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Source: Adia Bey

## Have REDD+ and FLEGT processes enhanced the land and resource rights of African communities?

Policy Brief by the Africa Community Rights Network (ACRN)

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- Can REDD+ and FLEGT, two international processes imported into African countries, effectively serve to protect the rights of African communities?
- Have African CSOs, which are close to communities dependent on natural resources, been able to use these processes to advance the rights of such communities?
- What are the main lessons, regarding the rights of communities dependent on natural resources, have we learned from the past 5 years of negotiation and implementation of FLEGT and REDD+ in African countries?

Two key international policies have been applied on the African continent to ensure a more sustainable management of forest resources and the contribution of forests to the fight against climate change: the European Union Plan of Action for Forest Law Enforcement, Governance and Trade (FLEGT) and the process for reducing emissions from deforestation and forest degradation, including conservation, sustainable forest management and enhancement of carbon stocks (REDD+). These processes are not only supposed to enhance forest governance by triggering considerable legal reforms in

the forest sector, but also to improve community rights to natural resources, including their participation in decision-making arrangements.

After closely observing the implementation of REDD+ and FLEGT in Africa for nearly 5 years, ACRN assesses in this policy brief the impact of these two processes on the mainstreaming and recognition of the rights of local and indigenous African communities to natural resources. Currently, this assessment is justified by the hopes placed in the two processes. In ACRN's view, REDD+ and FLEGT must result in significant improvement in standards for involving communities that use the relevant areas and resources, by enforcing better consultation rules and by ensuring effective and direct representation of any group affected by REDD, Voluntary Partnership Agreements (VPAs), and related policies, as well as the participation of resources stewards and NGOs pursuing goals relate to these processes. Forest-related policy-making processes must devote sufficient resources and time to allow the respective representatives to effectively consult their constituencies, and if necessary, allow marginalized groups not yet represented in the process to organize themselves. Finally, these processes must ensure that all participants receive timely information to facilitate their participation.<sup>2</sup>

This policy brief assesses the level of achievement of these expectations. It results from a study conducted in 5 countries that are relatively advanced in the implementation of the two processes in Africa, including Cameroon, Ghana, Cong-Brazzaville, the Democratic Republic of Congo and Gabon. The latter country stands out because it is not involved in the REDD+ process. However, the assessment also covers the preparation of its Climate Plan.

<sup>1</sup> Prepared by ACRN, with support from Téodyl Nkuitchua, Eric Parfait Essomba, Samuel Nguiffo, Patrice Kamkuimo and Bastien Revel

<sup>2</sup> ACRN (2009), «Bottom line» requirements for Engagement with National and International Processes Affecting Forest Governance, ACRN Foundation Documents, Yaoundé, Cameroon.

## Achievements and successes of VPAs and REDD regarding community rights

One of the main achievements from the implementation of the FLEGT and REDD+ processes in Africa is the establishment of processes that are more participatory than those generally led by the States covered in the study: the government recognizes the formal role of the civil society in such processes, and this step forward often results from demands made by the State's partners. This opportunity to participate in forest governance presented the civil society with a chance to better organize itself, improve its collective action, its analytical capacities and its mastery of the topics discussed. In Ghana, Cameroon, Congo Brazzaville and the Democratic Republic of Congo (DRC), the civil society was involved along with the government in negotiations for the signing of the VPA. As a result, VPAs provided the opportunity to strengthen transparency and disclosure laws, even though governments have yet to honor their commitments in this respect.<sup>3</sup>

While VPAs have at least opened the door to better consultation, it would seem that REDD+ did not necessarily follow the same path. All the countries studied above, except perhaps Cameroon and, at least at the beginning, the DRC, seem to show that REDD+ marks a setback in terms of participation in negotiations. One of the lessons learned is therefore that REDD seems to mark a recentralization of forest governance, due to its highly technical nature and the large amounts of money expected from this mechanism at the time of its inception.<sup>4</sup> The lack of an international partner similar to the European Union for VPAs deprives communities and the civil society of implementation standards, and opportunities to put pressure on African States. Nevertheless, it is worth noting that the five ACRN members whose countries signed a VPA think that the VPA resulted in an improvement in consultation in the other forest processes, including REDD+.<sup>5</sup>

3 Global Witness (2012), *VPA transparency gap assessment*, <http://www.forest-transparency.info/cms/file/566>, accessed on 11 December 2013

4 Phelps, Webb and Agrawal (2010), *Does REDD+ Threaten to Recentralize Forest Governance?*, *Science*, Vol. 328.

5 ACRN (2012), *Questionnaire APV en phase d'implémentation*, Brussels Works-

The issue of participation, and that of procedural rights in general, remains a precondition for achieving progress in the other community rights. Once invited to negotiations, the civil society can try to have included in the agenda issues related to the rights of communities. In terms of concrete progress in the area of the 'substantive' rights of communities, many successes can be highlighted. The most obvious is undoubtedly the adoption of a law on indigenous peoples in the Republic of Congo, which was one of the requirements for the signing of the VPA, and which explicitly recognizes the principle of free, prior and informed consent (FPIC). Also worthy of note is the fact that VPAs include safeguard clauses that primarily concern communities. Progress has also been made in Congo and Gabon as to the role of communities in the management of concessions. In Gabon, the civil society's selflessness led to the inclusion



Source: Brainforest

of several articles promoting the rights of communities in the legality grid. In Ghana, the VPA considers Timber Utilization Contracts (TUCs) as the main source of legal timber, which can be an advantage to communities, since TUCs give more consideration to the rights of communities than the other methods of sourcing timber.

