Case Study 2 - The Promotion of a National Policy and Governance Agenda for Conservation: Lessons Learned for Gabon

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Introduction and background to forestry policies and legislation in Gabon

« The Long March » towards the rational management of natural resources of Central African countries remains intimately linked to the evolution of the legislative and regulatory framework in these countries. During the colonial period, the discovery of Okoumé, Gabon's most valuable wood, and the ease of cutting veneer from it, made it possible to exploit it to satisfy the needs of all the countries of the north. The development of veneer cutting led to the standardization of the process by defining the exploitable diameter of the tree's trunk, i.e., the precise diameter at which an okoumé tree can be exploited. The technology used at the time made the impact on nature insignificant. In a bid to perpetuate the logging potential of the forests of Gabon, Okoumé plantations were created. The concern for conservation was also extended to wildlife with the creation of rational exploitation and conservation areas for wild fauna.

In view of the enormous potential that the forest offers, African countries are increasingly adopting policies that address the economic and social development concerns of the population.

Thus, concerns about the sustainable management of natural resources are still strong today. There is an urgent need for a form of management that guarantees the sustainability of the resource and contributes to sustainable

development, and improving the living conditions of the population.

Since the Yaoundé Declaration in 1999, countries of the Congo Basin have committed themselves to rational and sustainable management of their natural resources. This commitment aims at harmonizing all forestry laws with a view to joint management of the second largest forest complex in the world. In order to achieve this, they have to adopt several new laws that enhance the use and management of natural resources.

Gabon has reformed its legal framework by adopting two major laws based on the concept of sustainable management of natural resources. These are Law No. 16/2001 of 31 December 2001 on the forestry code of the Republic of Gabon and Law No. 003/2007 of 11 September 2007 on National Parks.

Since its launch in 1995, the Central African Regional Program for the Environment, CARPE, whose objective is "to identify and create conditions and practices necessary to reduce deforestation and biological diversity loss" has been committed to helping States formulate efficient national strategies that contribute to the conservation of resources and to building the organizational capacities of civil society actors in order to make them active partners for conservation. Members of the CARPE Country Team, and their partners, are sharing their expertise with the various administrations as they define national strategies for the rational and sustainable management of the natural resources that are the Congo Basin's transboundary wealth, and draft and develop relevant legal texts.

The new trends and limitations of the Forestry Code

The 2001 Forestry Code, that abrogates the provisions of Law No. 1/82 of 22 July 1982, has brought about innovation in several areas of which the most significant are: forest management, wild fauna management and the issue of community forests.

Unlike the old forestry law that was silent on the principles of sustainability in the use of forest resources, the 2001 Forestry Code emphasizes forest management with the aim of rational and sustainable exploitation.

In fact, in Article 18 of the Forestry Code, before any logging, the logging company is required first of all to develop the concession using a plan that has to be validated by the administration. This includes management of wild fauna.

In addition, the management plans of forest concessions, called Forest Management Units (FMUs), include, beyond the technical aspects, two new concerns: a socio-economic analysis and the designation of a conservation zone within the concession.

The socio-economic analysis will make it possible to take into consideration the interests of the local communities living close to the concession (hunting grounds, farmlands …), and the conservation zone allows for participation in the management of fauna found in the concession.

Under the Code, three types of permits are henceforth recognized: forest concession under management (CFAD), for an area of 50,000–200,000 ha – mostly issued to large companies. The associated forest permit (PFA), reserved for nationals, for an area of 15,000–50,000 ha. Finally, the mutual agreement permit (PGG), also issued only to nationals for local processing, allows for logging up to 50 trees.

Whichever the size of the area, the logging company must carry out an inventory of all forest resources and evaluate them in order to determine zones meant for felling, with a logging plan, and those to be retained for conservation. These documents must be presented to the appropriate authorities to be checked. Further verification may be carried out by forestry officials on the ground.

The Forestry Code, supplemented by Decree No. 689/PR/MEFEPEPN of 24 August 2004 to define the technical standards for the sustainable development and management of registered productive state forests, remains ambivalent on the

socio-economic analysis specified in Article 21 – the text does not provide any explanation of this term.

