FLEG, REDD+ and community forest and land rights in Africa: lessons learned and perspectives

Study report

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Africa Community Rights Network
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The Rights and Resources Initiative (RRI) is a strategic coalition comprised of international, regional, and community organizations engaged in development, research and conservation to advance forest tenure, policy and market reforms globally.

The mission of the Rights and Resources Initiative is to support local communities’ and Indigenous Peoples’ struggles against poverty and marginalization by promoting greater global commitment and action towards policy, market and legal reforms that secure their rights to own, control, and benefit from natural resources, especially land and forests. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. For more information, please visit www.rightsandresources.org

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<tr>
<td>AFD</td>
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<td>APV</td>
<td>Voluntary partnership agreement</td>
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<td>CAGDFT</td>
<td>Centre d’Appui à la Gestion Durable des Forêts Tropicales</td>
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<td>CED</td>
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<td>CEDEN</td>
<td>Cercle pour la Défense de l’Environnement</td>
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<td>CERD</td>
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<td>FIP</td>
<td>Forest Investment program</td>
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<td>FLEGT</td>
<td>Forest Law Enforcement, Governance and Trade</td>
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<td>FPIC</td>
<td>Free, prior and informed consent</td>
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<td>GTCR</td>
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<td>MECNT</td>
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<td>NGO</td>
<td>Non-governmental Organization</td>
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<td>REDD+</td>
<td>Reducing emissions from deforestation and forest degradation, through Conservation, sustainable forest management and enhancement of forest carbon stocks</td>
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The co-occurrence of two major African forests management processes such as REDD+ and FLEGT raised hopes in the civil society and especially the Africa Community Rights Network (ARCN), that legality and governance could be enhanced in their forests. ARCN’s priorities were to use these processes to secure gains for forest dependent communities by:

- Securing their land and customary rights,
- Better sharing benefits derived from forests,
- Empowering them to manage forests at community level,
- And ensuring their right to free, prior and informed consent to any activity affecting them.

Ten years after the adoption of the FLEGT action plan and five years after the launch of REDD+, the situation is rather worrying, the political will which led to the signing of the various VPAs has disappeared at the time of implementation, and negotiations on climate have resulted in a succession of disappointments.

This study nevertheless points to some notable progress, especially the unprecedented participation of the civil society in decisions resulting from VPA negotiations in many countries. This therefore confirms a clear potential of the VPAs to improve governance, reduce malpractices and unlawfulness, provide opportunity for new rights. However, this study calls for greater realism of the civil society in its commitment. Its participation in negotiations, then in implementation, is hampered by the reluctance of governments, obviously anxious to keep as much as possible their ‘business as usual’, so the direct participation of communities remains the exception rather than the rule. Progress through this commitment is limited, and rarely has changed the rules on land ownership, FPIC or the respect for customary rights. Finally, the implementation of these commitments, however limited they may be, remains to be seen, while abuse, unlawfulness and the acquisition of large-scale land and forest still continue. The situation is even more worrying for REDD+, with a more limited participation and few signs of progress to come to enhance community land and forest rights.

The main lesson thus remains that civil society participation is still the mother of all battles for community rights, the only way to open the door to real progress. This observation calls on ACRN members to continue their efforts to ensure that all commitments under the VPAs are implemented. Regarding REDD+, a process of this magnitude and with such potential impact on local and indigenous communities cannot continue without a real participation of all forest management stakeholders, including forest communities and civil society. Without a radical change of the trends observed so far in most countries of the network, ACRN members could raise again the issue of their willingness to legitimize a process by participating in it, on the basis of the minimum criteria they themselves defined to engage their participation in a national or international process.
Introduction: Enhancing community rights through FLEGT and REDD+

The Africa Community Rights Network includes Non-Governmental Organizations (NGOs) from Central, West and East Africa, which advocate for a more equitable forest governance which is more respectful of the rights of indigenous and local communities.

ACRN was set up from the will of African NGOs and their European and Asian partners to use the EU FLEGT (Forest Law Enforcement, Governance and Trade – enforcement of forest regulations, governance end trade) process and more specifically the Voluntary Partnership Agreements (VPAs) as an opportunity to promote the rights of communities. The network aligns with a context where “it is [...] widely accepted that government policies promoting industrial logging and agricultural conversion are the biggest causes and instigators of deforestation while local communities and indigenous peoples are those that conserve forests on their land when their land rights are safe”.

African NGOs quickly realized the need to work together to be more efficient and better heard by decision-makers, as well as to learn from their respective experiences. This desire to use FLEGT as a catalyst for putting the rights of the most vulnerable communities under the spotlight, led to setting up the network on an informal basis in 2008. ACRN is thus a platform to share experiences and ideas, to develop synergies, to build solidarity among member States, to have an efficient warning system on threats to communities and to carry out joint activities at the regional or international level.

Another catalyst tapped by ACRN is the process of Reducing emissions from deforestation and forest degradation, including through conservation, sustainable forest management and enhancement of forest carbon stocks (REDD+) in which African states gradually engaged from 2008. Whether through REDD+ or FLEGT, the main interest for African NGOs was the possibility to move existing policies so as to permanently improve community rights to their lands and resources.

Indeed, at the launch of these processes in Africa, communities were facing recurrent right-related problems:

- Laws sometimes guaranteeing minimum community rights compared to the rights granted to companies investing on traditional lands. On forest land, the only rights were limited to rights to resource use, without including property;
- Denial, or at least lack of recognition of ancestral rights to lands and resources;
- Poor governance of spaces and natural resources. The application of already weak legislations on community rights was also criticized: illegal logging, corruption, low collection and redistribution of forest revenues, corporate impunity even in the case of non-compliance with payroll specifications.

Several other problems may be mentioned after these ones. The fact is that FLEGT and REDD+ have been presented as a panacea to these problems. In the FLEGT Action Plan, the major challenge faced is “to make sure that measures to fight illegal logging, and in particular to strengthen law enforcement in this area, do not focus on the weakest, such as poor rural populations, saving the most powerful”.

Thus, the challenge of FLEGT is not simply to reduce illegal timber exploitation by enforcing existing laws, but also to ensure that this approach is not based on the most vulnerable communities. Although the Action Plan of the Bali Conference where REDD+ negotiations were

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officially launched does not assign to this mechanism the final objective of enhancing the rights of indigenous and local communities, it still refers to these rights and stresses the need to take them into account. The original intentions were already bearing seeds of hope for NGOs and African communities. Six years have passed since, and progress on community rights were not studied in full to enable ACRN come up with concrete recommendations for governments to improve the recognition and security of indigenous and local community rights.

To avoid making overly definitive decisions on the potential of FLEGT and REDD+, and hence on civil society involvement in these processes, it is imperative to take stock of this participation from the perspective of ACRN organizations. This report aims to inform the future ACRN strategy. Network members have indeed developed their skills on REDD+, FLEGT and land issues in recent years, but now need to take a more concrete step to engage with decision-makers and conduct well targeted advocacy activities to ensure that REDD+ and FLEGT are founded on the strengthening of community rights. This report therefore aims to:

- Take stock of REDD+ and FLEGT in a number of African countries.
- Assess the potential and characteristics of each mechanism to advance property rights reform issues.
- Document possible good practices for REDD+ and FLEGT contribution to policies in favor of marginalized populations.
- Learn how these instruments can complement each other and be used to secure the rights of communities.

3 UNCCC, Report of the 13th COP held in Bali from 3 to 15 December 2007, add.
The combination of many approaches made it possible to collect the data presented in this report. The first step was to review official documents relating to the FLEGT process (document of the Agreement, legality grid, etc.) and REDD+ (R-PIN, R-PP) and any other relevant documentation. The purpose in this phase was to review legal reform plans (with a particular focus on reforms that advance and recognize the tenure rights of communities) and prospects for stakeholder involvement in FLEGT and REDD+ processes at national level, including civil society and indigenous communities.

