

## EXECUTIVE NOTE

### FIFTH NATIONAL FORUM<sup>1</sup> : FREE, PRIOR AND INFORMED CONSENT (FPIC)

DATE: 19 - 20 OCTOBER 2009

#### Participants

The National Forum was attended by representatives of the Ministries with responsibility for forests, planning and land matters, together with representatives of the following NGOs: WWF, RRN, LINAPYCO, OCEAN, CEDEN, IUCN, ODC, GTF, CODELT, *la Dynamique Pygmée*, Greenpeace, Forest Peoples Programme/UK, *la Société pour les Peuples Menacés (SPM)/Suisse*. The Congolese wood industry union, *la Fédération Industrielle des Bois (FIB)*, was also represented.

#### Main results

1. **Compliance with the principle of “free, prior and informed consent” (FPIC) is required by Congolese law:** The Congolese Constitution as well as the 2002 Forest Code both set out the rule that communities living in and around forests should be consulted and their views and concerns taken into account. The FPIC principle has also been adopted in a number of conventions and international instruments to which the DR Congo is a party. The FPIC principle was formally used in the final statement of a conference on DRC’s forests held in Brussels in February 2007, which stated: “local consultations relating to any decision regarding the use of forests should be undertaken in accordance with the principle of free, prior and informed consent”.
2. **The need for an operational guide on FPIC:** A number of Congolese legal texts relating to various sectors recognise the principle of consulting local communities but none of these provide guiding principles to direct people in the field. A national guide on FPIC should therefore be designed and used as a practical tool for any person or organisation responsible for consulting local communities on issues related to the management and exploitation of natural resources in DRC.
3. **The analysis of FPIC carried out during the forum** should allow people working in the field to assess their actions and for them to apply FPIC in the various consultation activities undertaken by them in DRC.

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<sup>1</sup> 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.

## **Summary of discussions and points of consensus**

- 1. FPIC as a tool to prevent conflicts:** Far from being a source of conflict, as some believe, the rule of free, prior and informed consent of local and indigenous communities represents a tool for conflict prevention and management. This is because it can help to reinforce partnerships between the state and local communities that can collaborate in the design, implementation and monitoring of development projects and programmes.
- 2. Constitutional and legal foundation of FPIC in Congolese law:** Article 56 of the Congolese Constitution prohibits any act, agreement, convention, arrangement or any other fact resulting in depriving the nation or any individual or corporate body of all or part of their own livelihood derived from their natural resources or wealth. The Land and Forest Codes have similar rules as does the World Bank Operational Policy OP 4.10.
- 3. The communal and cumulative nature of FPIC:** FPIC is communal. In other words, it is given by a community as a whole. FPIC is also cumulative. In other words, it does not exist if its four components i.e. consent, free, informed and prior, are not combined together.
- 4. Key guiding principles to guarantee FPIC in the Congolese context of community forests:**

### **(1) Consent**

- Refer to the customary bodies authorised to give consent on behalf of the community concerned, following the traditional norms in place.
- Obtain consent, preferably in the local language of the location concerned, translated into an official or national language if needed. In the case of a dispute on interpretation, the local language should be deemed authentic.
- Within the concerned community, identify any socially vulnerable or marginalised groups (women, indigenous groups, etc.) and take their opinion into account, as it may be different from the opinion of the majority or dominant group. Consent is unique for one community and thus can not be split as this could lead to “divide and rule” situations. The process to request consent continues until all parts of the community have given their opinion.
- Consent should be recorded in writing and subject to revision at deadlines agreed between the concerned parties.

### **(2) Free**

- The community must have the possibility to declare itself in favour or against something. This guarantees that the position of the community be taken seriously by the party calling for consent.
- The community can not be subjected to any manipulation or suffer from a position of strength of one party over the other. Parties must be represented proportionally as far as possible. For example, communities must discuss in an environment and with people that are not intimidating to them in order to develop mutual trust. Communities should also have the possibility to receive assistance.
- The two parties need to identify a third party (individual or corporate body) that can play the role of witness or observer.

### **(3) Informed**

- The information must be given to the community well before asking for its consent.
- The information given must be detailed and quantified and include advantages, detrimental effects, potential consequences and benefits of the activities or project considered.
- Tools used to communicate with the community must be culturally appropriate for the concerned community.
- The responsibility to give the right information at the right time lies with the party seeking consent (the State or any individual or corporate body). In any case, the

Congolese state is in part responsible, as the guarantor of national interest and public order.

- In some cases, local communities first need to build their capacity to understand technical aspects of the sector concerned before being asked for consent. Capacity building is the responsibility of the party seeking consent.

**(4) Prior**

- Consent should be sought from the community before the title to access or allocate the resource is signed. Preliminary negotiations need not be concerned by FPIC as long as they don't lead to any commitment from any party.
- Time spent to seek consent must be reasonable given that FPIC is a process and that too protracted a negotiation could dissuade investors.

**(5) Fields to which FPIC could potentially be applied in DR Congo:** FPIC is applicable to various domains where it is necessary to consult local communities, including the forest, land, mining and conservation sectors.

**Conclusion**

The fifth national forum revealed the content and beneficial nature of the principle of “free, prior and informed consent” (FPIC) recognised by Congolese law. Details of what the principle entails would allow any one to appreciate the quality of consultations undertaken in various domains of public life. A national standard for FPIC is indispensable in order to reinforce partnerships between the State and local communities.

The next Forum will concern the “legal role of participative mapping” in the creation process of local community forests. National forums have previously been held on the concept of community forests, artisanal logging, community conservation and community exploitation of forests. Future forums will be organised to cover diverse subjects including: REDD, fuel wood, decentralisation, and others. We believe that these concepts are useful to the work currently being undertaken on community forests in DRC.

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