The implementation decree, mentioned above, stipulates the role of each actor in the process of logging FMUs and extends to technical provisions.

As regards non-timber forest products, « obtaining a permit does not confer the right to exploit forest products including timber » (Article 148). Their exploitation remains under the area of customary usufruct rights and is defined by Decree No. 692/PR/MEFEPEPN of 24 August 2004, laying down the conditions for exercising customary usufruct rights in the areas of forest, fauna, hunting and fishing. The economic aspects of these products are not covered by the law. Exploitation of rattan is beyond the scope of usufruct rights.

Hunting out of protected areas is controlled by the issuing of permits or licences. The Forestry Code provides for six types of permits: small-scale hunting permit, large-scale hunting permit, scientific permit, permit to capture live wild animals, licence for commercial capture of live wild animals, and photo safari licence. These various permits and licences subdivided into categories are granted both to nationals and foreigners (Article 173). However, they do not override the customary usufruct rights of village communities to hunt for their subsistence.

In spite of these provisions, illegal hunting occurs in Gabon (Article 14 and 163) and is on the increase. Increasingly sophisticated networks of poachers are developing both inside and outside the conservation zone.

For provisions on the exploitation of wild fauna to be complete, they have to be accompanied by implementation decrees that will help organize and control the bushmeat sector, and make official the practice of hunting and marketing of hunting products. The increased presence of forestry officials, more staff training, and game wardens patrolling the conservation zone may help deal with illegal hunting.

In order for the major principles contained in the forestry code to become operational, they therefore require the enactment of specific decrees to implement them.

Initiatives supported by partners, aimed at effective management of wild fauna, will only be sustainable if the appropriate decisions are taken at the appropriate time, if comprehensive training of conservation officials takes place and if local communities are made more aware of all aspects of the law.

Community forests are another important innovation of the Forestry Code

Unlike previous forestry regulations, the Forestry Code recognizes the rights of the local population to exploit their forests. Seven articles describe how to create and manage a community forest. Such a forest, usually situated in a rural area, is the property of a village, a group of villages or a canton. The procedure for its attribution has been simplified for the decision is taken at the level of the provincial inspectorate of forestry.

According to the Code, the Head of the provincial inspectorate of forestry is the competent authority to whom members of a village community should address themselves when they wish to designate a community forest for exploitation. He/she will give an opinion on the matter while forwarding the file to the Minister in charge of forestry for a decision. The provincial services are also charged with assisting communities in developing the management plan for the community forest.

The provisions of the forestry code, relating to community forests, are supplemented by a regulatory instrument that is intended to guarantee transparency in the attribution and management of community forests for exploitation purposes.

In the long term, it would be beneficial for local communities to organize themselves into associations or cooperatives for more cohesive action. In order for them to be real community forest managers, they need to have mastered the texts that

govern the exploitation of community forests.

It is not uncommon for tensions to mount in villages where community forests are exploited on a rental basis. They generally arise as a result of the management of revenues paid to local communities.

Those who "know the system" (i.e., those who are or have been involved in local government) may commit their whole community and be the first to benefit from the effects of these commitments.

At the level of provincial inspectorates, apart from the provincial inspector, most of the officials have been recruited locally and do not necessarily have the requisite expertise to carry out the tasks entrusted to them.

In spite of the law's imprecision on socio-economic analysis, Article 251 of the Code provides for the establishment of a financial contribution fed mostly by forest concessions whose objective is to fund development actions initiated by local communities. This provision will effectively allow the population to deal with their general needs (electrification of rural areas, building primary health care centres and schools …).

The law on national parks

National parks, formerly governed by an ordinance, are today regulated by Law No. 03/2007 of 27 August 2007. This law specifies the provisions contained in the Forestry Code and the Environment Code.

Historically, Gabon already had national parks before it became independent. In 1946, the Okanda National Park was created and in 1956 the Loango National Park was created. After independence, the Wonga Wongue National Park was created in 1967. These parks only exist in the letter of the law, because no structure has ever been designated to manage them.

