Free, Prior and Informed Consent and Sustainable Forest Management in the Congo Basin

A Feasibility Study conducted in the Democratic Republic of Congo, Republic of Congo and Gabon regarding the Operationalisation of FSC Principles 2 and 3 in the Congo Basin

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By Jerome Lewis, Luke Freeman and Sophie Borreill

July 2008

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Foreword

Commercial timber exploitation in the tropics has been the subject of heated discussion over recent decades, often leading to polarised viewpoints. Many efforts have been made to resolve the differences in opinions and the conflicting demands of different stakeholders, but huge challenges remain. The increased global awareness of climate change and the need to retain tropical forest cover is a further incentive to work towards ensuring the sustainable management of tropical forests.

While experience is growing on how to reduce the negative impacts of forestry activities on forest ecosystems, and the protection of huge forest areas is widely discussed, an important group of stakeholders has often been ignored. These are the people who live in and immediately around the forest - people who often do not have the necessary power and influence to make their voices heard. They commonly see themselves as the true owners and guardians of the forest, at the same time as having the right to benefit from any harvesting that takes place. Forestry companies, by contrast, consider that they have full rights to harvest the forest if they have gone through the procedure of gaining official permission from the state – which according to the national constitution, is the owner of the land. These different judicial perceptions can result in conflict – sometimes even of a violent nature.

International laws increasingly require that the rights of indigenous peoples are recognised. However, the adoption of such laws into national legislation is often still pending. Moreover, there is only limited experience in finding peaceful ways to resolve differences between stakeholders with such different interests as those of the forest peoples and the forestry companies.

Against this setting, the concept of free, prior and informed consent (FPIC) provides a possible avenue for developing mutual understanding. FPIC is seen as an appropriate tool for defining and regulating contractual relationships; in other words, it can guide forest management to ensure an open, ongoing and equitable relationship between the different stakeholders. Negotiating consent means that forest peoples have the right to say 'no'. This is of course a challenge for forestry companies. However, far from being the end to a negotiation process, the right to deny consent can represent the start of discussions and a powerful means to build the confidence of local communities.

This report documents the findings of a first, preliminary study that was conducted in the Congo Basin to test how FPIC can be implemented in practice. It was undertaken in collaboration with five forestry companies and the local people living in and around the forest concessions, and entailed a number of field visits during 2007 and 2008. The field work was conducted by Anthroscape, in the persons of Jerome Lewis, Luke Freeman and Sophie Borreill, whose professional input was enriched by their many years of anthropological experience in Africa and especially the Congo Basin.

Voluntary schemes driven by markets, such as the certification system of the Forest Stewardship Council (FSC) that requires free and informed consent, represent an excellent opportunity to test and to improve the FPIC concept. However, such measures should finally result in legislative change that resolves any contradictions between the rights of the indigenous and local population and existing national legislation, and leads to a full recognition of the former.

It must be stressed that this report represents a contribution to the debate over the use of FPIC in forest management, rather than a final solution. It sets out the results of preliminary investigations, and provides a total of twelve recommendations. It was agreed by all those involved in the study that a more comprehensive field testing is a much-needed next step. We hope that this will indeed be the outcome. In the meanwhile, we are grateful to SECO (Swiss Department for Economic Affairs), the foundation Art for Tropical Forests, and the Federal Department of Foreign Affairs for their financial support for this study. We also much appreciated the willingness of the five forest companies involved to not only participate and provide logistical support at the field level, but also to offer pertinent comments and insights at all stages in the process. Finally, we acknowledge the cultural insights and knowledge provided by all the local people who participated. We trust that FPIC will eventually become a tool that will ensure their voices are heard in decision-making, support sustainable forest management, and lead to a fairer share of its benefits for all.

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ACKNOWLEDGEMENTS

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RECOMMENDATIONS TO SUPPORT THE INTEGRATION OF FPIC INTO THE LEGAL, COMMERCIAL AND SOCIAL CONTEXT OF FOREST MANAGEMENT IN THE CONGO BASIN

ABBREVIATIONS

ATIBT	International Technical Tropical Timber Association
CAR	Central African Republic
CBD	Convention on Biological Diversity
CEB	Compagnie Equatoriale des Bois
CFT	Compagnie Forèstiere de Tshela
CIB	Congolaise Industrielle des Bois
DRC	Democratic Republic of Congo
FPIC	Free, prior and informed consent
FSC	Forest Stewardship Council
GDP	Gross Domestic Product
GPS	Global Positioning System
IFO	Industrie Forèstiere d'Ouesso
ITTO	International Tropical Timber Organisation
NGO	Non-Governmental Organisation
OCDH	Observatoire Congolaise des Droits de l'Homme
OECD	Organisation for Economic Co-operation and Development
RC	Republic of Congo
RIL	Reduced Impact Logging
SECO	Swiss State Secretariat for Economic Affairs
SFM	Sustainable Forest Management
TTAP	Timber Trade Action Plan
UFA	Unité Forestière d'Aménagement
UN	United Nations
UNDP	United Nations Development Programme
WWF	World Wide Fund for Nature

EXECUTIVE SUMMARY

This document is the result of a study into how the notion of free, prior and informed consent (FPIC) can be put into practice in forestry concessions in the Congo Basin. FPIC is a concept that is gaining acceptance as a way of defining and regulating contractual relationships. It is applied in contexts such as medical intervention, social welfare, and, in this case, resource management.

FPIC is increasingly seen as an appropriate tool for managing the relationship between indigenous peoples and companies wishing to exploit natural resources on the land where they live. This report is the first to consider the applicability of FPIC within the context of industrial forestry exploitation in the Congo Basin. It presents FPIC as a process to guide forestry management so as to ensure open, ongoing and equitable relationships between forest peoples and forestry companies. Such relationships are the basis for making long-term socio-economic development a consequence of forestry operations. The FPIC approach requires, above all, that forest people are aware of the issues surrounding industrial forest exploitation so that they can make informed decisions about their role in forest management. This reduces negative impacts, enhances positive ones and ensures equitable sharing of benefits. The report shows how this approach is advantageous to both forest populations and forestry companies implementing it.

This report is the result of field research carried out in seven concessions of five European forestry companies operating in Gabon, the Republic of Congo and the Democratic Republic of Congo. It presents an overview of the major issues relating to consent and the role of local populations in forest management. This is followed by a set of recommendations for the implementation of FPIC in forestry concessions in the Congo Basin. These recommendations have been

specifically elaborated and proposed in that context, although some will undoubtedly be relevant to the management of other resources and to other regions.

The report opens with an introduction to the concept of FPIC before presenting the political and economic context of the Congo Basin that frames and constrains its application. Important factors to be considered here include the political instability of the region; the role of the forest in local and national economies; the legal framework pertaining to forestry concessions; and the diversity of local forest peoples.

Forest populations are divided into two groups: settled Bantu and Ubangian farmers and fishers, and semi-nomadic Pygmy hunter-gatherers. The report discusses the rights and recognition of indigenous peoples, paying particular attention to issues specific to Pygmy populations, such as mobility and marginalisation. This places a group usually peripheral to the state at the heart of forest management.

The research was carried out through visiting concessions and holding in-depth discussions with both industrial forestry managers and local people. The wide range of topics and material researched are presented here as seven related issues which, taken together, cover the main aspects of the social dimension of forest management. These issues are: the notion of consent; capacity building of forestry companies' social teams; communication with and informing of forest populations; participation of forest populations in consent negotiations; forest resource use and livelihoods; forest management partnerships; and transparency.

In presenting these issues the report identifies both strengths and weaknesses in current approaches to the social aspects of forest management. However,

the aim is not to critique current practices, but to present of a set of working guidelines for the implementation of the FPIC approach, and thus provoke further discussion about how best to achieve socially sustainable, equitable forest management.

The FPIC approach is characterised by its organic nature. The evidence that free, prior and informed consent has been achieved lies less in a signed document than in the implementation of procedures to maintain an open and ongoing relationship that is mutually satisfactory to forest populations and forestry companies. With this relationship established, information can be exchanged, problems resolved, benefits shared and profits made. FPIC is a work in progress.

INTRODUCTION

What is FPIC and why is it important?

Free, prior and informed consent (FPIC) is necessary because industrial forest exploitation has great environmental and social impact on forest people's lives. It impacts upon the availability of resources and changes the way the forest is managed. The objective of FPIC is to ensure that if industrial forestry takes place, resources are shared fairly and that the forest is managed equitably and sustainably.

In order for this to happen, governments and forestry companies must formally recognise forest dwellers' legal right to a say in all important decisions concerning industrial forestry exploitation in their forest areas. The first of these is whether it happens at all. Consent is only meaningful if the party granting it truly holds the power to refuse it. All the other issues surrounding free, prior and informed consent proceed from this.

It then follows that if forest people do give consent for industrial exploitation they should be guaranteed the opportunity for fair compensation, sustainable access to resources, and a role in forest management as it affects their area, if they wish. The FPIC process described in this document is aimed at achieving this state of affairs.

FPIC is recognised internationally by accords such as the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organisation Convention 169, and the Convention on Biological Diversity. This widespread acceptance of the principle of FPIC urgently requires incorporation into national laws in the Congo Basin. The following definition of FPIC comes from the Commission on Human Rights, 2004.

'Free, prior and informed consent recognises indigenous peoples' inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent.'

As this definition acknowledges, the recognition of land rights and the protection of resources are absolutely central to FPIC. Without this, forestry operations occurring on forest people's land cannot be equitable. The definition also underlines the importance of the relationship between forest peoples and other stakeholders (in this case industrial forestry companies and government agencies). Throughout this discussion we emphasise the importance of building relationships between industrial forestry companies and local forest dwellers. These relationships are both a cause and an effect of the FPIC process: good relationships are key to achieving consent; and consent produces good relationships.

As industrial forestry exploitation is an ongoing process, it makes sense to consider FPIC as an ongoing process, too. There are two core elements in that process. The first is the provision to local people of all information relevant to making informed decisions about issues resulting from industrial forestry. The second is thorough consultation between the company and the community. At no point during this process should the community feel any pressure to consent to systems of forestry management that they are not happy with. Throughout the process they should be aware that they have the right to refuse industrial exploitation in their forest area. This has implications for the relationship between forestry companies and their host state which are discussed in the report.

On paper these principles may seem straightforward. Putting them into practice is a complex affair, particularly in view of the weak support and engagement from national governments, wider political and economic instability, and the varied social and cultural context of the Congo Basin.

The Congo Basin and FPIC

The forest area of the Congo Basin covers the Democratic Republic of Congo (DRC), Republic of Congo (RC), Angola, Equatorial Guinea, Central African Republic (CAR), Cameroon and Gabon. It is the second largest block of tropical forest in the world. The total forest area is estimated to be between 187 and 207 million hectares (ITTO 2006). This forest is of critical value for the global environment and for millions of local people.

The Congo Basin has enormous wealth in minerals and timber. But severe political instability in recent decades has led to high levels of poverty. The political and economic problems are exacerbated by some of the highest levels of corruption in the world. Congo Basin nations ranked poorly in transparency in the most recent 'Corruption Perceptions Index': out of a total of 179 countries Gabon is 84th, Cameroon 138th, the RC 150th and the DRC 168th (Transparency International 2007).

In recent decades the DRC, Angola, RC and CAR have experienced violent armed conflicts, major human rights violations, internal displacement of peoples, uncontrolled economic exploitation (particularly in mining and forestry), and overall poor law enforcement and governance. The comparative peace and stability in the basin since 2006 represents a huge opportunity for more equitable development. However, it also offers an opening for powerful interest groups in the region to use peace-time stability to organise the harvest of forest resources for their personal gain at a previously unseen level of exploitation. For governments and international agencies, it is a challenging task to focus on long-term issues such as sustainable forest management or the rights of forest people when there are other more immediate concerns, such as pressing humanitarian crises.

