communities. Nonetheless, the core and specific issue addressed here is that, for whatever plant genetic resources and associated traditional knowledge the communities can claim some customary rights, this article is concerned with the form of the regulatory measures that need to be in place to protect community rights and the enforceability of such measures.

2- Local communities and their rights that require legal protection

It is important to undertake a methodological and dynamic assessment of rural communities' claims of intellectual and resource rights prior to suggesting any practical regulatory measures to address their concerns. Non community members may be unaware of how rural communities value and use their genetic resources and TK on a daily basis or of the grounds for complaints by these communities that their traditional systems of resources management have been trespassed upon by outsiders in pursuit of scientifically -and potentially commercial- motivated activities.

Community customary rights are broad and include their rights to traditional arts and designs, music, traditional dance, stories and drama, traditional knowledge of local minerals, traditional ecological knowledge pertaining to the conservation of natural landscapes and traditional knowledge of the nutritional and cosmetic values of plants and other biomaterials.⁹ According to Ekpere, the concept of community rights recognises that the customary practices of local communities derive from a priori duties and responsibilities to past and future generations of both human and other

⁸ International Treaty on Plant Genetic Resources for Food and Agriculture of the United Nations Food and Agricultural Organisation (Rome, 4 November, 2001).

⁹ Blakeney, M., "Ethnobiological Knowledge and the Intellectual Property Rights of Indigenous Peoples in Australia", in Blakeney, M. (ed) *Intellectual Property Aspects of Ethnobiology*, (London: Sweet and Maxwell, 1999)

species.¹⁰ Community rights therefore reflect a fundamental relationship with all life and are imbued with an innate demand for respect. However, it is worth stressing that this understanding of community rights is not accepted by the dominant western world. Despite this state of affairs, the purpose for recognising and providing some form of legal protection to such rights is to recognise and protect the multicultural nature of human species. In a given community setting, community rights over plant genetic resources and TK are squarely linked with some forms of responsibilities and all govern the use, management and development of these assets. These rights and responsibilities are based on the communal ownership of the relevant assets which existed before the concepts of individual and private ownership and property emerged.¹¹ The issue of responsibility for the management and development of the community assets is very important at the community level. With regards to such responsibility, any dealing with the communally owned resources is subject to approval by the community, through the authority of its representative who may be its traditional leaders or the elected members of a locally established resource management group that may also be known as a Common Initiative Group (CIG) or a Community Based Organisation (CBO). It must be stressed that, if the community representative has the decision-making power at the community/village level, the decisions are hardly made unilaterally, but rather mostly in a participatory and consultative manner. Having received the authorisation to deal with the community assets, users of such assets, mostly outsiders are generally subject to the rules and restrictions embedded in the cultural or religious customs.¹²

The specific rights of rural communities requiring legal protection through workable regulatory measures at the national level include:

- Their customary ownership rights over plant genetic resources and land
- Their rights to fully participate in the decision-making processes regarding the management of their resources
- Their rights to monitor and control access to the resources and to determine terms for access authorisation, be consulted prior to any access and utilisation of their resources
- Their right to fairly benefit from the utilisation of the resources and TK
- Their right to stop any activity not respecting their traditional rules and to file lawsuit against anybody who infringes the terms under which access was allowed.

A number of declarations and statements of indigenous peoples' associations have been elaborated to promote the rights of rural communities in relation to modern exploitation of genetic resources and TK. In 2002, an assessment of some of these 'voluntary instruments' was carried out by Graham Dutfield, who identified about 15 of such declarations and statements.¹³ In his assessment, Dutfield finds that these instruments cover a wide range of issues, expressed as the critical demands of rural

¹⁰ Ekpere, J.A., "The African Model Law: The Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources. An explanatory Booklet", (*Organisation of African Unity*, 2001).

¹¹ Ibid

¹² Kameri-Mbote, P., "Community, Farmers' and Breeders' Rights in Africa: Towards a Legal Framework for Sui Generis Legislation", (*University of Nairobi Law Journal*, 2003)

¹³ Dutfield, G., "Indigenous Peoples Declarations and Statements and Equitable Research Relationships. In: Laird, S. A. (Eds) *Biodiversity and Traditional Knowledge: Equitable Partnerships in Practice*", (*London: Earthscan*, 2002), p228.

communities in the context of access to and subsequent utilisation of their assets. Such demands include, but are not limited to their ownership and inalienable rights over their knowledge associated to plant genetic resources, their prior informed consent, the issue of participation, their rights to veto over research and/or access to lands, knowledge and the resources, the full disclosure of research results, demand for compensation and benefit sharing.¹⁴

Although these declarations and statements bear significant legitimacy, from the perspective of this article, they also bear significant limitations. On the one hand, they are frequently cited by scholars and policy analysts and are therefore well known and influential. They were agreed by representatives of many indigenous peoples' associations across the world. Consequently, they portray some degree of international consensus. Moreover, these statements and declarations target a large international audience comprising a range of stakeholders with significant interests in biodiversity regulatory policies including indigenous peoples, national and international policy-makers, and intergovernmental organisations. In this respect, they are carefully drafted and very sophisticated. However, they offer no practical guidance for stakeholders to request the PIC of rural communities in the manner that recognises them as the key partners in the decision-making processes pertaining to access to and subsequent utilisation of their assets. Also, they provide no practical guidance as to how rural communities may veto access to the resources or lands which might have been authorised without their participation in the decision making process. Overall, these declarations and statements have merely identified the above mentioned critical demands without suggesting some practical measures to achieving them.

