

# Implementing the Nagoya Protocol of 2010 in Cameroon; Benefits for Indigenous Peoples

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**TABLE OF CONTENT**

- I. Introduction
  - a. Background
  - b. Research Problem
  - c. Research Questions
  - d. Limitations to the study
  - e. Theoretical Approach
- II. Methodology
- III. Access and Benefit Sharing in Cameroon: Actors, Stakeholders and Instruments
  - a. Why Cameroon ratified the Convention on Biological Diversity in 1994
  - b. Actors and Stakeholders in Cameroon's ABS regime
  - c. Instruments for the Protection of the Environment
- IV. Discussion & Analysis
- V. Conclusion

Appendix

References

## List of Acronyms

ABS- Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization

AU- African Union

BR- Biological Resources

CBD- Convention on Biological Diversity

CED- Center for Environment and Development

CIEL- Center for International Environmental Law

CNA- Competent National Authority

COP- Conference of Parties to the Convention on Biological Diversity

CPI- Corruption Perception Index

CUSS- University Center for Health Sciences

FPIC- Free Prior Informed Consent

GEF- Global Environmental Facility

GI- Geographical Indicator

GIZ- German Society for International Cooperation

GR- Genetic Resources

GTBAC- Biodiversity-Working Group of Central Africa

HIPC- Heavily-Indebted Poor Countries Initiative

IGC- Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

ILC- Indigenous and Local Communities

IP- Indigenous Peoples

IPR- Intellectual Property Rights

ITPGRFA- International Treaty on Plant Genetic Resources for Food and Agriculture

LBZG/ MCBCC- Limbe Botanic and Zoological Gardens/ Mount Cameroon Biodiversity Conservation Center

LC- Local Communities

LCBC- Lake Chad Basin Commission

LDC- Least Developed Countries

MAT- Mutually Agreed Terms

MINADER- Ministry of Agriculture and Rural Development

MINEFI- Ministry of Finance

MINEPDED- Ministry of Environment, Protection of Nature and Sustainable Development

MINEFI- Ministry of Economy and Finance

MINFOF- Ministry of Forests and Wildlife

MINMIDT- Ministry of Industry, Mines and Technological Development

MINRESI- Ministry of Scientific Research and Innovation

MINSANTE- Ministry of Public Health

MSABS- Multilateral System on Access and Benefit Sharing

NBSAP- National Biodiversity Strategic Action Plan

NGO- Non- Governmental Organization

NSABS- National Strategy on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization

OAPI- African Intellectual Property Organization

PCT- Patent Control Treaty

PGRFA- Plant Genetic Resources for Food and Agriculture

PIC- Prior Informed Consent

PVC- Patent Variety Certificate

SAP- Structural Adjustment Program

STRC- Scientific, Technical and Research Commission

TCE- Traditional Cultural Expressions

TK- Traditional Knowledge Associated with the Use of Biological/Genetic Resources

TRIPS- Trade Related Aspects of Intellectual Property Rights

UN- United Nations

UNDRIIPS- United Nations Declaration on the Rights of Indigenous Peoples

UNEP- United Nations Environmental Program

UNFCCC- United Nations Framework Convention on Climate Change

UPOV- International Union for the Protection of New Varieties of Plants

WIPO- World Intellectual Property Organization

WTO- World Trade Organization

1994 Regime- Law No 94/01 on the Regime for Forests, Wildlife and Fisheries

1995 Decree- Prime Ministerial Decree No. 95/531/PM on 25August 1995, Laying-down the Procedure for Implementing the Forest System

1996 Framework Law- Framework Law No. 96/12 of August 5 Relating to Environmental Management

## Abstract

Access and benefit sharing involves a legitimate process where users access genetic resources and associated traditional knowledge and they share resulting benefits with providers. Cameroon sees the Protocol as a policy that will contribute to improve the livelihoods of its people if implemented (NSABS 2012).

This study examines the manner in which the Ministry of Environment, Protection of Nature and Sustainable Development develops a Strategy on Access and Benefit Sharing and the implementation of the Access and Benefit Sharing Project of 2011. Using implementation theory, this study identifies, and analyzes actors' participation in the national process to implement the Nagoya Protocol. It also analyzes the likelihood of its effective implementation, including possibilities for indigenous peoples to benefit from a national legislation on ABS.

In conclusion, this study recognizes a need for the national implementing agency to develop greater cooperation and communication with ministries, non-governmental organizations and indigenous peoples that have stakes in Access and Benefit Sharing. In order to improve the chances for indigenous peoples to participate and benefit from the implementation process, there is a need for the implementing agency to increase its regard on the needs of staffs at regional offices. Cameroon must determine and understand how benefit sharing works in reality, weigh potential benefits to its environ-economic opportunities before it can decide to ratify the Nagoya Protocol.

## **I. INTRODUCTION**

### **a. Background**

Cameroon is endowed with natural resources like oil and gas, high value timber species, minerals and agricultural products. It has a current population of about 23.3 million people and it is situated in Central Africa (World Bank 2018). According to the World Bank (2018), Cameroon's weak governance hinders its development. Often referred to as "Africa in miniature," 92% of Africa's ecosystems (forests, coastal, montane open savannah and aquatic) are represented in Cameroon and the country has a rich biodiversity that is subject to threats and overexploitation (CHM 2018). Cameroon is ranked 4<sup>th</sup> and 5<sup>th</sup> places in floral and faunal diversity in Africa. These flora and fauna reserves, sanctuaries and botanical gardens cover 9.6 million hectares (CBD 2018). Cameroon's flora are useful for timber, food, fuel, medicine, cultural practices and building. Unfortunately, there are no recent work to create a database on flora and fauna in Cameroon as most citations are based on 1997 figures.

This study makes a lot of references to the "Pygmies" who inhabit the Rain Forests of the South-Eastern region of Cameroon. Forest Peoples Programme (FPP) recognizes the Baka, Bagyeli, Bakola and Bedzang hunter gatherers as indigenous peoples and they are commonly referred to as "Pygmies" for their short-stature. According to FPP (2013), Cameroon State laws do not recognize ancestral land rights and there exists no official State document that recognizes the "Pygmies" as indigenous peoples (FPP 2013). Hence the "Pygmies" lifestyle is threatened by lumbering concessions, the Chad-Cameroon pipe-line and national conservation efforts. Furthermore, the World Bank's Independent Evaluation Group notes that 'investments in forestry over the past 10 years have done little to reduce poverty, improve conservation, tackle climate change or benefit local communities in developing countries [article 7]' as cited by FPP (2013). It is against this background that this study seeks to understand to what extent the "Pygmies," with their wealth of traditional knowledge on the use of biological resources, will make any livelihood gains if Cameroon implements the Nagoya Protocol.

Environmental laws and policies regulate the manner in which humans relate to their natural environment, both near and far. The effects of human activity, such as loss of biological diversity on the natural environment, are not limited to national boundaries. These effects

extend to every area of human society like governance, social interaction, food security and poverty alleviation.

In 1988, the United Nations Environmental Program (UNEP) led efforts to prepare an international legal instrument for the conservation and sustainable use of biological diversity, taking into consideration the need to share costs and benefits between developed and developing countries. The product of these activities was the Convention on Biological Diversity (CBD) that UN enforced in 1993.

At its tenth meeting, the Conference of Parties to the CBD adopted the Nagoya Protocol in 2010. Besides genetic resources, this international instrument puts in place measures, steps and recommendations for users to secure access to traditional knowledge and to share benefits with providers. This consideration comes from one of the original interests of the CBD to look for “ways and means to support innovation by local people” (CBD 2014). Today, a hundred and ninety-six (196) countries have ratified the Nagoya Protocol and a hundred and sixty-eight (168) countries have signed it. Cameroon is a signatory. The Protocol was enforced with the 50<sup>th</sup> ratification. Parties to the Nagoya Protocol met, for the first time, in October 2014 at Pyeonchang- Republic of Korea.

At the national level, Cameroon has been able to relate its environmental laws to the CBD since 1994. This is particularly evident in its Framework Law No.96/12 of 5 August 1996 Relating to Environmental Management (1996 Framework Law). Article 65(1) states that ‘scientific exploration and the exploitation of biological and genetic resources of Cameroon should be done under conditions of transparency and in close collaboration with national research institutions, local communities and in a manner that is profitable to Cameroon....’ (2) “An enabling decree of this law shall lay down the terms and conditions under which foreign researchers and Cameroonian research institutions and local communities shall collaborate” (Rosendal’s [2010] translation).

Twenty-two (22) years later, there is still no enabling decree on Article 65 (1). However, Cameroon launched an ABS Project<sup>1</sup> in 2011. The aim of the ABS project was to build the

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<sup>1</sup> The 2-year ABS Project was bound to run between 2011 and 2013. Its specific objectives include the following:

capacity of major stakeholders on Access and Benefit Sharing principles and implementation of ABS measures. Cameroon utilized finances from the Global Environmental Facility /United Nations Environmental Program and contributions from varying national stakeholders and international development partners to develop a strategy on ABS. The strategy is a framework approach for Cameroon to implement in order to derive a policy and national law on ABS. Also, significant progress has been made between the French company V. Mane Files S. A, the local community of Mangha-Bamumbu and the Ministry of Environment, Protection of Nature and Sustainable Development mutually agree on the terms for benefit sharing of the commercialization of genetic material of the roots to the plant *Echinops gigantus* (ABS 2015).

### **b. Research Problem**

For 22 years, Cameroon has not passed an Enabling Decree on the modalities of collaboration between foreign researchers, Cameroon research institutions and local communities according to Articles 65 of the 1996 Framework Law on the exploration and exploitation of biological and genetic resources in Cameroon. Since 2011, the Ministry of Environment, Protection of Nature and Sustainable Development has carried-out multi-stakeholder capacity building on Access and Benefit Sharing in the Regions of Cameroon through its Access and Benefit Sharing Project. It used a multi-sector participatory approach to design a strategy with a framework of activities on strategic areas to implement in order to produce a national policy and law on Access and Benefit Sharing. This study examines challenges in the implementation of the Access and Benefit Sharing Project of 2011. Using implementation theory, this study looks at variables that have an effect on implementation with a focus on activities of central actors or ministerial staff at the headquarters in Yaounde and front-line staffs or ministerial staff at regional offices who deal directly with indigenous peoples. An analysis of the current situation will indicate potential shortcomings in the implementation of the National Strategy on Access and Benefit Sharing and its potential of meeting the needs of indigenous peoples.

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- Sensitization of major stakeholders and the general public on the importance of Access and Benefit Sharing of genetic resources;
- Elaboration and implementation of policies with regards to Access and Benefit-Sharing of genetic resources including valorization strategies;
- Building capacities of key actors for the implementation of ABS measures.

*c. Research Questions*

- i. Given the current challenges of implementation and processes related to Access and Benefit Sharing in Cameroon, how does the Ministry of Environment, Protection of Nature and Sustainable Development involve major actors and what are their responses? What is the likelihood of effective implementation of the national strategy? What are the constraints? What means exist to address the constraints in particular as it relates to the need for sharing benefits with indigenous peoples in Cameroon.

In order to answer these questions, I will make use of the following:

- International and national instruments, treaties and laws;
- Literature review;
- Implementation theories and
- Material collected from interviews.

*d. Limitations to the study*

During my fieldwork, it was difficult to meet the first Technical Adviser at the Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED) because her responsibilities allowed very little time for an interview. When we met, it was close to the end of my fieldwork. I needed her authorization to access all material related to Access and Benefit Sharing at MINEPDED. Thus, I acquired only qualitative data and no quantitative data because I had limited time left to complete my fieldwork.

*e. Theoretical Approach*

Implementation Theory

Implementation theory is a key element to understand the links between formulation, implementation and outcomes of a policy. Policy implementation is a stage in a policy cycle where implementers execute field activities to accomplish target-goals set by policy designers. By virtue of its place in the policy cycle, policy implementers must seek new

ways, methods and approaches to achieve performance outcomes, as well as resolve and adapt to changing field situations without compromising the goals of policy.

Dimitrakopoulos & Richardson (2001) define implementation as “the complex process of putting a policy into practice by a variety of mechanisms and procedures involving a wide and diverse range of actors.”

This study makes use of implementation theory. Implementation theory was born from a necessity to provide clues, guidance, and effective/efficient ways of implementing policies as well as reasons for policy implementers to consider alternative strategies and techniques to achieve goals of a policy. I will relate specific features of these theories to Cameroon’s challenges with the implementation of the Nagoya Protocol and I will use these theories in my analysis to suggest future courses of action.

Hill and Hupe (2002) separate implementation theories into three types. These are top-down, bottom-up and synthesizers. In general, implementation theories seek to solve the problem of ‘how to identify features of a very complex process, occurring across time and space, and involving multiple actors’ (Hill & Hupe 2002). Specifically, scholars use “top-down”/“bottom-up” implementation theories to link implementation to policy formulation in policy development and identify factors that will affect implementation. Meanwhile synthesizers attempt to combine “top-down” and “bottom-up” perspectives into an applicable model.

### 1. “Top-down” Theories

““Top-down” theorists see policy designers as the central actors and concentrate their attention on factors that can be manipulated at the central level’ (Matland 1995). Matland (1995) equally adds that “top-down” theories are ‘...concerned with the degree to which the actions of implementing officials and target groups coincide with the goals embodied in an authoritative decision.’ At the “top level”, institutions formulate policies and make decisions; meanwhile member States implement these policies (Sabatier 1986: found in Máiz- Tomé [2010]). There is a divide and a hierarchy between policy designers and implementing agents. Yet, there exists an opening for feedback and communication between them. In order for policy designers to manipulate factors of implementation, there must be feedback and

communication. Therefore, “top-down” theories explore variables that affect the relationships between policy designers and implementing agents, as well as the interrelationship between implementing agencies (Hill & Hupe 2002). Below, I will pick-out specific features of some “top-down” theories.

Pressman & Wildavsky (1973: found in Dimitrakopoulos & Richardson [2001]) define “implementation as the ability to forge subsequent links in the causal chain so as to obtain the desired results.” The former, founders of implementation theory, argue that cooperation between agencies that form these links must be excellent to avoid any large shortfalls caused by an accumulation of small deficits in the implementation chain (Hupe & Hill 2002).

