

EXECUTIVE NOTE

FOURTH NATIONAL FORUM¹: COMMUNITY EXPLOITATION OF FORESTS: SCOPE AND CONTENT OF RIGHTS, PRIVILEGES AND RESPONSIBILITIES

DATE : 21 - 22 SEPTEMBRE 2009

Participants

Given that local community forests sometimes contain a range of natural resources, senior representatives of a number of different ministries participated in this forum, namely the ministries of hydrocarbons, mines, agriculture, justice and forests. Among the national and international institutions/organisations represented were USAID, Greenpeace, WCS, Fauna and Flora International (FFI), *Ligue Nationale des Associations des Autochtones Pygmées du Congo* (LYNAPICO), *Action Massive Rurale* (AMAR), CODELT, RRN, CEDEN, as well as representatives of the private sector. They included experts with experience of issues related to community management of forests in DRC and elsewhere.

Main results

1. The concept of “community forest exploitation” is new in Congolese law and is to be distinguished from the concepts of “artisanal forest exploitation” and “industrial forest exploitation”. These last two refer only to the exploitation of timber whereas “community forest exploitation” covers many aspects, for example the conservation of wildlife by communities and potentially other environmental services, such as carbon capture. For this reason “community exploitation of forests” should have its own legal regime.
2. It was noted during the discussions that forest legislation is more advanced in relation to the rights of local communities than are other areas of legislation, such as that of hydrocarbons, mines, agriculture and water. In this regard forestry legislation could inspire or even guide the legislation in these other sectors, with a view to harmonising the standards relating to the involvement of local communities in the exploitation of natural resources. In relation to this, the Ministry with responsibility for forests is developing a draft Presidential Order on local communities as legal entities.

Summary of discussions and points of consensus

1. ***The new and collective character of the concept “community exploitation of forests”:***
The term “community exploitation of forests” is to be distinguished from “artisanal exploitation” and “industrial exploitation”, which relate only to timber. Moreover, the

¹ The National Forums serve as a platform where experts, practitioners and researchers can discuss and analyse technical and legal concepts and ideas related to community forestry.

industrial and traditional exploitation of forests tend to be based on the individual rights of the users, whereas “community exploitation” involves the promotion of collective rights. Thus, community exploitation of forests would be carried out by a community as a recognised entity in its own traditional territory. In other words, “community exploitation” is not possible outside the particular community’s territory.

2. **Scope of the term “community exploitation of forests”:** The concept “community exploitation of forests” includes, in particular, the exploitation of timber and non-timber forest products, the protection of wildlife by the community, bio-prospecting, carbon sequestration and other environmental or even tourism services. Thus, it covers many forms of forest exploitation.
3. **Community forest exploitation title:** A “permit for community forest exploitation” should be granted to each community. It would be a collective entitlement for diverse activities by the local community, which would be a distinct legal entity. No individual exploitation should take place in local community forests, so as to avoid the gradual individualisation of community lands.
4. **Flexible administrative arrangements and a locally-based administration:** A local community should not have to be registered as being in the forestry profession, as is required for other operators. Forest inventories should consist of a simple count of trees, a community management and development plan should be put in place, and the administration should be local so as to minimise communication difficulties, since DRC is so large.
5. **Technical standards for “community forest exploitation”:** There is a need for a manual setting the technical standards for the diverse forms of community forest exploitation. These standards will deal not only with the exploitation of timber, but also with conservation, the sale of environmental services by the communities and other forestry activities.
6. **Legal personality of the local community:** Recognising the legal personality of each local community that wishes to exploit its forests would make the community legally capable of interacting and making agreements with other national or international legal entities (individuals or corporate bodies). In order to do this, a Presidential Order concerning the organisation of local communities, an initial draft of which has been prepared by the Ministry with responsibility for forests, would be timely. This legal text would organise local communities not only on questions relating to forests, but also relating to other natural resources, the exploitation of which takes place on traditional lands occupied by local communities.
7. **The rights of local communities and the mining, hydrocarbon, agriculture and other sectors:** Other natural resources are or will be exploitable in the areas covered by local community forests. No Congolese legal text is decisive on the question of conflicts between or superimposition of the different legal regimes, such as those for mining, land, or agriculture, on any forested or non-forested area. Based on the presentations by the representatives of the different ministries, it seems that forestry legislation is more advanced on the question of the participation of local communities in the exploitation of natural resources. It has also emerged that in the DRC there is no national common legal standard concerning the rights and privileges of local communities whose lands are rich in natural resources. Each ministry has its own standards for its own sector. It has therefore been noted that there is an urgent need to harmonise approaches and standards between different ministries, with a view to improving the partnership between the State and local communities in the management of natural resources.

8. ***Abandoned and non-utilised concessions (emphyteutic² and others)***: These concessions have been identified as potential areas for local community forests, especially in provinces with heavy demographic pressure and scarcity of land, as in Bas Congo. One possible way forward would be to conduct a legal review of these concessions, some of which could revert to traditional territories.

Conclusion

This fourth National Forum has considered the content and the importance of the concept of “community forest exploitation”, which goes well beyond the exploitation of timber. This Forum has also provided an opportunity to generate a debate on the necessity for an inter-ministerial approach on the question of the participation of local communities in the management of Congolese natural resources.

The next Forum will address “Free, prior and informed consent” (FPIC) as a concept to be integrated into the management of local community forests.

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² “Emphyteutic” relates to the responsibility of the renter of a property to improve that property during his tenure.