As hinted earlier, the concept of community rights is not understood by the dominant western world, where modern systems of protection of intellectual property are well established and stress individual or private ownership rights. Hence, the forms of protection achieved under the standard intellectual property laws are not appropriate for the legal protection of community intellectual and resource rights.¹⁵ The market-driven and profit-making features of modern intellectual property concepts prevent them from fitting within the realm of community systems of resource ownership and management. The 1967 Convention Establishing the World Intellectual Property Organization (WIPO), defines intellectual property rights to incorporate rights in the creations of the mind, such as inventions, industrial designs, literary and artistic works, symbols, names and designs as well as all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.¹⁶ The concept of intellectual property is therefore very broad, and may be relevant to elements that are not mentioned in the WIPO definition, provided they result from intellectual activity in the industrial, scientific literacy or artistic fields.¹⁷

¹⁴ Ibid.

¹⁵ WIPO, 'Survey on Existing Forms of Intellectual Property Protection for Traditional Knowledge', 08 August 2001, WIPO/GRTKF/IC/2/5.

¹⁶ Article 2 (viii) of the Convention Establishing the World Intellectual Property Organization (WIPO) (Stockholm, 1967).

¹⁷ WIPO, "Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge 1998-1999", (*World Intellectual Property Organization*, 2001).

The owner of any modern intellectual property is an identifiable individual or a legal entity who must have described his creation in the manner that reflects pre-designed requirements. For example, the owner of patent rights on an invention based on scientific exploitation of genetic resources is an identifiable individual or corporation that must have transformed these resources and presented his invention in the manner that complies with the basic requirement for patentability notably novelty, inventiveness and industrial applicability.¹⁸ The raw resources are therefore transformed into commodities, henceforth owned by others. What other commentators have identified as ‘commodification’¹⁹ of knowledge characterises the modern forms of intellectual property and explains the market-driven aspect of these individualistic and monopolistic concepts.²⁰

This article addresses the legal protection of community rights at the national level as an expression of countries’ sovereignty to develop national legislations to regulate issues of national interests. However, it is important that national policy and legal processes be aligned with any relevant international treaty or policy process related to such issues of national interests. Below, there is an elaboration on community rights as encapsulated in the existing biodiversity related regulatory instruments in force in Cameroon.

3- Community rights in the existing biodiversity-related regulatory instruments in Cameroon

3-1 The forestry and environmental regulations

The landscape of regulations governing biodiversity related activities in Cameroon and providing some amount of protection to community rights comprises a number of legal instruments. This article uses the term ‘biodiversity-related activities’, rather than the restrictive ‘forestry activities’ which, as currently encapsulated in the existing forestry and environmental regulations, tend to point very much at the activities related to timber exploitation. Biodiversity related activities is thus preferred because it includes activities related to timber exploitation and extend to a wide range of other activities such the exploitation of Non Timber Forest Products (NTFPs), especially medicinal plants and the knowledge associated to these resources which is nurtured, held and improved by rural communities. Such exploitation can be undertaken for commercial, non-commercial purposes such as for academic research only or a combination of both.²¹ The key legal instruments

¹⁸ See Article 27 (1) of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), General Agreement on Tariffs and Trade, Uruguay Round, World Trade Organization (Marrakech, 15 April 1994), Annex IC

¹⁹ Stephen Brush also addressed the issue of commodification of knowledge especially biological knowledge within the realm of modern Intellectual property rights. He states that ‘biological knowledge is treated like other types of intellectual or material property in that it can be monopolised and commodified. The establishment of property rights for biological materials followed the scientific transformation of agriculture and other industries that use biological materials.’ See Brush, S.B., “Indigenous Knowledge of Biological Resources and Intellectual Property Rights: the Role of Anthropology”, *American Anthropologist*, 95, 3, (1993).

²⁰ Honore, A.M. “Ownership. In: Guest, A.G. (Eds.) *Oxford Essays in Jurisprudence*”, (Oxford, 1961), p 144; and Sherman, B. and Bently, L., “The Making of Modern Intellectual Property Law-The British Experience”, (Cambridge: Cambridge University Press, 1999), p1760.