The next “top-down” theory argues that greater marginal change in implementation happens when there is greater agreement between implementing agents. Van Meter & Van Horn (1975: found in Hupe & Hill [2002]) further identify a combination of six (6) interrelated variables that work well to provide “outcome performance.” These variables include the following:

- a. Policy standards and objectives
- b. Available resources and incentives
- c. The quality of inter-organizational relationships
- d. The characteristics of the implementation agencies
- e. The economic, social and political environment
- f. The disposition or response of the implementers

In the same light, Sabatier and Mazmanian (1980: found in Hill & Hupe [2002]) identify the following categories of factors that produce an impact on implementation of public policy:

- factors affecting the ‘tractability of the problem’;<sup>2</sup>
- ‘non-statutory variables affecting implementation’<sup>3</sup> and

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<sup>2</sup> This refers to the ease with which implementing agencies can manage upcoming problems.

<sup>3</sup> These variables are independent of a specific legislature or law. They include the socioeconomic condition of a country.

- the ‘ability of the statute to structure implementation<sup>4</sup> (Sabatier & Mazmanian, 1980:554 found in Hill and Hupe [2002]).

These theorists do observe the divide between policy designers and implementers. However, they concentrate on central actors by mainly identifying important variables that shape the relationship between policy designers and implementers. Despite their focus on the central actors, they also recognize that local actors produce feedback on policy outcomes.

Institutions at the “top” will use this feedback to redesign policies.

Hogwood and Gunn’s (1984: cited in Hill & Hupe [2002]) contribution is popular because it introduces ten pre-conditions for Hood’s (1976) concept of “perfect implementation” (cited in Hill & Hupe [2002]). These pre-conditions include the following:

- i. The circumstances external to the implementing agency do not impose crippling constraints.
- ii. That adequate time and sufficient resources are made available to the program.
- iii. That the required combination of resources is actually available.
- iv. That the policy to be implemented is based upon a valid theory of cause and effect.
- v. That the relationship between cause and effect is direct and that there are few if any, intervening links.
- vi. That dependency relations are minimal.
- vii. That there is understanding of, and agreement, objectives.
- viii. Tasks are fully specified in correct sequence.
- ix. That there is perfect communication and co-ordination.
- x. That those in authority can demand and obtain perfect compliance (Hogwood & Gunn 1984: cited in Robertson-Wilson & Lévesque 2009).

Robertson-Wilson and Lévesque (2009) examine policy documents to assess the application of these pre-conditions. In the same way, this study will apply these pre-conditions as a

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<sup>4</sup> This refers to the ability of policy designers and implementing agency to structure activities for implementing the legislation or policy.

method to assess whether the implementation of Cameroon's ABS Strategy may achieve its goals.

## 2. “Bottom-up” theories

These theories focus on the actual service providers or ‘front-line staffs’, who have contact with the target population or members of the society. These theories look at how the former interpret policy and what attitudes and techniques they apply to solve problems that may affect the implementation of public policy on the field.

One interesting theory is Lipsky’s “street-level bureaucracy” approach. Lipsky(1980:xii found in Hill and Hupe 2002) argues that ‘the decisions of street-level bureaucrats, routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out.’ According to Lipsky, “street-level bureaucrats cope with limited resources, pressure from stringent requirements from implementing agencies and policy designers, ‘inadequate time in relation to limitless needs’ and control imposed because of alleged failures of street-level staff (Hill & Hupe 2002).

In his theory, Lipsky analyzes ‘the behavior of front-line staff in policy delivery agencies (Tummers & Bekkers 2012). A central feature in his work is the fact or an assumption that “Street-level bureaucrats” exercise discretion-freedom in the work place (Tummers & Bekker 2012). In principle, Lipsky’s perspective is based on the assumption that ‘implementation of policy is really about street-level workers with high service ideals exercising discretion under intolerable pressures<sup>5</sup>’ (Hill & Hupe 2002). According to Lipsky, an additional control from the “top” to these intolerable pressures will yield increasing stereotypes and cause “street-level bureaucrats” to disregard the needs of their clients (Hill & Hupe 2002). Therefore, Lipsky opens-up questions about what kind of measures can “top” implementation actors

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<sup>5</sup> This study considers Hill and Hupe's (2002) 'intolerable pressures,' to be similar to what Tummers and Bekkers (2012) refer to as 'intrinsic problems.' Therefore "street-level bureaucrats" face the following intrinsic problems:

- i. They have to respond to the public with a limited amount of information,
- ii. They have a limited amount of time to make decisions,
- iii. The rules to implement do not always correspond to the specific context of citizens and
- iv. They work with limited resources.
- v. Rules of implementation do not always correspond to the context of the “street-level bureaucrats.”

take to create an ideal working environment for front-line staffs and ensure that they fulfill the needs of target populations as set in the goals of public policy.

Besides “top-downers and “bottom-uppers,” there are also synthesizers. Synthesizers tend to combine both perspectives into a single model. In this study, I do not make use of synthesizers’ perspectives in order to limit the scope of the study. In addition to the fact that this study emphasizes the role of “street-level bureaucrats” in the implementation of ABS, it mainly examines the activities of central actors to implement the Strategy on ABS and develop a policy on ABS for Cameroon.

## II. Methodology

The material for this study is qualitative. Through interviews, I had the opportunity to learn and understand more about the concept of Access and Benefit Sharing and Nagoya Protocol. A list of interviewees is available on page 64. This study makes use of primary data in the form of interviews and secondary sources such as peer-reviewed and non-peer-reviewed literature, as well as other published material. In response to emails about my intention to pursue this study, I received secondary sources from staffs of Forest Peoples Programme (FPP) and the African Intellectual Property Organization (AIPO). These data will enable me to examine the nature of activities in the ABS Project, to identify major actors and recognize challenges that Cameroon faces with the implementation of the Nagoya Protocol.

Primary sources or interviews with staffs at the Ministerial head office for Environment, Nature Protection and Sustainable Development as well as at AIPO are fundamental to indicate what they actually understand as ABS. These officials are at the helm of discussions and negotiations with the Convention of Biological Diversity and the Commission for Central African Forests on ways to develop a national strategy on ABS for Cameroon. These interviews and the accompanying secondary data will help me analyse the goals, objectives, clauses and assumptions on a suitable implementation strategy of the Nagoya Protocol. I will compare these details with available research and Cameroon Forest Laws to show an improvement or further deficiencies in the management of biological resources in Cameroon. I understand Cameroon has a history of creating genuine laws that are not matched by implementation decrees or facilities and the means to implement these laws. The area of natural resource management is compact yet important to this work in order to determine whether ABS will be a one-time national policy issue or it will develop a life of its own and create benefits for even indigenous peoples. Below, I discuss Cameroon's history of regulatory dispositions on the management of natural resources with relevance to ABS. The complex nature of the national structure and dysfunctional paid-staff will help me analyse the actual problems in implementing the Nagoya Protocol in Cameroon.

This study also uses data from on-going capacity development activities in order to verify the participation and responses of major actors.

I will use available data to make a list of actors in Cameroon. Based on the list of actors, I will map links between them to show direct and indirect involvement in developing an ABS policy for Cameroon. I will analyze direct linkages to indigenous peoples to identify actors that are in direct contact with the former. The roles of these identified actors, factors that affect their activities and challenges they face will enable me to analyze whether they can effectively execute services that support indigenous peoples in an Access and Benefit Sharing process; this includes services that provide tangible and non-tangible benefits.

Implementation theory shall play a central part in the discussion and analysis of this study. This study utilizes essential factors and variables considered in “top-down” and “bottom-up” theories to do a critical examination of the following:

- i. The design process of Cameroon’s National Strategy on Access and Benefit Sharing and its provisions,
- ii. Activities of the implementing agency (ABS Project of 2011)- Ministry of Environment, Protection of Nature and Sustainable Development; and
- iii. The roles and participation of major actors and stakeholders.

### III. Access and Benefit Sharing in Cameroon: Actors, Stakeholders and Instruments

#### a. Why Cameroon ratified the CBD

Cameroon showed particular interest in the CBD because of her rich biological diversity (Mahop 2011; Chouaibou 2011). Despite this assertion, the State has not been able to carry out a full inventory of Cameroon's biological diversity according to the first point on Article 64(1) of the 1996 Framework Law Relating to Environmental Management and Article 7[a] of the Convention on Biological Diversity for the lack of resources. Cameroon's National Biodiversity Strategic Action Plan (NBSAP 2000) identifies her rich biological diversity as a source for poverty alleviation and food security. The NBSAP recognizes possible medicinal potentials exemplified by the anti-HIV vine (*Ancistrocladus korupensis*) found in the Korup National Park and *Prunus africana* found in the Mt. Cameroon and Bamenda highlands.

‘...The implementation of the convention’s provisions could halt the loss of biodiversity and degradation of ecosystems for the benefit of Cameroon and the world<sup>6</sup> today and tomorrow (NBSAP 2000).’

Socio-economic and political reasons pushed Cameroon to institute a forest law in the early 90s and caused Cameroon to assume new international obligations by ratifying the CBD in 1994. During the late 1980s, Cameroon faced economic recession and political unrest (Brunner and Ekoko, 2000 cited in Oyono, Ribot & Larson 2006: 9). At the same time, local communities began to demand “equity and security of access to financial benefits from the public management of forests-“their forests” (Bigombe Logo 1994; Bigombe Lobo 1996; Oyono 2004e cited in Oyono et al. 2006). Apparently, Cameroon’s 1994 Regime was a product of the World Bank’s Structural Adjustment Program. Its major implications included the following:

[1] “An intensification of logging...” (Kuwik 1996: 18; Brunner and Ekoko 2000: 65-69; Essama Nssah and Gockowski 2000: 5-14 cited in Oyono et al. 2006);

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<sup>6</sup> Cameroon is commonly referred to as “Africa in miniature” because 92 percent of Africa’s ecosystems are represented in the country.

[2] “Increased donor influence over decision making regarding the restructuring of the country’s forestry sector (Ekoko 1997: 11 cited in Oyono et al. 2006).”

In summary, environmental policy in Cameroon changed when the President of Cameroon passed Law No. 94/01 on the Regime for Forests, Wildlife and Fisheries (1994 Regime) on 20 January 1994. This new forest policy is expressed as a ‘Decentralized Forest Regime’ (Nuesiri 2008) because it included provisions for local communities to participate in the management of national forests and repealed Law No. 18/013 of 27 November 1981 in Article 170<sup>7</sup> of the 1994 Regime. In the 1994 Regime, the State defines, includes and specifies the rights and limits to various stakeholders including indigenous peoples, local communities, village communities, State ministries as well as lumbering concessions. Besides the newly established rights for indigenous peoples to use the national forests, the 1994 Regime introduces community-based forest management and allocates tax revenues for development of forest-adjacent local communities<sup>8</sup>. The intensification of logging corresponds to the simultaneous focus on community-based forest management in the form of Forest Management Plans (FMP). FMPs are plans drawn by logging concessions to include the use and management of forests by indigenous peoples and local communities that live adjacent and within forest concessions. They include the respect of local land tenure rights, rights to hunting within logging areas, employment of locals in logging activities as well as to socioeconomic development within local communities (Lescuyer, G. et al, 2001). However, Lescuyer et al 2001 note that most FMPs limit access to forest resources for indigenous peoples and local communities that previously depended on these forests.

Following Presidential Law No. 94/01 of 20 January 1994, the Prime Minister signed Decree No. 95/531/PM on 25 August 1995 Laying-down the Procedure for Implementing the Forest System<sup>9</sup> (1995 Decree) and for relevant ministries to implement Law No. 94/01 on the Regime of Forests, Wildlife and Fisheries (go to Appendix III). According to the 1995 Decree, then-Ministry of Environment and Forests has to collaborate with then-Ministry of

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<sup>7</sup> Art. 170.- All previous provisions contrary to this law are repealed, including the law no. 18/013 of November 27<sup>th</sup> 1981 relating to the regime on forests, wildlife and fisheries.

<sup>8</sup> Find articles in Appendix II

<sup>9</sup> This suggests that, with respect to environmental law in Cameroon (in the 90s), the Presidency made the Law and the Prime Ministry produced procedures (a Decree) for implementing the Law.

Scientific Research to control access, importation and exportation of genetic resources. This is a sign that the Prime Ministry understood the need for inter-organizational cooperation in the implementation of environmental policy.

In 1996, Cameroon enacted its Environmental Management Law known as Framework Law No. 96/12 of August 5 Relating to Environmental Management (1996 Framework Law). Before the 1996 Framework Law, Cameroon used Law No. 94/01 on the Regime for Forests, Wildlife and Fisheries as its Environmental Management Law after repealing the 1981 Environmental Law in Article 170 of the 1994 Regime. However, Cameroon is implementing both the 1994 Regime and the 1996 Framework Law simultaneously and contemplating a draft of the revised 1994 Regime<sup>10</sup> ([www.forestpeoples.org](http://www.forestpeoples.org) ).

Actors in Cameroon's ABS regime include international and regional organizations, neighboring States, State ministries and regional departments, establishments that are jointly owned and controlled by the government and private sector, urban and rural councils, indigenous peoples and local communities, local and foreign researchers, bio-prospectors, the media<sup>11</sup> and the Cameroon people at large.

The government of Cameroon<sup>12</sup> has the responsibility to develop the country's environmental policy and revise its National Environmental Management Plan<sup>13</sup>. To achieve these objectives, it created an Inter-ministerial Committee on the Environment and a National Consultative Commission on the Environment and Sustainable Development<sup>14</sup>. Both committees have political influence in decision-making processes for environmental laws in

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<sup>10</sup> Can be found at <http://www.forestpeoples.org/sites/fpp/files/news/2012/12/Version%20de%20la%20loi%20compar%C3%A9e%20au%2031%20dec%202012.pdf>

<sup>11</sup> Through television and radio programs, mass communication media can inform and educate a people about ABS.

<sup>12</sup> This may include the presidency and prime ministry.

<sup>13</sup> Article 10(1): The Government develops environmental policies and coordinates the implementation. To this end, in particular:

Line 4- It prepares a revision of the National Environmental Plan, based on intervals stipulated in Article 13 of this Act, in order to adapt to the *new requirements* in this area;

<sup>14</sup> Art. 10(2): It is assisted in its work of developing, coordinating, implementing and monitoring environmental policies by the Inter-ministerial Committee for the Environment and the National Consultative Commission for the Environment and Sustainable Development whose responsibilities, organization and operation are fixed by enabling decrees of this law (1996 Law).