However, the civil society's major expectation from VPAs was that they lead to an overall review of the forest laws and policies of their respective countries in order for them to comply with sustainability goals, including better mainstreaming of the social component, and better monitoring of the impacts of timber exploitation on the main functions of the forest. In this regard, we witnessed a new Forestry Policy prepared in Ghana, a new Forestry Code in the Republic of Congo, a new Forestry Policy and Law in Cameroon. In Congo, civil society's advocacy helped draw the attention of other stakeholders to the need to overhaul the legal framework, whose consistency could be greatly improved. As in the other countries, this could make it possible to tackle structural issues such as land rights, benefit-sharing, FPIC, or community forestry, as the VPAs have so far had only limited direct impacts on these issues that are key to the people. Issues of tree ownership in Ghana, and

hop of October 2012, <http://loggingoff.info/node/486#navigation>, accessed on 11 December 2013

community forestry in the Congo, seem to stand a good chance of being addressed. However, the example from Cameroon, which is the country that has made the most progress in the process to revise its Forestry law, calls for prudence because the current draft bill does not contain all the advances desired for communities. This observation is similar for REDD+, regarding which skepticism prevails, given that participation and consultation were limited, and no concrete progress has been achieved. An important point worth underscoring here concerns REDD+'s limited capacity to act as a lever for changing the land and forest tenure situation of communities which remains marginal because of the weak institutional power of ministries in charge of monitoring the process in the countries concerned. For example, Ministries of the Environment (very often responsible for the REDD+ process) have little influence over "stronger" ministries such as those of Mines or Agriculture, whose policies and practices are capable of contributing sustainably, and often involuntarily, to the elimination of the land rights of rural communities. Legality issues, which are at the core of the Voluntary Partnership Agreements, are another important aspect regarding the eventual impact of VPAs on communities. Communities are often the first victims

## A major step forward in the Republic of Congo: adoption of a specific law on indigenous peoples

By adopting the specific law on indigenous peoples, the Republic of Congo demonstrated a strong desire to recognize the rights of indigenous peoples. This is a major step forward in Africa and in the Congo Basin where the denial of indigenous peoples' distinctiveness can still be heard in some political speeches. The law recognizes and grants significant rights to the people, with the explicit recognition of the principle of Free, Prior and Informed Consent for all projects or initiatives likely to impact their quality of life. Indigenous peoples also have the right to promote their customs and demand compensation for any harm or violation of their right to land and natural resources. The State is under obligation to take steps to protect sacred or spiritual sites, as well as their habits and customs. Indigenous peoples have customary land rights even with no land title. They reap the benefits deriving from the use and commercial exploitation of their land and natural resources. Finally, they can manage their internal affairs and settle their internal disputes in accordance with their own customs.

Source: ACRN (2014), FLEGT, REDD+ et droits des communautés aux forêts et à la terre en Afrique.

of illegal acts committed during industrial forest exploitation, and conflicts of interest between perpetrators of such acts and the authorities sometimes prevent the communities from seeing justice served. Strict compliance with the legality of timber from VPA countries can therefore result in a significant drop in abuses suffered by communities. The

VPAs also provide a platform for making known to State Parties major deficiencies in the forest governance system in order to elicit a response. These issues have up to now been related to cases of corruption or unexpected impacts of forest conversions. The solutions provided so far have not been of a scale consistent with what is at stake.<sup>6</sup>

## Limits of VPAs and REDD+ and challenges to promoting community rights

Community consultation and participation in forest-related processes, which is the main achievement of VPAs and REDD+ processes, is however face with significant constraints. Apart from Liberia, no other country has made the break between the civil society and communities. While it is true that the civil society took on the role of advocate of communities and has often succeeded in representing and safeguarding their interests at best, as well as discussing progress in the process with them, it is however to be regretted that governments and the European Union have not taken the time to directly involve communities. The case of Liberia flies in the face of the idea that it is too difficult to involve communities directly. Seven representatives from communities were part of the VPA negotiation panel, in addition to four civil society representatives, at the insistence of the latter.<sup>7</sup>

The very content of the consultation is questionable. It is still very common for consultation to be synonymous with information sharing sessions. Some governments still hesitate to lead genuine consultation processes in which the civil society and local and indigenous communities really share their opinions and concerns on the issue and are involved in decision-making. Also, such information sessions are often organized only in capital cities and in major cities. Regions thus receive bits of information they cannot use to effectively participate in processes. The risks of centralized forest management are not far off.