The second step was to assess the progress of legal reforms and of processes aiming to improve the involvement and consultation of indigenous and local communities provided for in the various national blueprints relating to FLEGT and REDD+. This was done through a review of the relevant legislation such as the forest law, the land tenure law, including their implementing instruments, and any new text enacted in the meantime as well. This review was completed by interviews of key stakeholders, including civil society representatives, members of governments and a few representatives of indigenous and local communities involved in the process at national level.

This review makes it possible to easily appreciate the key successes of reforms triggered and facilitated by the advent of FLEGT and REDD+ processes to protect and/or recognize the tenure rights of local and indigenous communities as well as the improvement of the processes for civil society, local community and indigenous peoples participation.

The findings of the review will be used to inform strategic workshops on REDD+, FLEGT and community rights. In addition, members of ACRN, but also other civil society organizations, will be better informed on good practices and lessons learned on community rights in different countries of the network, so as to enhance their advocacy efforts.

The report therefore successively examines progress made in terms of procedural and substantive rights and the ongoing reforms pertaining to VPAs and REDD+ in Cameroon, Ghana, the Republic of Congo, Gabon and the Democratic Republic of Congo in particular. It then makes an interim assessment of the two processes, their achievements, their opportunities and constraints, before making a series of recommendations for policy-makers and African NGOs.
The forest law which came into force almost 20 years ago is currently being reviewed. This review has abruptly been suspended following months-long heated deliberations with Cameroon civil society organizations (CSOs), particularly on the proper acknowledgement and protection of people’s rights as well as their active involvement in the drafting of the new law.

The current context underpinning the implementation of these provisions justifies the intensity of such deliberations. Since 1994, Cameroon has made considerable efforts to enforce the forest law, with focus on provisions favorable to the communities. Good examples include: the enabling instruments for the law on community forests, the involvement of these communities in forest gazetting and the monitoring of illegal exploitation (through entities such as the Forest Farmers Committee known as CPFs), the distribution of Annual Forest Royalties (RFA), etc. Moreover, the issuing of forest certification, even by private entities, has further strengthened the role of communities in forest management. Finally, a great stride was made with the signing and ratification of the VPA-FLEGT (Voluntary Partnership Agreement on Forest Law Enforcement Governance and Trade) in 2010 and 2011 respectively. Indeed, the effective implementation of this agreement automatically ensures better forest law enforcement.
In practice, these efforts are however limited. Though forest law enforcement constraints significantly impact on the national economy, forest-dependent communities are the most at risk. Various problems are tied to the implementation of provisions favorable to these communities, one of the most frequent being the sharing of proceeds from forest exploitation, especially the RFA. This problem is due both to the weak compliance of companies with their social responsibilities regarding disclosures and performance and to governance at community level. Besides, illegal logging persists with damaging consequences on the livelihood of the people who depend on the resources which are tapped and destroyed.

It is indeed in a bid to address illegal forest exploitation issues that Cameroon entered into negotiations with the European Union for the FLEGT-VPA in November 2007. The agreement signed in 2010 and ratified in 2011 was to pave the way for the first FLEGT licenses to be issued by March 2013. However, no such license has been issued. Worst still, the objective of improving forest governance through participation, transparency, accountability, fairness and legality is a long way from being met. In parallel, the REDD+ Readiness preparation proposal (R-PP) drafted by the Cameroon government was approved in October 2012 by the World Bank’s Forest Carbon Partnership Facility (FCPF). The R-PP should be implemented during a three-year period and result in an emission reduction strategy associated with the forestry sector in Cameroon. With particular focus on the rights of local and indigenous communities, what is the impact of these years of negotiations and brainstorming on FLEGT and REDD+? What lessons can be drawn? These are some of the questions addressed in this section on Cameroon.
The VPA and its impact on community rights

In 2007, the Cameroon civil society united on a new platform, the European Community Forest Platform (ECFP), to take part in the VPA process after a long struggle to get to the negotiating table, just like many other countries. They initially succeeded in obtaining a single seat, then eventually three. Though forest dependent communities were represented in the preparatory meetings for the civil society platform participation in negotiations, they were not formally involved in the negotiation process.

This participation had varied results on the content of the Agreement. As other VPAs, that of Cameroon contains provisions for social, economic and environmental safeguards of local and indigenous communities in its article 17. However, provisions on benefit sharing are quite weak, but for those welfare projects to be executed by logging companies. Furthermore, not all civil society concerns were addressed, especially with regards to the fight against corruption, the land tenure system and the risk of timber laundering through auction sales. Nonetheless, it appears from the negotiation phase that most civil society concerns were taken onboard (stakeholder involvement, transparency through annex 7 of the VPA, commitment to forest and land reforms with a focus on the new REDD+-related issues, etc.). As of now therefore, significant benefits of the VPA process are mainly related to procedural and not substantive issues.

As concerns the VPA implementation phase in Cameroon, decision-making and monitoring bodies are already established and operational. Yet, the set-up of the National Monitoring Committee casts a shadow on the active involvement of local communities and indigenous peoples. Indeed, the instrument organizing this entity provides for a representative of each of the following stakeholders: indigenous peoples, civil society, community and local forest management units; but the role and the ability of these stakeholders to make their voice heard remain very limited. For example, within the Joint Implementation Committee, the Cameroon government finds fault when other stakeholders have a different opinion.

In the absence of a new legal and regulatory framework that truly values contributions from the different stakeholders involved in the forest management process in general, and particularly contributions from communities and the civil society in the review of the current forest law and land tenure system, the implementation of the FLEGT-VPA in Cameroon may not achieve the expected results, that is meeting civil society expectations and respecting the specific rights of communities.

REDD+ and its impact on community rights

In June 2011, Cameroon effectively launched activities related to the REDD+ process. This date also marks the start of the active involvement of a quite representative group of stakeholders, including the civil society and indigenous peoples. In fact, Government department in charge of the REDD+ process pushed for the creation of a civil society platform in July 2011. Even though the civil society is made up of parallel and often antagonistic movements, Government recognizes the REDD+ platform as the interface between civil society organizations and entities involved in the REDD+ process.

Between July 2011 and October 2012, date of submission of Cameroon’s Readiness Pre-
Preparation Proposal (R-PP), more than a dozen workshops on the country’s REDD+ approach held nationwide. These workshops made Cameroon a hallmark among countries of the sub-region. It is considered to be one of the most participatory REDD+ processes. Still, this commendable effort did not ensure full involvement of the civil society and indigenous peoples.

Actually, the current set-up and operation of the REDD+ steering committee, which is the only effective institutional organ of the process, gives a marginal place to the civil society and indigenous peoples. Out of the twenty one committee members, the civil society and indigenous peoples are both entitled to a single representative only within the decision-making organ of the process, whereas the government has fourteen representatives. Besides, decision-making within this committee is done through a majority vote (two-thirds of committee members) at the expense of consensus. Undoubtedly, this offers a very slim chance for the civil society and indigenous peoples to voice their concerns. Such move is contrary to Cancun safeguard requirements and goes against the FCPF and UN-REDD+ joint guidelines on the involvement of stakeholders which requires full and effective involvement of the civil society and vulnerable groups such as indigenous communities. An attempt to adjust this situation began with the corrected and validated copy of the R-PP which provides for a subsequent reform of the committee “if need be”.

It is also worth noting that contrary to the FLEGT process, membership of indigenous peoples in the REDD+ steering committee is of right, which is a thus a significant achievement. Moreover, the Cameroon government adopted a positive attitude by acknowledging the Free, Prior and Informed Consent of communities within the framework of this process. Thus, a recently drafted participatory guide is being produced to easily secure the free, prior and informed consent of communities when mapping out a national strategy and during project execution. This guide is a significant step towards the effective acquisition of decision-making power by communities on their lands, but the most important challenge remains its implementation and due respect not only by project developers but also by the Government itself. Successful implementation of this guide under the REDD+ process may inspire other natural resource extracting industries like agro-processing, mining and forestry.

Lastly, it is important to underscore that designing Cameroon’s REDD+ strategy by rolling out R-PP activities is taking place at a time when the main instruments governing natural resource management (see section below) are being reviewed. Although the capacity of the REDD+ process to push for substantial structural changes in Cameroon’s natural resource management may seem limited given the present context, there is no doubt that it may lead to useful reflection with a view to addressing the land and forest insecurity faced by forest dependent communities, mainly indigenous peoples. The implementation of the R-PP should therefore serve as a leverage to bring the REDD+ issue to a much higher political level than it is today.