Cameroon. The committee has political influence because of an enabling decree. In Cameroon, these committees coordinate *Multilateral Environmental Agreements* (Bruch & Mrema 2006). Meanwhile ministerial Focal Points are responsible for day-to-day activities related to multilateral environmental agreements (Bruch & Mrema 2006). The Ministry of Environment, Protection of Nature and Sustainable Development is coordinating and running the day-to-day activities on CBD and ABS.

The 1994 Regime identifies the Ministry of Forest and Wildlife (MINFOF) as the State organ to implement Article 17 (3)<sup>15</sup> which is relevant to ABS. Article 12 (2)<sup>16</sup> establishes a role for the Ministry of Finance (MINEFI). In Article 13(2 & 3) of Decree No. 95-531 of August 23<sup>rd</sup> 1995 (one of the implementing regulations of the 1994 Law), 'MINFOF is the national authority responsible for issuing permits to collect samples of genetic resources for scientific and cultural purposes (Mahop 2011). According to Article 13, MINFOF will also issue certificates of origin and export permits for such resources with the consent of MINRESI (Ministry of Scientific Research and Innovation)' (Mahop 2011). Despite these government controls, 'local populations retain their rights of use (traditional activity) in national domain forests' according to Article 26 (Mahop 2011).

Before 2004, then-Ministry of Environment and Forests (MINEF) coordinated management of Cameroon's environment. Presidential Decree No. 2004/320 of December 2004 divided the Ministry of Environment and Forests into the Ministry of Forests and Wildlife (MINFOF) and Ministry of Environment and Protection of Nature. The President created the Ministry of Environment and Nature Protection to engage Cameroon in the global fight to prevent the degradation of the environment ([www.minep.gov.cm](http://www.minep.gov.cm)). By October 2012, the President used Presidential Decree No. 2012/431 to add functions of the Ministry of Environment and

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<sup>15</sup> Art.17 (3) In the context of the conservation of biological resources, the administrations in-charge of forests, wildlife and fisheries may make or participate in the establishment of ex-situ conservation units of these resources, such as genetic resource banks, zoological and botanical gardens, arboreta, seed orchards and nurseries. To this end, the authorities concerned determine the arrangements for collection, processing, preservation and propagation of genes and specimens in the wild.

<sup>16</sup> Art. 12(2): The economic and financial result of its (genetic resources) use result in the payment of royalties to the State whose rates and methods of collection are set in proportion of their value, by order of the Minister of Finance on the proposal of competent ministries.

Protection of Nature to include activities on Sustainable Development. These functions include some of the following:

- Definition of environmental management measures in connection with the concerned ministries and specialized agencies;
- Gather information from the public to elicit their participation in the management, protection and restoration of the environment and nature and promote their education;
- The negotiation of international agreements and conventions relating to the protection of the environment, nature and their implementation in conjunction with the Ministry of Foreign Affairs-*Ministry of External Relations* (MINEPDED 2012).

MINEPDED has two units that operate as Focal Points for CBD and ABS<sup>17</sup>. MINEPDED has exercised its prerogative by developing a National Strategy on ABS and secured funds to implement the ABS project. Since 2011, MINEPDED has organized seminars and workshops on capacity building of stakeholders on ABS in the Regions of Cameroon. MINEPDED performed this role according to Article 72<sup>18</sup> of the 1996 Framework Law. To make the implementation process more effective, MINEPDED needs to collaborate with the Ministry of Communication and other concerned public agencies, traditional authorities and associations working in the field of environment and development (like Non-Governmental organizations<sup>19</sup> [NGOs]). Their cooperation can employ their varied resources to inform, raise awareness and educate the Cameroon people on environmental issues (Article 74 of the 1996 Law)<sup>20</sup>.

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<sup>17</sup> However, there is no information about these units on the ministry's official website.

<sup>18</sup> Art. 72: Public participation in environmental management should be encouraged, including through:

- Free access to environmental information, subject to requirements of national defense and security of the State;
- Consultative mechanisms to collect the opinions and contributions of people;
- Representation of people in the advisory body of matters on the environment;
- The production of environmental information;
- Awareness, education, research and environmental education.

<sup>19</sup> NGOs like the Center for Environment and Development (CED) Cameroon and FPP Cameroon.

<sup>20</sup> Art. 74: To strengthen environmental awareness in society as well as awareness and public participation in environmental issues, administrations in-charge of the environment, communications and other concerned public agencies shall organize information and awareness campaigns through the media and other means of communication.

In an ideal ABS regime, users can access genetic resources for academic research. Academic research may include in-depth studies into the nature and properties of plant and animal species and derivatives thereof. In an ideal ABS deal, where a user shares monetary and non-monetary benefits with the providing country, providing countries may benefit also in the form of permanently established academic networks and cooperation (Biber-Klemm & Martinez 2006).

Cooperation between the Ministry of Public Health (MINSANTE) and MINEPDED is necessary in situations where non- monetary benefits include the transfer of knowledge and technology that are suitable for improving services of Cameroon's health sector. Foreign research partners may find the University Center for Health Sciences (CUSS) of the University of Yaounde 1 and other science departments of State and private universities in Cameroon as potential research partners in academic research and bio-prospection. MINSANTE may step in to coordinate some of these arrangements according to its needs. In 1987, bio prospecting<sup>21</sup> occurred in Cameroon with the collection of barks of the tree called *Prunus africana*. In collaboration with the Missouri botanical Gardens, University of Yaounde 1 participated in research on the distribution and cultivation of *A. korupensis* between 1992 and 1993 (UNEP 1998). The National Cancer Institute of the United States of America researched on *A. korupensis* because it contained anti-HIV naphthyl-isoquinoline alkaloid michellamine B. The aim of the research collaboration with the University of Yaounde 1 was to 'assess the density and distribution of the population of *A. korupensis*' (UNEP 1998).

The field study of this thesis revealed that the Ministry of Industry, Mines and Technological Development (MINMIDT) contributed and participated in Cameroon's ABS project. MINMIDT contributed on the issue of intellectual property rights in the development of the National Strategy on Access and Benefit Sharing. MINMIDT may equally apply its services in case an ABS agreement includes the transfer of technology and creation of industry.

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In this regard, they make use of the contributions of traditional means of communications as well as traditional authorities and associations working in the field of environment and development.

<sup>21</sup> 'Bioprospecting can be defined as the systematic search for and development of new sources of chemical compounds, genes, micro-organisms, macro-organisms, and other valuable products from nature' (WHO 2014).

Intellectual Property Rights are specific rights allocated to ‘creations of the mind, such as inventions; literary and artistic Works (WIPO 2014). These rights include patents, geographical indications, copyrights, trademarks etc.

The Ministry of Agriculture and Rural Development (MINADER) is the Focal Point for the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) in Cameroon. MINADER is responsible for granting access to healthy plant material of good quality and protecting the rights of farmers. This role makes MINADER another access point or gatekeeper in implementing the Multilateral System on ABS in the ITPGRFA. It is worth noting that agricultural activities make up the livelihood in most rural households in Cameroon.

At the regional level, Cameroon belongs to the African Union (AU) and the African Intellectual Property Organization (OAPI). As an organization, that regroups African countries, the AU<sup>22</sup> decided on its ABS Model Law in Algiers-Algeria in 2000. The African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000) provides an interesting mix of provisions that should facilitate the formulation and implementation of ABS legislation in African States. Its concept of Community Intellectual Rights, among others, adds importance to intellectual property that emanates from heterogeneous local communities in Africa. This is a useful concept to consider when negotiating ABS agreements within heterogeneous rural societies in Africa.

The Central African Forests Commission (COMIFAC) is a regional organization that harmonizes policies in the management of forest and savannah ecosystems in the Central African Region. The organization equally provides technical guidance to create practical national framework and legislation for the implementation of environmental laws. A month after the adoption of the Nagoya Protocol at the international level, COMIFAC was swift to elaborate its ABS strategy. COMIFAC seeks to institute its Strategy on Access and Benefit Sharing as a tool for poverty reduction and sustainable management of biological diversity in Central Africa (COMIFAC 2010). COMIFAC’s commitment has been instrumental in

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<sup>22</sup> AU has a political mandate to influence environmental policy in Africa.

Cameroon's ABS process because COMIFAC contributed to the baseline study that led to the development of NSABS.

The headquarters of OAPI is located in Yaounde-Cameroon. The Bangui Agreement created the organization on 2 March 1977 and revised in 1999 to comply with WTO's TRIPS Agreement (WIPO). With the Agreement Revising the 1977 Bangui Agreement in 1999, the regional organization serves as a "national office" that provides IPRs to member states. It equally provides training in IP. Amongst others, OAPI provides Plant Variety Certificates (Annex X of the Agreement Revising the Bangui Agreement of March 2, 1977, on the creation of an African Intellectual Property Organization). This is a certificate that is required for national ABS agreements that include plant propagation and plant breeding. OAPI serves as the authority issuing these certificates after rigorous checks to ensure that applications for these certificates meet requirements of the Revised Bangui Agreement (1999).

In its effort to cover Traditional Knowledge associated with the use of genetic resources (TK), OAPI has developed a draft Agreement related to the Protection of Traditional Knowledge, as an addition to the Revised Bangui Agreement of 1999. The organization has also produced a draft Agreement Related to the Protection of Folklore. In Article (3) of the former, the last point states that 'the term (traditional knowledge) is not confined to a specific technical field and can be applied to include agricultural, ecological or medical, as well as combined knowledge in genetic resources.'

In Cameroon, some indigenous peoples and local communities<sup>23</sup> maintain traditional ways of using biological resources in their environment. They have passed down traditional knowledge about using their biological resources for many generations. ABS presents an opportunity for holders of relevant TK to seek benefits when users access such TK and it is also problematic and can be disruptive. Sometimes non-access is preferable because Cameroon Laws do not have a clear definition for the term indigenous peoples. However, this study considers Baka communities<sup>24</sup> in Cameroon as indigenous peoples based on

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<sup>23</sup> Local communities in Cameroon are heterogeneous groups of people who live outside urban areas or in rural communities. These people provide food and employment for urban areas, depend on modern medicines and have organized markets and basic educational systems.

<sup>24</sup> This study defines indigenous peoples as a group of people who are non-urban or non-rural and maintain traditional lifestyles and livelihoods. They are regularly at odds with national governments because of logging

categorization by NGOs that have worked with Baka communities. One of these NGOs is the Forest Peoples Program.

There are people who treat common illness through TK on the use of biological resources in rural and urban centers of Cameroon. Commonly referred to as “Tradi-practitioners<sup>25</sup>” they indirectly promote the use and valorization of TK. They are a complex and dynamic group with a potential to facilitate access to TK owned by indigenous people and facilitate bio-piracy.

Forest Peoples Programme (FPP) has cooperated with a national NGO known as Center for Environment and for Development (CED) to study and eco-map the Baka peoples’ customary use of natural resources and land. FPP in Cameroon and CED are organizations that mediate between the State and forest indigenous people in order to articulate the needs of indigenous peoples.

The German Society for International Cooperation (GIZ) directly functions in Cameroon’s ABS process as the lead executing agency of the ABS project. Cameroon’s ABS project started in 2011. Meanwhile, the Global Environmental Facility (GEF) of the United Nations Environmental Program (UNEP) provided funds for Cameroon’s ABS project. The present study is unable to determine how the involvement of both international organizations influences decision-making and methods applied by MINEPDED (national executing agency) to carryout activities in Cameroon’s National Strategy on ABS<sup>26</sup>.

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concessions or national conservation and they are sometimes enslaved. The Baka “pygmies” in Cameroon are uniquely short-statured sedentary hunter-gatherers who live deep in the Equatorial Rain Forest of South-Eastern Cameroon and maintain a traditional livelihood. They depend on the forest for food, medicine, shelter, protection and spirituality. This study does not describe their traditional knowledge and use of natural resources. This information is not readily available. This study looks at conditions in the implementation of ABS in Cameroon that will prevent indigenous peoples from receiving significant benefits if indigenous people allow access to their traditional knowledge associated with the use of biological/ genetic resources.

<sup>25</sup> They are mostly individuals with traditional knowledge in the use of natural resources. They live in local communities and trade ready-made cures for money.

<sup>26</sup> It is MINEPDED’s role to propose budgets, negotiate and agree on funds for environmental projects in Cameroon. With respect to ABS, GEF provides these funds. By virtue of its role as lead executing agency, GIZ supervises and monitors allocation and use of funds provided by GEF. GEF may likely impose its standards with the objective that MINEPDED uses GEF-allocated-funds in a manner that is consistent to set objectives of the national ABS project. Therefore, decision-making in NSABS is largely subject to GEF policy.

The United Nations Environmental Program (UNEP) provided funds for Cameroon's ABS project. The present study is unable to determine how the involvement of both international organizations influences decision-making and methods applied by MINEPDED (national executing agency) to carryout activities in Cameroon's National Strategy on ABS<sup>27</sup>.

Amongst others, private sector stakeholders include lumbering concessions and agro-industries. Both stakeholder groups exploit large portions of forest areas for logging and plantation agriculture, respectively. Their interest is to make profits from the commercialization of primary products.