²¹ It can however be very difficult for the communities to understand the real intent of seekers for access to their plants and associated knowledge, because academic researchers and other actors

governing biodiversity-related activities and providing some elements addressing community rights in Cameroon are:

- Land Ordinance No. 73/18 of May 1973 and its text of application No 74/357 of August 17, 1974
- Law No 81/13 of November 1981 on the Forestry, Wildlife and Fisheries and its text of application No 83/169 of April 12, 1983
- Law No 94/01 of January 20, 1994 on Forestry, Wildlife and Fisheries (hereinafter ‘the 1994 Forestry Law’)
- The Cameroon Forest policy Document produced by the ministry of Environment and Forestry (MINEF) in 1995
- Law No 96/12 of 5th August 1996 Relating to Environmental Protection Management (hereinafter ‘the 1996 Environmental Framework Law’)

In addition to these laws, there are some decrees of application usually signed by the Prime Minister and intended to promote the implementation of the above-mentioned laws. They include:

- Decree No 95-531 of 23 August 1995 to Determine the Conditions of Implementation of Forestry Regulations (hereinafter ‘the 1995 Forestry Decree’).
- Decree No 95-678 PM of 18 December 1995 to institute an indicative land use framework for the southern forested area of Cameroon
- Decree No 96-237 PM of 10th April 1996 to define the conditions for the functioning of special funds provided in Law No 94 of 20 January 1994 to lay down forestry, wildlife and fisheries regulations.

Among these laws and decrees, a significant step was taken in 1994 by the state of Cameroon towards addressing community interests, thus providing some elements for the legal protection of their rights in forestry policy making. Indeed, through the Law 94/01 of January 20 1994 that introduced the community forest scheme, there was a gradual inclusion of rural populations in forest activities.²² The participatory approach enshrined in the community forest scheme is already indicated in the general provisions of the 1994 Forestry Law. Section 1 of these general provisions provides that: “the law and the implementing instruments thereof lay down forestry, wildlife and fisheries regulations with a view to attaining the general objectives of the forestry, wildlife and fisheries policy, within the framework of an integrated management ensuring sustainable conservation and use of the said resources and of the various ecosystems.”

The current framework of forestry and environmental regulations has accommodated some basic rights of traditional communities living in the vicinities of forested areas. However, it arguably appears that, despite such accommodation, the statutory rights of the state over the forest resources seriously outweigh community

interested in plant genetic resources and traditional knowledge have extremely complex reasons and tricky ways to seek access and acquire the required resources from traditional communities. See Tonye, M. M, “Addressing the Concerns of Rural Communities About Access to Plants and Knowledge in a *sui generis* Legislation in Cameroon”, *J.Biosc*, 29, 4, (2004), p 431

²² See section 37 and 38 of the 1994 Forestry Law. In MINEF, “A Compendium of the Official Instruments of Forest and Wildlife Management in Cameroon”, (Ministry of Environment and Forestry, 1998), 169pp

rights. In essence, the rights of traditional communities to control access to, to freely use forest resources for their livelihood needs and to earn fair and equitable benefits that might arise from scientific and commercial use of their resources are not properly protected. For example, section 6 of the 1994 Forestry Law stipulates that ownership of forest products shall be determined by the regulations governing land tenure. Section 9 of the 1994 Forestry Law makes a distinction between ordinary products and special products. Section 9 (3) provides that the extraction of special forest products shall be laid down by decree. Section 12 of the 1994 Forestry Law stresses the State's ownership of all genetic resources and emphasises that no person shall use them for scientific, commercial or cultural purposes without prior authorisation. As an implementation tool of the 1994 Forestry Law, the Forestry Decree signed by the Prime Minister on the 23rd August 1995 was meant to clarify some grey areas of the 1994 Forestry Law. For example, the 1995 Forestry Decree clarified the rights that populations living in the vicinity of forested areas have over forest resources. Article 26 (1) through (3) of the 1995 Forestry Decree stipulate that local populations' rights over forest resources are limited to usufruct rights, defined as the rights that consist in carrying out within these forests their traditional activities such as collecting secondary forest products such as raffia, palms, bamboo, cane or foodstuff and fire wood.²³ Another important piece of the existing biodiversity related regulatory landscape addressing some rights of rural communities is the 1996 Environmental Framework Law. Article 65 (1) of the 1996 Environmental Framework Law makes provision for rural communities' involvement in research activities that should be profitable to them. In addition, the same provision emphasises the need for the development of a decree laying down conditions under which foreign researchers, national researchers and local communities can collaborate.²⁴

3-2 The legal status of customary land ownership in Cameroon.

The Land Ordinance No. 73/18 of May 1973 and its text of application No 74/357 of August 17, 1974 (hereinafter 'the 1974 Land Ordinance') is the Land Law that is still in force in Cameroon. Although the State's ownership of land is subject to certain circumstances that will be addressed below, Article 1 of the 1974 Land Ordinance clarifies the State's ownership of all the land, such ownership being strengthened under Section 6 of the 1994 Forestry Law which links ownership of forest resources to ownership of land. Subsequent land-related legal instruments developed for the implementation of the 1974 Land Ordinance clarified the significance of the 1974 Land Ordinance on rural communities' customary land ownership. The 1974 land ordinance of Cameroon actually abolished any customary or indigenous land tenure systems and nationalised all land throughout the Cameroon's national territory. Indeed, in 1976 by an order of the then minister of finance who was also in charge of land matters, all the land consultative boards throughout the country were informed that the 1974 Land Ordinance had put an end to