Despite these political and economic constraints, environmentally and socially sustainable forest management is still possible and sought after. In line with other good governance initiatives, Cameroon, the DRC and RC have all recently brought in legislation to promote the participation of local people in forest management. This is also a requirement of Forest Stewardship Council (FSC) certification, the most widely accepted measure of ethical and environmentally sound forestry. As resources in this troubled region become ever scarcer and more hotly contested, there is an increasing need for initiatives contributing to long-term peace and prosperity for all its people. As a mechanism for the equitable management of resources FPIC is well suited to this task. This report shows how and why.

There are certain social and cultural features of the Congo Basin that are relevant to the FPIC process elaborated in this document. Most notable of these is the presence of significant populations of Pygmy semi-nomadic hunter-gatherers alongside the sedentary Bantu and Ubangian farming populations. This co-existence results in a sometimes strained relationship between the two groups in which the former are often marginalised, exploited and deemed inferior. At the same time, Pygmies suffer from a lack of recognition of their rights – and even sometimes of their existence as a group – by national governments. At best they remain peripheral to state concerns.

In turn, Pygmies' seasonal mobility and subsistence practices mean that historically contact with government has been infrequent. As with Bantu and Ubangian forest dwellers, they inhabit areas remote

from state infrastructure and influence. When industrial forestry companies gain rights to concessions it is often the companies themselves that are expected – both by local populations and central government itself – to fulfil the state's role of infrastructure provider. This is often explicitly formalised in the lease agreements between governments and forestry companies.

One of the major implications of this low level of state presence or engagement in forest areas is the meagre provision of health or educational institutions for forest people. Governments have mechanisms in place that are supposed to ensure that a proportion of surface taxes go directly to the communities, but there is evidence that this does not occur. Even in rare cases where rural hospitals, health centres or schools exist, Pygmies' nomadic subsistence practices, combined with their economic and social marginalisation, mean that they are unlikely to benefit from health care or to progress in formal education.

At the same time, Pygmies in particular are extremely knowledgeable about the forest and its resources. Their wealth of indigenous knowledge incorporates food sources, subsistence practices, medicinal resources, classification and understanding of flora and fauna, as well as sophisticated systems of religious beliefs and practices that serve to manage their forest resource use sustainably (Lewis 2005). Forest management practices that ignore, sideline or diminish this important indigenous knowledge will be socially and culturally devastating to the Pygmy populations. There is evidence that the current over-reliance on para-military wildlife enforcement is frightening hunter-gatherers out of forests and onto roadsides with attendant health and social problems. Current wildlife law enforcement has been unable to control large scale commercial poaching because it is largely sponsored by local political elites, and the arrival of roads has opened up previously inaccessible forest areas and

has provided access to illegal operators. All of these factors have contributed to the diminishment of livelihood resources and culture of indigenous peoples.

The objectives of this report

The above political, economic, social and cultural realities are all factors which influence the attempt to create equitable and sustainable forest management practices in the region.

The first objective of this report is to highlight particular issues that arise for industrial forestry companies seeking to obtain the free, prior and informed consent (FPIC) of local forest people to their activities.

The second objective of this report is to provide a set of guidelines for implementing procedures to achieve FPIC in forestry concessions in the Congo Basin.

The third objective is to suggest some initial practical steps to assist the integration of FPIC into the legal, commercial and social context of forest management in the Congo Basin.

The fourth and most important objective is to show that rather than being a burden on forestry companies the pursuit of FPIC, when supported by national legislation, is the best means of creating healthy, lasting, open and sustainable relationships between local forest populations and industrial forest companies. This is good for production and good for public relations.

FOREST POPULATIONS IN THE CONGO BASIN

Although the archaeology of Central Africa remains under-studied, recent excavations in the Ituri forest of north-eastern DRC suggest the existence of hunter-gatherers in the area several thousand years before farming was practiced in the region (Mercander et al. 2000). Bernard Clist's (1999: 75-87) important excavations in Gabon show that hunter-gatherers have lived in these areas for at least 100,000 years, with a population of around 2,000 people in the Middle Stone Age increasing to around 26,000 in the Late Stone Age. Whether or not these early hunter-gatherer populations are related to contemporary Pygmy groups remains unknown, but it is clear that Pygmy groups' physical characteristics are especially adapted to the forest environment, and likely to be the result of living in the forest for many centuries if not many millennia (Hiernaux 1975: 117).

The contemporary forest peoples of the Congo Basin can be broadly divided into two different groups: the Bantu and Ubangian farmers and fishers, who live in sedentary settlements, and a wide range of Pygmy groups[1], semi-nomadic hunter-gatherers and former hunter-gatherers, mostly living in the forest. Whilst the Pygmies are generally recognised to be the 'first people' or aboriginal inhabitants, some Bantu have lived in the area for many generations, possibly for as much as 2,000-3,000 years in certain places (Bahuchet and Guillaume 1982; Vansina 1990; Klieman 2003).

Pygmy hunter-gatherer groups use a huge range of different forest species in all areas of their lives – wild game, roots, fruits and other forest foods, religious activities, medicines, materials, craftwork, implements and fuel wood. The major interest of most Bantu and Ubangian farming groups focuses on clearing forest areas for agriculture, although they too use a wide variety of forest products for subsistence purposes, construction, craftwork, traditional medicines and religion, as well as occasional commercial activities (e.g. smoked fish and game, honey, raffia roof tiles, etc). Regular access to high quality forest resources is vital to the livelihoods of the poorest communities living in the Congo Basin, who often depend entirely on these resources.

There are over 26 different Pygmy ethnic groups with differing customs and languages in the Congo Basin (Köhler and Lewis 2002: 278). There is no reliable census data on their population and definitions of who counts as a Pygmy are sometimes blurred by mixed marriages with other groups. Estimates of their number range from 70,000 to 600,000 in the DRC alone – the *Ligue Nationale des Pygmées du Congo* providing the higher figure (Debroux et al. 2007), 70,000-87,000 Batwa in the Great Lakes Region (Lewis 2000: 5), approximately 30,000 Mbendjele – Aka Pygmies in northern Congo and southern CAR, and approximately 40,000 Baka in south eastern Cameron, north eastern Congo and north western Gabon. Large western groups such as the Bongo, Bagyeli and Kola certainly number in the tens of thousands but no reliable estimates of their numbers exist. The Forest People's Programme estimate that there are around half a million Pygmies in the Congo Basin[2]. Despite the absence of accurate figures it is safe to conclude that the Pygmies of Central Africa represent the largest grouping of hunter-gatherers and former hunter-gatherers in the world.

Farmer groups are far more numerous, estimated at around 24 million people[3], and belong to a huge range of different ethnic groups. Contemporary relationships between farmers and hunter-gatherer groups vary greatly, ranging from mutual support and friendship to exploitative patron-client relationships and even mutual avoidance. However, in all places

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A forest-dependent community from Boncoin living in the Republic of Congo. Striking enough it clearly shows the separation of Pygmies (left) and Bantu (right).

Pygmy groups are considered to have a lower status than farmer groups and their relations are often strained. Discrimination against Pygmies is a serious problem. Farming groups politically and economically marginalise Pygmy peoples through negative stereotyping, social exclusion and a denial of their basic rights (Woodburn 1997), and seek to dominate them through a variety of means from cultivating alcohol dependency to ritual incorporation into each other's clans (Köhler and Lewis 2002).

There is clear evidence that this discrimination extends to the state governments of the region as well as to their local representatives (Kenrick and Lewis 2001 and 2004; OCDH 2004). In Cameroon and Republic of Congo, for instance, no Pygmy villages are officially recognised as administrative entities by local government (Lewis 2002: 223; Nelson and Hossack 2003). The perpetuation of discrimination against hunter-gatherers by the state reinforces the discrimination practiced by the rest of the population and has severe consequences for the recognition of Pygmy rights to forest land in the context of forestry and conservation initiatives.

Where Pygmy peoples have access to sufficient forest resources they can resist discrimination effectively through their mobility, which assures them independent access to the resources their livelihoods depend on. However, expanding commercial forest exploitation, in conjunction with the imposition of protected areas, has reduced the quality and quantity of forest resources available to many hunter-gatherer communities. At the same time, commercial activities of all kinds by outsiders have increased – from excessive bushmeat trading to hunting-based tourism and agricultural projects. Left unchecked, these activities can totally disenfranchise Pygmy groups of their forest and resources, leading to

these groups becoming an underclass squatting on deforested land that was once theirs, and forced into marginal employment such as day-labour and begging. This is the case for most Batwa in the Great Lakes Region (Lewis 2000).

Given this extreme vulnerability of weak and impoverished groups of forest people to the activities of outsiders, the formal recognition of local forest rights and greater supportive involvement by governments in assuring just and equitable decision-making processes over how forest resources are shared is very important. Sedentary villagers have more experience participating in local and national government structures and their control of the local economy puts them in a better position to defend their rights than Pygmy groups. Additionally, national laws in the countries included in this study attribute ownership of forest land to the state unless it is *'in use'* – this is defined in terms of activities that transform forest into habitations, farmland or commercial areas. The non-transformative use of hunter-gatherers is not recognised as a use of the forest that confers rights over it. Fisher people have similar difficulties claiming key fishing sites or rivers.

The absence of national legislation that recognises local peoples' traditional rights to forest land (as opposed to farmland or habitations) is the root cause of much of the conflict between local people and forestry companies in the countries we visited. This stems from the contradictory and overlapping nature of rights over the forest. In general forest people understand their traditional land rights as an inalienable mystical relationship between a clan or family and the area of forest land they use and occupy, or recently occupied. This relationship is enacted in a wide range of rituals and ceremonies – from secret spirit cults to ancestral offerings – as well as in accounts of the past, in myths and in everyday subsistence activities. However, state laws attribute ownership of forest land to the state. Rather than claim this right directly

the state sub-contracts part of these rights to forestry companies for a tax of about 20% of their revenue. Thus forestry companies, often without being aware of it, find themselves in a delicate position negotiating between the competing demands of villagers who see the forest as theirs, and the government claiming it as theirs. Since the villagers often have only limited means to address the government concerning forest use, they are more likely to attempt to put pressure on the forestry company concerned.

These overlapping claims can provoke controversy in the context of sustainable forestry. Many forest companies contest the need to obtain informed consent from local communities. These companies interpret national laws to mean that since the land is the property of the state and since the state has granted them use rights, they have as much right to exploit the forest as local people, regardless of how long they have been there. Therefore they do not need to ask for consent. However, our research suggests that forest populations in the Congo Basin are generally in favour of industrial forestry operations and so are unlikely to refuse consent. If they do so it is usually on a temporary basis as a means of negotiating an equitable sharing of benefits. If forestry companies are clearly bringing benefits to local populations and are not damaging resources upon which they depend, then the latter should have no interest in refusing consent. Given the ambiguity of FPIC's status in national laws, it is necessary to investigate thoroughly the extent to which FPIC can be integrated into national laws. This is discussed in the section 'Next Steps'.

As the following section details, there is a growing body of international law, some of which has been ratified by Congo Basin states, some which has not, that recognises indigenous peoples' rights as having existed prior to European colonialism and remaining valid today. In particular, indigenous people's rights to their land and to control of their resources are

considered inviolable and inalienable. It is on this basis that they are in a position to grant their free, prior and informed consent to allow others to exploit forest resources on their land.

How to define who are indigenous people in Central Africa?