**Ongoing or future political and legal reforms and their impact on communities**

Current major projects in the forest industry include: the review of the forest policy and law, the setting up a tracking system (process on hold), etc. Still, these projects are either at the desi-
gning phase or on hold pending the revision of Law No94/01 of 20 January 1994 on forests, fauna and fishing.

The process to review the forest law has officially been going on since 2008. Though previously based on a very participatory approach, the process was abruptly halted when the civil society noticed that its main proposals were henceforth neglected or simply discarded. According to several Cameroonian organizations, the law which was supposed to better acknowledge and protect the current rights of local and indigenous communities, is rather going backwards, especially on the issue of the special recognition of the livelihoods of indigenous forest people. This made the civil society to lodge a complaint with the Committee on the Elimination of Racial Discrimination (CERD) lashing out against the bill. This was a successful move as CERD wrote to the Government in March 2013 to criticize the bill and requested that Government holds proper consultations with the civil society and indigenous communities.6

Delay in respecting the commitments made to effectively implement the FLEGT-VPA process in Cameroon is a major hurdle for the civil society and the communities, notably with enhancing good governance in the sector and improving local communities’ rights to access and enjoy the land and its resources. Such situation is all the more disturbing as the people are henceforth compelled to secure their customary land rights in the face of poverty and pressures from foreign investors.

Apart from the forest reform whose finalization has been delayed, a land reform process officially launched in 2011 by the President of the Republic is also ongoing. This reform which is not completely out of the box seemingly aims to ease access to land for foreign investors in a bid to set up agro-industrial plantations and extract mineral resources, etc. Currently, the civil society with the support of other main stakeholders (traditional rulers, Members of Parliament, networks of indigenous people, etc.) is working to rebalance the debate to ensure that the reform mainstreams the concerns of rural communities.

Be it the REDD+ or FLEGT-VPA process, it is necessary to correct the discrepancies noticed in securing the access rights of local communities, indigenous peoples and disadvantaged groups. This can only be done through a reform of the basic instruments governing the rights to access and manage the land, the forest and the resources they include.

However, there are some risks that may hinder the complementary implementation of both processes. Hence, it should be noted that the legal reforms launched for the FLEGT-VPA process seek to enhance the participatory and transparent management of resources, and consequently raise the forest sector contribution to the State budget. Yet, all measures taken to implement the REDD+ process not only aim to improving the level of effective involvement of all stakeholders but also continue to address conservation and sustainable management issues which do not always produce the substantial tax revenues expected by Government to be used in financing major emergency-related projects.

Moreover, the very nature of REDD+ calls for much caution as regards community rights. The “conservation” component of any REDD+ project may significantly limit the capacity of communities to enjoy their customary rights. The FPIC guide recently drafted with the participation of the civil society seeks specifically to address such risk, which is absent in the FLEGT process.

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Yet, the guidelines of both processes remain scattered with the responsibilities of different sectorial administrations. These Government structures have no collaboration framework to coordinate all FLEGT-VPAs and REDD+-related actions. Consequently, forest activities are monitored by the forestry administration, REDD+ responsibilities are entrusted to the Ministry of the Environment, agricultural management is the preserve of the Ministry of Agriculture, land management is done by the Ministry of Property and Land Tenure, management of mining sites is performed by the Ministry of Mines, land planning and regional development is under the Ministry of the Economy, while the Ministry of Finance is responsible for the management of revenue derived from both processes. This clearly demonstrates the compelling need for coordination.
In September 2008, Ghana became the first country to sign a VPA with the EU, though its implementation remains slow as in other countries. REDD+ preparatory activities also started quite early in Ghana, in 2010. In December of that year, the FCPF approved the country’s preparation proposal, thus setting the stage for drafting a REDD+ national strategy. Ghana is also a pilot country for the Foreign Investment Program (FIP), but only got involved in the UN-REDD+ program as a partner country in 2011.

It is widely acknowledged that for REDD+ and VPA processes to succeed, Ghana must better manage its forests and review its laws and policies, especially the land tenure system in force in the forest sector. The overlapping customary and statutory laws give priority to the State with regards to forest resource management and proceeds, even though it recognizes traditional rulers as the legal owners of the forests. The little recognition of ownership rights, the absence of a clear and fair arrangement for sharing the benefits and governing and managing the resource for forest communities, contribute in degrading forests. Natural forests are owned by the State and farmers do not benefit from them, even when they are found on their lands. Moreover, Government has almost absolute control on production, felling, management and financial decisions regarding the forests. With this, forest-dependent communities live in poverty despite being surrounded by a wealth of forest resources forbidden to them. Therefore, communities, most especially tenant farmers, have
little or no interest in preserving, developing or managing the forests found on their lands, given that they will not be entitled to sharing their financial benefits and run the risk of seeing their crops destroyed by logging companies.

In line with the pre-existing VPA legality grid on community rights, the 1999 Forestry Commission Act provides for the inclusion of a civil society representative in the Commission.\(^7\) The Forestry Commission act also provides for community involvement in the preparation of management plans and concession contract, and the need for the Commission to meet citizens’ expectations. The Collaborative Resource Management Unit must ensure that communities are involved in forest programs. The 1998 Timber Resources Management Regulation identifies land suitable for grant of timber rights and provides that the consent of the people shall be required in some cases.\(^8\) The approval of relevant individuals, groups, or owners must therefore be done in writing before granting timber rights on a given farm area. As for benefit-sharing, in practice, communities are almost totally excluded from enjoying the financial proceeds of the timber business, as these are captured by local and national leaders and the benefit-sharing system is plague by a heavy bureaucracy.

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The VPA and its impact on community rights

Early VPA negotiations in Ghana involved only public stakeholders, despite the dire need to completely review the governance system, and other stakeholders had to impose themselves in the process. It was only after strong protests by civil society actors that Government started inviting them. FERN, an NGO, indicates that: “Initially the Government had no real intention to create an inclusive process: there had been little contact with either civil society organizations or the timber industry. Only through threatening court cases and the use of media were civil society groups able to participate in talks which, in the event, proved highly successful.”

The VPA process eventually created a space of influence for civil society organizations, particularly through working groups. Civil society representatives were present in all working groups and even chaired two of these groups. They were also represented within the political sub-committee which merged the work done in the groups. This enabled the civil society to ensure that decisions taken at working group levels were not changed at the political level. Consequently, Ghana’s VPA enabled a strong engagement of some stakeholders on basic governance issues and paved the way for scaling up inclusive practices. However, it should be underscored that the Government of Ghana did not see local communities as an important component of this process, due to their supposedly limited knowledge and insufficient mastery of English. Thus, Ghana’s VPA did not make room for a direct involvement of communities in negotiations, considering that they were being represented by the civil society organizations.

Nonetheless, this did not prevent important provisions on community rights to be included in the final agreement. Various articles clearly indicate the need for equitable governance and improved living conditions for communities, plus the need to involve all stakeholders in the implementation of the VPA, even those currently involved in illegal or informal activities. Article 17 of the agreement further

10 Republic of Ghana and European Commission, Ghana - European Union Voluntary Partnership Agreement, 2009, Articles 1, 13, 15 and 16
Case studies

Ghana

mentions the need for social safeguard clauses as a pillar to the VPA. These clauses still need to be firmly elaborated upon. Finally, the VPA does not clearly explain the Free, Prior and Informed Consent principle, though several provisions are highlighted such as the need for a written consent issued by the communities before any logging activity.

This agreement is thus a reasonable framework for strengthening community rights, which must now move from print to practice. It is always highly tempting to focus more on technical aspects such as the legality verification system and less on governance issues, which are actually key to the sustainable management of forests. The participatory process should therefore continue and even spread out, based on the level of trust attained during the negotiations. In this vein, the Joint Monitoring and Review Mechanism, the Multi-Stakeholder Implementation Committee or the Timber Validation Committee all include civil society representatives. The legality verification system also allows the civil society to file complaints to the Timber Validation Division, and even encourage them to set up networks to monitor the system.