²³ See section 26 (1) of decree No 95-531-PM of 23 August 1995 to determine the conditions of implementation of forestry regulations

²⁴ See article 65 Law No 96/12 of 5th August 1996 Relating to Environmental Management. Ministry of Environment and Forestry, Republic of Cameroon. But it should be underlined that this provision is still very vague, as it does not specifically refer to rural communities' rights to have a critical say about such activities that may be carried out in their local areas or rights to claim or set the benefits that they deserve from such activities. In sum, the current forestry and environmental laws do not properly address the legal protection of the customary rights of rural communities to the extent that would appear satisfactory to them.

the customary ownership of land in the country.²⁵ Ownership of land by the State is however subject to the State being able to demonstrate that there is no private owner of such piece of land.

The 1974 Land Ordinance made provisions for traditional communities to individually and legally acquire their land through a registration system. This is the key entitlement provided by the 1974 Land Ordinance to traditional communities, allowing them to acquire private land ownership through a statutory registration scheme.²⁶ It must be emphasised that, rural communities lay their claims of ownership over their traditional land and the resources occurring thereon, on the basis of their customary laws that unfortunately are unwritten laws.²⁷ But as indicated above, despite such claims over land ownership on the basis of their customary laws, rural community must follow some statutory procedures if they want to be legally recognised as private land owners under Cameroon law. The registration of land and the eventual acquisition of land titles, which even traditional communities must follow, are all subject to the applicant's ability to demonstrate to the satisfaction of the land registration board that, he or she either established or exploited (in French '*mise en valeur*') the land before the 05 August 1974. This approach of the 1974 Land Ordinance is obviously an obstacle for rural communities willing to acquire land titles over their traditional land, if they or their elders did not have the means to exploit the said land before the 05 August 1974. Also, the registration scheme did not make any difference between applications filed by rural/illiterate peoples and wealthy and educated individuals who may even be very well connected to the members of the land registration board. Moreover, all the charges including transportation of the members of the consultative board to the site and food are the responsibility of the applicant. One element that emerged during interviews with some key policy actors in Cameroon is that, in the actual fact, land titles are easily acquired by wealthy private individuals living in urban areas, because they are able to use to their advantage, their

²⁵ See Ngwasiri, C.N., "Land tenure and Resource Access Within some WWF-CPO Conservation Sites: An Analysis of the Legal Context and Traditional Tenure Systems. Consultation Report Commissioned by the WWF- Cameroon Programme Office". (WWF-CPO, 1998).

²⁶ Ibid. But in practice, the registration system and acquisition of private land titles has not made it possible for individual community members to register their land, due to the high bureaucratic procedures, several obstructions to communities' willingness to acquire land title and the expensiveness of the system. Furthermore, the registration scheme is not based on conditions such as the communities' customary ownership and traditional use of land on the basis of the traditional systems. It can be argued that what we are referring to as obstructions are just the normal administrative procedures that must be followed by any individual willing to acquire land titles. But the fact of the matter is that the registration scheme has not made any difference between a normal illiterate person living in a remote area and a wealthy person, educated and perhaps having a high position in the society. The normal application dossier must be in four copies; one of the copies that will be submitted to the sub-divisional officer of the locality shall be duly stamped. The application documents must be accompanied by a description of the property, the nature of occupation and exploitation, estimated values and details of the charges with which the land is encumbered. To get to this level, applicants may need to hire the services of at least two experts, one on land tenure and another on valuation who will assist in the production of this information. Adding to all of these the required fees 40,000 FCFA to be paid by the applicant, the whole procedure turns out to be not only administratively cumbersome to rural communities, but also very expensive with regards to their level of income.

²⁷ Nguiffo, S., "Law, Transparency, Responsibility and Rights of Citizens in Cameroonian Forests. In: Centre for Environment and Development / the Rainforest Foundation and Forests Monitor (Eds.) Forest Management Transparency, Governance and the Law: Case Studies from the Congo Basin. Report Prepared for the Ministerial Conference on Africa Forest Law Enforcement and Governance (AFLEG), Yaoundé, October 13-16, (2003), p. 55.

financial means and relationships with government officials in charge of land matters.²⁸ One of the key findings from the survey carried out in Cameroon is the strong demand for the revision of the current Land Law to sufficiently accommodate traditional communities customary land rights and land tenure systems. This article argues that a critical step policy makers should take in order to address the interests and expectations of traditional communities in the context of biodiversity related activities in Cameroon is by establishing tailor made regulatory measures that respect community land ownership systems. Without this approach, the regulatory landscape will be very limited with regards to the legal protection of traditional communities' customary rights. Tailor made biodiversity regulatory measures respecting community land ownership on the basis of their customary systems will also ensure their participation in the processes leading to authorising access and eventual use of the resources found on their land, such approach that will eventually contribute to minimise the repetition of situations like in the case of Mr Kimbi Moses.