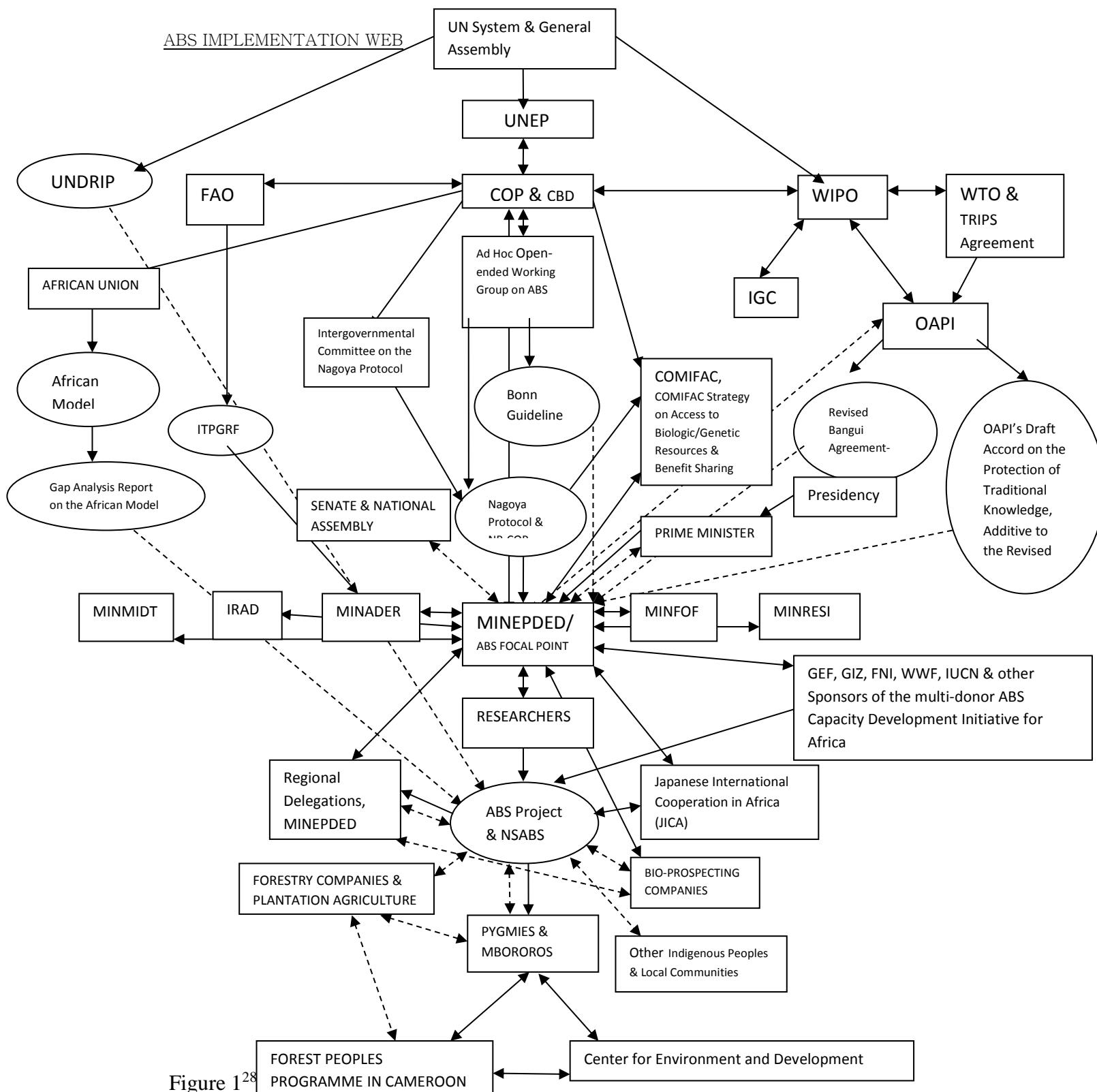
Below, an attempt is made to illustrate main actors in implementing ABS in Cameroon. Figure 1 illustrates complexities of existing linkages. The interlinkages demonstrate the bulk of influences, resources, requirements and interpretations involved in the concept of ABS.

The following acronyms are used in Figure 1 below:

COP- Conference of Parties to the Convention on Biological Diversity; COP-MOP1- First COP serving as meeting for Parties to the Nagoya Protocol; FAO-Food and Agricultural Organization; ITPGRFA-International Treaty on Plant Genetic Resources for Food and Agriculture; MINEPDED- Ministry of Environment; Protection of Nature and Sustainable Development; MINRESI- Ministry of Research and Scientific Innovation; COMIFAC- Central African Forest Commission; IRAD- Institute of Agricultural Research for Development; IGC- Intergovernmental Committee on Intellectual Property and Genetic Resources; Traditional Knowledge and Folklore; NSABS- National Strategy on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization; MINMIDT- Ministry of Industry, Mines and Technological Development, Ministry of Finance; TRIPS- Trade Related Aspects of Intellectual Property Rights; WTO- World Trade Organization; GIZ- German Society for International Cooperation; IUCN- International Union for the Conservation of Nature; WWF- World Wide Fund for Nature; GEF- Global Environmental Facility; FNI- Fridjof Nansen Institute; UNDRIPS- United Nations Declaration on the Rights of Indigenous Peoples; UN- United Nations; UNEP- United Nations Environmental Program and OAPI- African Intellectual Property Organization.

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<sup>27</sup> It is MINEPDED's role to propose budgets, negotiate and agree on funds for environmental projects in Cameroon. With respect to ABS, GEF provides these funds. By virtue of its role as lead executing agency, GIZ supervises and monitors allocation and use of funds provided by GEF. GEF may likely impose its standards with the objective that MINEPDED uses GEF-allocated-funds in a manner that is consistent to set objectives of the national ABS project. Therefore, decision-making in NSABS is largely subject to GEF policy.



<sup>28</sup> I produced this diagram in order to illustrate the complicated network of institutions that are involved in decisions and activities relevant to application of ABS in Cameroon. Indigenous peoples like the "Pygmies" will reap any benefits from ABS if these networks prioritize the needs of the "Pygmies."

- Arrow points from an organization that has contributed to a new policy or program in the recipients. It also points from bodies/organizations to an environmental instrument/project.
- ↔ This arrow represents direct collaboration between bodies/ organizations. It also represents any form of participation by an organization in a project or program.
- Recipient organization has instituted a new policy because of international environmental policy instrument.
- Dashed arrows represents a necessary yet unavailable link between bodies/organizations or environmental instruments.

Texts in black represent stakeholders.

Texts in purple represent relevant environmental instruments.

Boxes represent organizations.

 Circles represent relevant environmental instruments.

## b. INSTRUMENTS FOR THE PROTECTION OF THE ENVIRONMENT

### 1. CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

The Conference of Parties to the CBD (COP) opened CBD for signatures in 1992. COP adopted the CBD in 1993. The third (3<sup>rd</sup>) objective of the CBD is to achieve a ‘...fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding’ (CBD 1992). For the sake of my research, I will limit my elaboration of CBD to its third objective. However, all three objectives (including the conservation of biological diversity and sustainable use of its components) are interconnected and I will point towards this connectivity in my analysis.

Today there are 194 Parties to the CBD indicating a high approval by Parties to perform sovereign rights over their biological diversity. However, Parties (especially in the

developing world) cannot implement the CBD's provisions without guidelines on procedures for implementing the CBD. It is for this reason that at COP VI in 2002, COP adopted the Bonn guidelines. Meanwhile COP agreed on the Nagoya Protocol at its tenth meeting at Nagoya-Japan in 2010. Bonn guidelines are not legally binding. They are 'voluntary guidelines' that provide instructions for Parties to the CBD, scientists and stakeholders on creating legislations on access to genetic resources and benefit sharing, processes in negotiating contracts for access and benefit sharing and implementing an access and benefit sharing system.

If applied, CBD's Article 8 (e & j)<sup>29</sup> may open alternative solutions to threats on the traditional livelihood of some indigenous peoples in Cameroon. Tchoumba & Nelson (2006) have studied Baka communities that live adjacent to the Dja Biosphere Reserve and observed significant 'geographical overlaps' between indigenous peoples' traditional livelihood strategies and conservation activities in the area. Geographical overlaps, the latter indicate, have resulted in conflicts between the Baka communities and conservation authorities. Such conflicts clearly ignore Articles 8(e) & (j) because sustainable development in these Baka communities cannot happen when their dependence on the Dja Reserve for livelihood and traditional life style is restricted.

User rights expressed in Articles 8 and 26 of the 1994 Forest Regime, Decree No. 95/531/PM of 23 August 1995 Laying Down the Procedure for Implementing the Forests System respectively and Article 8 (j) of the CBD are similarly prescribed by Article 10 (c)<sup>30</sup> of the CBD. Interestingly, the latter lays emphasis on promoting the concept of compatibility

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<sup>29</sup> Art. 8 In-situ conservation.

Each Contracting Party shall, as far as possible and as appropriate:

e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant 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 the benefits arising from the utilization of such knowledge, practices and innovations.

<sup>30</sup> Article 10 Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate: (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

between indigenous peoples' customary use of biological resources and 'conservation or sustainable use requirements'. In effect, Articles 8(j) & 10(c) point to the fact that in many cases, customary use of biological resources is sustainable and leads to conservation of biological resources.

In Articles 15 and 16, CBD lays down important elements that Contracting Parties shall use in an Access to Genetic Resources Regime. Based on national legislation, Contracting Parties should grant access to specific genetic resources (these genetic resources must come from countries of origin or Parties that have acquired these resources according to the CBD) to other Contracting Parties and the former must not limit this access with restrictions that violate the CBD. It is noteworthy here that the CBD implies that access to genetic resources is 'subject to national and sub-national legislation or law (including common law as well as customary law)' (Greiber et al. 2012).

CBD instructs that requirements for access to genetic resources include Mutually Agreed Terms<sup>31</sup> (MAT) and Prior Informed Consent<sup>32</sup> (PIC). Biber-Klemm and Martinez (2006) note that PIC is fulfilled when the Competent National Authority and other stakeholders, of the country providing genetic resources, are informed of the planned research as part of the application process.

Besides access, MATs are required for a fair and equitable sharing of results of research and development, fair and equitable sharing of benefits arising from the commercialization and other utilization of genetic resources (Article 15[7]) and access to and transfer of technology to developing countries on concessional and preferential basis (Article 16[2]). MATs are middle ground in ABS. They determine terms of access, the biological resource and benefits that providers could gain. The negotiations require great knowledge, negotiation skills and the ability to forecast all possible outcomes in the agreement. MATs could be more complicated to negotiate because users and providers do come to the negotiation table with

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<sup>31</sup> Art. 15 Access to Genetic Resources (4) Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Art.

<sup>32</sup> (5) Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

different needs. There is also the interplay of market forces and diplomatic/economic relations between countries that may affect the transfer of technology.

## 2. NAGOYA PROTOCOL

The Nagoya Protocol details provisions on ABS for Parties to institute in their various socio-economic and political contexts. Most importantly, ratifying the Protocol indicates that signatories are committed to allow access to genetic/biological resources and initiate a fair and equitable sharing of benefits arising from their utilization<sup>33</sup> (Art.1). As the Protocol addresses access for foreign users, it equally necessitates Contracting Parties to allow ‘customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities...(Article 12.4).’

According to Article 5, the Nagoya Protocol requires national ABS legislations and administrative processes to provide measures for sharing benefits that arise from the use of genetic resources, over which ILCs have established rights, on MATs and in a fair and equitable manner. As concerns their TK, legislative measures should address the equitable sharing of benefits, with ILCs, after access to TK on MATs (Article 5.5). However, Nagoya Protocol does not have definitions for the terms indigenous peoples, local communities and indigenous and local communities

Article 5 is specialized on domestic policy related to sharing benefits with ILCs that arise from the utilization of genetic resources over which ILCs have established rights as well as ILC’s traditional knowledge associated with the use of genetic resources. These ‘established rights’ are varied. They may include ILCs’ right to use biological resources for personal use only, the right to exchange biological resources for specific goods and services with a restricted quota, as well as the right to own biological resources and grant or withhold access to these biological resources. In article 5(2), the Protocol notes that their respective States bestow tenure rights to ILC over genetic resources. However, Cameroon national laws do not

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<sup>33</sup> The term utilization and use shall be used interchangeably in the text. According to Art.2(c) of the Nagoya Protocol, “utilization of genetic resources” means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Art.2 of the Convention.’

provide established rights for indigenous people and local communities over biological/genetic resources.

Article 7 pertains to the protection of ILCs' right to PIC with respect to access to traditional knowledge associated with the use of genetic resources. This article relates to the implementation of Article 19<sup>34</sup> of United Nations Declaration of the Rights of Indigenous Peoples (UNDRIPS). However, there is a difference between UNDRIPS' free prior informed consent and CBD/Nagoya Protocol's PIC. FPP interprets the former as non-coercive with the choice to withhold consent or approval. Unlike PIC that demands approval to access ILC's genetic resources on negotiated terms without an option to withhold approval.

Article 6-3g [ii] on 'terms of benefit-sharing, including in relation to intellectual property rights (IPR)' recognizes IPR as an important legal concept that is applicable to ABS. This implies that Cameroon's expertise in developing and negotiating arrangements on ABS must be fully adaptable to deal with the practice of IPR in international trade. Moreover, strong international legitimacy and respect for Cameroon's IPRs will come from her membership with OAPI. Yet, there is very little cooperation between Cameroon's ABS Focal Point and OAPI.

Article 12 brings in the following concepts: local community's customary laws, community protocols and customary use and exchange of genetic resources. Local community customary laws and community protocols are deeply rooted norms by which indigenous peoples interact with their natural environment, amongst themselves and with aliens. Customary laws determine customary use and exchange of biological resources in local communities. Cameroon has a large variety of indigenous peoples and local communities. Art.12 will require the State to adopt a context-based approach to involve indigenous peoples and local communities in ABS. To be more effective, I think the State has to work with NGOs like FPP for a more dynamic outcome that includes improvement of livelihoods of indigenous peoples especially.

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<sup>34</sup> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

According to Article 13, the National Focal Point acts as an important “gate-keeper” that provides applicants with information on procedures for obtaining PIC, negotiating MATs and about Competent National Authorities (CNA). MINEPDED is Cameroon’s ABS Focal Point and CNA. However, other State ministries were responsible for providing access permits for Cameroon’s genetic resources before MINEPDED adopted NSABS. According to Rosendal (2010), bio-prospecting agreements will be less complicated if one focal point exists to deliver access permits in Cameroon. She makes this conclusion because of difficulties faced by Shaman Pharmaceutical to secure permits from several State ministries for the Shaman Pharmaceutical/Cameroon bio-prospecting agreement. Today, Cameroon’s CNA is responsible for granting access permits. However, CNA must work with relevant ministries for general acceptability. Nevertheless, this raises concerns because inter-ministerial cooperation has been ineffective in Cameroon (Laird & Lisinge 1998).

### 3. TRIPS AGREEMENT

Trade and exchange go way beyond processing non-biological raw materials and selling intangible goods that carry IPR. In addition, production of medicines, new plant varieties (using genetic resources) and their inventive processes carry IPRs. In Article 6.3g [ii], the Nagoya Protocol states that mutually agreed terms may include ‘terms of benefit-sharing, including in relation to intellectual property rights (IPR).’ The practice to include terms of IPRs in ABS is fundamental because providers of genetic resources may enjoy some exclusive rights in any processes that involve specific genetic resources and associated traditional knowledge, as well as fixed benefits from the market of final products. IPRs are ‘the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields’ (WIPO 2008).