In comparison to the Americas or Australia where physically distinguishable immigrant majorities continue to dominate national political and economic institutions, defining who are indigenous people is relatively straightforward, this is not the case in Africa (see Lewis 2001: 62 and World Bank Inspection Panel Report 2007: 149-152).

During the colonial period those Africans living in an area before Europeans arrived were considered to be indigenous people. However in a regional or local context within Africa, those Africans who inhabited an area before the arrival of other Africans from elsewhere can be called indigenous people. Often the newcomers take on a politically or economically dominant position over the original inhabitants, but not always. The term *'first people'* is commonly used in African languages to designate this special status, and this is the way most Pygmy groups are referred to by their farming neighbours. Throughout Central Africa *'first people'* play key roles in chiefly enthronement ceremonies, and in the death and fertility rituals of the dominant groups (see Woodburn 2001 and Klieman 2003 chapters 3 and 5).

As Ichikawa points out (World Bank Inspection Panel Report 2007: 151) in certain parts of the Congo Basin agricultural groups have been sharing forest areas with hunter-gatherers for many centuries. In these areas, an inter-dependent relationship based on exchange has been maintained between the two groups. Since both groups have a long history of habitation in, and strong attachment to the forest, they can both be considered to

be 'indigenous people' of that area. This is the approach the companies visited in northern RC have adopted.

However, such an approach should not be used to blur the important differences and inequalities in economic and political relations between agriculturists and hunter-gatherers. This recent statement by the African Commission on Human and Peoples' Rights is particularly relevant:

'Almost all African states host a rich variety of different ethnic groups, some of which are dominant and some of which are in subordinate positions. Basically all of these groups are indigenous to Africa. However, some are in a structurally subordinate position to the dominating groups and the state leading to marginalization and discrimination. It is this situation, which the indigenous concept in its modern analytic form, and the international legal framework attached to it, addresses.[4]'

Therefore, despite there being places where these two groups have maintained an interdependent relationship of significant historical depth, it is not enough to define indigenous people solely on their attachment to the forest. Rather, whether to call a group indigenous or not also depends on political and economic criteria. Are the group economically or politically dominated by others? What opportunities exist for their political representation? What access do they have to modern social, legal and medical facilities, to development initiatives and so on? When using the term 'indigenous' to describe a people special attention should be paid to underprivileged groups who *'do not enjoy equal social status, political representation, and economic opportunities'* (World Bank Inspection Panel Report 2007: 152).

Legal recognition of the status of 'Pygmies' as indigenous people

Despite their wide distribution across the Congo Basin it is only in recent years that

Pygmy groups are slowly becoming legally recognised as indigenous people[5]. In the east in 2005 Burundi adopted *'its new constitution that includes guaranteed representation for indigenous Batwa people in both the Parliament and Senate.'* In the west *'Gabon and Cameroon formally recognize the presence of indigenous peoples in their respective countries and have signed World Bank Operational Directive'* relating to indigenous people. In the centre *'The new constitution for the Democratic Republic of Congo (DRC), adopted in 2005, guarantees the protection of fundamental rights and equality for all its citizens (Article 13)'*[6] though no explicit reference is made to indigenous peoples or Pygmies in particular.[7] In the Republic of Congo, to reinforce a similar article (Article 8 of the 2002 Constitution[8]) efforts are being undertaken to recognize the special status of Pygmies as indigenous people through the adoption of national legislation recognising their rights as such (OCDH and Rainforest Foundation 2007).

Historically there is some precedent for this in the region. Under President Mobutu in the former Zaire, Pygmies were called *'premier citoyens'* (first citizens) (Grinker 1994: 27), but they were not legally recognised as indigenous people. Neither have they been legally recognised as indigenous people in the new legislation in DRC. During the socialist period in RC, Pygmies were entitled to free medical treatment, education and transport on state-run services such as ferry boats and airlines.

The term 'indigenous' is creeping into national legislation in the region. In DRC, Article 2 of the Presidential Decree for legal review and conversion of old forest titles (10th November, 2006) identifies twelve categories of members to compose the Inter-Ministerial Commission charged with reviewing forest titles. It states that *'[I]n the case of the presence of indigenous communities ... in proximity to the titles under consideration, the Commission will be open to an additional rep-* *resentative of these indigenous communities...'* This is the first case in which the term *'communautés autochtones'* (indigenous communities) is used in a legal text in DRC. However it is not clear if *'communautés autochtones'* exclusively denotes Pygmy communities[9].

The rights of indigenous people

With the recent adoption in September 2007 of the United Nations Declaration on the Rights of Indigenous Peoples by all the states of the Congo Basin the use of the term in national legislation, especially in relation to forestry law, will increase substantially. Three of the 46 articles explicitly refer to the requirement for the free, prior and informed consent of indigenous people to activities that may take them away from their land (Article 10), and to redress and provide restitution for their property taken without their FPIC - Article 11.2 relates to cultural, intellectual, religious and spiritual property; Article 28 to land, territories and resources. These are clearly very relevant to forest exploitation in the territories of indigenous people. Many other articles, such as Article 13, which refers to the importance of indigenous peoples' right to 'understand and be understood' in political, legal and administrative proceedings, are central to the application of FPIC and therefore directly relevant to industrial forestry. Harmonisation of national forestry codes with this Declaration should be an urgent priority if FPIC is to become standard in the region.

The United Nations Declaration on the Rights of Indigenous Peoples complements and clarifies an existing body of international law that concerns the way states and large organisations conduct their relations with indigenous people. Sometimes called the indigenous peoples' convention[10], Convention 169 of the International Labour Organisation, states in Article 7.1 that *'the peoples concerned shall have the right to decide their own priorities for the process of development*

as it affects their lives, beliefs, institutions and spiritual well-being (…)' and *'to exercise control, to the extent possible, over their own economic, social and cultural development'*. Article 16 states that *'relocation shall take place only with their free and informed consent'* (International Labour Organization 1989). Article 8j of the Convention on Biological Diversity (CBD) also requires that states *'respect, preserve and maintain knowledge, innovations and practices of indigenous and local peoples …'.*

At the international level, there is increasing recognition that certain rights of indigenous peoples should have the status of international customary rights (Nobirabo 2007). In particular the FPIC approach to negotiating activities on indigenous peoples' lands is increasingly becoming the international legal standard for establishing agreements with indigenous peoples, or for them to refuse, and if necessary legally resist. FPIC is thus going beyond a concept applied to voluntary agreements with indigenous people; states are increasingly obliged to implement the concept in all activities in their territory which could impact on indigenous people.

COUNTRY PROFILES

Since the research upon which this report is based was conducted in three Congo Basin countries – RC, DRC and Gabon – a short introduction to each country will serve to contextualize the results.

Accurate up-to-date figures on the industrial exploitation of the forest of the Congo Basin are hard to find and the picture varies greatly across the region. In Atlantic coastal forests, unsustainable timber harvesting has impoverished huge areas in Cameroon and formerly unexploited forest concessions in northern Congo-Brazzaville were put into production in 2000-2002 following the end of the last civil war. Meanwhile, it is claimed that vast areas of forest in the DRC remain unexploited. The ITTO figures in Table 1 below provide an official quantification of the region's forest estate, but in reality there is substantial informal activity. The market value of informal timber used in the DRC today is estimated to be about US$100 million, in comparison to 60 million for industrial timber (Debroux et al. 2007; see also Karsenty 2003).

Many of the conflicts between industrial forestry companies and forest communities result from a feeling on both sides that the state is not fulfilling its duties in the (often remote) regions where industrial forestry operations occur. The companies feel that they are paying double:

once for the taxes to the state and once to the community fund.

Country Profile: Republic of Congo (RC)

The approximately three million people living in RC have a national economy dominated by off-shore oil production. Oil accounted for about 95% of state export revenues in 2003. Around 22 million hectares of forest cover sixty per cent of the Republic of Congo. Although this natural resource is not a major source of foreign revenue compared to oil, it is the major source of private employment for the population. In 2006 there were 27 forestry companies of mixed origins operating in the country: mainly Europeans (French, Swiss, Dutch), but also Asians (Malaysian, Chinese), Arabs (Libyan and Lebanese), North Africans and Congolese. Since 2001 the elaboration and legalisation of forest management plans is a legal requirement for all concessions. However, only a few have actually submitted management plans, or are close to submitting them (Greenpeace 2005). This is partly because the elaboration of management plans requires highly qualified forestry engineers, costs between 3-5 Euro per hectare[11], and depends heavily on coordinating a wide range of stakeholders to verify and sign off on the

Table 1: Forest Estate

Countries in the Congo Basin	Estimated total forest area range (million hectares)	Total closed natural forest ('000 hectares)	Timber production forest ('000 hectares)
Democratic Republic of Congo	128-135	126,236	20,500
Republic of Congo	20.3-22.1	22,000	18,400
Gabon	25.8	21,800	10,600
Cameron	13.3-23.8	19,985	8,840
Central African Republic	22.9-29.3	4,826	3,500

Source: ITTO (2006)

plan once it is submitted to the national government.

The south and the north of RC have quite different exploitation profiles. Prior to the civil wars of the 1990s, the south was already exploited whereas only the most accessible areas of the north were exploited. In the south, smaller companies have been exploiting smaller concessions for a much longer time and hunter-gatherer groups are fewer and often relatively sedentary by comparison with those in the north. The northern areas of the Sangha and Likouala regions that border Cameroon and CAR are densely forested. With renewed political stability after 2000 this forest was divided into relatively big concessions or UFAs (Unités Forestières d'Aménagement) and logging rights were granted to large international companies. These northern forests are home to important groups of semi-nomadic hunter-gatherers, who, in areas such as the Ndoki forest in the mid 1990s outnumbered village-dwelling farmers and fishers (Lewis 2002: 43-44).

Big European companies currently have greater resources and incentives to develop their forestry activities to FSC standards than small and non-European ones. They have the necessary means to fulfil certification requirements and have important clients in Europe who are increasingly demanding FSC certified products. However, against this they have to balance the higher cost of producing FSC-certified timber and the difficulties of competing in the market against non-certified timber. Only one company has obtained FSC certification, for two of four concessions that it manages. In its other concessions it is making advances towards FSC, as is the other company we visited. Both exploit big areas (over one million hectares) in the north. The majority of companies here are not seeking certification, and exploit only in line with the minimum requirements of the national *code forestier,* if at all. This lack of investment in improving management practices creates some resentment from certification-oriented companies who have to sell their wood at the same international market price. As a consequence they are developing closer relationships to support one another, and to define themselves as responsible exploiters in contrast to the others.

The Congolese government often lacks the capacity to undertake major infrastructural and social development activities in remote forested areas. In such cases they may make a *'cahier des charges'* as a way for locally active forestry companies to pay part of their taxes. This often requires them to make and maintain roads, build schools, hospitals and other activities normally undertaken by the state. This results in the activities of privately owned forestry companies, and some conservation agencies, having more direct impact on local forest peoples' lives than do the institutions of state. The forestry industry and related services now dominate regional economies in forested areas. Concessions tend to become small islands of relative prosperity and lively business activity surrounded by neglected rural communities that lead fairly politically autonomous lives as subsistence farmers, fishers, hunter-gatherers and small-time traders in farm and forest produce (Lewis 2002: 42). A similar pattern develops within the concessions themselves whereby most economic activity outside urban areas takes place when harvesting occurs. As harvesting rotations operate on a cycle of about 30 years, areas not under production can become virtually ignored.