Although the civil society is clearly involved in the implementation of the VPA, communities are once more absent from this process. Civil Society Organizations also expressed concerns about their involvement within the Timber Validation Committee which has oversight on the timber validation division (the timber validation division shall issue FLEGT licenses) The Department's membership guidelines replaced the term civil society with that of representative of trade unions and chiefdoms. This was criticized by civil society organizations, as the organizations that took part in negotiating the agreement were left out of the timber validation committee. The Ministry of Land and Natural Resources promised to address this problem. Verification protocols were also drafted in the absence of the civil society, although these participated in the testing of the latest draft in April 2014. Lastly, contrary to other VPAs, Ghana’s VPA does not have an annex on disclosures. Nonetheless, there are some provisions in the agreement which uphold the right to information, even though the civil society keeps requesting for a transparency monitoring matrix.

**REDD+ and its impact on community rights**

In 2008, Ghana submitted its Readiness Plan Idea Note (R-PIN) to the World Bank which had been drafted without civil society involvement, as many NGOs were initially reluctant to participate in the process. However, the World Bank approved the R-PIN and instructed Ghana to reverse the trend while drafting the REDD+ R-PP. In 2009, a Bank mission to work on the R-PP was postponed at the request of the civil society for need of considerable time to get set and involve community-level participants in REDD+ talks. Forest Watch Ghana, one of the major NGO coalitions in the country’s forest sector, held a two-day convention on REDD+ to raise civil society awareness. The World Bank mission finally allowed for a strong civil society involvement but did not allay fears that REDD+ could mark a drop in the level of VPA-established consultation standards. Such concerns intensified when Government held R-PP consultation workshops that turned out to be information sessions where Government laid out its plans without accommodating feedback from participants. Furthermore, REDD+ did not directly involve communities, and NGOs taking part in the process were unsuccessful in sharing information which would have helped develop the capacities of community organizations.

In 2010, when Ghana was selected to benefit from the Forest Investment Program, the civil

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11 Idem.
society understood that proper organization was needed to jointly voice their top concerns and positively impact the national REDD+ process. Unsurprisingly, the main priorities identified were the need to settle land tenure issues as well as the ownership of trees and carbon, to ensure effective community involvement, and to set up a benefit-sharing system that could compensate directly the sustainable forest management efforts of communities and farmers.

Ongoing or future political and legal reforms and their impact on communities

Civil society organizations keep pressing for the REDD+ and VPA processes to recognize community rights, improve governance, and develop the necessary social and environmental safeguards. Various ongoing legal and political reforms could help push forth these priorities, same as the constitutional review process, or the environment and natural resources management sector review. The civil society particularly requested that the forest and wildlife policy be reviewed as a basis for other legal reforms. A new policy was adopted in 2012, clearly expressing the will to have a transparent and fair governance system involving the local communities. The Forestry Commission is drafting a comprehensive implementation plan for this policy, without showing real transparency or involving the civil society for now.

On the legislative front, VPA implementation lead to a new off-reserve timber tax regulation, timber resource management regulations and the setting up of the Timber Validation Committee and the Timber Verification Department. The Ministry of Land and Natural Resources and the Forestry Commission are currently working on reviewing and consolidating the forest law which is closely monitored by the civil society.

Republic of Congo

Background

The VPA for the Republic of Congo was the fastest to be concluded, after just eleven months of negotiations. It was signed in May 2009 before a sudden interruption of the process due to the time taken by the Congolese President to enact the Agreement, which eventually entered into force only in 2012.

Congo’s involvement in the VPA and REDD+ process is based on its will to respond to illegal logging and timber trade, the low capacity to manage protected areas, the poor integration of some formal and informal activities in the forestry sector, the low level of industrialization of timber and non-timber products processing and development units, the low level of participation of the local and indigenous people... In short, Congo still lacks a clearly defined forestry policy to guide and channel the various activities in the forestry sector, with a view to the sustainable management of forest resources.

The legal framework that existed prior to these processes included a few provisions on the rights of local communities, especially regarding their engagement for the classification or declassification of forests, or the management of protected areas. Yet, several legal mechanisms have been
developed across forest concessions to ensure the involvement of communities in the management of forest concessions. Hence, community involvement in the management of forest concessions is done mainly through the management plan, within the consultative councils set up in each concession. Article 55 of the Forest Code describes the management plan as a document that “specifies the objectives of the management of the forest management unit it covers and the means to achieve them, based on relevant data”. The law specifies that this document should comply with the sustainable development principle and be drafted in the format prescribed by the Minister of Forests.

The problem with these provisions lies with their implementation. In practice, since they were created, the consultative councils of the various concessions meet only to address issues relating to the management of local development fund and the financing of micro-projects. They are not yet involved in the management of conflicts related to land use or access to resources. Consultation arrangements operate more like information and sensitization instruments than true mechanisms for the participation of communities in any kind of decision-making. Another shortcoming of this mechanism is the low level of involvement of the indigenous people. Due to the fact that the local and indigenous people are usually represented by the same people, namely the Bantus, the individual concerns of indigenous peoples who have specific needs and problems are overshadowed. 

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14 Republic of Congo (2000), Law No. 16-2000 to lay down the Forest code, Article 55
15 Idem.
16 Due to the fact that the local and indigenous people are usually represented by the same people, namely the Bantus, the individual concerns of indigenous peoples who have specific needs and problems are overshadowed. For instance, indigenous peoples are more concerned with social marginalization, the preservation of their cultural heritage and the respect of their dignity rather than the sharing of benefits from the excessive exploitation of natural resources, on the one hand, and their poverty level, which is twice or thrice that of the local populations, on the other hand, which requires proportionate solutions.
When civil society entered the preparatory stages of the VPA and REDD+ processes, its concerns were threefold: mechanisms for the participation and consultation of communities in forest management, customary land rights and forest tenure, and the role of civil society in the formal REDD+ and FLEGT implementation organs.

The VPA and its impact on community rights

Civil society took advantage of the VPA negotiation process to establish a platform enabling it to contribute directly thereto, whereas local communities were unable to participate directly. The platform carried out several field trips in order to better understand and voice the concerns of the communities.

In practice, civil society participation led to a certain number of improvements in the content of the VPA. The legality grid of the agreement sets out principles for impact assessment and remedial action with regard to the lifestyle of forest communities, especially where companies destroy property belonging to local and indigenous people. It also provides for the establishment of monitoring and conflict resolution mechanisms involving the civil society and the communities. The role of communities in the establishment of concession management plans and the monitoring of forest activities was also strengthened, which could pave the way for greater compensation and benefit sharing. The development of management plans had been provided for in the Forest Code even before the entry into force of the VPA, but was not respected. The VPA thus triggered the implementation of this legal provision. In order to ensure that these principles are effectively implemented, the Agreement states that Congo should review its laws and regulations to mainstream all these social issues before the first FLEGT license is issued. It also recognizes that the concept of community forestry is not defined in Congolese law and must therefore be taken into account through existing the existing community development and community forests management projects.

Civil society organizations come in at the implementation phase of the agreement. They are therefore represented in formal VPA implementing entities, through three representatives in the Joint Implementation Committee and one delegate in the Technical Secretariat and the Joint Working Group. However, civil society once again had to request to be part of these institutions in order to be taken on board, proof that the idea of participation is not yet established within Government. Moreover, the VPA does not provide for any formal mechanism for involving forest communities in its implementation.

REDD+ and its impact on community rights

Although the REDD+ process was launched in February 2008 in the Republic of Congo, before the...
development of the R-PP, recognition of community rights and involvement in the REDD+ process was more said than done. R-PIN and R-PP were developed by renowned consultancy firms, far from communities and without consulting them. The R-PIN and the first draft of the R-PP were vetted during so-called “validation” workshops which were actually information sessions as the Parties only discovered the document on the spot and could not amend it. For instance, the communities had wished for better representation in REDD+ implementation organs as well as the clarification of benefit-sharing and safeguard arrangements, in vain. After a series of advocacy efforts, a second draft of the R-PP was validated in September 2011 with the participation of civil society organizations and indigenous people representatives.