In a quest to smoothen the international disparity in different IPRs enforced around the world, the World Trade Organization (WTO) signed the WTO agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in 1994 at Marrakesh-Morocco. It sets the minimum requirements for the protection of IPRs between WTO members.

The TRIPS agreement entered into force on 1 January 1995 to provide a minimum standard, amongst World Trade Organization (WTO) member countries, for the protection of specific

IPRs. These IPRs include patents, trademarks, copyrights, trade secrets, industrial designs, layout designs of integrated circuits and geographical indications. Members of WTO negotiated the TRIPS Agreement during the 1986-1994 at the Uruguay Round and Cameroon became a member of the WTO in December 1995.

This study does not examine the implementation of the TRIPS agreement in Cameroon. It rather looks at TRIPS' provisions on the protection of biological resources and traditional knowledge.

As one of the IPRs, Geographical Indications (GI) are useful for ABS in Cameroon. In Article 22.1, they are '...indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.' In order to use GIs in an ABS regime, the State should collect an inventory of biological resources that have unique characteristics to locations within Cameroon. Such inventory collection should include the *Ancistrocladus korupensis* (anti-HIV vine that grows in the Korup National Park). Data collection should extend to TK. The State may consider depositing applications for GIs on biological resources at OAPI. With GIs on biological resources, providers can secure more profitable terms of benefits in MATs according to Article 6.3g (ii) of the Nagoya Protocol.

Rizo et al. (nd) note that in an ideal situation, GIs create a "regional brand" and generate additional value to a product. Later, this translates into benefits that accrue to entitled regional producers. They equally add that it possibly boosts rural employment and improves rural livelihoods in the end. When applied to biological resources and associated traditional knowledge, GIs legitimize geographical identifiers for associated biological resources and traditional knowledge and present lots of advantages (Chouaibou 2011). With GIs, holders may seek improved brand prices because these GIs 'prohibit the transfer of indications to users outside the demarcated region' (Rizo et al., nd). Thus, GIs may confer added strength of negotiation. GIs may also assist in raising consumers' purchasing interests. Ideally, such economic returns will accrue to stakeholders in Cameroon's ABS regime if user countries (who are members of WTO) provide the legal means to prevent any violations on GIs from Cameroon according to Article 22.2. The latter will require bilateral/multilateral negotiations.

In 2011, OAPI examined white honey from Oku and white pepper from Penja for GI registrations (Chouaibou 2011).

With respect to the protection of plant varieties, TRIPS prescribes the following: patents, an effective *sui generis* system or any combination thereof (Article 27[3b]). However, TRIPS obliges members to provide patents for non-biological and microbiological processes for the production of plant varieties and animal species. The TRIPS Agreement excludes patents for “essentially biological processes” for the production of plants and animals. Bystrom & Einarsson (2001) cite that contextual interpretations may exist for the term, “essentially biological processes.” This un-clarity in interpretation affects the application of TRIPS. For countries not rife in modern biological research, due to the lack of financial and technical capacities, it will be necessary to do a proper review of TRIPS in order to convey appropriate relevance to their conditions.

The patentable and non-patentable subject matters of Article 27 form a subject of major debate amongst parties of WTO. In paragraph 19<sup>35</sup> of the Doha Declaration, Parties instructed the TRIPS council to carry out a review of Article 27.3b of the TRIPS Agreement. Parties also instructed the TRIPS council to review the relationship between the TRIPS agreement and CBD from 1999-2006. These reviews equally examine the relationship between TRIPS, the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV Convention) and ITPGRFA. They look at ambiguities and concerns about the following issues:

- Possible conflicts between TRIPS and CBD;
- Patentability of genetic materials according to Article 27.1 of the TRIPS Agreement;
- Patents for inventions that make use of genetic materials without PIC and MATs of the CBD, but follow the provisions of International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA);

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<sup>35</sup> 19. We instruct the Council for the TRIPS, in pursuing its work program including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore...

- Patents for inventions where the country of origin of the relevant TK or GR has no benefit-sharing infrastructure for the use of TK and GR;
- Interchangeability between genetic resources and biological resources;
- Flexibility of TRIPS, i.e. TRIPS leaves decisions about major issues to the discretion of members;
- What “an effective *sui generis* system” means in the TRIPS agreement;
- Lack of protection for staples and traditional medicines under UPOV as “an effective *sui generis* system” and
- Transfer of biotechnology that makes use of genetic resources and associated traditional knowledge to developing countries.

Reviews offer certain positions that may mitigate divergence, in principle, between TRIPS and CBD. These include collection of data on TK and GR in order to safeguard better patent examination. There is further extension for least developed countries to delay implementation of IPR protection, under the TRIPS agreement, until 1 July 2021 (possibility of further extension). This gives ABS experts, in Cameroon, sufficient time to examine aforementioned concerns and their effects on its ABS policy.

It is OAPI’s task to administer IPRs in Cameroon. Eleven (11) OAPI members belong to the Least Developed Countries (LDC) group of WTO. In 1999, OAPI revised its 1977 Bangui Agreement to bring OAPI in tune with TRIPS and the 1991 UPOV act (Mahop 2012).

Mahop (2012) equally states that some OAPI-LDC group priority needs, with respect to the TRIPS agreement, include better understanding of TRIPS, technical and logistical support for intellectual property administration and enforcement, training of private and public agents, and enhancement of cooperation with international enforcement agencies. Cameroon has provided no reports on its priority needs regarding TRIPS agreement (based on search results from WTO website). This raises questions about its national commitment to implement TRIPS.

**4. AGREEMENT REVISING THE BANGUI AGREEMENT OF MARCH 2, 1977, ON THE CREATION OF AN AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (1999)**

The agreement revising the Bangui Agreement of March 2, 1977, on the creation of an African Intellectual Property Organization, offers provisions on obtaining patents and other IPRs in Cameroon. According to Article 2, OAPI serves as Cameroon's "national Office," the "designated Office," the "elected Office" or the "receiving Office" going by Article 2(xii), (xiii), (xiv) and (xv) of the *Patent Cooperation Treaty (PCT)* of WIPO.

Just like Article 27.3b of the TRIPS agreement, Article 6c excludes inventions with plant varieties and animal species as subject matter as well as "essentially biological processes for the breeding of plants and animals from patents. Art. 27.3b also agrees with TRIPS on providing patents for microbiological processes and their resulting products.

The Accord goes further to give conditions for obtaining a *Plant Variety Certificate (PVC)* in Annex X. Article 1.b is explicit about plant varieties that PVCs will cover. It defines a plant variety as 'a plant grouping within a single taxon of the lowest known rank.' OAPI bases selections for PVCs on the following characteristics of plant varieties: expression of characteristics, the expressed characteristic distinction from other plant varieties and its ability to reproduce itself unchanged. For minor crops, like several medicinal plants, a breeder would not register a variety but use trade mark registration instead as variety registration is expensive and gives a low degree of protection (Lars Björk's comment).

Since TRIPS and the Revised Bangui Agreement require provision of patents only for microbiological processes and their resulting plants and animals, it may imply TRIPS and the Accord exclude indigenous and local communities from the requirement of patents for traditional knowledge on the use of biological resources. Indigenous and local communities lack the capacity to develop modern microbiological processes and techniques for the creation of new plant varieties and animal species.

Experts hold that GIs are the most effective IPRs to mitigate the appropriation of genetic resources. GIs link the value and reputation of BR to its geographical origin and traditional systems of production (Chouaibou 2011). Such traditional systems of production maintain

livelihoods of IP and LC. The Agreement offers provisions for GIs in Annex VI and GIs share the definition provided by the TRIPS agreement.

With Respect to TK, the State of Benin developed a *Draft Accord on the Protection of Traditional knowledge for OAPI in 2007*. Interestingly, the draft accord provides protection for all technical domains of traditional knowledge. These traditional knowledge domains

- must have been preserved and transmitted in a traditional and intergenerational context,
- must be distinctly associated to an IP or LC and
- must be the cultural identity of an IP or LC.

These domains include agricultural knowledge, ecological or medical as well as knowledge associated with the use of genetic resources (Article 1[3]). In Article 7(1 & 2), holders of these rights to traditional knowledge must benefit from fair and equitable sharing of benefits that arise from the exploitation of their knowledge. These advantages must be determined by MATs; in the absence of which Competent National Authorities will secure the terms of benefit sharing. This Benin Accord can serve as a guideline for Cameroon or provide a clue on how to set objectives and expected results for a law on the protection of traditional knowledge.

With respect to access to TK, access permits to TK do not cover access to their associated genetic resources (Article 13). This emphasis is necessary to protect associated genetic resources from bio-piracy. Through capacity building workshops, holders of traditional knowledge need to learn about their rights to associated genetic resources and Competent National Authorities should respond to violations of rights to traditional knowledge, according to Article 14 of the Draft Accord Relative to the Protection of Traditional Knowledge. Holders of traditional knowledge need to be educated on associated genetic resources because indigenous and local communities normally have little knowledge on genetic resources but great knowledge on biological resources and their use. The idea that Parties should protect holders of TK is also a provision in the Protocol. Apart from establishing rights for indigenous peoples and local communities over genetic resources, the draft accord requires Parties to protect TK and its holders. However, this is not the case now.

In Article 3 of Annex X, the Revised Bangui Agreement of 1999 states that ‘all botanical taxa shall be protected by this Annex except for wild species, that is, species that have been neither planted nor improved by man.’ This provision initiates questions about the intentions of its legislators because indigenous peoples like the semi-nomadic Baka “Pygmies,” besides hunting, gather “wild species of fruits.” On the other hand, what kind of “improvement by man” is implied? Probably through natural selection over time, indigenous peoples may have propagated particular species or improved particular characteristics of these “wild species” through various traditional processes (like harvesting techniques) in their natural forest habitats. If the Agreement holds the latter as an exception, then TK and cultural belief systems on the use of “wild species” become non-biological processes (according to TRIPS) for the breeding of plant species and require no protection.

It is likely that the market for genetic resources, during a global implementation of the Nagoya Protocol, may yield disproportionately higher profits to gene-technology-patent holders in relation to providers/ holders of traditional knowledge regarding the use of biological resources in developing countries. In addition, the concept of “fair and equitable benefit sharing,” in the Nagoya Protocol, lacks clarity enough as a standard for fair and equitable redistribution of benefits in the market for genetic resources. My assertion considers the distinct quality of rights and protection that TRIPS and the Revised Bangui Agreement do offer to patent holders as opposed to the providers/ holders of traditional knowledge regarding the use of biological resources.

##### **5. WIPO’s DRAFT ARTICLES ON THE PROTECTION OF TRADITIONAL KNOWLEDGE**

In 2000, WIPO established the *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*. IGC’s task is to discuss and agree on policy issues related to genetic resources, Traditional knowledge and Traditional Cultural Expressions (TCE). Its current mandate is to carry out text-based negotiations in

order to agree on texts of an ‘international legal instrument (or instruments) which will ensure the effective protection of TK<sup>36</sup>, TCE and GRs’ (WIPO 2013).

Interestingly, its sixth Policy Objective aims at ensuring PIC and exchanges based on MAT ‘...in [coordination] line with existing international and national regimes governing access to genetic resources in a fair and equitable manner.’ WIPO’s draft article also seeks to set up digital libraries on publicly known TK. Though negotiations are still stalling, it makes one more relevant instrument that Cameroon should carefully examine before it settles for an appropriate ABS legislation.

#### **6. ITPGRFA OF THE UN’s FOOD AND AGRICULTURAL ORGANIZATION (FAO)**

In Decision VI/6 of the sixth meeting of CBD’s COP, Parties negotiated the ITPGRFA. Cameroon ratified ITPGRFA in 2002 and ITPGRFA entered into force in 2004. This Treaty is important for economic reasons because Cameroon’s agricultural sector is large and varied with multiple actors. Cameroon’s agricultural sector produces an important value-added chain for local consumption and exports. As the sector develops and faces global competition in the food market, hopefully ITPGRFA is an important instrument that should contribute in safeguarding Cameroon’s rights to its PGRFA and its farmers’ rights. These two elements are important for its food sovereignty and food security.

Apart from the similarity in ITPGRFA’s objective and definitions to those of CBD/Nagoya Protocol, ITPGRFA tailors its provisions and policy recommendations specifically on ‘...genetic material of plant origin of actual or potential value for food and agriculture.’ Unlike the Nagoya Protocol, ITPGRFA does not cover access to genetic resources for ‘... pharmaceutical and/or other non-food/feed industrial uses’ (Article 12.3). However, with multiple use crops, their importance for food security may guarantee their protection under the ITPGRFA.

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<sup>36</sup> IGC separates Traditional Knowledge into Associated Traditional Knowledge and Traditional Knowledge Associated with Genetic Resources. This study focuses on Traditional Knowledge Associated with Genetic Resources. WIPO defines the latter as ‘substantive knowledge of the properties and uses of genetic resources [and their derivatives] held by indigenous [people[s]] and local communities [and which directly leads to a claimed [invention] [intellectual property]] (WIPO 2014).

Due to its rich biodiversity, Cameroon possesses a wealth of wild plant genetic resources that could harbor possible potential to improve food security and agricultural development in ILC. Article 5.d which instructs members to ‘promote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, *inter alia*, efforts of indigenous and local communities,’ is a provision that will apply to the conditions of IP and LC who live outside protected areas in Cameroon. However, ITPGRFA does not provide indigenous peoples and local communities with the rights to FPIC and MAT for access to PGRFA under its Multilateral System of Access and Benefit Sharing (MSABS).

In the MSABS (Part IV), which states that Parties should take the appropriate legal measures to secure facilitated access to its PGRFA (Article 12.2), Article 12.3b recommends expeditious access to PGRFA ‘without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved.’ This requirement includes free access to PGRFA, which may include staple foods for ILCs as per Annex I of the ITPGRFA. With the likelihood, that such access may be for applying gene-technology to yield new patented-plant varieties, this provision may add to unfair advantages and benefits between stakeholders in the MSABS as well as imposes dire consequences for food security in developing countries.

## **7. CENTRAL AFRICAN FOREST COMMISSION (COMIFAC)**

### **STRATEGY ON ABS**

Ten Central African States created the Central African Forest Commission (COMIFAC) in 1999 through the Yaounde Declaration. It serves as a policy-harmonization and decision-making institution for the conservation and sustainable management of the forest and savannah ecosystems in Central Africa. With respect to ABS, COMIFAC provides a framework guide to orientate COMIFAC States as they elaborate their national frameworks on ABS; it seeks financial resources for its implementation and provides technical orientation on forest policy issues in the COMIFAC sub-region. COMIFAC has a long-term plan to institute a regional market for genetic resources.