In this case, *Mr Kimbi Moses Ndoh* on behalf of a group of plaintiffs sued the *Groupement d'Entreprise Trap-Strabag Belfinger + Berger* (defendant).²⁹ The plaintiffs identified themselves as natives and inhabitants of Mejang village in the Belo Sub-division of the Boyo Division and the defendant is a road construction company, that was contracted the construction of the road Bambui-Fundong in the NorthWest Province of Cameroon. Although the plaintiffs acknowledge the compensation provided by the defendant as a result of the destruction of the biological resources and their crops caused by the construction activities, the main complaint of the plaintiffs is related to the transformation of a piece of land by the defendant into a quarry in the context of the road construction activities. The plaintiffs needed compensation from the defendant following the destruction of their land resulting from such transformation. As evidence for such destruction, the plaintiffs stated that the entire area became exposed to erosion, which is continuously wasting the land, making it bare and consequently unfit to be utilised for its primary purposes such as farming. On the basis on the State' ownership of all land, the court ruled that because the road construction work was a contract between the State of Cameroon and the German company, the plaintiffs has no basis to claim damages for trespass and destruction of the resources on the said land against the German company. In translating this case to bioprospecting activities, because they cannot provide evidence that they are the actual owners of given piece of land, rural communities might find it very hard to sustain a court case related to what they may consider as violation of their customary rights over the resources and land by committed by a researcher or a bioprospector during field plant collection activities.

Despite the weaknesses of the legal protection afforded to community rights as discussed above, the current landscape of biodiversity related instruments in Cameroon is not just too bleak in relation to the legal recognition of traditional communities' rights to use and benefit from the utilisation of their resources. As indicated earlier, the community forest scheme, introduced in the 1994 Forestry Law

²⁸ As indicated by one staff member at the provincial delegation of environment and forestry North West province of Cameroon, this issue of land ownership is just like the community forest issue. Anyone who is wealthy and well connected in the government arena will have what he/she wants.

²⁹ No WHC/2/98, in the High court of Menchum, in the Boyo Division, North West Province of Cameroon *Mr Kimbi Moses Ndoh* on behalf of a group of plaintiffs Vs *Groupement d'Entreprise Trap-Strabag Belfinger + Berger* (defendant).

was the major avenue aimed at ensuring traditional societies substantial benefit from forestry activities. The community forest scheme is therefore the opportunity offered under the existing regulations to tailor a more appropriate and satisfactory scheme protecting community rights. The Cameroon approach of community forest is discussed in turn.

4- The Community forest scheme: opportunity and major weaknesses

The current landscape of forestry and environmental regulatory instruments in force in Cameroon makes the State a statutory owner of all land and forests resources in the territory. Therefore, through its competent authority, the State is the entity that authorises forest exploitation, plant collection and ethobotanical surveys for research or commercial purposes.³⁰ This suggests that any forest activity that is carried out without a proper authorisation from the State is deemed to be illegal. The current legislation provides for the classification of forest in Cameroon. Section 20(1) of the 1994 Forestry Law stipulates that the national forest estate is composed of permanent and non-permanent forests. Section 20(2) of the 1994 Forestry Law emphasises that, permanent forests shall comprise forest lands that are used solely for forestry and/or as wildlife habitat, while Section 20(3) of the 1994 Forestry Law stipulates that non-permanent forests shall comprise forest lands that may be used for other purposes than forestry. In respect of the decision-making power pertaining to access to the resources in all these categories of forests, the provisions of the 1994 Forestry Law³¹ and the 1995 Forestry Decree³² have clearly concentrated such power in the hands of the governmental departments, omitting any consultation with rural communities through which their consent would be acquired before any decision is made. However, it should be said that, with regards to accessing, using forest resources for domestic and small scale commercial purposes, the community forest scheme³³ introduced in Cameroon by the 1994 Forestry Law was a step forward towards addressing the expectations of rural communities. According to one environmental lawyer in Cameroon: “the community forestry scheme provides the highest opportunity for the communities to manage their resources themselves and benefit substantially”.³⁴

Article 28 (3) of the 1995 Forestry Decree defines the communities to which a portion of forest can be entrusted for management, as the group or community which

³⁰ The office of the Prime Minister, the Ministry of Environment and Forestry and the Ministry of Scientific and Technical Research are all involved in the decision-making processes for the authorisation of forest related commercial and research activities. See Tonye, M.M, “Are the African Organization of Intellectual Property Patent Approach and Cameroonian Biodiversity Regulations at a Crossroads? Suggesting Alternatives Tailored to National and Regional Interests”, *RECIEL*, 14, 3, (2005), p283

³¹ *Supra* note 22. See Section 41 (2) of the 1994 Forestry Law.

³² *Ibid.* See Articles 13 and 14 of the 1995 Forestry Decree.