The R-PP henceforth mentions local communities and indigenous peoples’ participation through REDD+ implementation organs in the Republic of Congo, namely in REDD+ national and regional committees. Regarding consultations, the R-PP reasserts that consultations under the REDD+ process will be conducted first among platforms including Government, the private sector and civil society. They shall be followed-up and complemented by large scale consultations that will bring together representatives of all stakeholders at the national, regional and local levels. Community participation is not yet effective, although there are some positive signs such as the translation of the R-PP into Lingala and Kikongo to ease the forest people’s understanding thereof. In addition, the World Bank supported the civil society in producing communication tools on REDD+ and engaging with the communities on this process. Lastly, an extensive program is being considered to raise awareness on REDD+ challenges in these communities and identify their concerns in order to mainstream them in the implementation process.
As noted above, Congo’s VPA involves a clear commitment to review the forestry policy. During FLEGT VPA negotiations, civil society raised several issues the other stakeholders and the European Union acknowledged as relevant, building a consensus to review the laws so as to provide legal answers to these concerns as well as to other issues raised by the European Union. For a year now at least, the Government of Congo has initiated the process to review its Forestry Code and draft complementary instruments, with the support of FAO and AFD. This reform should last six months (August 2013 - January 2014). The diagnostic study had pointed out the inadequate consideration of communities and their rights in forest management. This is therefore one of the major issues to which the policy should provide clear answers. Thus, civil society was able to make proposals to enhance procedural and substantive rights, and ensure the transparency of the process. However, the new Forestry Code being considered for amendment gives many prerogatives to communities in the management of forest resources. For example, it addresses the issue of community forestry which had long been a taboo subject in a more practical manner. Indeed, until recently, Government remained adamant on the fact that the community development arrangement remained the only possible form of community forestry. However, with the revision of the Forestry Code, things have changed. At the moment, discussions on community forestry are open to find out if this model is adequate.

The most important reform that took place in Congo was the passing of a law on the rights of indigenous peoples in 2011. This process was initiated in 2006 by national NGOs, with the support of Rainforest Foundation UK. This law recognizes and grants key rights to the people, and explicitly acknowledges the principle of Free Prior and Informed Consent on all projects or initiatives that may affect the quality of life of indigenous peoples. In addition, indigenous people have the right to impose their customs and claim compensation for any damage related to the violation of their right to land and natural resources. The State has the obligation to take measures to protect sacred or spiritual sites as well as the people’s ways and customs. Indigenous peoples have customary land rights even without land titles. They reap benefits from the use and commercial exploitation of their lands and natural resources. Finally, indigenous peoples can administer their internal affairs and settle their internal conflicts according to their own customs. The enactment of this law was a major step in recognizing the rights of forest communities.

Since 2000, Congo has also initiated an extensive program to reform land policy and laws. This reform process which lasted eight years has led, among others, to the recognition of customary land rights. Customary land rights are acknowledged for Indigenous and local communities that prove that they have been occupying a portion of land for at least thirty years and have developed it. However, the notion of “development” in itself prevents the full recognition of the rights of indigenous peoples, whose lifestyle allows and encourages forest uses with very low impacts, whereas development in this case refers to the conversion of forests to other uses.
Background

In September 2010, Gabon opened negotiations with the European Union in order to sign a Voluntary Partnership Agreement. This negotiation process slowed down since May 2012, and Gabonese and European technical teams haven’t met again since then. Despite the European party’s attempt to renew negotiations, Government seems to demand some time to support the ongoing VPA. As for the REDD+ process, the Government of Gabon views it simply as a component of its wider climate change strategy and vision. This process is effectively taken into account in the preparation of the Climate Plan, a policy which should oversee all climate-related mechanisms. The National Climate Plan was initially announced for late 2011 during COP 17 in Durban, but was only published in early November 2013.

The forest-related rights of rural communities are codified in various regulatory instruments prepared and adopted by Gabon. These rights are equally mainstreamed in conventions and other international guidelines ratified by the country. Chapter 6 of the Forestry Code is devoted completely to customary user rights and lays down the conditions for exercising such rights in articles 252-
261. As for the consultation mechanism, it is highly recommended in view of the award of forest concessions, forest management and the social provisions of the Forestry Code.

However, applying the Forestry Code is not always easy. Government does not always have the requisite means to carry out sustainable management tasks, especially as various provisions with regulatory references have never been completed. Although it is clearly mentioned in the Code, customary user rights remain a theoretical concept as the conditions for formalizing them have not been broached. Therefore, the people’s participation in the decision-making process is in jeopardy. Ironically, in many cases, these people find themselves obliged to refer to a provision repealed by the law in force.

Without prejudice to the will of the authorities to overcome all forms of illegal exploitation of Gabon’s forests and, by extension, the exclusion of communities from the forest management process, it would be appropriate to acknowledge that the period before the opening of VPA negotiations was characterized more by political statements on forest governance than by changes in prevailing practices. It was common practice to have forestry permits issued without completing the community consultation phases provided for by law. The fact that local people’s customary land rights were not secured also fostered massive eviction of these peoples from their lands through land grabbing to the benefit of major forestry and agro-forestry companies. This is a glaring contradiction of policy guidelines and regulatory instruments. As regards forest management, very few operators can
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present related terms and conditions signed with neighboring communities. Community involvement in the governance and sustainable management process has long been and remains at the level of political vision though reflected in the laws. With the objective of strengthening the reference framework, introducing an instrument to protect rural land tenure through the formal recognition of property instead of user rights would be a major step to settle the issue on the respect of community rights once and for all.

VPA negotiations and impact on communities

The idea of a constant participation of external actors, especially civil society, is not yet readily accepted by Government representatives who are however supposed to apply general policy guidelines and regulatory provisions. Civil society and community organizations practically have to force their way into participating in the negotiation process. Participatory management as a method of governance still has a long way to go even though prescribed by regulatory instruments and public policies.

At the start of negotiations, the European party had called the attention of the Government to the need to comply with its principles by involving civil society in discussions. This reminder was not
very much welcomed by the authorities and their acceptance materialized by granting civil society and rural communities the right to two representatives only. Also, Government sought to exclude timber sector unions from negotiations. Civil society on its part formed a national coalition with branches in regions and chose to be represented by a technical expert and a focal point selected in collaboration with the various components of civil society.

Noticeable results of the approach adopted by civil society organizations to date involve the following: i) presenting a unified front to speak with one voice through its representatives, bearing in mind that Government is represented in greater numbers and holds a hegemonic position, ii) supporting the views of stakeholders that seem to converge with theirs so as to create strategic alliances; iii) insisting on internal training (capacity building for peers and their respective organizations).

At the current stage of VPA negotiations, the legality grid clearly mainstreams community rights. It is provides for any owner of a forest permit or any logging company to conduct all environment impact studies specified in the legislation in force,\(^{18}\) to protect community rights in relation to forest management, and more specifically to ensure that planned development operations comply with regulations.\(^{19}\) Particularly, principle 9 is fully dedicated to the respect of community rights (customary user rights, rights of access to forest resources, land rights), to which stakeholders in the timber sector are required to comply.\(^{20}\) Principles 3, 5, and 9 of the VPA legality framework are undoubtedly the result of the relentless insistence of CSO representatives to accurately reflect the concerns of rural communities and civil society organizations on the consideration of the rights of these people. Nevertheless, as negotiations have been suspended, there is cause to fear that Government’s does apply the few improvements made and recorded in the FLEGT legality grid.

