

EXECUTIVE NOTE

FIRST NATIONAL FORUM: CONCEPTS RELATED TO COMMUNITY FORESTS

DATE: 23 – 24 JUNE 2009

On 23^d and 24th June 2009, the first National Forum was held to discuss technical issues related to community forests. This series of meetings (of which a further 12 will be held in the future) serves as a technical platform where experts, practitioners and researchers can discuss various concepts and ideas related to community forestry.

This first debate brought together: officials from the Ministry in charge of forests, including the head of the legal department; a judge who practices customary law and is currently advising the Ministry of Justice; lawyers working on community rights; a university professor who helped in drafting the Forest Code; representatives of the timber industry and civil society, and several international experts.

Progress was made in discussions on the concept of “community forests” as distinct from “local community concessions”. The concepts of “collective rights”, “legal personality” and others were also discussed, as summarised below.

The rule of self-identification or self-definition: The reality on the ground in the Democratic Republic of Congo shows that various groups such as families, lineages, clans or even whole groups identify themselves as local communities. The Forest Code does not specify what sociological entity a “local community” refers to but instead gives guiding criteria to help a local community to identify itself as such. It would therefore seem that the rule of self identification would be the most appropriate, meaning that any local community would have the right or freedom to identify itself as such in accordance with Article 22 of the Forest Code.

Magistrates and legal practitioners have underlined that this pragmatic approach is also the one adopted by the Congolese Supreme Court of Justice, which in nearly all rulings concerning land disputes between local communities has not contested the right of any group with some links of kinship to identify itself as a “local community”. Usually, for a legal action to be admissible it is sufficient for a community to sign a declaration of power of attorney to enable certain members to represent the community legally.

The collective nature of local community rights over the forest: The collective nature of local community rights has been acknowledged in a number of rulings of the Supreme Court of Justice as well as certain articles of the Forest Code. The Congolese Constitution also provides a legal basis for this notion as it guarantees “*individual and collective property acquired in accordance with law or custom*”. These issues will be the subject of an in-depth debate on the nature, content and extent of local community rights to their forests. **The draft texts produced so far on local**

community forests do not mention the collective nature of local community rights to forests.

Concepts of “local community forests” and “local community concessions”: The experts participating in the Forum agreed on the need to differentiate between the concept of “local community forests” and that of “local community concessions”. This distinction has not been made in the draft texts on local community forests proposed to the government. Local community forests would represent all the customary lands of a community. These are usually large spaces, representing a cultural entity, and used by a community for subsistence activities. Local community forests represent a *de facto* reality that no-one contests and that is recognised by law as an acquired right. This recognition stems from Article 22 which confers a right of **customary ownership of the forest** to local communities. This right is **acquired** by virtue of customary law, prior to the Forest Code of 29 August 2002. Article 9 of the Code also mentions that the forests around a village are the property of this village.

Local community concessions should represent the foundation of community forest lands. Their use and access is exclusive to the local community and they should be used for income generation as well as to maintain the culture and way of life. This type of concession should therefore be different from those awarded to industrial logging companies. This is an innovation brought about by the Forest Code: based on customary practices, i.e. the reality on the ground, such concessions would be formally recognised by a process to be defined by Decree, as foreseen in Article 22 (i.e. public enquiry, mapping, registration of rights, formal allocation (contractual or unilateral), type of management, etc.). It was also highlighted that for customary rights to be recognised in the written law, local community leaders should first be granted a legal personality, specific to managing land and resources.

The boundaries of local community concessions should be defined by communities themselves as only they know what land is essential for their survival and for maintaining their way of life and culture. This is in accordance with the rule of self-identification or self-determination by those communities in the concession area, and for which participative mapping provides an essential tool. In other words, the area of local community concessions should not be limited beforehand. These concessions could be registered in a dedicated national registry in accordance with previous measures on forest land registry. However, when defining the boundaries of a forest concession, the concerned community must act in consultation with neighbouring communities in order to avoid future disputes and conflicts.

The notion of a “local community concession” should therefore come under a specific set of regulations with different rules of allocation, operation and management to those used for industrial forestry concessions. Draft texts produced so far do not include all these details, distinctions and clarifications.

The need for a flexible and functional legal personality: Participants concluded that it was necessary for local communities to be given a legal status in order to secure their rights. It was also highlighted that any such system of legal recognition should be sufficiently decentralised, simplified and much less formal so that it does not serve to exclude rural communities. The option of the granting of rights by central government was excluded. Rather it was considered that rights should be granted at the provincial level where territorial boundaries are effective.

Land and forest tenure: Participants noted that land and forests in Congo are owned by the state and that the state recognises customary ownership rights (for forests) and customary occupancy rights (for land). Customary ownership means that the community has the right to ask for and obtain a local community concession, while customary occupancy remains unorganised and regulated through customary law, so long as no ruling to organise this has been made.

Conclusion:

All participants, including those who oversaw and prepared the draft texts on local community forests, agreed it was necessary to further clarify the concepts used in these texts. Some of the individuals who produced these draft texts went further and suggested that the process of approval be suspended in order to improve the texts in question.

The topic of the next forum will be artisanal forestry, an activity which the Forest Code links to local community forests.

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