The FPIC approach to participative management of resource exploitation is currently the only opportunity for local forest people to have a voice in forest management decisions that will directly affect forest land and resources they depend upon. The Congolese parliament is currently considering a draft law on Pygmy peoples' rights that may make this obligatory for all companies regardless of whether they seek FSC certification.

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Country Profile: Democratic Republic of Congo (DRC)

The Democratic Republic of Congo covers an area of 2.3 million square kilometres (Forest Monitor 2001: 32). Of the 134 million hectares (62%) that are forested, 86 million hectares are closed, broadleaf rainforest (World Bank Inspection Panel 2007: ix). This represents about half of Africa's rainforest, and combined with its neighbouring countries forms the second largest block of tropical forest in the world (World Bank Inspection Panel 2007: ix). Despite its huge wealth in natural resources DRC has a GDP per capita of US$123 and occupies position 168 (of 177) on the UNDP's Human Development Index[12]. In 2006 the DRC had a population of about 59.32 million people (African Development Bank 2007: 129), of which only 33% live in urban areas. This is the highest rural to urban population ratio among Congo Basin countries and, with a population density of about 24 inhabitants per square kilometre, the third most populated country in Sub-Saharan Africa (Debroux et al. 2007: 4). After a decade of chaotic and multi-sided war and civil disturbance that killed nearly four million people and displaced millions more, DRC is in recovery.

This large rural population survives mainly on agriculture, fishing and hunting and gathering. The past decade of war has reinforced rural dependence on forest products as national and regional infrastructure was destroyed or collapsed, forcing most communities into basic subsistence economic activities (Debroux et al. 2007: 1-4). All communities depend heavily on forest products, though hunter-gatherers more than others. The situation of Pygmies in DRC varies greatly from region to region: from small hunting and gathering bands dispersed across large forest areas – notably in the Ituri forest (Mbuti, Efe), the east (Batwa), and far west (Aka), whereas some Pygmy communities living in central and western regions (Batua, Bacwa, Batwa, Jofe and others[13]) are relatively sedentary and although most still depend on hunting and gathering, they participate heavily in the agricultural economy as both producers and as a labour force for others.

With the recent end to major conflict in DRC, forest companies have been seeking to intensify exploitation of these massive forest resources. Commercial forestry is often the only significant economic activity in forested rural areas, and it is frequently these companies, rather than government agencies, that invest in rebuilding local infrastructure such as roads and ports – and occasionally schools and health centres. This places them in a strong bargaining position with the government, and reports of corruption with regard to obtaining concessions are frequent (Greenpeace 2007: 23). Despite only limited industrial forestry activities occurring during wartime, with peace came intensive interest in expanding the industry. In 2002 43.5 million hectares were obtained relatively cheaply and without any prior local consultation (Debroux et al. 2007: 18). These concessions often overlapped with villages, farmland, and the territory of indigenous peoples as well as biodiversity hotspots. In addition to creating various conflicts with the local population, this attracted widespread condemnation from local and international non-governmental organisations. The resulting controversies lead to a moratorium on the allocation of all new concessions and a recent World Bank Inspection Panel Report (2007).

Although the 2002 Forest Code was introduced in an attempt to improve and regulate the situation, the moratorium that was placed on the issuance of new concessions (until all existing concessions have undergone legal review) suggests that the structural problems in this area run deep. The new Forest Code has some recognition of local peoples' rights insofar as the government must first examine any pre-existing rights to forest lands before allocating new rights to others. Where legitimate claims exist, the government must modify the outline of

the future concession and compensate those who would lose access to resources. Article 122 establishes a revenue-sharing system that could become a significant source of income for local people. Forestry companies are required to contribute to local development through a *cahier des charges* which includes constructing state infrastructure such as schools and classrooms, healthcare centres and providing transportation services.

However the Forest Code does not specifically mention the rights of indigenous people (Debroux et al. 2007: 26). And in general there is widespread frustration among rural communities because the compensation or other benefits given out by forestry companies generally only go to local leaders, who often do not share the benefits with the wider population (ITTO 2006: 76). Furthermore there is still widespread corruption, an absence of transparency, and a general lack of implementation of the laws in practice.

Today about 20.5 million hectares are classified as production forest, whereof 15.5 million hectares are allocated to concessions and about 1.1 million hectares are managed according to management plans (ITTO 2006: 76-77). Debroux et al. state that forest revenues reached US$1.8 million in DRC in 2002. Assuming that security continues to improve, and fiscal reforms are properly implemented, they estimate that forestry revenues could attain about US$10 million in 2007. Although this estimate is conjectural it indicates that forestry can generate significant income for the state (Debroux et al. 2007: 30-31).

In conjunction with this there is also substantial informal activity. The value of informal timber used in the DRC today is tentatively estimated of about US$100 million in terms of market value in comparison to the value of industrial timber of about US$60 million (Debroux et al. 2007; see also Karsenty et al. 2002).

Country Profile: Gabon

Gabon covers a total area of 267,000 square kilometres. About 80% of the area is covered with forest. Gabon's population of only 1.38 million is mainly urban (73%) (Albrecht et al. 2007: 192). With this low population density, there is little anthropogenic pressure on forest resources (ITTO 2006).

Until the 1970s Gabon's forests contributed up to 75% of its export earnings. This decreased rapidly with the discovery of off-shore oil deposits (Forest Monitor 2001: 45). Today Gabon's export revenue is derived from three main sources: oil (55%), manganese (35%) and timber (9%), in the past coffee and cacao were also important, but today agriculture is largely a subsistence activity. There exists almost no manufacturing industry[14]. Because of its richness in natural resources Gabon has a GDP per capita of about US$5,821[15] statistically one of the richest countries in Africa. However it only achieves a position of 119 out of 177 in the UNDP Human Development Index[16]. Its high dependence on exports leaves Gabon's economy vulnerable to external factors (Forest Monitor 2001: 45).

Although reliable up-to-date information on the timber sector is hard to find, certain trends remain relevant[17]. In 1957, fewer than 10% of Gabon's forests were allocated as forest concessions. By 2000, 8.8 million hectares had been allocated to 40 firms, with expatriate companies accounting for the majority of production. In 2002, the WWF reported that 3.6 million hectares had completed inventories, 1.7 million hectares had forest management plans[18] and forest inventories were under way in an additional 1.1 million hectares (ITTO 2006: 93). The 9% of Gabon's export revenue provided by the timber industry is worth about US$250 million per year. Forest taxes are primarily derived from export levies. In 2001, 29,000 people were employed in forestry and wood industries (ITTO 2006: 96).

Deforestation rates are low at 0.1% (about 10,000 hectares per year). 80% of Gabon is covered in forest rich in *okoumé (Aucoumea klaineana)*, a species prized in international markets for the manufacture of high quality plywood.

More than 90% of Gabon's log production is exported, about half of it to Asian countries. Of this volume, 73% is *okoumé.* China has now replaced France as the primary export market of Gabonese wood. The Chinese market does not demand sustainable forest management or certification as much as Europe, providing little incentive to adopt such practices. With declining oil revenues, it is thought that pressure to exploit the country's forests will continue to grow. Although the International Technical Tropical Timber Association (ATIBT) reported in 2003 that concessionaires managing around 50% of the surface area of Gabonese concessions are now involved in sustainable forest management planning, the UN estimates that at the current rate of clearing, Gabon will lose half its forests over the next 100 years[19]. Forest Monitor (2001: 45) explains that:

'financial mismanagement of the economy, weaknesses within current forestry policy and practice and new evidence of negative social and environmental impacts at the local level associated with current forest operations all call into question the extent to which industrial logging as currently practised will be ecologically sustainable and will alleviate poverty and bring long-term sustainable development to Gabon's people.'

At the end of 2001 a new forest law was adopted that emphasises sustainable development, participation of the local population and increased local processing of the timber (Christy et al. 2003: 216). According to the new law all production forests must have a sustainable forest management plan, which is prepared by the concessionaires and approved by the Ministry of Water and Forests. It must contain at least one rota-

tion and should be based on tree inventories, and ecological and socio-economic studies. This management plan is the basis for forest activities. To ensure that part of the forestry industry's earnings are redistributed to the local population, Article 251 of the forest law[20] states:

'to promote the social aspects of sustainable management policies, there is a financial contribution supplied by the concessionaires to support development initiatives of collective interest to communities. The nature and value of these contributions is defined in the contract of the 'Cahier des charges' that is linked to each concession. The management of this contribution is the responsibility of the representative assembly of the concerned communities.'[21]

In Gabon, local populations normally have free access to all forests as long as they possess appropriate customary rights and do not jeopardise the sustainability of the forest products they collect. Under the 2001 forest law, what were formally referred to as family forestry rights have been replaced by the concept of community forests. This law provides a zone in each production forest for the exercise of the customary rights of surrounding communities. In May 2004 a memorandum on forest policy was published by the government with the objective of increasing the future role of local people in community forest management. However, due to problems in forest governance, weak civil advocacy and few participatory processes in the forestry sector, the high standards for concession management as well as the concept of community forests exist more on paper than on the ground (ITTO 2006: 96-97).

The Timber Trade Action Plan (TTAP)[22] report states that there are a number of 'drivers' of illegal timber production and trade in Gabon. In particular, forestry concessions are typically allocated by means of discretionary procedures such as 'mutual agreement permits' or *'gré à gré'* rather than by auction. There is no

transparency, nor clear technical or financial criteria to guide allocation. Additionally an important percentage of forestry concessions are controlled by the Gabonese political class. The President and his son (also current Defence Minister), the Prime Minister and many Ministers in function (including the Forestry Minister, numerous high ranking civilian and military officials) are all forestry concessionaries. According to Greenpeace (2005):

'In Gabon, the award of logging concessions to the Libreville elite is part of a (neo)patrimonial system: In such a system – rather than managing the natural resources for the public good, officeholders 'manage' these resources for their private interests.'

Currently, industrial forestry companies that are serious about SFM seek to distance themselves from the implications of such negative portrayals of the Gabonese timber industry. One means of doing this is to attempt to achieve Forest Stewardship Council (FSC) certification. FPIC is the basic component of FSC Principles 2 and 3, which address forest tenure and the rights of indigenous people. In carrying out the research which forms the basis of this report we used FSC Principles 2 and 3 as a framework for enquiring into the issues surrounding FPIC.

METHODOLOGY

The purpose of the investigation was to see to what extent the concept of FPIC could be refined in order to create a model that corresponds to the realties of life in the Congo Basin. The study was conceived by the Society for Threatened Peoples Switzerland and Anthroscape in collaboration with Intercooperation, which managed and coordinated it; the field research was carried out by Anthroscape (the authors of this paper; in subsequent paragraphs, 'we') and on two studies with the Society for Threatened Peoples Switzerland as well.

During field visits to five companies seeking FSC certification, Anthroscape researched current practice for obtaining consent in seven concessions, of which one had already gained FSC certification and was therefore considered by its auditors to have successfully negotiated their interpretation of FPIC. Each company visit lasted about five days. Anthroscape held extensive conversations with managers and with specialists in the social aspects of the companies' management plans. An equal amount of time was spent visiting local people living in the concessions and listening to their accounts of the processes by which the company had negotiated the right to exploit. We are grateful to all the local people and company staff who provided their valuable time.

The concessions visited were two exploited by CEB in Gabon, a company that belongs to the Precious Woods group; two concessions exploited by CIB (tt Timber International/DLH) and one exploited by IFO (Danzer) in the Republic of Congo, and one concession each exploited by CFT and Sodefor (Nordsüd-Timber Group) in the Democratic Republic of Congo.