**Gabon’s National Climate Strategy and its impact on community rights**

Gabon ratified the UN Framework Convention on Climate Change (UNFCCC) on 21 January 1998. Under the REDD+ process, Gabon validated its R-PIN in 2008 and the R-PP financing agreement was signed in September 2009. The REDD+ process was stuck at this stage due not only to the political transition taking place in the country at the time, but also due to the new climate vision and strategy developed subsequently by the new leaders in late 2009. As concerns stakeholder involvement in the development of the R-PIN, apart from international NGOs working in Gabon and some consultancies, national civil society and communities have never been involved in the preparation of this document and even less in the subsequent discussions for the development of a

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19 Idem
20 Idem
national policy on climate change. Apart from the creation of a Climate Council, whose management is not transparent, the REDD+ process has not really started in Gabon. In any case, Government is not providing any information in this regard. A framework law on sustainable development was adopted in Cabinet, but is still discussed at the Environment and Sustainable Development Committee of the National Assembly and is not yet public.

Concerning its content, the R-PIN neither addresses the rights of communities nor the strategies and other instruments developed subsequently. Only the access right is alluded to, under certain conditions. The R-PIN provided that informing and consulting communities would be done based on the sustainable management approach to forest exploitation or the framework for environmental and social impact studies. Nevertheless, civil society observes that allocation of new concessions for agro-industrial plantations was done without consulting the communities likely to be affected by these projects. In Olam Gabon plantations for instance, participatory mapping activities with communities were only initiated later on, whereas plantation activities had begun much earlier.

Ongoing or future political and legal reforms and their impact on communities

At the political level, it is still too early to identify the reforms resulting from the FLEGT
process and the VPA being negotiated. The launch of negotiations is however an expression of Government's will to reform the forest management framework, as expressed since 2010, with the establishment of the National Climate Council and the Environment and Sustainable Development Code. That notwithstanding, it should be noted that no particular emphasis is laid on the issue of community rights. These reforms make no particular mention of the rights of communities, apart from user rights.

At the legislative level, the only reform going on is the bill on Sustainable Development being discussed at the National Assembly. In substance however, one notes that the bill aims to establish ecological compensation mechanisms and paves the way for the formalization of a right to pollute. Therefore, any activity harmful to the environment and surrounding communities could be justified or validated following a commitment to compensate. As such, this law is very vague. Participatory management is not explained. Nowhere does it mention regional planning nor consultation tools such as the principle of Free, Prior and Informed Consent.

The future multisectoral reforms process could however offer a good opportunity to address the issue of community rights. Hence, for reforms dealing with the timber sector, ongoing discussions are a step towards the inclusion of the community right to benefit from the development of the forests they share with the concession-holders.

Similarly, regarding forest management and benefit sharing, it is important to highlight ongoing processes in the forestry administration with a view to finding solutions for the implementation of related terms and conditions. On these two points, discussions with officials of the Forestry Development Department entertain the hope of a better future to the issue of community rights. Community forests have been advocated for several years. Finally, if civil society amendments are taken into consideration, the adoption of the framework law on Sustainable Development may enable a better recognition of community rights to land and resources (different types of credits). The development of the land use Plan could be an opportunity to formalize the Rural Forest Estate, which is usually reserved primarily for community activities.

In conclusion, it can be said that it is the civil society that brought the concerns of communities to the VPA negotiation table and, despite the deadlock in the process, significant progress can be noted as concerns the possible involvement of communities in forest management at the national level. Administrative officials now accept that civil society organizations should take part in discussions on sustainable forest management. Concrete processes such as the draft implementation decree referred at Article 251, the draft template of terms and conditions, and the first allocations of community forests, are underway to ensure that the rights of communities are taken into account.
DRC’s forests include the second tropical forest carbon stocks in the world and about sixty million hectares of timber, i.e. half the area of Africa’s tropical forest potential. 70% of the country’s population is rural and depends on the forest for their livelihoods. This makes it all the more necessary for forests to be managed not only sustainably, but in a way that respects the rights of local and indigenous communities.

The issues of forest governance in the DRC are very alarming. It was only in 2002, with the enactment of a forest law, that the country started to streamline its forestry sector. In 2002, more than half of forest concessions were repealed, and a moratorium imposed on the granting of new titles. The moratorium is not being complied with as new titles have been granted illegally. However, in 2011, following a regulatory process allowing for the conversion of existing forest titles into concession agreements, only 80 of the 156 existing forest titles were deemed convertible. A report by RRN talks of companies whose forest concession agreements were approved even when...
the social clauses signed with communities did not meet the required standards\textsuperscript{21}. At the same time, informal artisanal logging, which was initially intended to benefit local communities, has been for the most part diverted to industrial loggers\textsuperscript{22}. More than 80% of the timber produced in the DRC is alleged to be from informal sources\textsuperscript{23}.

The draft decree on local community forests, which has been ready for more than three years now, has yet to be signed by the Prime Minister. The text, in its current form, is said to be a major step towards safeguarding the land rights of local communities, which rights are also under threat from the contradictions between different laws in force.\textsuperscript{24} As of now, only user rights are recognized by the Forestry Code.\textsuperscript{25} There is also no explicit reference to Free, Informed and Prior Consent in Congo’s legislative framework, including the law on fundamental environmental principles adopted in 2009.\textsuperscript{26}

**VPA negotiations and their impact on community rights**

It was only in February 2011 that the DRC started negotiating a Voluntary Partnership Agreement with the EU to improve governance and transparency in forest exploitation across the country. The legality grid on forest concessions was adopted in September 2011 before negotiations were suspended for a whole year. They were only resumed in September 2012, but seem to be making very slow progress.

In May 2011, in collaboration with the FAO, the NGO CEDEN held a workshop to kick-start the civil society mobilization for the FLEGT process in DRC. During the workshop, Government formally invited the said civil society to join the VPA negotiation process.\textsuperscript{27} CSOs are represented by three delegates out of a total of 33 in the Technical Negotiation Committee (TNC). Faced with this under-representation on the Committee, the civil society united into a platform to ensure a flow of information between the TNC and civil society members outside the negotiation sessions, to specify its role in the DRC FLEGT process and finally to participate in the implementation once the VPA was signed by the parties. The legality grid for industrial forest concessions developed by the TNC is based on six complementary principles covering all the legal and regulatory provisions that must be complied for logging in these concessions, as well as the timber products derived from them, to be deemed legal. It is Principle 3 of those six principles that mainstreams community rights. This


\textsuperscript{25} Idem

\textsuperscript{26} Democratic Republic of Cong (2011), Law No.011/09 of 19 July 2011 to lay down Fundamental Principles of environmental protection.

principle stipulates that: “The entity respects the rights of local communities and indigenous peoples, as well as those of its workers”\textsuperscript{28}, and its criteria respectively specify that the entity respects the individual rights of its workers (3.1), respects the collective rights of its workers (3.2) and respects the rights of local communities and indigenous peoples (3.3).

**REDD+ and its impacts on community rights**

The REDD+ process was launched in 2009. The R-PP was approved in March 2010 and the country was selected as a pilot FIP country in 2010, with the ambition to launch REDD+ activities in 2013. This process was delayed and the national REDD+ strategy remains incomplete, though the country has all the same entered the second phase of the REDD+ process, that of investment, with support from the FIP. The civil society participated in the process from the outset by creating the GTCR (REDD+ climate working group), a platform comprising more than one hundred organizations, with the goal to ensure the recognition and protection of local and indigenous community rights.\textsuperscript{29} The civil society also has three representatives on the REDD+ National Committee. The start of the process thus aroused a degree of excitement, and the consultative nature of the process is even

\textsuperscript{28} The Democratic Republic of Congo and the European Commission (draft), legality grid of the Voluntary Partnership Agreement, Principle 3.

considered as an example for other countries of the region.30

In their evaluation report, Well Grounded and Samuel Nnah Ndobe31 underscore that active participation from the civil society started from the start of discussions on REDD+ in the DRC, and that the participation had an impact on the content of key phases: R-PIN, R-PP and the REDD+ national framework strategy. Several civil society organizations from all provinces of the DRC, as well as organizations working on several topics, were involved in the process. Though not substantial, this involvement was however notable because issues such as the land rights of local communities and indigenous peoples, participatory land use planning, community management of forests and good governance got special attention in the process thanks to the civil society. The DRC was thus the first country in Central Africa to secure the validation of its R-PP in March 2010,

It should nevertheless be pointed out that consultations focused mainly on Kinshasa – organizations from other provinces were not only few, but were also invited on very rare occasions – this continues to be an issue for a country the size of the DRC. This notwithstanding, the process prepared an ambitious “Information, Education and Communication” program, which has never made any significant progress.32 There however were attempts to enhance the recognition of FPIC in the process, with a guide prepared by the World Wildlife Fund in 201133 and a workshop organized by Forest People Program at the end of 2012. In view of the risks REDD+ may present for local communities and indigenous peoples, the civil society, with financial assistance from UN-REDD+, came up with efficient social and environmental safeguard measures to support the design and implementation of a REDD+ program that respects the rights of indigenous peoples and local communities. These safeguards are now being tested across the country, but it is still very unclear whether they will get official recognition and form part of the legal framework.