COMIFAC mandated work on the elaboration of a COMIFAC ABS Strategy to its Biodiversity-Working Group of Central Africa (GTBAC). Created in 2006, GTBAC

launched a study into the “Institutional and Regulatory Provisions on Access to Genetic Resources and Sharing of Benefits Arising from their Utilization and Prospects in the COMIFAC” in 2007. Subsequently, in 2009, another study was carried out on “The Identification of Elements that Form the Basis of a Sub-Regional Strategy for COMIFAC Countries in-terms of Access to Genetic Resources and Sharing of Benefits Arising from their Utilization.”

With the former identifying “legal, institutional and technological insufficiencies on ABS,” both studies recommended an elaboration of a sub-regional ABS strategy. In addition to the Protocol’s incentives for trade, market and use of modern technologies, COMIFAC sees the promotion of ABS long-term objectives (conservation, sustainable use and socio-economic well-being) as an asset. Nevertheless, issues of *developing and agreeing on legal, political mechanisms and methods* (in the practice of ABS) are a challenge in the region; according to results from GTBAC’s studies of 2007 and 2009.

The COMIFAC Strategy comprises of a vision and goals/objectives. It stipulates that National ABS frameworks will need a strategy, legislation, judicial framework and other measures used in the ABS process. The goals of the COMIFAC strategy are similar to Article 1 of CBD. About its vision, COMIFAC seeks to achieve a regional ABS policy by 2015.

Its specific objectives include the following:

- Facilitate the implementation of the ABS Strategy in the COMIFAC region;
- Enable COMIFAC countries to develop legal frameworks for ABS and to define administrative procedures and mechanisms for stakeholder participation;
- Contribute to capacity building of stakeholders on ABS;
- Enable the integration of the development of biological/genetic resources in national development policies and
- Provide tools for monitoring and evaluating the implementation of the national ABS frameworks.

In order to achieve its objectives, COMIFAC set-up strategic axes that it considers indispensable to setting-up national ABS frameworks. The strategy provides an operational framework on identifying and planning activities based on the strategic axes. It expresses the operational framework in matrices of activities with set deadlines and desired results.

According to the Strategy, COMIFAC countries must implement the activities '*identified and agreed*' at the sub-regional level. Appropriately, in implementing the COMIFAC Strategy regional States must consider their unique contexts on ABS issues. With COMIFAC's *Consolidated Log Frame Matrix*, Cameroon can develop strategic targets that it can regularly monitor in ABS activities that lead to a legislation. COMIFAC's *Matrix of Operations to Sub-Regional Scale* presents a practical and detailed approach to implementing activities towards legislation on ABS.

During 2 - 5 July 2013, COMIFAC organized the seventeenth (17<sup>th</sup>) reunion of GTBAC in N'Djamena to discuss (amongst other issues) the levels at which its member States are implementing the capacity development axis of its operational framework on ABS. At the end of the reunion, participants recommended CBD and ABS Focal Points to pursue actively, activities geared towards ratifying the Nagoya Protocol. Secondly, ABS Focal Points will identify training needs for stakeholders in development work on ABS (COMIFAC 2013).

**8. ORGANIZATION OF AFRICAN UNITY (OAU)'s AFRICAN MODEL  
LEGISLATION FOR THE PROTECTION OF THE RIGHTS OF LOCAL  
COMMUNITIES, FARMERS AND BREEDERS, AND FOR THE REGULATION  
OF ACCESS TO BIOLOGICAL RESOURCES OF 2001**

Formerly created by African States as the OAU in 1963, they later launched the African Union (AU) in 2002. The Scientific, Technical and Research Commission (STRC) of the AU supervised and developed the Model Legislation. STRC operates through the activities of several Inter-African Committees or Expert Committees.

Through their collaboration, the group of African experts of the *Inter-African Committee on Medicinal Plants and Traditional Medicine* exposed the problem of '...ownership, conservation and utilization of biological resources in Africa.' Consequently, the committee recommended STRC to develop a Model Law on Indigenous Knowledge on Medicinal

Plants; as well as harmonize relevant national policies to create model legislation on medicinal plants.

In its plan to develop a “*sui generis*” system of protection, the AU developed legislation on the rights of ILCs and their TK, farmers and breeders’ rights, as well as ABS that was consistent with the provisions of the CBD (Adeniji [nd]). The Model Law shares the same objectives as the CBD but it is unique because it promotes the importance of women in the participative process for decision-making in ABS (Part I.e.). Furthermore, AU States must ‘...promote the conservation, evaluation and sustainable utilization of biological resources with a particular focus on the major role women play.’ The emphasis on women, especially women in ILCs, underscores the need to address the situation and role of women in the sustainable use of biological resources.

Another issue that is specific to the Model Law is the element of transparency. In Article 6, the Model Law wants applications for access published for comments and feedback from the public. It helps to gather pertinent information (about applicants and the resources concerned) that may affect the access process. This information may help Parties to weigh the opportunity cost of granting access.

Where access is granted, the access agreement does not allow its holder to apply for any IPRs on accessed biological resources, nor transfer the biological resources and its derivatives to any third party (Article 8.[1] iv and v). The Model Law does not allow holders of accessed biological resources to apply for patents on life forms and biological processes. However, it does not provide its view on patents for microbiological processes and their derivatives (Article 9). In Article 8[2], it pushes States to carry-out all research, on accessed biological resources, on their national territory. However, it failed to recognize the lack of biotechnology as a common problem that will push research to developed-biotechnology-endowed territories.

In Article 17, States must protect community customary norms, practices and laws ‘...whether they are written or not.’ In Article 23, States must protect Community Intellectual Property Rights that may exist in the form of *oral tradition*. The Model Law also permits ILCs to exercise their *Community Intellectual Property Rights (CIPR)* on the use of

BR even when international organizations publish or keep information on these BR in gene-banks. The MSABS of the ITPGRFA is an example of a gene-bank.

In the same light as Article 17, Articles 18, 19 and 20 provide the right to PIC for ILCs as well as the right to refuse or withdraw and place restrictions on consent and access. Since Articles 18, 19 and 20 seem to provide ILCs with rights equal to those of CNA; research is yet to show how the AU has supported ILCs to secure the aforementioned rights.

In 2012, commissioned by the African Union, a team of experts developed a gap analysis on the Model Law in light of current changes on environmental law in relation to ABS. The issue of closer collaboration in implementing environmental policy, between actors at the regional and continental level, is a defect that the gap analysis cites (amongst other striking issues like a thorough review of the African Model Law). Closer collaboration is equally required between national and regional actors. Unfortunately, this does not exist between OAPI and MINEPDED as concerns Cameroon's ABS activities.

#### 9. NATIONAL STRATEGY ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION (NSABS) OF CAMEROON

NSABS is a reflection of the efforts made by Cameroon State in collaboration with experts, regional and international organizations to develop an ABS framework. The apparent interest to work-out a strategy indicates that the State has identified specific opportunities in ABS. By recognizing the potentials of its biological resources/genetic resources for socio-economic development, MINEPDED adopted NSABS in 2012 as the path Cameroon will follow to meet its obligations as a Party to the CBD.

MINEPDED's efforts are worth emphasizing despite the fact that the Nagoya Protocol still lacks some measure of clarity in interpretation and application. Cameroon's interest in developing a strategy on ABS has earned the country international support. Amongst other states, UNEP/GEF selected Cameroon to participate in its *ABS Capacity Development Initiative for Africa*. The initiative provides funds and technical support to develop activities that can fit ABS into relevant national processes on environmental issues. These national processes include administrative, national environmental laws as well as biological diversity

management. COMIFAC equally provided expertise to create NSABS. Notably, COMIFAC developed a Strategy framework guide to enable its States to create implementable strategies that contain elements on national ABS policies (COMIFAC 2010).

NSABS is a product of several studies (baseline studies) on the nature and texts of pre-Nagoya Protocol ABS policy in Cameroon. The ABS Capacity Development Initiative for Africa (Rosendal 2010), MINEPDED (Chouaibou 2011, Ndobe & Njeukam 2011) and Mahop (2011) carried out these studies. They found that Cameroon does not have the legal and institutional framework specific to ABS. Neither does existing relevant policy protect TK. Subsequently from these baseline studies, stakeholders in Cameroon's ABS process decided on five (5) strategic areas of operation for the development of an ABS legislation and policy. These strategic areas include:

- Capacity building on ABS;
- Creating the legal and institutional framework on ABS;
- Defining administrative measures;
- Reinforcing mechanisms for stakeholder participation and
- The promotion and valorization of genetic resources and associated traditional knowledge.

By 2020, Cameroon plans to regulate access to GR and identify changes in livelihoods and public revenue. However, the strategy does not specify how potential benefits will be used to improve livelihoods of indigenous peoples and local communities. With this strategy, Cameroon wants to create a policy and specific law on ABS. The strategy documents a detail of specific steps/activities that the State and identified stakeholders will carry-out (without definite time-periods) on the five strategic areas.

According to the strategy, activities in the field will begin with training and dissemination of knowledge on ABS (this it has begun). The State plans to execute activities on capacity building through three (3) key processes known as *institutional capacities, systematic capacities and individual capacities*. These processes consist of measures and mechanisms

that the State will employ to meet the specific needs, in terms of knowledge on ABS, of identified stakeholders on the territory. MINEPDED is definitely carrying out these activities. The strategy addresses measures to improve stakeholder participation through a consultation framework, providing information to stakeholders and support capacity building. It recognizes that identified stakeholders lack capacity and resources for research and training. Nevertheless, it fails to provide any strategies to respond to these needs. Based on my field study, I could not acquire details on planning, coordination and organization of capacity building activities. These details are necessary to analyze MINEPDED's capacity to implement ABS.

In the next phase, the State plans to develop specific legal and regulatory frameworks on ABS through a participatory mechanism. Here, the strategy identifies that the developed texts must be relevant to the specific needs and concerns of multi-stakeholder groups. This is a useful consideration. However, the strategy fails to identify the apparent necessity of a *complete stakeholder analysis*. The legal framework of NSABS consists of existing environmental laws. These existing laws cover plant, animal and microbial GR and institutions that manage these GR. Meanwhile the regulatory framework includes standard processes in ABS in addition to a regime on IPRs.

The State plans to define administrative measures that organize and secure access to GR and TK, monitor utilization of the latter and operate benefit sharing. At this stage, it plans to designate a CNA, set-up procedures for PIC and MAT as well as provide measures for monitoring, controlling and penalties in the national ABS process.

The fifth (5<sup>th</sup>) strategic area deals with the promotion and development of GR and TK. In this strategic area, measures are geared towards gathering complete information on the '*quantity, quality and intrinsic value of genetic resources from plants, animals, micro-organisms and associated traditional knowledge*' of Cameroon. With this information, the State will be able to derive values to negotiate optimum benefits for its GR and TK. This could also be a tool for using benefits from accessed GR and TK for village development work.

Interestingly, *inter alia*, activities geared at valorizing GR and TK include the following:

- Developing a communication strategy for GRs and TK;

- Conducting economic studies on GRs and associated TK;
- Developing a marketing sector for GR, BR and their derivatives and
- The National Strategy will obtain assets for the development of natural pharmaceutical products, cosmetics and other derivatives.

From a critical standpoint, these are ambitious measures and the strategy provides no mechanisms to plan and realize them. Besides these, the strategy entails multiple activities that require a lot of expertise, material and financial resources.

To implement NSABS, the project team relies on *coordination, resources, an effective monitoring and evaluation system*. Nevertheless, NSABS does not suggest a methodology for its activities. This suggests a lack of technique. The success of the ABS program in Cameroon requires efficiency and effectiveness in the application of context-based methods in every project within the ABS program.

CBD does not differentiate between indigenous peoples and local communities. In Article 8j, CBD uses the term “*indigenous and local communities embodying traditional lifestyles*;” an all-inclusive term according to the *Center for International Environmental Law* (CIEL 2009). NSABS provides its definition for local communities without an equivalent for indigenous peoples. Apparently, the latter may apply separate definitions due to its national context and more than a hundred (100) different ethnic and tribal groups. It is important to map-out what particular groups fit NSABS’ specifications for indigenous peoples and local communities. Then, NSABS should be clear if indigenous peoples and local communities play the same role in ABS. In this context, it would also be important to determine how NSABS will share benefits between different groups and how it defines these groups. Cf. the *Hoodia* example and registration of the San people.

## **10. Specialized Access and Benefit Sharing Instruments**

In the case where Parties share genetic resources on international boundaries, the Nagoya Protocol provides requirements that also relate to provisions in the 1996 Framework Law. The Nagoya Protocol prescribes Trans-boundary Cooperation between the concerned Parties

and participation of all indigenous and local communities concerned<sup>37</sup>. Article 69 (1)<sup>38</sup> of the 1996 Framework Law looks at this provision for ABS. Cameroon and other States may equally apply their roles based on an agreed international convention (Article 69[2] of the 1996 Framework Law)<sup>39</sup>. Such international conventions are acceptable and replace the Nagoya Protocol provided they are consistent with the CBD. The Protocol refers to them as ‘Specialized International Access and Benefit Sharing Instruments<sup>40</sup>. ’

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<sup>37</sup> Article 11 Trans-boundary Cooperation:

1. In instances where the same genetic resources are found in situ within the territory of more than one Party, those Parties shall endeavor to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavor to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol (Nagoya Protocol of 2010).

<sup>38</sup> Art. 69 (1): The management of resources shared between States should be done in a sustainable manner, as far as possible, in cooperation with the concerned States.

<sup>39</sup> Art. 69 (2): This cooperation is under international conventions concluded between states sharing these resources.

<sup>40</sup> Art. 4- Relationship with International Agreements and Instruments

Paragraph 4: This Protocol is the instrument for the implementation of access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific resource covered by and for the purpose of the specialized instrument.

#### IV. Discussion & Analysis

It is best to proceed that the Nagoya Protocol document does not contain language that is understandable on the first read. In fact, it is not explicit enough for implementers.

Altogether, the abstraction of ABS-related issues and its complexities adds to the difficulty of effective implementation of the Nagoya Protocol.

