

## **EXECUTIVE SUMMARY**

### **NINTH NATIONAL FORUM INDIGENOUS PEOPLES AND CONFLICT MANAGEMENT IN RELATION TO COMMUNITY FORESTS**

**DATE: 18 - 19 MARCH 2010**

#### **Participants**

The ninth national forum focused on the two issues of conflict management and of indigenous peoples in relation to local community forests. The experts reflected on conflict prevention and resolution mechanisms linked to the process of obtaining and managing community forests. They also considered the role of indigenous peoples in community forest management. These peoples depend on the forests for their survival and yet their rights to land and forest resources are not always recognised by neighbouring communities with whom there are sometimes conflicts. The experts' exchanges and discussions were aided by discussion notes presented by DGPA, CODELT, CEDEN and Judge Kilomba.

The forum brought together 22 experts from the Ministries of Environment, Rural Development, Land Affairs, Justice and Human Rights, international conservation organisations (WWF, WCS, FFI, CI, IUCN, Greenpeace), organisations working with or representing indigenous peoples (DGPA/OSAPY, LINAPYCO, VAPYBA) and other civil society organisations (RRN, CEDEN, OCEAN, GTF, CODELT).

#### **Summary of the discussions**

A consensus was reached on the fact that, in the Democratic Republic of Congo (DRC), the concept of indigenous peoples refers to the Pygmy populations that live in the forest and whose survival is threatened due to their marginalisation from the allocation and management of forest resources. This definition is in accordance with international human rights instruments, particularly the African Charter on Human and Peoples' Rights and the report of the Working Group of Experts on Indigenous Peoples.

#### ***Marginalisation of indigenous peoples from decision-making processes on forests:***

The experts observed that although the concept of indigenous peoples is mentioned in some of the Forest Code's implementing regulations (Decree of January 2008 on the allocation of forest concessions, Ruling 028 on the standard forest concession contract and terms and conditions), the DRC has not yet incorporated the provisions of international standards for the protection of indigenous rights into its domestic legislation, despite having signed up to the UN Declaration on the Rights of Indigenous Peoples. Moreover, on the basis of their field experience, the experts observed that indigenous peoples - with some exceptions - are generally marginalised and even excluded from processes, both by the State and by neighbouring Bantu communities with whom they coexist. The result is that poverty is worse among these peoples and their culture and way of life, which is heavily dependent on the forest, are under threat. Recurrent conflicts also arise between indigenous peoples and their Bantu neighbours.

#### ***Taking indigenous peoples into account when defining the concept of "local community"***

The experts noted that the Forest Code was the only text that gives a definition of local community, this being a "population traditionally organised on the basis of custom and bound by ties of clan or family solidarity that form the basis of its cohesion. It is also characterised by its internal cohesion". In terms of whether this definition is sufficiently inclusive to take the distinctive features of indigenous peoples into

account or not, the experts noted that the definition failed to take into account two important characteristics, namely, the marginalisation and discrimination that indigenous peoples suffer, along with the strong relationship between their cultural identity and the forest.

***The need to take the distinctive features of each indigenous community into account:***

It was highlighted that indigenous communities in different parts of the country do not all have the same experiences, particularly in terms of their relationship with Bantu communities and their level of attachment to the forest. At least three categories of indigenous community can thus be distinguished:

- Those who peacefully co-exist with Bantu communities and who share their forests and socio-cultural activities with them. They are socially well-integrated into the Bantu group and consequently do not have their own land and/or forest rights over any given space. Instead they have shared rights with the Bantu communities. Under these circumstances, the national forum participants recognised that it was impossible for such indigenous communities to have their own community forest. They would need to share the forest with their neighbours according to practical details that would be jointly defined, under the terms of the peaceful co-existence already established in those areas.
- Indigenous peoples living autonomously and not integrated into any outside social group; leading a nomadic life and not having any recognised rights over any land and/or forest rights and not claiming any land. It would be difficult for this group of indigenous communities to have their own community forests. Nevertheless, under these circumstances, it would be advisable for rights to be negotiated with the Bantu communities with whom they have more or less cordial social relations. Account should also be taken of spaces belonging to these communities that may already have been allocated by the State to other uses, such as nature conservation. Hence the need to apply the principle of “free, prior and informed consent” (FPIC) when allocating these communities’ lands and to envisage compensation for those who have already lost their traditional lands and forests to other players and/or uses. Ethnological mapping, which would visualise cultural sites within their nomadic area, has been identified as a tool that could help ascertain the land and forest rights of this category of indigenous people.
- Finally, the third category comprises more or less sedentary communities with a traditional territory that is known and recognised by other neighbouring Bantu communities. These groups are thus able to demonstrate customary possession of their lands and are consequently entitled to request community concessions over these traditional spaces, in the same way as any other local community in the DRC.

***The main causes of conflict over forests in the DRC:***

There are many different causes of conflict in rural areas of the DRC, including both structural issues and local practices. Participants identified the following issues:

- lack of involvement on the part of local and indigenous communities in decision-making processes related to the allocation and management of forest resources;
- marginalisation and discrimination of minority and vulnerable groups, particularly Pygmies, by both the State and other players;
- lack of real indigenous leaders;
- unequal sharing of profits from the exploitation of forest lands and resources;
- demographic growth, resulting in a shortage of agricultural land, particularly in the east of the country;
- inaccurate and undocumented demarcation of village lands;
- ignorance of the rights and duties of different stakeholders and actors in the forest domain;
- insufficient or lack of modern courts for implementing the formal law in rural areas;
- lack of knowledge among lawyers regarding customary law;
- lack of capacity within government departments, administration and courts.

***Mechanisms for conflict prevention:***

To help prevent conflicts related to forest resource management, the following recommendations were made:

- incorporation of participatory mapping into zoning of the national forest domain in order to take the rights of local and indigenous communities into account in decisions regarding the allocation and management of forests on the basis of free, prior and informed consent;

- respect for the procedures for land vacancy (in relation to land rights) and for public enquiries (in relation to forest rights), which guarantee consultation and prior participation in decision-making with regard to the allocation of rights over these spaces;
- incorporation of the practice of “free, prior and informed consent” into the forest land allocation processes.

***Mechanisms for conflict resolution:***

In order to resolve conflicts related to forest management, participants made the following recommendations:

- reappraisal of local (customary) methods of conflict resolution;
- establishment of courts of written law in rural areas and support for their operationalisation;
- reincorporation of training courses on customary land and forest rights for Congolese lawyers;
- inclusion of training courses on forest rights, conservation and water management into University law programmes in DRC; and
- additional training and capacity building in issues related to forest and customary rights for judges, members of the administration, civil society and chiefs and their communities.

**Conclusion**

The ninth national forum focused on two separate issues: the role of indigenous Pygmy communities in forest management; and the issue of conflicts related to resource management between indigenous communities and their Bantu neighbours, as well as with those holding rights to land that had previously belonged to indigenous peoples.

This forum highlighted that there are different categories of indigenous groups living in the country’s forests. The different causes of forest conflicts in the DRC and the mechanisms for preventing and resolving them were also noted. This diversity needs to be taken into account in establishing a legal framework for community forests in the DRC.

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