The Democratic Republic of Congo’s REDD+ framework strategy clearly paints a vision of a future in which the DRC’s forest is better managed, better preserved, and whose sustainable exploitation contributes to the country’s rapid development.34 However, this remains a mere intention. The gamut of legal and regulatory instruments still has to ensure that community rights are mainstreamed through access to land and resources, leading REDD+ projects on the field and equitably sharing benefits derived from REDD+ projects. Since 2009, the program has been implemented at a very sustained pace. The national REDD+ process recorded many successes and continues to be well positioned to enter phase 2 quickly.

This process requires strong responsiveness, a great capacity to adjust, as well as adaptive management in order to be well positioned to grasp opportunities and meet emerging challenges. However, the National Committee neither seems to function correctly nor to allow the civil society, which is under-represented therein and ill-informed, to have a genuine impact.35 Some of the committee decisions, including the adoption of FPIC guidelines, were later challenged by the National Coordination, a team of experts coordinated by the Ministry of the Environment, Nature Conservation

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32 Hoefsloot (2012), Mid-term independent assessment of the national preparedness for REDD+ in the DRC, Kinshasa (DRC) and Arnhem (the Netherlands), p.6.
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and Tourism (MECNT). The marginalization of the National Committee in favor of the National Coordination resulted in the civil society withdrawing from REDD+ thematic working groups in June 2012. The ministerial decree on the approval of REDD+ projects also excludes the civil society and the communities likely to benefit from such projects. The civil society is thus left feeling that this reduction in its involvement in the process shows that the Government mainly held consultations to join the Forest Investment Program. This was confirmed by discussions on environmental and social safeguards, during which civil society representatives once more felt sidelined. Finally, there is a genuine risk that local communities will not only be excluded from REDD+ benefits, since issues relating to the sharing of benefits have not been settled, but that they will be REDD+ main victims, since they are portrayed in studies as those mainly responsible for deforestation.

Ongoing political and legal reforms
and their impact on communities

In the DRC, the structural reforms necessary to improve forest governance and the recognition of community rights have been expected for many years. While some timid efforts have been made, the fact remains that the most important ones, such as those relating to land tenure, community forestry, regional planning, etc., are not coming as quickly as expected. Also, the civil society and local and indigenous communities are not always listened to. Some examples include:

- the signature of contracts for the 80 forest titles declared to be convertible – information on this remains fragmented, though it appears that the bulk of the contracts were signed even when the civil society had highlighted numerous companies that had failed to comply with legal provisions on reaching agreements on social clauses with local communities;

- micro zoning of the territory to taking into account the usage and customary rights of communities is highly awaited, yet there is very limited communication from the Government on progress on this issue.

In short, transparency and consultation issues, including at the local level, are a source of great concern because the Government is unable to provide comprehensive information on a regular basis. Concerning REDD+, the ministerial order laying down the procedure for the approval of REDD+ projects sets a requirement that for a project to be approved, the communities concerned by such a project must be informed. Just like the consultation mentioned in the Forestry Code, it is not a guarantee of FPIC and therefore did not help move things forward.

37 Idem.
38 Idem.
39 Democratic Republic of Congo (2012), order No.004/CAB/MIN/ECN-T/012 of 15 February 2012, chapter 2 article 11(8).
Preliminary assessment of VPAs and REDD+ impact on communities

After the initial expectations, the euphoria caused by early successes or disappointed hopes and future challenges referred to above, now is the time for a more accurate preliminary assessment of the REDD+ and VPA processes with regards to improvements in the rights of communities.

Lessons learned

As explained in the introduction, ACRN focusses both on the procedural and the substantive rights of communities. We will successively and in greater detail assess the VPA and REDD+ processes in the various countries based on these two categories of rights.

Procedural rights

It seems undeniable that one of the first major successes is the establishment of a genuinely participatory process in which the government recognizes the civil society’s role in forest management and accepts to sit at the same table with it. This is hardly a given in all the countries previously studied, but the fact that the civil society at least had a formal role to play is a major success made possible by these multilateral processes in which international partners are able to make governments change their stands.

Similarly, this window of opportunity to participate in forest governance presented the civil society with a chance to organize itself and build its capacities. Earlier, we saw platforms being established in all countries with the aim of putting forward unified positions and building their capacities.

Finally, VPAs provided the opportunity to strengthen the legal framework on transparency and disclosure, even though Governments have yet to honor their commitments in this respect. Concerning governance, VPAs led to significant progress in terms of the capacity building for the civil society and communities, the provision of a platform for discussing issues that go far beyond the framework of forestry governance alone, etc. In the Democratic Republic of Congo for instance, the legality grid has already provided for principles on participation, consultation and sharing of benefits which, however, must be translated into regulatory provisions during the preparation of additional instruments on forest management.

While recognizing these achievements, the five studies however mention major weaknesses...
in the negotiation process. The most significant was the low direct involvement of communities. It’s true that the civil society took on the role of advocate of communities and sought to represent and safeguard their interests at best, as well as discuss progress in the process with them. However, it was conceivable that Governments and the European Union would take the time to directly involve these communities. This is supported by the fact that while some highlight their low technical capacities to participate in negotiations, the fact remains that as a major player in the management of forests and the major victim of their bad governance, forest communities are more than legitimate participants in processes that have a direct impact on their lifestyle.

Yet, the case of Liberia, not covered in this report, qualifies the idea that it is too difficult to directly involve communities. Seven representatives from communities were part of the VPA negotiation panel, in addition to four civil society representatives, at the insistence of the latter. The participation of communities was made possible by the production of a community map – to show and safeguard their rights to forests - and by the existence of Community Forest Development Committees (CFDCs) – which appointed their own representatives to take part in negotiations.42

The issue of participation, or procedural rights, is a precondition for achieving progress in the other community rights. Once invited to negotiations, the civil society can table issues linked to the rights of communities. As noted in an upcoming joint report by RRI and Forest Trends on the lessons learned from civil society efforts to promote rights in VPAs, “civil society organizations in most VPA countries consider that the VPA process was very important in getting on the agenda customary rights issues and expanding the political space for promoting rights. This is why procedural rights are fundamental and constitute a precondition for achieving progress in land or other rights”43. It is thus equally important to ensure that the civil society maintains a formal role in the implementation of the VPA, even if we could not help but notice that this had not become a “natural” practice with governments, as shown by the controversies surrounding the participation of Ghana’s civil society in the Timber Validation Council or verification protocols, and the fact that the civil society had to withdraw its request to participate in the implementation of Congo’s VPA.

While VPA 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. A key lesson here is that REDD+ seems to have refocused forest governance, on account of its technical nature and sums of money potentially involved, as was feared at the inception of the process.44 The lack of an international partner similar to the European Union in the VPAs also removes the possibility of exerting pressure.

42 RRI Forest Trends (draft), Lessons Learned from Civil Society Efforts to Promote Community (Forest) Resource Rights and other Rights in Voluntary Partnership Agreements.
43 RRI Forest Trends (draft), Lessons Learned from Civil Society Efforts to Promote Community (Forest) Resource Rights and other Rights in Voluntary Partnership Agreements, p.35-36.
Substantive rights

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. Also worthy of note is the fact that the VPA includes 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 continuous efforts led to the inclusion of several articles promoting the rights of communities in the legality grid. In Ghana, the VPA considers Timber Use Contracts (TUCs) as the main source of legal timber, while TUCs take the rights of communities more into account. Farmers will thus have the opportunity of withdrawing their consent from logging if their rights are violated.