³³ Article 3(11) of the 1995 Forestry Decree defines the community forest as forest forming part of the non-permanent forest, which is covered by a management agreement between a village community and the forestry administration. Management of such forests is the responsibility of the village community concerned with the help or technical assistance of the forestry administration. Section 37 of the 1994 Forestry Law provides that the services in charge of forest shall, in order to promote the management of forest resources by village communities which so desire, give them assistance in, for example, the development of a single management plan, such technical assistance being free of charge.

³⁴ This statement was made by Augustine Djanmshi, an environmental lawyer working for the Bioresources Development and Conservation Programme-Cameroon (BDCCP-C), during an interview in October 2003.

must be legally registered as an association, a co-operative, Common Initiative Groups (CIGs) or an Economic Interest Group (EIG). This requirement is a constraint to some communities who have been managing their forest through their traditional institutions which require no registration with any authority as a pre-requisite for its operations in natural resource management and which are regulated with unwritten customary rules. Thus, community rights over forest resources and traditional lands exist and do not depend on any registration scheme for their formal validation at the community level. Due to their illiteracy and their lacking the necessary financial means, the communities will find it difficult to write the statutes of their group and to afford the cost of the registration process. Nonetheless, the community forest scheme offers a great opportunity for the establishment of a right-based system ensuring that rural communities determine terms of access to and benefit substantially from the scientific and commercial activities based on the resources found on their entrusted piece of forest. Ideally, the rules pertaining to access and the utilisation of the communities' assets should be determined by the communities themselves and the monitoring of compliance with these rules should be the responsibility of the communities. However, the community forest scheme bears some shortcomings that must be taken into consideration in the process of establishing such a right based system.

The definition of 'the agreement' for the management of a community forest provided under Article 3(16) of the 1995 Forestry Decree clarifies that it is a contract whereby the forest administration '*allots*' to a community a portion of the national forest. From the perspective of this article, the fact that the forestry administration allocates a portion of national forest to the community implies that the community forest is not really the property of the community. In fact, by entrusting a registered community group the management of a piece of forest for a period of 25 years renewable, the law does not indicate that this community group is the owner of the land where this piece of forest is located, thus implying that the State retains ownership of such land. Likewise, there is no mention in the 1994 Forest Law and the 1995 Forestry Decree that the communities have the rights and are free to design a management plan on the basis of their traditional systems of resource management. Although it is provided that the forestry services must assist the communities in the design of a simple management plan, the communities are not allowed to design it themselves, even if they wanted and/or could do it themselves. Instead, the management agreement signed between the communities and the State regulating the implementation of the simple management plan empowers the forestry administration to monitor the execution of all the activities of the simple management plan by local communities. If the communities fail to execute the simple management plan adequately, they may face sanctions such as the termination of the management agreement.³⁵ This article argues that the agreement for the management of the community forest should not be considered as a contract between the State and the community concerned. Instead, the communities should have the full legal entitlement to manage the resources of their forest according to their own rules and procedures and they must be legally empowered to design their own management plan, and may only seek the assistance of the forestry services if they so wish. Such assistance might take the form, not compulsorily, of a contract between the State and the communities under which, the State must be answerable to the communities. The communities

³⁵ Supra note 22. See Section 38(2) of the 1994 Forestry Law.

should therefore have the rights to bring the State to justice if the relevant services of the State breach the contract.

Another limitation of the community forestry scheme is related to the enforceability of the rights of rural communities. In principle, the holder of some specific rights should be able to pursue judicial actions against anyone who trespasses upon his or her rights. It is therefore surprising that for a given property, one stakeholder seems to have been legally given the ownership rights and cannot enforce such rights against those who infringe them, because the rights to undertake judicial action are held by another stakeholder. This is basically the situation under the Cameroon's community forest scheme.³⁶ As the article discusses below, the legally registered entity representing the communities owning the community forest should be empowered to enforce their rights through the formal judicial system.

5- Practical approach to the enforceability of the community rights

The enforcement provisions of the current biodiversity related legal instruments are questionable, especially in respect of empowering rural communities to enforce their customary rights.³⁷ Perhaps this situation is related to the statutory rights of the State over land and the resources in the national territory as they supersede the customary rights of the communities.³⁸ However, an effective legal protection of the customary rights of rural communities through national biodiversity regulations should mean that the communities are able to enforce their rights through the formal judicial system.³⁹ In this respect, rural communities must be empowered to file lawsuits before the relevant courts in Cameroon,⁴⁰ against anyone who trespasses local rules of resources management or misuses the legal authorisation for research or plant collection issued by the competent authority.

Broadly speaking, the legal system in Cameroon is based on the French civil law system, but heavily influenced by common law. Both the national courts and the customary courts operate under the Cameroon judicial system and civil cases in Cameroon are tried by either of these courts. The 1996 Constitution of the Republic of Cameroon stresses the right of every Cameroonian to a fair trial before the courts under the premises that every accused person is presumed innocent until found guilty

³⁶ Article 31(3) of the 1995 Forestry Decree provides that "in case of infringement of community forests regulations, it should be up to the ministry in charge of forests to bring legal actions against the authors of such infringement. The Ministry may be notified to that effect by the official in charge of the community concerned". Here, the role of the communities is just to notify the infringement to the authorities who may or may not even take actions. See the Forestry Decree No 95-531-PM of 23 August 1995 to Determine the Conditions of Implementation of Forestry Regulations. A Compendium of Official Instruments on Forest and Wildlife Management in Cameroon. (Ministry of Environment and Forestry, 1998).