In the end, they were transformed into wildlife reserves. The legislation provided for two types of reserves: those devoted to rational exploitation of fauna and those devoted to integral conservation. Unfortunately, the economic potential of these protected areas, other than their fauna, could make them liable to be exploited. Moreover, in these reserves, only the fauna was ever protected and not its habitat.

Before the 2001 Forestry Code, the provisions contained in the 1982 Forestry Law had already set the basis for the management of protected areas with the introduction of an important innovation: "the wildlife reserve is a perimeter wherein flora and fauna have absolute protection" (Article 38). This law also authorizes scientific activities, tourism activities and recognition of customary rights (Article 5).

When the creation of the network of thirteen national parks was announced, the Government enacted Ordinance No. 2/2002 of 22 August 2002 to modify some of the provisions of the 2001 Forestry Code. This ordinance creates the National Council of National Parks, placed under the direct authority of the President of the Republic (Article 2). This council, an inter-ministerial body, is charged with managing national parks and the activities carried out therein (scientific and tourism activities). It is headed by a Permanent Secretary and the parks are under the responsibility of conservators (Article 3).

Pursuant to this ordinance, decrees to create each of the thirteen national parks were passed. These decrees give the geographical situation of the parks, specifying their surface areas and boundaries.

Law No. 03/2007 of 11 September 2007 on national parks starts by defining what a national park is and outlines the activities that may be carried out in them. In Article 3, paragraph 8, the National Park is defined as a "protected area created in a portion of the territory where terrestrial and marine ecosystems, geomorphological sites, historical sites and other forms of landscape have special protection with the aim of preserving biological diversity and the processes of regulating natural ecology by authorizing regulated ecotourism activities, scientific research and educational activities, while contributing to the economic and social development of local com-

munities".

This new law does not impinge on the rights of the local population for whom the park is an opportunity to improve their living conditions, through income-generating activities.

In order to achieve sustainable development, the national park associates conservation of biological diversity with economic and social development of local communities. Its management plan, drawn up after consultation with all stakeholders, takes into consideration data related to the history, physical features of the area, biological diversity, etc. (Article 21).

Articles 4 and 7 state that local communities should play an important role in the management of the park and Article 18 recommends that community representatives are appointed onto the local consultative committees for the management of the parks.

Within the park, exploitation of natural resources is not allowed. This is only possible in the peripheral zones, subject to prior conduct of an environmental impact assessment (Article 17) that must be presented to the park management body, for review and approval.

Thus, the biodiversity of the park benefits from integral protection and the integrity of the park is guaranteed by law. This law makes it difficult to degazette all or any part of the park. If all or part of the park is to be degazetted, then a new zone must be gazetted that has the equivalent ecological features and biodiversity (Article 8 and 12). This same degazettement provides for financial compensation to the national parks.

This provision for degazettement is unlikely ever to be applied because of the very specific nature of the biological wealth of the zones designated as national parks. It would be almost unimaginable to contemplate the degazettement of all or part of the Monts de Cristal National Park, since the same ecological features such as the clouds and an abundance of orchids, which are so peculiar to this zone, could not be found elsewhere. Each national park has its special and unique features.

Articles 8 and 12 of the law on national parks attempt to resolve the conflict between the concern for conservation of the biodiversity of national parks and the economic needs of contributing to the country's development, through the exploitation of natural and mineral resources. However, this attempt is doomed to failure because of the multiplicity of decision-making centres and the absence of a national consultation framework for actors. Each ministry takes decisions without taking into consideration the regulations governing other administrations.

The « realistic » opening of Article 12 that provides for the degazettement of national parks in the case of discovery of petroleum or minerals is sufficient proof that the exploitation of minerals supersedes biological conservation. It should be envisaged that brainstorming on an integrated and sustainable management model for conservation zones that mainstream the exploitation of mineral be conducted. The experience of the Gamba protected area complex can be applied in protected areas currently under exploitation with, as prerequisite, the carrying out of a social and environmental impact assessment.

Administrative organization of national parks

In addition to the major principles related to natural resource management, this law stipulates the three types of organizational bodies charged with the management of National Parks, namely: political, technical and scientific.