However, the main source of hope from the VPAs is that they must all result in an overall review of forest laws and policies of the respective countries, with a new forest policy for Ghana, a new Forestry Code in Congo, and a new forest law in Cameroon. In Congo, civil society participation and advocacy made the other stakeholders realize the need to overhaul the legal framework, which is fraught with contradictions. As in the other countries, this could make it possible to tackle structural issues such as land rights, the sharing of benefits, FPIC, or community forestry because the VPAs have so far had only limited direct impacts on these issues. Issues of tree ownership in Ghana, and community forestry in the Democratic Republic of Congo, seem to stand a good chance of being addressed. However, the example from Cameroon, which is the country that made the most progress in the process to revise its forestry law, calls for prudence because the draft new forest bill does not contain major progress in terms of promoting the rights of communities. This observation also applies to REDD+, regarding which there should be skepticism, given that participation and consultation were limited, and there was no concrete progress. An important point worth underscoring here concerning REDD+ ability to act as a lever for changing the land and forest tenure situation of communities is that it is marginal because of the weak institutional power of ministries in charge of the process in the different countries. For example, Ministries of the Environment (very often responsible for the REDD+ process) have little room for maneuver over “stronger” ministries such as those of mines or agriculture which continue to strip communities of their land for the benefit of foreign investors. Here we see the importance of procedural issues in promoting substantive rights.

Finally, another important aspect regarding the impact of VPAs on communities has to do with issues of legality. Communities are often the first victims of illegal acts committed during industrial logging, and conflicts of interest between perpetrators of such acts and the authorities just as often prevent the communities from seeing justice served. In trying to ensure that timber from VPA
countries being exported to the European Union is legal, the fact must not be neglected that VPAs can therefore limit such abuses against communities.

Also, the civil society and communities themselves have a fundamental role to play in ensuring that legality checks are efficient. The formal structures of VPAs provide at least two levels of monitoring: through the timber legality verification structures they establish and in the provisions they create to check the functioning of legality verification systems. On top of this addition, the provisions of VPAs concerning disclosures and complaints mechanisms offer an opportunity for external audit. However, there are strong reasons for thinking that these structures by themselves cannot be enough to guarantee legality in all circumstances. This is why every VPA agreed so far contains some references to the possibility for independent monitoring by the civil society, which generally implies direct links between NGOs doing monitoring and local communities, which are the first whistle-blowers. A recent report reviewing independent monitoring initiatives rightly concludes in this regard that:

The precise structure that emerges from a given country, the remit and mode of operation of the monitor, the relationship between the monitor and the authorities, and the degree of recognition of the monitor in the VPA will vary with the country’s circumstances and change over time. But the overall conclusion is clear: effective independent monitoring will be essential for the credibility of the VPAs and the timber products that must be accompanied by a FLEGT authorization to be considered as legal.

Apart from this possibility for communities and the civil society to protect their rights by taking part in monitoring initiatives, VPAs also offer an important forum for putting pressure on Governments to address significant governance failures. Global Witness showed that, in at least four countries (Cameroon, DRC, Ghana, and Liberia), systematic abuses were committed to divert forest permits initially intended for small local operators to industrial logging. This had some dramatic impacts on communities, which were not only deprived of the possibility of getting this type of permit, but also saw their rights completely alienated and their livelihoods threatened. This was particularly the case in Liberia, where the abuse of Private Use Permits led to the conclusion of abusive agreements and the grabbing by logging companies of millions of hectares of forests normally intended to be covered by the Community Rights Law. In all of these cases, the existence of VPAs enabled the civil society, once it uncovered the abuses, to report them to the highest political level and to benefit from pressure from the European Union to get responses from Governments. VPAs thus make it possible to tackle problems of corruption and bad governance that especially impact communities,

46 Idem
even though the solutions provided so far have not necessarily been of a scale consistent with what is at stake.  

### Challenges

The main challenge facing VPAs is their implementation, at a time when concrete measures to translate commitments into practice are slow in coming. At the level of the legality verification system alone, there so far is only one authority responsible for issuing licenses in Ghana and one independent auditor in Cameroon. Similarly, it will be necessary to have a civil society that can implement independent monitoring programs everywhere. While the civil society thus cannot take the lead in the process and revive the political determination that disappeared following the signing of agreements, it can already get set for the challenges of implementation.

Next, it will be necessary that it maintains heightened vigilance over the other VPA commitments, in particular reform of the legal framework on forests, since such reforms are best placed to structurally improve the rights of communities. Those active in the African civil society must bear in mind the example from Cameroon, where a process to revise the forestry law, albeit having started off well, was suddenly sped up and then closed at the level of the Government, resulting in a draft instrument very similar to old law that was much decried, especially with regard to the rights of communities. However, Cameroon’s civil society’s response at the United Nations Convention on the Elimination of all forms of Racial Discrimination, which was approved by the latter, shows that other remedies are always available and that a setback should not weaken the determination of NGOs. Likewise, the adoption of legislation on the rights of communities in Congo (and in Liberia earlier) is also a positive example to emulate.

Regarding the REDD+ process, there are at least two types of challenges linked to the rights of local and indigenous communities. While the REDD+ process seems to support FLEGT by focusing more on local, indigenous, vulnerable and underprivileged communities, the fact remains that its conservative and more centralized approach to forest management is a major risk. Still to be developed in each REDD+ country are strong and efficient safeguard measures for curbing negative impacts, securing the full recognition of customary rights and designing mechanisms for sharing benefits related to such rights. The subsidiary risk is that national REDD+ mechanisms may specifically worsen the marginalization of women and indigenous and vulnerable communities if the process does not understand the subtlety of their specific characteristics. Also of crucial importance is the issue of building and complying with robust and efficient safeguards. The civil society will also have to utilize all the resources at its disposal to ensure more openness in the REDD+ process. This will help ensure that consultations conducted in recent years for the VPAs or the preparation of R-PPs are not a mere parenthesis.

One of the obstacles preventing the VPA achievements in terms of participation from being transposed to REDD+ is the absence of a link between the two processes at the level of Governments. Country surveys point out that in general, the processes are dissociated, even when they fall under the responsibility of the same ministry, as in the case in the DRC. Promoting intra-governmental discussions is thus one of the challenges to take up.

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48 Ibid, p.28.
The challenges reviewed in this document are not insurmountable. A well-organized response in VPA countries could meet a good number of them. In spite of the different national contexts, the following recommendations can be made to Governments of the African countries involved in the VPAs:

- 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 effectively 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.

49 For recommendations made to the EU, see: FERN (2013), Improving forest governance: A comparison of FLEGT VPAs and their impact.
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The Africa Community Rights Network (ARCN) was launched in 2008 and now includes some forty NGOs from more than ten forest countries in sub-Saharan Africa: Cameroon, Central African Republic, Congo, Democratic Republic of Congo, Gabon, Ghana, Cote d’Ivoire, Burkina Faso and Liberia. ARCN also works in partnership with European and Asian organizations. It advocates for a more democratic forest management and a governance which is more respectful of the local community rights. ACRN results from the will of those African NGOs to use the FLEGT-VPA (Voluntary Partnership Agreement on Forest Law Enforcement, Governance and trade in timber and derived products) between their governments and the EU as a platform to promote community rights. The African NGOs and their European partners quickly realized the need to work together to be more efficient, engage more with decision-makers and learn from their respective experiences. In addition to the VPAs, ACRN is also interested in the REDD+ process (Reducing emissions from deforestation and forest degradation, through conservation, sustainable forest management and enhancement of forest carbon stocks). Monitoring these processes is key, but neither limits nor shapes the action of ACRN whose overarching objective is to enhance recognition and security of the forest and land rights of vulnerable communities.

51 The founding members of the Network are the Center for the Environment and Development (CED – Cameroon), Civic Response (Ghana), Sustainable Development Institute (SDI – Liberia), Congolese Human Rights Observatory (OCDH – Congo) and Brainforest (Gabon).
Study report

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lessons learned and perspectives