³⁷ Ibid

³⁸ Supra note 22. See Section 6 and 12 of 1994 Forestry Law.

³⁹ See Correa, C. M., "Protecting Traditional Knowledge: Lessons from National Experiences. Prepared for the UNCTAD Meeting, Geneva, 04-06 February". (UNCTAD, 2004).

⁴⁰ Ibid. Professor Carlos M Correa observes that the enforceability of the rights of rural communities is an important factor but often overlooked in discussions or initiatives related to TK protection. He suggests that enforceability be built into the country's judicial system. According to Correa: specific measure for enforcement may encompass civil or commercial sanctions (such as damages) or criminal penalties.

during the hearing conducted in strict compliance with the rights of defence.⁴¹ However, despite this constitutional basis, the issue of legal representation under the legal system of Cameroon is not clarified. In practice, it is purported that, due to the very bad compensation system attorneys are subject to, the quality of legal representation for indigent is very poor.⁴² For forest related matters, the communities do not even have the legal rights to seek justice in terms of filing lawsuits that could bring those who trespass upon their rights before the courts. So in practice, because the communities must report cases of infringement to the local forestry service, they are not encouraged to seek any legal representation, which could be achieved either through an attorney or an elected representative from the community. This article opposes this approach and argues for more power to the communities to seek justice themselves. This should mean, electing local representatives who can bring infringement cases directly to national tribunals and using legal representation as appropriate.

The structure of the judiciary system in Cameroon is a solid foundation upon which the effective enforcement measures can be established. Ordinance No. 72/4 of 26 August 1972 Concerning the Organization of the Judiciary in Cameroon, as amended by Act No. 89/019 of 29 December 1989, classified the courts to include the customary court, the court of first instance, the high court, the court of appeal and the Supreme Court. Also there are special courts such as the military tribunal, dealing with offences committed by or having some connection with military officers. However, military tribunals also have jurisdiction over civil cases including for situations of public unrest or organised armed violence. On the basis of this foundation, biodiversity regulations can design their enforcement provisions by clarifying what amounts to criminal or civil offence in the context of biodiversity research or bioprospecting activities; classifying the level of gravity of such offences; and identifying the court or courts that have jurisdiction over the categories offences. The law may consider as a criminal offence, the fact that someone collects from sacred areas, some culturally sensitive plants not listed in the plant collection permit. The customary court can be legally empowered to undertake a preliminary trial of such an offence. The judgements of this tribunal in relation to this offence will then be sent to the tribunal of first instance, which may be entitled to address the matter and establish sanctions. Biodiversity regulations must establish the fines related to a given offence. Such fines may be determined as X amount of money, which will be used to address the needs of the specific communities for instance in terms of financing some rural development projects. However, in addition to such fines, sanctions such as imprisonment of the offender may also be provided.

However, in Cameroon, local administrations usually overuse their power at the local level and the biodiversity regulations must address this issue, otherwise their enforceability will be very restricted. There should be mechanisms enabling the communities to challenge local authorities through the courts. Overuse of power is very common in remote areas because local authorities know that the communities are

⁴¹ See the preamble of the constitution of the Republic of Cameroon: Law No 96-06 of 18 January 1996 to Amend the Constitution of 2 June 1972. Found online at: <http://www.idlo.int/texts/leg5518.pdf>. Although a constitutional preamble has limited legal power, the preamble is an important element of the constitution because it is theoretically intended to portray the vision of the people about the broader aspects of the functioning of the republic.

⁴² See www.state.gov/g/drl/rls/hrrpt/2005/61558.htm (last visited 27 November 2006).

usually ignorant of their legal rights. Biodiversity regulations can provide that the grant of legal authorisations for access (research permits or exploitation licence) is the responsibility of the National Biodiversity Authority (NBA) as a result of consultations processes involving the NBA (or its representative at the local level), the communities and the operators seeking access.⁴³ In the absence of such consultations, the NBA should not be allowed to issue the legal authorisation meaning that there should be no access to the required resources. Let us assume a hypothetical case, which is in fact very common in many remote forested areas in Cameroon. Generally researchers or plant collectors tend to go directly to a given area, negotiates with the local executive authority such as the Divisional Officer (DO) who issues him a letter stating that he/she can undertake plants collection. Usually, this kind of letter influences the communities that are frightened and eventually allow the researcher to collect the plants specimens that he/she requires. However, when the communities try to oppose such a letter, the local authorities get the local force of order involved to obligate the communities to accept the activity. Although not yet documented, situations similar to the one described in the hypothetical scenario happen in practice in remote forested areas on regular basis in Cameroon. In the present context, only the Ministry of Scientific and Technical Research (MINREST) or, to a certain extent, it is only as a result of a collaborative undertaking between MINREST and the Ministry of Environment and Forestry (MINEF) that someone could be allowed to collect plants and carry out some ethnobotanical research with some communities.⁴⁴ However, in practice, many researchers and plant collectors fail to comply with the procedure administered by MINREST and MINEF as they tend to go directly to areas where they intend to undertake their field activities. Generally, they get some sort of authorisation from the local administrative authorities who generally grant such authorisation backing it with the assistance of the local force of order. Should the communities resist or oppose the researcher or plant collector to undertake his field activities, the local forces of order (police, gendarmes or military forces) will pressurise the communities to allow the researcher to undertake his activities. In order to ensure that local authorities comply with biodiversity regulations and do not get away with these unscrupulous practices, it is essential to empower the communities and raise their awareness that they can challenge such unscrupulous authorities before the courts.