Below, this study makes use of implementation theories, primary data and observations from field work as well as secondary data to discuss and analyze ABS baseline studies, the ABS Project and the National Strategy on Access and Benefit Sharing. Based on the current situation of ABS in Cameroon, this discussion and analysis seeks to answer whether there is a possibility for indigenous peoples to receive benefits from ABS if their associated traditional knowledge is accessed according to provisions of the Nagoya Protocol. The current situation is the execution of the *Echinops giganteus* pilot project on the application of ABS by the Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED).

In 2012, MINEPDED completed baseline studies on its national legal framework regarding Access and Benefit Sharing and the involvement of indigenous peoples and local communities in Access and Benefit Sharing in Cameroon. It is worth noting that these studies were conducted with no field work. Still in 2012, MINEPDED assembled a team of consultants to develop the National Strategy on Access and Benefit Sharing with a vision to create a policy and specific law on ABS for Cameroon by 2020. This study also discusses and analyses activities implemented by the German Society for International Cooperation, in partnership with MINEPDED, such as stakeholder consultations on traditional knowledge, the ABS Project (2011-2013) and the ongoing *Echinops giganteus* Pilot Project on ABS Principles.

The adoption of Cameroon's National Strategy on ABS in 2012 marked a milestone in MINEPDED's attempt to develop a specific law on ABS. However, there was no evaluation of the ABS Project before proceeding to the development of the National Strategy on ABS. MINEPDED did not carry out a stakeholder analysis of stakeholder participation in prior ABS activities like the ABS baseline studies and the ABS Project. It was necessary to carry

out both activities before the adoption of the National Strategy in order to identify the real needs of stakeholders and link these needs to activities that yield policy-related outcomes in the National Strategy. With the absence of an evaluation of activities, no examination or attention to flaws in the implementation of specific ABS activities before the development of the National Strategy on ABS, it seems likely that ABS will not improve the livelihoods of indigenous peoples should Cameroon create a policy on ABS by 2020.

Access and Benefit Sharing baseline activities were carried out by a mix of experts and ministerial staffs and did not involve local stakeholders. This is a typical representation of policy designers in “top-down” level implementation theory where public policies, projects and policy strategies are exclusively designed by institutional staffs and implementers execute these strategies. In this case, staffs at regional offices for MINEPDED and other external service providers were trained on ABS and their roles in its implementation in Cameroon<sup>41</sup> according to the third objective of the 2011 ABS project (building capacities of key actors for the implementation of ABS measures). Field conditions change. Experts may design projects and activities that field implementing agents may find difficult to implement in current conditions. Considering a general lack of resources for regional staffs to implement government policies, additional public policy creates an increase in work pressure without a possibility of attaining priority goals and objectives during the financial year. Government policy usually requires an increase in field work with limited assistance. Secondly, Njeukam & Ndobe (2011) completed their study on the involvement of indigenous peoples and local communities in national ABS without a field study. Such a study requires input from regional staffs of MINEPDED and the Ministry of Forestry and Wildlife as well as independent actors who may be in direct contact with indigenous peoples and local communities. Regional staffs can better determine possibilities and ways for indigenous peoples and local communities to participate in national ABS. Likewise; regional staffs can best identify resources that will enable them to assist indigenous peoples and local communities in relevant ABS activities.

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<sup>41</sup> This discussion will focus on challenges of implementing the National Strategy on Access and Benefit Sharing when staffs at regional offices for MINEPDED and other external service providers did not participate in designing the National Strategy on Access and Benefit Sharing.

Most consultation activities for the National Strategy on ABS relied on different inputs from different international, regional and ministerial institutions. Their common goal was to develop a framework of activities whose outcome should be a specific national policy on ABS. Therefore these institutions have met, discussed and shared or contributed knowledge and resources on ABS issues at various stages of the design and implementation of the strategy. This follows Pressman and Wildavsky's (1973) theory. They note that action in the implementation of public policy depends on cooperation between different implementing agencies. For instance, in order to implement ABS in the basic agricultural sector, MINEPDED must work with MINADER on access to basic agricultural resources in Cameroon. According to Pressman and Wildavsky (1973) one can argue that for effective and efficient access to basic agricultural resources, MINADER and MINEPDED must equally and fully commit the required human and financial resources at every stage where action is needed in the process. When one or both institutions fail to meet the demands of the process, access to basic agricultural resources will not meet international and national ABS provisions.

The field study revealed that the Ministry of Mines, Industry and Technological Development and the Ministry of Scientific Research were fully cooperative on issues relevant to intellectual property rights and permits respectively both ministries provided qualified personnel during national ABS baseline activities and meetings. However, there was little cooperation from MINADER in relation to issues on the ITPGRFA because its current representative was not qualified to make contributions on ABS issues relevant to the ITPGRFA. OAPI, whose activities on intellectual property span within the Central African region was not directly involved in national ABS baseline activities. When MINADER and OAPI fail to provide quality human resources in the baseline studies and the design process of the National Strategy on ABS and the ABS Project, MINEPDED must strain its financial resources to recruit expats in fields where contributions from MINADER and OAPI are lacking. Equally, regional staffs of MINEPDED will have an increased work load when implementing access to basic agricultural resources in the Regions. This occurs if MINADER fails to adopt and implement the final policy on ABS with respect to basic agricultural resources. Whereby, regional staffs of MINADER do not participate in the implementation of ABS in the basic agricultural sector.

Another classical “top-down” implementation theory that applies to the implementation process of ABS in Cameroon is that of Van Meter and Van Horn (1975). They go further than Pressman and Wildavsky (1973) to provide additional variables, other than the level of cooperation that will affect ‘performance outcome.’ Using Van Meter and Van Horn’s (1975) variables<sup>42</sup>, an analysis of ABS activities in Cameroon reveals that Cameroon is provided with a significant amount of resources and incentives to implement the Nagoya Protocol from the Nagoya Protocol Implementation Fund (NPIF) of the GEF. This includes benefitting \$10,126,484 in a project on the Ratification and Implementation of the Nagoya Protocol for member Countries of the Central African Forests Commission (COMIFAC) and \$1,040,000 in a project on A Bottom-Up approach to ABS: Community Level Capacity Development for Successful Engagement in ABS Value Chains in Cameroon [Echinops giganteus]<sup>43</sup> (GEF Progress Report on NPIF) as well as additional funds for the GIZ Projects. However, most of these funds are used for expatriate staff salaries and per diems for stakeholder participation at seminars. Except for Cameroon’s engagement against the Nigerian-based Boko Haram terrorist organization, these projects are implemented in a fairly stable economic, political and social environment. However, research on the other variables may indicate short-falls in national ABS activities. These variables are the characteristics of the implementing agency and the disposition and response of implementers, such as the implementers in the English-speaking Cameroon who are trapped in the “ghost town.”

An evaluation report of the National Anti-Corruption Strategy in MINEPDED revealed that regional staffs of MINEPDED earn lower salaries than their colleagues at the ministerial headquarters, staffs fraudulently appropriate State resources (funds and material resources) to personal use, the ministry’s administrative machinery is heavy<sup>44</sup> and slow and some staffs have a poor understanding of procedures, policies and laws of the ministry and public service (Cameroon Post 2014). The evaluation report equally notes that there are unlawful practices

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<sup>42</sup> A. Policy standards and objectives  
 B. Available resources and incentives  
 C. The quality of the inter-organizational relationships  
 D. The characteristics of the implementation agencies & E. The economic, social and political environment

<sup>43</sup> An aromatic plant found in parts of the South West Region of Cameroon.

<sup>44</sup> The ministry has too many administrative staffs, functions and positions. With too many administrative staffs, administrative processes take longer to execute especially issues that require consents from various administrative levels.

in MINEPDED manifested through retention of documents and information when required by investigators, impunity and entrenchment of the culture of easygoing as well as complacency during controls (Cameron Post 2014). The aforementioned issues are impediments to the attainment of high “performance outcomes” notably when central services are more exposed to corruption than external services at MINEPDED (Cameroon Post 2014). If the National Strategy on Access and Benefit Sharing, adopted in 2012, is to be implemented by an institution that has not sufficiently trained its staff on procedures, policies and laws of the ministry and public service, it is likely that the ABS Project about training stakeholders on ABS is unknown to some staffs at MINEPDED.

Like Van Meter and Van Horn (1975), Sabatier & Mazmanian (1980) use an almost similar set of variables to examine implementation of public policy. These are the factors affecting tractability of the problem; non-statutory variables affecting implementation and the ability of the statute to structure implementation. However, in addition to Van Meter & Van Horn’s (1975) variables, the former introduce factors affecting tractability of problems. Sabatier & Mazmanian (1980) are keen on measures that central implementing agencies put in place to manage upcoming problems. These may include follow-up measures and regular monitoring activities as well as well-trained ministerial staffs who can promptly manage unexpected flaws in implementing public policy. Based on this research, there is a tendency for MINEPDED to hire expats to provide constructive ways to tackle problems with implementing ABS. Well-trained ministerial staffs are few. In this regard, a lot more resources will be needed when MINEPDED faces major problems in implementing ABS.

“Top-down” theorists seem to prescribe straightforward formulae for the implementation of public policy. When the values for their selective variables are positive, there will be perfect implementation. However, these variables apply to central implementing agents and services. Based on these variables, central implementing agencies design public policy and tasks that must be executed by staffs at the regional offices of MINEPDED to achieve specific goals. These workers are equally affected by other variables that impact the actual ‘performance outcomes’ of public policy. These variables include their lower salaries, difficult working and field conditions; as well as lack of appropriate means of transport to work in the hinterlands. For this reason and after applying and analyzing both the top-down and bottom –

up theories mentioned above, this study favors a “bottom-up” approach to the development and implementation of a national ABS strategy in Cameroon.

An effective national strategy and ABS definitely requires staffs of MINEPDED in all regions of Cameroon to work with other actors to administer and effectively implement the National Strategy on ABS and the upcoming policy on ABS. Users of genetic resources and prospectors may get access permits from central services of MINEPDED. However, they will report to external services for inspection and control of the activities they pursue at the ten regional levels of Cameroon. With the latter as their activity, Lipsky (1980: found in Hill & Hupe [2002]) notes that unsolved intolerable pressures will cause “street-level bureaucrats” or regional staffs to disregard the needs of their clients and implement public policy based on their discretion or as they see fit. The evaluation report on the National Anti-Corruption Strategy at MINEPDED reveals that external services have many problems. The report notes that ‘poverty and misery are the main causes of corruption in the ministry’ (Cameroon Post 2014). External service workers tend to be poorer as central services control finances. As the evaluation report notes, there is an ‘entrenchment of the culture of easygoing.’ As Lipsky (1980) points out, external service actors may tend to disregard the needs of their clients when they execute public policy based on their discretion. With regards to this study, indigenous peoples will become part of the clientele served by these external service actors or regional staffs of MINEPDED during the implementation of the National Strategy on ABS. In this regard, external service actors, who are already dissatisfied with the conditions they work under, may tend to restrict services they provide to indigenous peoples.

The anti-corruption evaluation study was conducted in the Eastern, Central and Littoral Regions of Cameroon. These are areas of significant operation for MINEPDED. The study equally covered Baka territories because they inhabit the rainforests in the Eastern Region. As noted above, Baka Pygmies have lost hold of significant portions of their natural habitat to forest conservation and lumbering concessions. Baka Pygmies are either at conflict with conservation authorities or lumbering concessions or both. Some Baka Pygmies are reported to have been rounded up and given corporal punishment by forest guards for hunting within forest reserves. With this crisis, Baka Pygmies may likely require that their livelihood problems are addressed prior to any form of access to their relevant traditional knowledge on

the use of biological resources. These peoples are mostly supported by non-governmental organizations like Forest Peoples Programme (FPP) and the Center or Environment and Development. Considering the current situation and the fact that there are no available reports on the participation of indigenous peoples in the ABS Project, this study concludes that it is likely that indigenous peoples like the Baka Pygmies will not receive benefits if MINEPDED implements the Nagoya Protocol.

This study concludes that the National Strategy on ABS will neither be effectively nor efficiently implemented because of complexities related to the concept of ABS, a poor technical approach to implementing ABS as well as the lack of appropriate human expertise and physical capital.

On the other hand, MINEPDED may involve non-governmental organizations that work with indigenous peoples and local communities to work with staffs at its Regional offices in executing its National Strategy on ABS. This extra support will reduce work pressures on the latter and provide more services to indigenous peoples. Another important issue is the fact that there exists no evaluation report on the ABS Project to determine how much stakeholders and external service staffs understood about the real issues in ABS. Working with non-governmental organizations is a reliable possibility as GEF funds are not allocated for structural and remuneration reforms within MINEPDED.

Currently, MINEPDED is engaged in the *Echinops giganteus* pilot project to test the application of ABS in Cameroon after developing an interim ministerial legislation on ABS. This interim ministerial legislation was developed through joint effort from COMIFAC, GIZ and MINEPDED. Without a specific law on ABS and the lack of data on progress in the implementation of the National Strategy on ABS, it is worth finding out how effective MINEPDED is applying ABS. In the signed document on Mutually Agreed Terms for the Commercialization of Genetic Material of the Roots of the Plant *Echinops giganteus*, it is clear that MINEPDED appears to focus its efforts to applying the Nagoya Protocol. V. Mane Fils S.A., the Local Community of Magha-Bamumbu and MINEPDED signed a Pre-Prior Informed Consent proposal on 19 January 2013; on 23 May 2014, MINEPDED and V. Mane Fils S.A. signed a Memorandum of Understanding Relating to the Utilization; and State

Decree No. 2014/262 for adhesion to the Nagoya Protocol on ABS was signed by the Prime Minister on 22 July 2014.

This singular case of access to the *Echinops giganteus* plant, for its aromatic properties, is executed by executive staffs at MINEPDED and MINRESI head offices in Yaounde. It led to the signing of a decree of adherence to the Nagoya Protocol. According to the Mutually Agreed Terms of this pilot project, the Magha- Bamumbu local community will benefit 25 % royalties on clear profits after commercialization of the final products. The apparent future benefits of this case of ABS are more likely to accrue due to the direct involvement of executive staffs at MINEPDED. This raises the following question: will executive staffs of MINEPDED actively execute access and benefit sharing involving traditional knowledge associated with indigenous peoples like the “Pygmies” in the same manner as the latter? Can the State develop a national policy on access to associated traditional knowledge that has a dual objective to equitably share benefits with indigenous peoples and maintain their traditional lifestyles?