Although six concessions visited were not yet FSC certified, they all aspired to be, so we based our questionnaire on the

Gap Assessment for FSC Principles 2 and 3 developed by the Tropical Forest Trust. This allowed us to use the FSC criteria (see boxes below) as a working definition to uncover the problems and constraints in the companies' practices in applying a FPIC approach. It also allowed us to test FPIC critically on the ground and generate some guidelines for practical implementation. The notions of 'free' and 'informed' become concrete only when applied to specific contexts. Within the constraints of each particular situation – from large populations dominated by a single chief who refused women the right to participate, to small communities of non-literate hunter-gatherers and mixed villages of impoverished farmers – we were looking to identify procedures that could maximise the potential for these various populations to be fully informed about the implications of their giving consent and to choose freely whether to do so.

The FSC principles relate directly to FPIC because informed consent can only be achieved if people know that their interests (land tenure, resources, intellectual property rights, etc.) are protected in the way guaranteed by Principles 2 and 3. At the same time FPIC is the foundation upon which the criteria rest. They cannot be achieved without it. FPIC is both a prerequisite and a consequence of equitable forest management.

FPIC and FSC Principle 2

In the Congo Basin, criteria included under Principle 2 – regarding land tenure and use rights and responsibilities - apply to both Bantu farmers and Pygmy hunter-gatherers.

Principle 2: Tenure and Use Rights and Responsibilities

2.1   Clear evidence of long-term forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be demonstrated.

2.2   Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights and re-sources, over forest operations unless they delegate control with free and informed consent to other agencies.

2.3   Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any out-standing disputes will be explicitly considered in the certification evalua-tion. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.

Source: http://www.fsc.org/en/about/policy_standards/princ_criteria

Criterion 2.1: Demonstrated tenure and use rights

This relates to FPIC because unless there is a clear definition of different par-ties' legal access to and use of land, it cannot be said that FPIC has been clearly obtained. We thus investigated whether land rights of the company and local com-munities in the concession were clearly defined, recorded and mapped; and whether these were publicly available and understood by all populations con-cerned.

Criterion 2.2: Control over forest operations

This relates to FPIC because it prevents forestry operations without community consent. The matter of delegation of rights could be open to various interpre-tations, but we took it to mean that the granting of free, prior and informed con-sent[23] should give local communities the power to negotiate a participatory role in the management of forest they use. This would protect their use rights and provide legal recourse should the conditions under which consent was given not be respected.

Proceeding on this basis, we sought to investigate whether the companies had elaborated their own definition of FPIC,

and if so, whether it coincided with ours. We investigated on which basis local communities were identified and differen-tiated as being Bantu or Pygmy and whether their different kinds of rights and resources had been fully researched and recorded (c.f., investigation of Criterion 2.1). We investigated the use of inde-pendent expertise in supporting this research. Where this research had been conducted we asked if it had been done with the support, input, understanding and consent of the local population.

In the case of consent having been given, we investigated: whether this had occurred prior to local exploitation; whether local people had been aware of their right to withhold consent, and to what extent they had been able to do so; whether the potential impacts of the oper-ation had been identified and/or explained in collaboration with the forest manager; whether they were aware that their ten-ure or use rights had to be respected and recognised in forest management plan-ning and practice; and whether they had participated enough to have the means to monitor control over both.

In carrying out this research we were par-ticularly alert to the existence or absence of efficient procedures designed to ensure the above elements of FPIC. Where pro-cedures were said to be in place we

sought evidence to verify this. We were also conscious of the potential for certain groups (e.g., women and hunter-gatherers) to be marginalised from the whole FPIC procedure, all the way from awareness raising to decision-making and monitoring.

Criterion 2.3: Resolution of disputes

In requiring that appropriate mechanisms be employed to resolve disputes over tenure claims and use rights, Criterion 2.3 relates to FPIC because consent implies agreement over the existing status of land and rights to its use. If, prior to exploitation, there is a major disagreement between the communities and the company or among the community themselves, then FPIC cannot be achieved. Disputes arising after FPIC is achieved would imply either a misunderstanding of the original FPIC or a breech of conditions under which consent was given. There is also the possibility that the population has changed significantly (due to demographic growth or immigration) since the original consent was given, or that they have changed their demands due to changing economic circumstances. It is for this reason that FPIC needs to be viewed as an ongoing process of negotiation and exchange.

We investigated whether there was any process to resolve disputes (both before and after exploitation) and whether any such processes had been mutually agreed between the population and the company. We also investigated whether any such processes were documented, available to and understood by all parties.

FPIC and FSC Principle 3

Issues particular to indigenous peoples and hunter-gatherers are dealt with in Principle 3. We present first the criteria that apply to both groups, followed by criteria applicable only to hunter-gatherers.

Principle 3: Indigenous People's Rights

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

3.1 Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.

3.2 Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.

3.3 Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognized and protected by forest managers.

3.4 Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.

Source: http://www.fsc.org/en/about/policy_standards/princ_criteria

Criterion 3.1: Indigenous people's resources and tenure rights assured

This criterion is fundamental to FPIC because it safeguards the right of indigenous people to give or withhold their consent while protecting and maintaining their resource base and land rights. We investigated whether the forestry management plan included procedures by which the company and local people collaborate in identifying and documenting the latter group's resources. We also investigated whether the company and local indigenous people collaborated in assessing the potential adverse impacts of forestry activities on indigenous resources and in developing actions to prevent or mitigate any such impacts.

Criterion 3.2: Protection of sites of particular significance to indigenous people

This relates to FPIC in as much as it recognises that user rights include rights others than purely economic ones. Rights to those places, the existence and importance of which may not be immediately apparent to the outside observer, are maintained even if indigenous people give consent.

We investigated whether people were aware that they had such rights and whether they knew that they could get them protected in the management plan. We inquired how the forest manager and local indigenous people collaborated to identify and document those sites in a way that was comprehensible and available to all relevant parties. We also checked what procedures existed to ensure the protection of any such sites and to minimise the impact of forestry activities.

Criterion 3.3: Compensation for traditional knowledge

This criterion relates to FPIC because it ensures that indigenous people are

informed of the commercial value of their forest knowledge; the value of the forest to forestry companies, and of their labour rights as partners in forest management in their areas. Partners that are transparent with one another are more likely to develop durable working relationships since issues of potential conflict are made explicit and discussed before they cause problems. This can save company managers much time resolving disputes caused by rumour and misinformation.

We investigated if indigenous people's traditional practices and knowledge used in prospecting, designing the management plan and exploiting the forest were identified and documented collaboratively. We also investigated whether and on what basis any compensation has been negotiated, whether it is in relation to the benefit the company stands to draw from it, plus whether the indigenous people are informed in this respect. We also investigated whether any traditional practices or knowledge have been used at any stage, and if so, whether the people have been compensated in line with any informed agreement.

We take an ethnographic approach which examines consent through the lens of the local social and cultural factors that inform the relationship between forestry companies and communities as they negotiate consent. Without an understanding of these factors no sustainable model of free, prior and informed consent can be reached. In turn, a workable model of consent is a prerequisite for providing local communities with a participatory role in managing their own resources and negotiating appropriate benefits. This model of consent involves more than communities simply saying 'yes' to exploitation. It seeks to ascertain communities' customary rights, ensure that a share of the timber profits and taxes are invested locally, protect people's access to the forest resources against the negative

Logs from a FSC certified concession identified by the company to keep them separate from non-certified timber in the same woodyard.

impacts of foresters and conservationists and give them control over key decision-making processes related to their forest. Although the FSC principles and criteria were used as a means of investigating the issue of FPIC in the concessions vis-ited, the presentation of our results does not follow each criteria. Instead, our findings are presented according to seven issues fundamental to addressing FPIC in the region.

APPLYING FPIC IN PRACTICE

Although the FSC principles and criteria provided a useful framework for examining the issue of consent in the concessions visited we do not use that framework to present our findings. The FSC principles and criteria were designed as evaluation markers. Here, by contrast, we are not evaluating concessions but providing detailed guidance on how FPIC can be achieved in the context of forestry operations[24] in the Congo Basin.

For this purpose we have identified seven issues, described briefly below, that relate to the gaining of free, prior and informed consent. They cover every aspect of the FPIC process, and although we present them as discrete issues they nevertheless overlap. After discussing each issue we present our recommendations for reaching a sustainable and equitable consent.

Consent

Companies and communities may often hold different conceptions of consent. In this section we investigate what they are and how they might be reconciled in practice.

Institutional capacity building

FPIC requires commitment of skills and resources from industrial forestry companies. In this section we investigate what companies have achieved and what more should be done.

Communication and information

FPIC cannot be achieved unless local populations fully understand all the issues involved in industrial forest exploitation. In this section we examine why it is such a crucial and difficult issue.

Participation and negotiation

These are key issues because they touch upon the very sensitive question of who influences forest management decisions and what the extent of their influence is.

In this section we investigate what degree of local involvement is required to guarantee FPIC.

Resource use and livelihoods

Industrial forestry exploitation can impact upon economic and cultural resource use, particularly hunting. In this section we show how communities' understanding of such impacts is vital to their making an informed decision about consent.

Partnerships

There exist partnerships made up of multiple stakeholders to manage forest resources. This section investigates how good management and regulation of these partnerships is vital to an equitable sharing of forest resources.

Transparency

Transparency is a key issue in FPIC. It is both a way to achieve open and sustainable relationships between industrial forestry companies and local communities, and a way of proving that they exist.

Batwa Pygmies in DRC are presenting a letter to the research team explaining that they and their forests have been colonised by farmers. They demanded that their rights should be respected and that outsiders who come to their forest should consult them as well as their farmer neighbours.

ISSUE 1 – Consent

The cultural notion of consent is itself an important issue for the definition of FPIC. As consent is a contract between two parties, it follows that the parties should share a mutual understanding of what it means. Our field research indicates that this is generally not the case between companies and local communities, thus resulting in conflict and mutual recrimination. In the following section we discuss the two central issues related to the notion of consent:

- Industrial forestry companies' and local communities' different models of consent;
- Strategies for reconciling these different models.

1. Different models of consent

We began our investigation into local ideas of consent by asking our interpreters how they would translate consent into local languages. There were a range of possibilities, ranging from 'I accept of my own will' to 'I accept because I am tired of this debate'. Consent is not an autonomous concept, but one which mutates depending on the circumstances and context of the negotiations.

When we asked local people to expand upon the contextual aspect of the con-sent they had given to forest operations we often found that it had not been given as part of a negotiation, but as one man said, 'We accepted because we were obliged to. If the state has already decided that the company can exploit then we have no influence over this.' Others claimed that they had given their consent freely but that the company had not provided the material benefits (sawn timber, etc.) that the community had claimed in return for its consent. In only one case, in Gabon, did the consent process seem to be satisfactory to the communities we visited, despite extreme difficulties in the early stages of their relations.

While the first example points to the differential in power between the two parties, the others indicate how consent is conceived of as fundamentally contractual. These points are related. Contrary to European notions of consent as something that is achieved and marked at a moment in time, that is finite, definite and definitive, the Central African notion describes a transactional social relationship based on ongoing verbal and material exchange. The difference is not absolute and incommensurable, more one of emphasis. Whereas in European consent the emphasis is on finalising the boundaries of mutual responsibility, in the Central African case consent opens them up to ongoing negotiation.

European consent	Congo Basin consent
A definitive agreement that represents an agreement made at a specific moment in time and which is codified in a signed document.	An ongoing relationship of exchange between parties which undergoes revision and renegotiation and which is witnessed by evidence of mutual satisfaction with that relationship. It is based on mutual trust.