One main challenge facing VPAs is that of their implementation, at a time when concrete measures aimed at translating commitments into practice are slow in coming. In cases where legal reform processes were initiated, their implementation continues to be difficult. In spite of the hopes that the law on indigenous peoples in the Republic of Congo raised, that law has yet to be implemented three years after its adoption. In Ghana, the 2012 Forestry and Wildlife Policy contains provisions that are favorable to community rights, in particular through the inclusive governance system it establishes. However, the way the policy implementation plan is been developed highlights a

<sup>6</sup> Global Witness (2013), *Logging in the Shadows*, [www.globalwitness.org/sites/default/files/Shadow%20Permit%20Report%202013%20Final\\_Web.pdf](http://www.globalwitness.org/sites/default/files/Shadow%20Permit%20Report%202013%20Final_Web.pdf), accessed on 11 December 2013, p.28.

<sup>7</sup> RRI Forest Trends (draft), *Lessons Learned from Civil Society Efforts to Promote Community (Forest) Resource Rights and other Rights in Voluntary Partnership Agreements*.

repeat of errors of the past: limited transparency, low civil society and community involvement. This foreshadows a policy that in the final analysis may not result in any genuine advances in community rights.

All this makes us understand that triggering a reform process does not necessarily translate into genuine enhancement of rights.

Concerning REDD+, after raising a lot of hope, it should also be admitted that this far, it has had limited capacity to trigger the structural changes expected. In countries such as Gabon and Cameroon that clearly have other priorities that are sometimes contrary do REDD+ objectives, this incapacity can be explained easily. At the institutional level, ministries in charge of this process often wield negligible power when it comes to setting national priorities and therefore land allocation. On this front, the most “powerful” ministries are systematically those in charge of agriculture or mines. The undeclared inferiority of Ministries in charge of Forests and the Environment is in itself a threat no longer to communities, but to the REDD+ and FLEGT processes. A preliminary study conducted in Cameroon in 2012 showed that 33 mining permits were awarded in 16 parks, and 50 mining permits encroached on forest concessions (including FSC certified forests)<sup>8</sup>. Apart from the major issue of forest conversion, these cases of overlapping question the very capacity of REDD+ and FLEGT to operate, and as a result serve as levers for safeguarding the rights of local and indigenous forest communities.

## Prospects for future civil society involvement in REDD+ and VPA processes

This study calls on the civil society to be more realistic in its involvement. Its very participation in negotiations and then in the implementation of REDD+ and FLEGT processes comes up against unwillingness on the part of governments, which are clearly eager to continue ‘business as usual’ as much as possible; direct participation of communities continues to be more of an exception than the rule. The advances achieved through this involvement are limited, and only rarely changed the rules of land ownership, FPIC, or the recognition and respect of customary rights. Finally, ensuring this involvement, albeit limited, remains to be seen, even if abuses, illegality, and land and forest grabbing, continue on a large scale. The picture is even bleaker regarding REDD+, with a more limited level of participation and virtually no signs of progress ahead for community rights.

The main lesson from this analysis is that it is illusory to keep believing that the recognition and protection of community rights will happen in an incidental manner,

as part of processes aiming at different goals. It is thus imperative that ACRN and the entire civil society in these countries be proactive in advocating for the rights of rural peoples to land and resources, including the recognition of their collective ownership rights.

This observation suggests four main recommendations for governments:

- Participation, the current major focus of VPAs, must be better defined to ensure that forest communities are directly involved. The example from Liberia is interesting in this regard. However, depending on the different contexts, a specific platform for communities may be necessary, while elsewhere, it will be simply necessary to ensure that the civil society, in its current form, is truly representative.
- The difficulty to ensure technical achievements (in particular legality verification systems for FLEGT or a robust Measurement, Reporting, Verification mechanism) must not prevent States from giving governance aspects the required attention. FLEGT and REDD+ go way beyond such technical instruments.
- There is urgent need for better coordination between the REDD+ and FLEGT processes, especially in the area of community rights. The bad example from the REDD+ process must not limit efforts made thus far through FLEGT to guarantee community rights.
- States must urgently harmonize their development efforts in order that new long-term demands for land for the agro-industry, mining and infrastructure sectors, etc. do not entirely diminish achievements in terms of community rights, which, though minimal, were made through the FLEGT and REDD+ processes.

### Brief presentation of ACRN

The Africa Community Rights Network (ACRN) brings together about forty NGOs from more than ten sub-Saharan African forest countries that advocate for a more democratic forest governance and management approach which is more respectful of local community rights. ACRN result from the will of African NGOs to use the Voluntary Partnership Agreements (VPA-FLEGT) and the REDD+ mechanism (Reducing emissions from deforestation and forest degradation, including conservation, sustainable forest management and enhancement of carbon stocks) as a gateway to promoting community rights.

<sup>8</sup> Schwartz et al. (2012), *Tendances émergentes dans les conflits liés à l'utilisation des terres au Cameroun*. CED, WWF and RELUFA