The limitations or incompleteness of the enforceability of the biodiversity regulatory measures will likely occur if the relevant provisions do not address the issue of foreigners who carry out research activities in Cameroon. In this article, we address the issue of international enforceability of biodiversity related regulations and community rights very briefly, because it is being discussed in length in another work in progress. One of the features of biodiversity activities as they are carried out in biodiversity rich countries like Cameroon is that, they usually involve partnerships between national and foreign research teams and individuals. In some cases, foreign researchers actually go to the forested areas and work with the communities to collect the plants and the necessary information, all of which will be exploited/processed abroad. It is possible that the foreign partner complies with the national regulations pertaining to access and use of national resources and traditional knowledge, thus respecting community rights as enshrined in the relevant regulatory measures.⁴⁵ This

⁴³ Supra, note 30.

⁴⁴ Ibid

⁴⁵ Ibid

would mean that such a partner has normally gone the required prior informed consent process and has signed the required agreement with the national counterpart.⁴⁶ However, once abroad, the foreign partner may not actually commit to use the resources according to the terms under which they were acquired in the first place, perhaps because there is nobody to monitor the actual utilisation of the resources. Let us assume a case whereby a Cameroonian counterpart or a watchdog organisation monitoring the industrial use of biological resources comes across information about the patenting of derivatives of the biological elements from Cameroon. Considering that such patenting might have been carried out without the consent, involvement or even acknowledgement of the national counterpart, the law should make provisions for such actors to be challenged. The actual exploitation taking place outside abroad, this particular case can prove to be extremely difficult and particularly expensive but perhaps not impossible. One way to address this is for the law to provide that the state of Cameroon assists the national counterpart or the concerned communities to follow the case at the international level or instance by hiring international expertise.⁴⁷ Supportive to such eventual commitment of the State of Cameroon to follow up this matter at the international level, there are initiatives at the international level based on the recognition that with the lack of expertise in Intellectual Property Rights in developing countries, Cameroon in this case will certainly need an International IP advisor. The creation of the Public Interest Intellectual Property Advisors (PIIPA) is to make available such international experts' advice on intellectual property issues including traditional knowledge, biodiversity, health and agriculture.⁴⁸

6- Conclusion

Forestry and environmental laws are likely to achieve the goals of conservation and sustainability if they protect community rights properly. It is therefore critical that the rights of local communities to access and use the biological resources found in their traditional lands are properly enshrined in the national biodiversity-related regulatory instruments. In the absence of a proper legal protection of their customary rights to the level that is satisfactory to them, local communities are likely to contribute substantially to unsustainable and illegal practices, therefore increasing the depletion of forest resources.⁴⁹ However, providing for a satisfactory legal protection of the community rights through some workable regulatory measures is not enough in terms of addressing the communities' concerns and environmental sustainability. It is very important that the regulatory measures are also legally enforceable, enabling the communities to enforce their rights through the formal judicial system. In this respect, access to and use of biological resources collected from traditional lands will be monitored by the communities themselves. They will ensure that access is carried out pursuant to the terms of the regulatory measures and

⁴⁶ Ibid

⁴⁷ For example, if the state of Cameroon is serious about such an international matter involving a pharmaceutical company, a research centre based overseas and some communities or national institute on the use of some medicinal plants, the International Drug Association can be approached and used as international advisor to Cameroon in connection to this matter.

⁴⁸ Gollin M A "Answering the call: Public interest Intellectual Property Advisors (PIIPA). Paper presented at the international conference on Biodiversity and biotechnology and the protection of traditional knowledge at Washington University, St Louis, April 04-06" (2003).

⁴⁹ Tonye, M. M., "The *Prunus africana* (hook, f) Kalkman", Paper Presented at the Regional ABS Capacity-Building Workshop for Eastern and Southern Africa. (Addis Ababa, 02-06 October 2005), found at: <http://www.abs-africa.info/index.php?id=14>

of their traditional systems of resource management. The communities will therefore have the legal power to challenge before the court those (including resource users and local authorities) who trespass upon the established rules and their traditional systems of resource management, and will be entitled to seek legal assistance if they so wish.