The differences in power need to be recognised and carefully managed. Otherwise the weaker party feels that they are 'obliged' to give consent under constraint, so it is in their interest never to give it definitively, for this would weaken their claim to share in the forest company's profits. Instead, they keep the channels of negotiation permanently open through renewed demands for compensation. In turn, the stronger party hopes to foreclose the negotiation process as a means of finalising the terms of consent to its permanent advantage. Unless they recognise that they are operating under essentially different concepts of consent they will struggle to achieve a mutually satisfactory outcome.

2. Strategies for reconciling European and Congo Basin models of consent

Most companies visited are concerned that their exploitation would be jeopardised if they were required to continually renegotiate terms of consent with every single village. What is more, they maintain that different deals struck with different villages would lead to claims that some villages were being better compensated than others. The resultant conflicts could cost them a lot of time, effort and goodwill. However, even if every company's context is specific (the number of communities, the social profile, etc.), one company visited in Gabon took into account local views of consent in its negotiation process. This example shows that companies 'and local communities' concepts of consent can be reconciled.

The concession we visited in Gabon was aware of both parties' concept of consent. This is largely due to the skills of the head of its social team, a local man able to understand both world views on that question. He has enabled the company and local communities to negotiate strategically through various issues to the point where consent to forest operations was agreed. These issues included: identification of community land rights; access to resources; compensation (in the form of money and sawn timber) for trees felled on community land; and local village associations to manage the money received from the company. The achievement of consent was then marked by a celebration called *la fête de la forêt*.

This event essentially involves the company workers bringing food and drink to join villagers in a big feast which is also attended by the company management and local dignitaries. This practice is a much better marker of consent than any signed forms because it is understood as consent by all involved. Unlike a signed document it exists in the memory of all present and it follows local traditional practices. This does not mean that some formal documentation of what the *fête de la fôret* symbolises is not required. Indeed, this would be necessary for FSC auditors and would prevent ill-informed interpretations of the *fête* as being an attempt to buy forest populations' consent cheaply with a party. Any sustainable notion of consent has to be rigid enough to stand as legal proof of an agreement but flexible enough to contain means of redress.

This company managed to channel its relations with villages into an ongoing transaction of information and material items based on timber production in their forest areas. This outcome can be attributed to a combination of appropriate staff, sound research, inputs from experts (from universities, agencies and local and international NGOs), continual dialogue over many years, and a constant effort on the part of the company to improve its practice. This example should dismiss the fears expressed by other companies around entering into ongoing contractual relationships. After all, it was the only concession visited where we heard local communities saying that they gave their unreserved consent to forestry activities and that despite minor issues, they were generally satisfied with the way things have been carried out.

Recommendations

- Companies should take an approach which takes into account local notions of consent as well as their own.
- Companies should be prepared to enter into a dynamic long-term relationship with local communities based on ongoing exchange of information and benefits. This relationship should govern:
    - provision of information about the steps in the relationship between the villagers and the company;
    - explanation of the *cahier des charges* drawn up between the company and each community;
    - identification and mapping of each community's resources and land use protection of access to resources on that land;
    - identification of valuable trees and compensation (in the form of money and sawn timber) for any such trees felled on community land;
    - establishment in each village of local associations to manage the money received from the company;
    - setting a timetable for actions to improve the village environment.
- The gaining of each community's consent should be marked both by a legal document and by a memorable celebration for all parties involved.

ISSUE 2 – Institutional capacity building

The efficiency of the programmes put in place to gain local communities' FPIC relies on the building of specific capacities within forestry companies. Institutional capacity building is a crucial component for gaining FPIC.

The quality and efficiency of programmes for achieving FPIC rely heavily on the functioning of the social team. The key issues, discussed below, are:

- The skills and personality of the head of the social team as a manager, mediator and trainer;
- The composition and number of the communicators involved in those teams;
- The training the communicators receive in specific areas such as communication with non-literate and mobile populations;
- The materials available to them to reach and inform the local communities;
- The coordination between the social team and the other teams involved in forest operations;
- Awareness raising amongst forest workers and 'aménageurs' of the social aspects of company's work;
- Effective structures to ensure that regular and timely information flows exist between the local population and all divisions of the company which can have an impact on them, including the highest decision making bodies of the company.

All these factors are necessary for the successful design and implementation of any procedures targeting FPIC. We found that many shortcomings related to gaining FPIC were due to the lack of provision given to those institutional capacity building and coordination aspects.

1. Skills of the head of the social team

Reaching and informing the semi-nomadic hunter-gatherers and Bantu and Sudanic language speaking farmers living in concessions across the Congo Basin requires a solid understanding of these peoples' society and culture. In the complex social and cultural context in which those groups are living the social team leader needs to be an expert both on social forestry and on local cultural realities. The leader needs to bridge these worlds in an equitable way. We found this to be lacking in many of the companies' social teams, often resulting in inappropriate measures being applied and misunderstanding between the company and local people.

Anthropological insights and thinking are necessary to build cross-cultural communication channels between companies and local communities. Those channels are the key to successful FPIC and often do not exist. Only one company among the five visited managed to develop such channels. This came about as a result of pressure from the local communities and the presence of a social manager with local cultural expertise. He understood the expectations of both local communities and forestry companies. He also grasped how ways of communicating differed between the two parties and how they had different understandings of the notion of consent (see issues on communication and consent). This meant these notions could be reconciled and a compromise reached. This example clearly shows that an expert with such skills as head of the social team is crucial to achieve a genuine and acceptable FPIC for both companies and local communities.

2. The size of the social team

The percentage of social workers in each company's total workforce was 0.3% at best. For example, one concession, employing 1,600 workers and comprising more than 100 local villages on a territory bigger than one million hectares, had a social team with only five members. This is problematic in terms of the companies' image as responsible social forest managers. It also makes it nearly impossible to carry out the work necessary for gaining the local communities' FPIC as frequent visits and contacts over a long period of time are necessary. Problems which characterise the Congo Basin such as illiteracy, mobility, marginalisation of women and hunter-gatherers in public matters cannot be overcome without intense and long term awareness-raising. Teams of communicators need to be large enough to do the job properly. Although successful FPIC requires more than big social teams, it cannot easily be achieved without them.

3. The composition of the social team

Our research also highlighted the issue of the composition of the teams of communicators. Some (but not all) social teams were comprised of both Bantu and Pygmy communicators so as to communicate better with both groups. In mixed villages, hunter-gatherers are often not allowed to express their views publicly, especially if they contradict those of the Bantu. Therefore Pygmy communicators are required to address Pygmy groups. However, those communicators as well as the Bantu communicators were all men. This is an issue in Bantu villages as women are generally marginalised in public discussions and are more open when they speak with a woman in women's groups. Pygmy groups show greater gender equality in public affairs. In the communities visited we found that women were often less informed about companies' forest management than men and

were not involved in the village decisions about consent. FPIC cannot be reached without the involvement of women. The employment of skilled female communicators as members of the social teams would be a big step towards involving village women in the awareness raising, discussions, negotiations and decision that are necessary steps towards achieving FPIC.

4. Expertise of communicators

The specific cultural context in the countries visited requires knowledge and expertise in specialised means of communication in order to reach the local populations. While the general level of literacy may vary from country to country in the basin, the vast majority of villagers and especially women and hunter-gatherers are not literate. Moreover, the information to be communicated involves complex legal issues and terms. We generally found communicators making great efforts to get their messages across, but that they were often frustrated by the lack of success. They were using a variety of methods to inform the local communities (written documents, maps, flash cards) but these could only be understood by a small audience. We also found that even though the social communicators were all literate, they did not master most of the complex technical and legal concepts related to FPIC. If some did, they did not know how to translate most of those concepts as no equivalents existed in the vernacular languages. They were fighting an uphill battle to get the right message across. Far from being complacent, some asked us for further support. Such support might involve anything from specific help in grasping and translating technical and legal notions related to FPIC to training in communication and pedagogy. It would also include greater material support, such as vehicles and educational tools.

5. Equipment and materials

We found that the social teams were working with a limited amount of material support, both on a logistical and an educational level. In one concession the social team was reliant on the company arranging a vehicle for their trips, which was not always available.

For FPIC to be meaningful it is important that the whole community have access to information about forest management as well as records of agreements made. One way of doing this is through notice boards in villages displaying the documents. This can prevent elite capture of important deeds. Even though many people cannot read, it still demonstrates that the documents are public property.

The social teams were generally lacking in materials which could communicate effectively with non-literate people. Radio and video are media which can reach a wider, less literate audience than written material. In one concession a community FM radio station is in construction to facilitate communication between isolated communities and the social team. Broadcasts can inform communities of when the team will visit, issues, problems and successes can be discussed. Such innovations are needed to increase the work efficiency of the social team.

6. Coordination between teams within the company

Good work in community relations achieved by the social team can be put in jeopardy if other company workers are not aware of agreements made and issues raised. Some companies are better than others at coordinating the work of social and forest management teams. We found one instance where a boundary agreed between the social team and a village was cut elsewhere by workers from the forest management team. We heard of a site of cultural importance being bulldozed in error. We recorded one instance of the forest management team deciding for themselves which trees to protect independently of the social team's work in participatory mapping with the community. These actions all created tension and conflict between the communities and companies involved, which could have been avoided by better coordination at the company level. Very often it is such tensions and conflicts which threaten the achievement of FPIC.

7. Effective structures to ensure regular information exchange

Our research shows that some of the social teams we visited were not well integrated into the management of the company, leading to managers being unaware of social problems. One company visited has initiated a computerised system for tracking and ensuring the follow-up of requests made to the company by forest populations. This also provides evidence of the communication flows in case of further dispute or the need for inspection by outside bodies. Evidence of these communication flows should be stored as a record in the case of disputes, and for possible inspection. Structures should exist within the company to ensure that even at the highest level of decision-making, local peoples' concerns are directly heard. Whenever possible, the local people concerned should be directly present during discussions. Similarly, regular direct contacts between the social team and local people in their villages and camps should ensure that people are aware of decisions that are being taken that might affect their interests, that they are provided with sufficient information to take an informed position, and that this is communicated to those who are responsible for the relevant areas in the company.

Recommendations

- Skills of the head of the social team:
  - the leader of the social team should be an expert on social forestry and local society and culture;
  - the leader should know the legal framework and the different forest laws;
  - the leader should draw on anthropological expertise to build cross-cultural communication channels.

- The size of the social team:
  - the size of the social team should be proportionate to the difficulty of the task, and to the size of the population and the concession.

- The composition of the social team:
  - all social teams should include women as communicators;
  - all social teams should include members of ethnic groups represented in the local population.

- Communicators should be trained in:
  - the specialised means of communicating with non-literate people;
  - the complex legal issues involved in consent;
  - translation of those issues.

- Additional expertise:
  - the social team should be encouraged to develop partnerships with expert bodies (e.g., national and international NGOs and academic institutions) who can bring them support in such matters as intercultural communication, widening participation and project evaluation.

- Equipment and materials:
  Communication teams need dedicated materials and equipment such as:
  - vehicles;
  - relevant communication technology (DVD players, video cameras, computers for editing and preparing materials, etc.);
  - information boards for villages;
  - specialised education materials.

- Coordination between teams within the company:
  - full integration of the social team and its responsibilities into the organigram of the company;
  - the social team should be informed and consulted on decisions about forest management;

- – all staff should receive a minimum coaching/orientation in:
  - ▪ the importance of FPIC and what it means in practice
  - ▪ the specific role of the social team
  - ▪ how all forest operations could and should take social aspects into consideration
- – management should support the above measures with incentives for socially aware action.