Article 24 institutes the High Council of Protected Areas, whose role is to assist the President of the Republic. This body is placed under the authority of the Prime Minister and brings together all technical ministries and local elected officials. It defines the national policy on national parks and conditions for its implementation.

A specific text has to be passed to describe the powers, organization and functioning of this council. It is also the appropriate body to resolve the conflicts between conservation and exploitation of natural resources. Its members, all admi-

nistrators, have to discuss and assess projects that may impact social development and exploitation of resources.

The National Agency, an administrative, technical and financial body, with corporate status and financial and administrative autonomy (Article 27), is the body in charge of national parks and charged with the execution of national policy on the protection of natural resources and valorization of the natural and cultural heritage of national parks.

The agency is made up of the management committee, a deliberative body, the Executive Secretariat, the management body and an accounting agency (Article 31).

The chairman of the management committee is chosen from amongst senior civil servants, and is appointed by decree taken during the council of ministers.

Due to its role in the management of national parks, the designation of the Executive Secretary of the agency follows a special procedure. He /she is appointed during the council from amongst candidates previously selected by the management committee, after a public call for candidatures (Article 33). This provision ensures that the output of the Executive Secretariat, chosen based on competence and moral qualities, is likely to be good.

The accounting agent, appointed on the proposal of the minister of finance, guarantees the financial autonomy of the agency.

An implementation decree, Decree No. 19/PR/MEFEPPN of 9 January 2008, stipulates the real powers of these bodies.

Finally, the scientific committees of national parks, made up of well known scientific personalities, provide opinions on issues related to biodiversity conservation in national parks. Their members are chosen by the management committee, on the proposal of the Executive Secretariat, with a mandate of three years (renewable).

Contributions of CARPE and its partners

The multi-faceted participation of the CARPE Program in the process of improving environmental governance in Gabon is enabled through a constructive partnership with the administrations in charge of natural resource management. This partnership extends to international NGOs and is engaged in initiatives such as the management of wild fauna, combating poaching in forest concessions, and banning the transportation of bushmeat by train.

Also, for more than 15 years, CARPE has been funding the activities of environmental NGOs, to the tune of US$ 30,000 per NGO per year. This support aims at involving civil society in the process of managing natural resources and making its participation relevant. The CARPE Small Grants Scheme has made it possible to fund a wide range of sectors: environmental education, research, training, production of documents, ….

Lessons learned

Decisions that do not take into consideration the interests of local communities are bound to fail

The rational and sustainable management of natural resources is a complex process that requires the acceptance of a great number of actors in order to attain set objectives. The administration has to open up to local communities and to NGOs that work in the area of conservation in order to define together the main guiding principles organizing the exploitation of resources and integrating the interests of all stakeholders. Involving civil society organizations and local communities in decision making makes the implementation of those decisions much easier.

Decisions that do not take into consideration economic realities are difficult to uphold

The concern for development and improving the

living conditions of the population compels African countries to exploit, at all costs, their mineral wealth. The opening in the definition of conservation zones is multidirectional. In as much as it takes into consideration the interests of civil society, it also has to take into consideration the concerns of other ministries. Collaboration between administrations will lead to a consensual definition of conservation zones, in full respect of the geographical situation of mines. Gabon has to combine mineral exploitation and conservation in several of its national parks.

Information campaigns have to accompany the adoption of laws

For better appropriation of the terms contained in a law on management/use of natural resources by local communities and other stakeholders, information and awareness campaigns must be organized for the populations. This will facilitate a better understanding of legal provisions and real implementation of those provisions on the ground. A law that is not well understood will not have any impact on the ground and repressive sanctions will not help – people will continue to do as they have always done.

Apart from information campaigns, within the framework of laws, the implementation decrees also have to be enacted. Experience has often shown that following the promulgation of a law, the enabling instruments are not systematically enacted. This makes implementation difficult.