In the case of associated traditional knowledge owned by indigenous peoples such as the Baka Pygmies, ABS may encounter a different set of requirements by the Baka Pygmies. Such requirements may include unrestricted access to hunt in currently protected forests adjacent to the Baka Pygmy territories as well as conditions that will guarantee that they maintain their traditional lifestyles and habitats. Currently, these are requirements that are not supported by the State.

## V. CONCLUSION

Implementing an effective strategy/legislation/policy for the fair and equitable sharing of genetic resources/ access and benefit-sharing of genetic resources in Cameroon requires multi-stakeholder participation. However, the Nagoya Protocol makes it clear that Parties are responsible for initiating stakeholders' interest, developing stakeholders' understanding of ABS issues and their capacity to participate in ABS processes as well as developing a national policy and implementable legislation on ABS with clearly specified roles and responsibilities of various stakeholders. So far, the Ministry of Environment, Protection of Nature and Sustainable Development has executed an ABS Project on stakeholder capacity development on ABS and designed a National Strategy on ABS. The Ministry is currently participating in the execution of a pilot project on the ABS principle through the *Echinops giganteus* project involving a French enterprise (Erudef 2014). However, the Ministry needs to review the implementation of past ABS activities. Mainly, MINEPDED has not secured full stakeholder participation and contribution in capacity development and policy design. Neither is it safe to bestow various tasks and responsibilities to staffs at Regional offices of MINEPDED who may lack the complete understanding of ABS and work under unproductive conditions. Notably the Ministry of Agriculture and Rural Development and the African Intellectual Property Organization have not shown enough interest in national ABS activities by their little participation in these activities. Apart from the regional capacity development sessions, where participants seemed primarily interested in per diems, the National Strategy on ABS does not outline a framework to train its staffs at Regional offices of MINEPDED on their functions as regards delivery of ABS services to indigenous peoples.

The interim legislation on ABS that was developed by MINEPDED, COMIFAC and GIZ does not define indigenous peoples. However, it defines local communities as 'communities dependent on genetic resources, local residents of certain areas that are not legally recognized as indigenous peoples.' Though it does not define indigenous peoples, the interim legislation on ABS has provisions for access to associated traditional knowledge. The omission of a definition for indigenous peoples may indicate that MINEPDED does not recognize indigenous peoples as major stakeholders. Under these current circumstances, associated traditional knowledge owned by indigenous peoples will not be accessed and the latter will

not make any benefits if the National Strategy on ABS is implemented. In addition, the State has moved from the implementation of the National Strategy on ABS to the application of ABS as a means to derive a national policy on ABS without activities to involve indigenous peoples.

## Appendix I

### Article 2: Use of Terms

For the purposes of this Convention:

“Biological diversity” means 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.

“Biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

“Biotechnology” means any technological application that uses biological systems living organisms or derivatives thereof to make or modify products or processes for specific use.

“Country of origin of genetic resources” means the country that possesses those genetic resources in in-situ conditions.

“Country providing genetic resources” means the country supplying genetic resources collected from in-situ sources, including populations of both wild and domesticated species, and taken ex-situ sources, which may or may not have originated in that country.

“Domesticated or cultivated species” means species in which the evolutionary process has been influenced by humans to meet their needs.

“Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

“Ex-situ conservation” means the conservation of components of biological diversity outside their natural habitats.

“Genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity.

“Genetic resources” means genetic material of actual or potential value.

“Habitat” means the place or type of site where an organism or population naturally occurs.

“In-situ conditions” means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

“In-situ conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

“Protected area” means a geographically defined area that is designated or regulated and managed to achieve specific conservation objectives.

“Regional economic integration organization” means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

“Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

“Technology” includes biotechnology.

## Appendix II

Art. 6- The ownership of forests and aquaculture facilities is defined by the Land and State laws, as well as the provisions of this Act.

Art.7- State, municipalities, village communities and individuals shall act on their forests and aquaculture facilities based on all the rights resulting from the ownership, subject to restrictions of State and Land Laws and this Law.

Art. 8. (1) According to the present law, the rights to use or customary (rights to use) are those recognized for local populations to exploit forest, wildlife and fish products for personal use, with the exception of protected species.

(2) Ministers responsible for forests, wildlife and fisheries may, in the public interest and in consultation with affected communities, temporarily or permanently suspend the right of use when the need arises. The suspension is subject to the general rules of expropriation for public utility.

(3) Procedures for exercising the rights of use are determined by decree.

Art. 9. (1): Based on the present law, forest products essentially consist of plant and non-wood products, as well as fish and wildlife from the forest.

(2) Certain forest products such as ebony, ivory, animal or plant species, medicinal or presenting a particular interest, are called special products. The list of these special products is fixed, as appropriate, by competent authority.

(3) The modalities for exploiting special products are fixed by decree.

Art. 11 The protection of forest, wildlife and fish resources are ensured by the State.

Art. 12(1) The National Heritage genetic resources belong to the state of Cameroon. No one can exploit them for scientific, commercial or cultural reasons without obtaining authorization.

(2) Financial or economic benefits arising from their utilization give rise to the payment of royalties to the State, whose rate and methods of collection are set in proportion to their value, by order of the Minister of Finance on the proposal of the competent ministers.

Art. 13 The import and export of genetic materials from all forest, wild animals and aquatic resources are set by regulation.

Art. 26 (1): The act of classifying a forest reflects the social environment of indigenous people who keep their normal rights of use. However, these rights may be limited if they are contrary to the objectives of the said forest. In the latter case, indigenous peoples receive compensation according to the terms fixed by decree.

(2) Public access in State forests may be regulated or prohibited.

Art. 34 ... The following are considered as non-permanent:

- National domain forest;
- Community forest;
- Private forests.

Art. 36 In the forests of national domain, usage rights are granted to local communities in the conditions laid down by decree. However, for purposes of protection or conservation, some restrictions related to the exercise of these rights, including pastures, grazing, logging, delimiting and the mutilation of protected species, and the list of these species can be fixed by order of the Minister responsible for forests.

Art. 37(1) Forest authorities must assist village communities who express interest in the management of forest resources. Thus technical assistance provided to village communities should be free.

(2) Community forests have a simple management plan approved by the forestry administration. This plan is established at the behest of the interested in a manner prescribed by decree. Any activity in a community forest must in all cases comply with the management plan.

(3) Forest products of any kind resulting from the exploitation of community forests belong entirely to the village communities.

(4) Village communities have a right of first refusal in the event of transfer of natural products included in their forests.

Art. 38 (1) The management agreements referred to in Art.37 above including the designation of beneficiaries, the boundaries of the forest that is assigned to the specific requirements and development of forest and/or wildlife developed at the diligence of those communities.

Art. 66 (1): For the sales of cutting and logging agreements, financial charges provided for in Art. 61 paragraph (3) above are made in addition to the License under the General Tax Code by:

- its contribution to the achievement of social work;
- completion of forest inventory;
- Participation in development work.

Art. 67 (2): Under the exploitation of their forests, municipalities shall collect the sales price of forest products and the annual fee based on the area. Village communities and individuals shall collect the selling price of products derived from forests they own.

Art. 68 (2): For the development of village communities of some forest areas brought under the national domain, a portion of the revenue obtained from the sale of forest products shall be repaid to the benefit of those communities in a manner prescribed by decree.

Art.95: The exploitation of wildlife in the forests, communal forests, community forests and private forests and in private hunting areas and hunting areas are subject to a management plan jointly developed by the administrations of wildlife and forests.

Art. 154. The author of the following offences is punishable by a fine of 5.000 to 50.000FCFA and an imprisonment of ten (10) days or only one of these penalties:

- The exercise of activities that do not conform to the restrictions prescribed in Art.6 of the ownership of forest or aquaculture establishments;
- Violations of laws and regulations on the rights to use provided in Art.8, 26 and 36 above and
- Unauthorized importation or exportation of genetic material for personal use.

Art. 155 the author of one of the following offences shall be punished by a fine of 50.000-200.000 CFAF and an imprisonment of twenty (20) to two (2) months or only one of these penalties:

- Violation of standards for the use of special forest products referred to in Art. 9 (2) above;
- Unauthorized importation and exportation of genetic material for profits, as provided in Art.13 above.

### Appendix III

Art.3 For the purposes of applying the Law and this Decree, the following definitions shall apply:

11) Community forest: a forest forming part of the non-permanent forest, which is covered by a management agreement between a village community and the Forests Administration. Management of such forests is the responsibility of the village community concerned, with the help or technical assistance of the Forests Administration.

16) Community forest management agreement: a contract whereby the Forests Administration entrusts part of the national forest to a community with a view to its management, conservation and use for the benefit of that community. The management agreement is accompanied by a basic management plan which sets out the activities to be undertaken.

18) Buffer zone: An area which is subject to agro-silvo-pastoral management measures which are essential in order to settle the population and its activities.

21) Natural product: A forest product as defined in article 9(1) of the Law.

22) Forest products: The ligneous and non-ligneous vegetable products, animal or fish resources or a forest.

Art. 4(2): When carrying out studies or work which has been the subject of international tendering procedures, foreign consultancies must confer with recognized national authorities, where they exist.

Art. 5(1): When drawing up and implementing forestry policy, the Forests Administration shall consult and draw in the relevant local populations and trade associations in the forestry sector. In the context, the latter may take responsibility for certain activities in connection with forest development.

Art. 9-3(b): Declassification may not take place where clearing is likely to threaten the survival of persons living on the forest edge whose way of life is linked to the forest concerned.

Art. 13(1) Management of the genetic resources of forests shall be the responsibility of the Forestry, Fauna and Environment Administrations, with the assistance of the Scientific Research Administration.

(2) Collection of samples of genetic material for scientific or cultural purposes shall be conditional upon obtaining a permit from the Minister of Forests, following an opinion of the Minister of Scientific Research, and upon the prior constitution of reference stock by the applicant at the National Herbarium of Cameroon.

(3) On importation or exportation, genetic forest material collected for scientific or cultural purposes shall require a certificate of origin and an import or export licence issued by the Minister of Forests, after obtaining the opinion of the Minister of Scientific Research.

Art.14(1) The results of scientific research obtained from samples of genetic material collected in accordance with article 13 of this Decree shall be made available to the Administrations concerned on an on-going basis.

(2) Bio-ethnological studies must also be carried out where such results are positive.

(3) The procedure for applying this Article shall be laid down in a separate instrument.

Art. 15(1) A certificate of origin attesting to provenance, compliance with regulations and destination shall accompany all forest products on importation and exportation.

However, importation or exportation of certain forest products appearing on a list drawn up by the Minister of Forests may require a licence issued by the Forests Administration.

The procedure for issuing such licenses shall be laid down by decree of the Ministers of Forests.

(2)The certificate of origin or the export licence for forest products intended for export shall be issued by the Forests Administration after inspection of the products concerned.

Art. 26(1) In national forests, people living on the forest edge shall retain user rights, namely their right to carry out their traditional activities in those forests, such as gathering secondary forest products, notably raffia, palm, bamboo, rattan, food products and firewood.

(2) In order to meet their domestic needs, *inter alia* for firewood and construction timber, people living adjacent to the areas concerned may fell the number of

trees to meet their needs. They shall be required to justify the use of such trees at forest inspections. They shall not be permitted to market or exchange the timber from such trees.

(3) These user rights shall be maintained in national forests with the exception of closed areas and areas where regulations have been adopted by the Minister of Forests, or the Minister of Mines in accordance with the regulations governing quarries.

Art. 27(2) Forests which may be the subject of a community management agreement shall be those situated near or on the edge of one or more communities, where the inhabitants of those communities carry on activities.

Art. 28 (1) Any community wishing to manage a community forest must hold a consultation meeting with all sections of the community concerned in order to appoint a management officer and lay down the objectives and boundaries of the said forest.

Art. 29(1d): The application dossier for a community forest shall contain a description of the activities previously carried on in the area of the forest concerned.

Art. 35(1): Any natural or legal person wishing to pursue a forestry activity for profitable and commercial purposes must be approved in one of the following fields:

- Forest inventories;
- Forest use;
- Silviculture.

Art. 36(1) Approval to carry on one of the activities referred to in Article 35 above shall be given, following an opinion by a Technical Approval Committee, hereinafter referred to as the “Technical Committee”, by decree of the Minister of Forests as regards silviculture and forest inventories, and by delegation from the Prime Minister, Head of Government, as regards forest use.

Art. 85(1) In order to develop village communities on the edge of national forests which are being used under permits to sell felled timber, a percentage of the felling tax laid down in the Finance Law shall be paid back for the benefit of such communities.

Art. 88(1): An operating permit for special forest products shall show in particular:

- The species in respect of which operations are authorized;
- The quantities of products to be recovered; and
- The conditions governing the local use, or possibly the export of products.

(2) The terms of reference accompanying the operating permit for the special forest products shall show in particular:

- The conditions for renewing the resource;
- The conditions for using the products;
- The conditions for transporting them and
- The procedure for paying the financial costs.

Art. 96(1): The procedure for deriving benefit from the products resulting from the use of community forests shall be laid down in a management agreement for the forest concerned.

Art. 98 The Inter-ministerial Committee provided for in Articles 58, 64 and 82 of this Decree, hereinafter called the “Committee,” shall be a body set up under the Ministry of Forests, whose task shall be to give its opinion on the following:

- The issue or withdrawal of operating permits for certain special forest products.

Art. 99(1) The Committee shall be composed as follows:

Chairman – the representative of the Minister of Forests.

Members - A representative of the Ministry of Territorial Administration;  
 - A representative of the Ministry of Economics and Finance;  
 - A representative of the Ministry of Industrial and Commercial

Development;

- A representative of the Minister in-charge of domains;
- A representative from each association or union within the forestry profession and

- Two deputies from the National Assembly.

### **List of Persons interviewed for this study**

- Dr. Lars Bjork

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- Mrs. Prudence T. Galega

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 Ministry of Environment, Protection of Nature and Sustainable Development-Cameroon

- Mr. Wilson Shei  
Support Staff to the Technical Adviser No. 1 and CBD National Focal Point  
Ministry of Environment, Protection of Nature and Sustainable Development- Cameroon
- Elie Armand Pango; Chief of Service for Research, Publication and Documentation  
OAPI
- Honorine Annick Simo; Jurist- OAPI

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