- Effective structures to ensure regular and timely information exchange:
  - – the leader of the social team should be regularly present at the highest levels of decision making within the company so as to ensure that local people's perspectives are represented. His/her opinion should be actively sought and overtly taken into account (ie. written records, communication to staff) in all management decisions;
  - – wherever possible, local people should be directly invited to participate;
  - – the social team should ensure local people are aware of important decisions to be made that may affect them. Their points of view should be documented and made part of considerations. The outcome of this should be communicated to the local people concerned;
  - – documentary evidence of this should be maintained.

ISSUE 3 – Information and communication

Informed consent requires effective communication. Local people cannot give their consent to industrial forestry exploitation unless they have received and understood all the necessary information upon which to base their decision. Below we discuss some fundamental issues about communicating in the local context that need to be addressed in order to achieve FPIC. In summary, these are:

- How features of the local social structure (such as marginality of certain groups) might constrain the informing process;

- Which means and media to adopt in a context of low levels of education and literacy;

- What information to select to help people to come to a free and informed decision about consent;

- How to verify that the information process and communication are effective.

1. Informing, social structure and marginality

One major constraint on communication is the social structure of many villages in concessions in the Congo Basin. Many local populations are constituted of Bantu and Ubangian speaking farmers and Pygmies. Some Pygmies are hunter-gatherers and others have abandoned this means of subsistence in favour of sedentary agriculture. If living in the same village, Pygmies are invariably under the political authority of Bantus and Ubangians. Farmer and farmer/Pygmy villages tend to be patriarchal, with a customary and/or elected/designated chief dominating decision-making and relations with outsiders.

Our investigations revealed how often the consultation and negotiation process had only involved local political leaders such as the *chef de secteur* or *préco*. This may be due to such powerful local individuals claiming to speak on behalf of the community; of course it is also easier for the company to deal with only one person. The result is that it sidelines populations with rights to forest use but with little voice in local politics, such as women and Pygmies. Consultation or negotiation strategies which focus on a single individual effectively remove control over resource management from large sections of the community. This contravenes FPIC. If consent is being given by local chiefs without such populations being informed, consulted or listened to, then FPIC has not been achieved.

In such cases, it is necessary to grasp the local political realities in order that awareness-raising (or *sensibilisation*) should reach the widest possible range of the population. For example, in one concession *le chef de secteur* explicitly rejected the right of women to participate in consultation and negotiation processes, thus excluding 51% of his sector's large adult population. It is not uncommon for some groups or individuals to be effectively excluded from village politics (being constrained by traditional power relations). During our visits to villages we sometimes witnessed the exclusion of Pygmies from the meeting shelter. Members of the social team told us how even if Pygmy men are included they are not allowed to express an opinion contradicting that of the Bantu. We also observed that women tend to sit outside of the discussion, although some were happy to contribute from the periphery. Even if such people are present at meetings, they usually do not speak and may also not pay much attention, as they know they have no influence over the discussion.

The question is to what extent effective strategies can be devised that circumnavigate such (self-) exclusionary practices in the context of existing structures of power. One forest company refused categorically to engage in such manoeu-

vring, claiming it was not in their remit 'to meddle with social structure'. However, this need not be a question of interfering with social structure, but of recognising the existence and rights of significant sections of the community such as women and indigenous ethnic groups. Of course this dilemma is not confined to the Congo, but is found in many parts in the world in which participatory natural resource management is implemented. Usual practice is to seek to facilitate the formation of a representative community structure – a committee that includes representatives of all stakeholder groups, without alienating the traditional leadership. Much could be learned in this respect (both 'how to' and 'how not to') from experience in participatory forestry in Cameroon (see, for example, Oyono 2005). Although the investment of time required to ensure fully representative discussions may seem heavy, if well executed it will preempt conflicts and resolve issues before they create delays or damage production targets, or cause recrimination in the future.

2. Appropriate means and media for informing populations with low levels of formal education and literacy

Even if the whole community can be reached, giving out information does not guarantee understanding. Our research shows that although forest companies across the region have carried out thorough *sensibilisation* the population shows little or no comprehension of the content. When we pointed this out to the teams responsible for *sensibilisation* we met with reactions ranging from disappointment, frustration and incredulity. Such reactions are understandable given the tremendous efforts made by some social teams to inform the local population. It was also suggested to us that villagers were dissimulating lack of comprehension to manipulate us politically, and that in some cases we had talked to the 'wrong people'. The former assertion is

possible, but the latter is not. All people can be expected to have an understanding of the issues. For FPIC to be achieved the question of communication must be addressed comprehensively.

A major consideration is the means and media through which *sensibilisation* is carried out. This consideration can vary enormously depending on the local and national context. Some concessions contain hundreds of villages and few of them have schools. Others have villages with functioning schools and a population that is up to 75% literate. The effectiveness of the state as education provider plays an important role in facilitating or constraining the process of informing the local population. Companies need to adapt to those different national contexts because no compromise can be made in informing the local communities without compromising FPIC. The discussion which follows therefore addresses the fact of high illiteracy, which was the general pattern in most concessions.

A high percentage of the forest population is non- or poorly literate, and it is not unusual to find only one literate person in a village. We visited several villages in RC where the people were unable to give us any information about the terms of consent because the chief was away and all the documents were with him, the only person who could read. In one concession we found that many signatures on the consent forms established by the company were clearly the scrawls of a non-literate person. The form was in French and included legal terms alien to local cultural understandings. When we checked with the company's interpreters we found they had misunderstood these terms and therefore had mistranslated them.

Two forest companies we visited had attempted to bridge the illiteracy gap using flash cards with pictures relating to forest operations, protection of wildlife and so forth. This is a worthy attempt to diversify the media of information trans-

fer. Nevertheless, it is based upon the informers' ideas about how information should be conveyed (and the implicit assumption that *sensibilisation* is a one-way process). For example, one flash card showed an elephant, a Pygmy hut and a forestry truck. The communications team intended this to represent different facets of forest management. Yet the local people to whom we showed this – and whose consent had been gained on the apparent understanding of the related interests represented by this card – were unable to tell us in what way the images were connected. It seems likely that local people targeted here have minimal (if any) experience of the use of pictures to convey messages; certainly pictures do not form part of their own communicative repertoire. Effective *sensibilisation* depends on finding precisely what does.

Unfortunately the forest companies' social teams, who are responsible for *sensibilisation*, are constrained by their limited expertise in participatory approaches. They use a top-down mode of informing, based on school pedagogy, in which information is passed from the active knowledgeable speaker to the passive ignorant listener. This is not necessarily how people learn best, least of all unschooled people. Research (Lewis 2002; 2008) shows that Pygmies acquire knowledge through active interaction within relevant social contexts and that it is rude to lecture others or to publicly claim to know more than others. This factor may account for low comprehension and/or retention rates among Pygmies.

Despite those difficulties and failed attempts, we found some interesting participatory approaches designed to address the issue of illiteracy. These approaches were school dance and song contests to illustrate the main aspects of FSC principles, and independent community radio to broadcast relevant news and information about FPIC. Such alternative methods of communication can be effective in addressing populations who may not be literate in writing and reading but whose communicative repertoire is particularly strong in aspects such as singing, dancing and storytelling.

3. Selection of information

Bearing in mind the need to find appropriate tools for communication and to reach everybody, companies must also be careful about what kind of information they choose to give to local communities. Sometimes we found that information provided was insufficient for people to make an informed choice, while other times it was too dense or complex for people to assimilate. Although this requires input from specialists in communication techniques, companies tend to leave this to members of the social teams who have little or no training or background in such issues. There is a balance to be struck between information deficiency and information overload. Similarly, it is very difficult to ascertain how detailed and sophisticated the information needs to be. It is very time consuming to convey complex issues in simple language to people for whom the ideas are new. And within any population there will be varying interest and ability in grasping the issues. There are no easy answers here, but a company seeking FPIC should have a clearly defined process in place to ensure that communities are provided with access to relevant information. This is one of the most delicate issues involved in gaining FPIC.

Our research visits revealed a wide range of information provided by those companies seeking FPIC. The information is usually delivered through four to five meetings in each village. Documents and maps recording the agreements are left with the chief. We found that generally the chiefs had kept these documents for themselves and for inspection by a few influential persons.

The information delivered included information on the forest management plan; on legal issues; on the mapping pro-

gramme aimed at registering and protecting their local economic and cultural resources; on conflict resolution procedures; on the role of independent local NGOs; on the structure and function of diverse partnership platforms (see Issue 4) managing crucial aspects of their life. This is all necessary information for the achievement of FPIC, but it was often rather complex. At the same time, key subjects such as communities' right to say no to exploitation, the negative impacts of industrial forestry on their resources, and the volume and type of timber felled on their land were generally avoided (see Issue 4).

Failing to provide such important information has two drawbacks. Firstly, it means that forest populations are unable to make a fully informed choice and therefore FPIC cannot be gained. Secondly, it risks creating future problems between communities and the company as problems not discussed and tackled at the negotiation stage surface during exploitation. This can have costs in terms of community relations and production efficiency. It may not seem realistic to require industrial forestry companies to provide information on the potential negative impacts of their exploitation, but the provision of this kind of information is a crucial element of the FPIC process.

One crucial element in the information process is the question of giving more control over the information and learning process to the local communities. The process should not be a oneway conveyance of selected information but a dialogue investigating all the issues relevant to both parties. Local people need to have mechanisms by which to request information on certain topics. But the problem is that isolated communities previously unaffected by industrial forest exploitation do not know what it is they need to know in order to make an informed decision. Raising awareness of this knowledge is crucial to FPIC, but we found no clear evidence that any party (be that the company or local NGOs) was

taking responsibility for this. One forestry company was setting up a community radio station in order to provide a medium for the large and dispersed forest population to be informed and inform each other on issues surrounding forest management. However, it has yet to become operational, and it is recognised that the cost may be beyond the means of smaller companies.

4. Verification of the information process and communication efficacy

No information process is complete without mechanisms to check its efficacy. The audit should include assessment of the issues mentioned previously in this section, namely reaching marginalised peoples, using effective media and verifying that sufficient relevant information was provided. We found that some companies have recognised the importance of independently assessing the impact of communication and rely on local NGOs to carry this out. However, companies reported frustration at the level of competence and commitment shown. It seems that these local NGOs lack training and resources and are not clear about what has to be assessed. They need support and monitoring.

Nonetheless it is vital that companies are able to provide evidence that communities have gained sufficient understanding of the information to be said to have given their *informed* consent. This inevitably requires the participation of an independent third party to assist in the assessment. There are a number of possible strategies: One would be to invite representatives of various stakeholders and interested parties (e.g., the ministry responsible for forestry, local and international NGOs, civil society) to join a discussion with villagers in which the representatives ascertain whether the main issues are understood sufficiently well. Notes should record which areas were strong and which were weak to ensure further awareness

Traditional housing and collection of non-timber forest products for sale to forestry workers by Mikaya Pygmies in the Republic of Congo.

raising is well targeted. If all parties (independent, local community and company) are satisfied that people sufficiently understand the issues, they could sign a joint declaration to this effect. Only when this has been achieved should the *fête de la forêt* be planned and celebrated.

Recommendations

- Specific procedures need to be developed to ensure that marginalised groups such as women and hunter-gatherers are reached by awareness-raising campaigns.

- Companies should hire expert support to train the social team in methods for communicating with non-literate and isolated populations.

- The information process should rely less on written documents and be supported by methods and media appropriate and relevant to the local cultural context. These might include songs, storytelling, films showing what happened elsewhere, or visits by a village delegation to other communities where industrial forestry has occurred.

- Awareness-raising should be treated as a two-way exchange of information and views between company and community.

- Some means for measuring the extent to which local communities have sufficiently understood the key issues in the awareness-raising campaign should be implemented just prior to a community granting consent.