Unsustainability of their funding makes NGOs vulnerable

The involvement of civil society in the process of rational and sustainable management of natural resources remains precarious, because of a shortage of funds and the way the projects of national NGOs are funded. There are not yet any mechanisms for the sustainable funding of NGO activities. CARPE remains a shining example in Gabon. It is the only programme that has provided support to civil society since its creation, in a permanent manner. These funds, though limited, enable NGOs to execute field projects and to build their organizational capacities. If another mechanism could also be put in place, with substantial funds, the involvement of civil society would be greater. The relevance of the interventions of NGOs and the performance of their projects are inextricably linked to the sustainability and level of funding obtained.

Partnerships with the administration

The quality of collaboration with public authorities depends on the behaviour of the individuals concerned. Changes effected in some administrations, as a result of professional mobility, can have a great influence on the quality of relations between these administrations and partners. The previous encumbent may have been open and receptive, but there is no guarantee that the person replacing him/her will be of the same character and, under the new regime, partners may find themselves excluded from consultation frameworks within which discussions on improving policies and on the formulation of strategies for concerted management of natural resources are held.

Also, public officials are becoming less able to participate in the meetings of partners, due to their ever-increasing administrative burden. They may also show little interest in some of the activities of their partners.

A long process to enact laws and implementation decrees

For a law to be promulgated and published, it must follow a painfully lengthy process with potential obstacles at every stage. This “long march” starts with its drafting by the initiating administration. In a participatory process, drafts are discussed and enriched by all stakeholders. At the end of the exercise, the bill is examined by both houses of parliament (National Assembly and Senate) that may propose amendments or vote it through without any amendments. The draft text is then re-introduced into the channel for signature by legal councillors and the ministries concerned, the Prime Minister’s office and the Presidency. Thus, a text may easily spend a year in the pipeline before being signed off by the President of the Republic for publication. It is a

process that requires patience and endurance. Once the draft law is adopted, the next step is to enact implementation decrees – a process that follows the same course.

The law on national parks is a good illustration of this process. The enactment of implementation decrees of this law has not yet occurred. Several provisions still cannot be implemented today, in spite of the existence of the law.

Primacy of politics and economics over conservation exigencies

The Government of Gabon has responded swiftly to the positions taken by NGOs concerning issues related to the exploitation of natural resources. There has been some controversy about the exploitation of the iron deposits at Belinga, situated in the Ogoue Ivindo Province. For its exploitation, NGOs require that the legislative framework be respected (environment code) that requires an environmental and social impact assessment as a prerequisite. Since the company retained to exploit this deposit has not carried out any impact assessment, NGOs are opposing the operation. This is in keeping with regulations on the subject. The iron deposit of Belinga is situated at the crossroad of three national parks: Minkebe, Mwagna and Ivindo. Its exploitation, without security measures and any guarantee to respect the environment, may seriously affect these parks.

The mining of the Belinga iron is to be accompanied by the construction, over the Ivindo River, at the level of the Kongou falls, a hydro-electric dam. This huge investment will cause the Kongou falls, situated at the heart of the Ivondo National Park, to disappear, and has created an access road that is useful to poachers.

After clearly manifesting their opposition to these two projects by demanding that certain prerequisites be respected – such as an environmental impact assessment, and the choice of an alternative site for the hydroelectric dam – the NGOs were initially suspended by the Government which accused them of being manipulated by foreign organizations. However, subsequently the NGOs were summoned to a meeting by the President of Republic for a direct exchange of views. As a result of this, the President decided that the NGOs should take part in all discussions related to the exploitation of the Belinga iron deposits.

Conclusion and recommendations

The march towards an adequate legal framework for rational and sustainable management of natural resources has started and is irreversible. This process makes local communities active participants and aims at improving their social conditions.

Civil society, hardly mentioned in the regulatory instruments, should develop its activities around the interests of local communities and build their capacities so as to intervene in a relevant manner.

The tendency for some administrations to cause all stakeholders to take part in the formulation of some legal instruments on the management of natural resources is appreciated and has to be maintained and encouraged in other sectors of activity. All stakeholders defining the content of legal instruments that orientate and organize the management of natural resources is a very good way of appropriating the process by all and a guarantee for conservation projects to succeed.

For greater harmony and national cohesion, this approach has to be extended to other ministries involved in the management of natural resources: Planning, Mines and Land Management.

The management of forests requires a legal framework that commits States to jointly protect their common heritage.