- The core elements that must be communicated by any FPIC awareness-raising programme are:
  - the legal framework that exists, including national forest laws;
  - community land rights (e.g. as defined by FSC Principles and Criteria);
  - the community's right to refuse forestry exploitation;
  - the positive and negative environmental and social impacts of forestry operations;
  - a clear and accessible strategy showing how companies aim to minimise the negative impacts of logging and optimise the positive impacts on local villages;
  - the volume and types of trees the company is to fell on each community's land to negotiate compensation;
  - the means by which resources will be protected;
  - a statement of the company's policy on the use of forestry roads during and after exploitation;
  - a timetable of key stages and activities in relations between local communities and forestry companies.

ISSUE 4 – Participation and negotiation

In order to gain genuine and sustainable FPIC the participation of the local population is needed at every stage of the process of informing and negotiation. Participation should be based on an active role, which gives local people a real influence over the process. This active role is discussed below under the following headings:

- Active input from both parties.
- The discussion and negotiation of sensitive subjects:
  - the communities' right to refuse industrial forestry operations;
  - the sharing of revenue from industrial forestry operations;
  - the awareness and management of negative impacts from industrial forestry operations.

Addressing these difficult issues is the only way to engage people fully in the important debates and discussions related to the consequences of the proposed activities. Without this they cannot make an *informed* decision about whether to consent. Similarly, if the local community is not fully and widely involved in the negotiation process they cannot be said to have control over their livelihoods. Such a situation cannot lead to genuinely informed consent.

1. Active input from both parties

We noted that there is a tendency for companies to elaborate information programmes without consulting the local communities on what they need to know. This prevents people from full involvement in the decisions concerning the management of their forest. In the majority of cases observed, local people (usually elites) were simply presented with ready-made decisions and procedures which are going to govern their lives and

relationship with the company. For example, two companies visited had defined the areas where local people can farm and hunt, and where the sawmills and roads will be built, without achieving the consent of the concerned populations.

The awareness-raising process must go beyond telling people what is going to happen. It should involve an exchange of information and ideas as well as a negotiation about the level of impact that local people will experience. This means that the process should have already begun as the forestry management plan is being elaborated and not after it has been approved by the state. For example, the limits of hunting zones should not be presented as a *fait accompli* to the population on maps they cannot read. They should be negotiated on the ground, with wide participation before the management plan is proposed to the state for approval. The same process should be used to set the standards for establishing the limits of the *séries de développement communautaire* (the land near to villages exclusively reserved for the use of local populations) and for *series de conservation et de protection* if situated in local peoples' usage areas. The state requires that these areas exist but the company has room to be flexible in defining the limits with the population.

This lack of participation creates a feeling among the population of a lack of choice. As one Congolese villager said, 'We have no choice but to accept the company's decisions.' This is not free and informed consent. FPIC must include the freedom to participate in major decisions and the choice to accept or refuse them. Further, consent cannot be free and informed unless the process guarantees the thorough understanding of key information relevant to forestry operations. This is discussed in the section on communication and information.

However, one company we visited has established an openness in its relations with local communities that allows the community to participate effectively in discussions and key decisions about forestry management where it concerns them. Where differences of opinion existed these were acknowledged, openly discussed, and solutions were proposed. The villagers clearly expected the company to listen to their management ideas for their forest area and the evidence presented to us confirmed that the company does take their views into account in managing their forest.

2. The discussion and negotiation of sensitive subjects

The question of what to include in the awareness raising programme is a crucial and sensitive one.

Our research revealed that in five out of seven concessions visited, some key subjects are systemically avoided by company staff. Important information missing from awareness raising programmes includes: the populations' right to say 'no' to forestry exploitation; the quantity and types of trees to be felled on communities' land; the question of compensation for forestry operations through sharing of benefits; and the negative impacts of industrial forestry activities on communities' rights and resources.

Obviously, these subjects are sensitive as their implications could pose a financial risk to the companies: it could be that local communities refuse to consent to industrial exploitation either temporarily or permanently. But unless such issues are addressed, FPIC cannot be achieved. Our experience with one company, however, shows that the financial risk implied in raising those issues is less than perceived and can even be mitigated by raising and dealing with them candidly. Many villages had refused the company the right to harvest timber, yet in every case, after free and fair negotiation the com-

pany was able to find a solution that satisfied all parties. During research for this study we did not meet any people who expressed total opposition to forestry activities, rather those that expressed opposition saw this as a strategic tool to force their concerns or demands to be taken seriously. Well managed FPIC negotiations can pre-empt such situations.

2.1 Communities' right to refuse industrial forestry operations

Consent is only meaningful if the party granting consent is aware that they have the right to withhold it. Our research shows that this was frequently not the case. The majority of forestry companies visited did not give forest communities the option of refusing consent, but instead presented industrial forestry exploitation as a *fait accompli*. This is why one villager said, 'We consented because we felt obliged as the state had already decided.' The majority of forestry companies consider that the government's granting of the concession and approval of the management plan gives them the right to exploit regardless of local people. But this is without their free, prior and informed consent. Some concessions have been harvested for forty years or more, and thus it is not possible to negotiate 'prior' consent. As FPIC is an ongoing process it is a question of negotiating a mutually acceptable contract for present and future exploitation.

It is important to acknowledge the relationship of unequal power that exists between companies and communities. FPIC cannot redress the differential in power, but it can create a workable co-existence under which the two parties can benefit from forest resources. If local communities are not aware of the right to refuse consent then they cannot be said to have a meaningful role in the process of negotiation that leads to it. Communities should be aware of this right and companies should respect it. But companies need not perceive communi-

ties' right to refuse as a threat to their business. In the concessions where several communities had refused consent, this became the beginning point for negotiations. In every case these resulted in robust working relationships between the company and the community.

Only one company we visited accepted that the local population has the right to refuse consent. They did not do this because FPIC is enshrined in national law (which it is not) but because they recognised that FPIC is not possible without it. If local communities do refuse or withdraw consent, presently mostly expressed as barricades on key roads, the company stops all activities in forest attributed to the community in question and begins a dialogue to resolve the situation. The confidence of these communities in opposing the foresters is due to the political connections of some local families and the militancy of the youth. At the beginning of the exploitation in the 1990s the company workers were sometimes met by armed members of local communities forbidding them access to harvest in forests associated with the community. The problem was so acute in some areas that even prospecting was impossible. Through negotiation and clear revenue-sharing structures consent was obtained and exploitation resumed, in every case.

This example shows that accepting that people have the right to refuse consent does not jeopardise exploitation, it simply means that the company has to convey how this could provide local benefit. So far, once this is understood, consent has been granted. The one company that has taken this approach is pleased with the robust relationships it has with local communities and so feels no serious or long-term threat to its business. Giving people the power to say 'no' and then providing a stable relationship for (re)negotiating terms can help companies deflect long-term aggravated obstruction and build sustainable relationships. It is evidence of good faith and respect, which is good for business.

2.2 Sharing of benefits from industrial forestry operations

We have seen that aggressive resistance to forestry exploitation forced one company to be very sensitive as to how it conducted its relations with communities in its concessions. It also resulted in the company reconsidering how to achieve some sort of revenue sharing that would persuade local people to permit exploitation. Adequately addressing this financial aspect of relations with local people was observed to be key to achieving genuine consent. This is especially complicated due to the seeming inability of governments in the region to assure that the taxes paid by companies return to communities in the form of public services (health and education) and public infrastructure. Without any tangible benefits from forestry activities returning to communities through normal government channels, many communities feel that they are being cheated and this creates resentment towards the forestry company.

The most common solution being proposed to address this governmental failure is for forestry companies to develop more direct revenue-sharing methods that circumvent central government. Most commonly companies attribute a certain sum of money per cubic metre of timber harvested for community use, ranging between 200 and 1,000 CFA (roughly US$0.5-2.2). Since the money does not pass through central government it is expected that the money will really get to local communities. How to distribute this money then becomes a major issue.

In most concessions this money is placed in a common fund to which all local communities are meant to have access. The amount of money is calculated on the basis of production in that concession. Sharing benefits of forestry exploitation through big collective funds is problematic due to the large amount of money available and the tendency for local elites to dominate the management of collec-

tive funds. These people often lack the skills to run such structures and feel that they should be the primary beneficiaries. Such elites often present themselves as 'traditional owners' *(ayant droits)*. In a number of concessions we visited, traditional owners had captured these funds and so the majority of the forest population still perceived no benefit.

Some of the problems associated with dealing solely with so-called 'traditional owners' to determine who should receive the proceeds of such schemes were brought out in the Gabonese study. There, as in the concessions visited in DRC, the *ayant droits* deliberately marginalised the majority of the population in order to monopolise benefits to be obtained from the company. Once having formally recognised these claims, the companies experienced great difficulty in negotiating benefit-sharing with other forest communities. These included a number of Pygmy communities whose forefathers were ritually cheated of their claims to forest by being incorporated as juniors in villager clans, and some farming villages who were forced to relocate by the state before forestry operations commenced. Both groups remained very resentful towards the company and caused numerous problems. In another concession in DRC certain *ayant droits* were skilfully manipulating the courts to claim ever-larger forest areas from other villagers and Pygmy communities. The company would settle with one family of *ayant droits* only to be taken to court a year later by the new *ayant droits*.

By including all those who depend on forest resources in the concession in benefit sharing mechanisms, conflicts are avoided. Of course not all communities may have the same claim to benefits – for instance many companies exclude populations that arrived in the concession from other areas after forestry exploitation began. In general, those who have arrived more recently have less of a claim than those who came before them. What is key is that the company should docu-

ment oral histories of occupation and migration to form the basis for catagorising communities in a systematic way. A recent comparison of studies of land rights and population densities in Central Africa offers some general features of local property regimes:

'The first of these is that the pattern of land rights is a complex mosaic, with overlapping areas and resource rights. Furthermore, traditional territories show some flexibility over time, and may shift over a number of decades. Another feature of these territories is that they show huge variation in area(…). One important factor which determines the area of land being used is the local ecology. The distribution of forest types, and presence of particular ecological features, such as marshes or salt-licks, determines the availability of resources within an area, and consequently, patterns of land-use. Settlement history is also important, and this can be the over-riding factor determining land-ownership patterns (Hoare 2007: 1)'.

By comparing priority of occupation with actual land use when working out how to distribute benefits to forest populations, it is possible to arrive at equitable solutions for all parties. In the Gabonese case actual land-use was used to guide the allocation of forest from which the quantity of harvested timber would be measured and cash made available to community associations. Cash derived from forest not directly used by the community but harvested by the company, was put in a general kitty to support community projects proposed by any local forest inhabitants' association regardless of whether harvesting was taking place in their area. This provides the opportunity for development benefits to continue to be available after the community's area has been harvested.

There is no more reliable way to map land use than by going with people into their forest areas and mapping the areas they use. We discuss ways this has been

done in Issue 5, which addresses resource access and livelihoods. If companies plan to remove trees of vital importance to local communities, participatory mapping can indicate this and either lead to negotiations with local people, or to withdrawing that tree from felling schedules. When companies are aware of what matters most to local people they can avoid much time-wasting conflict. Efficient and effective benefit-sharing schemes depend on high quality mapping. If communities are to receive compensation on the basis of the quantity of timber to be felled in each community's area some accurate way of assessing this area needs to be made.

Our research revealed landuse mapping to be the most efficient and equitable method of organising benefit-sharing and a very successful strategy for gaining and maintaining FPIC. This method does not unfairly advantage so-called traditional owners and so ensures that forestry activities benefit the maximum number of local people. It also avoids the potential for conflict that a focus on customary lands leads to (see Issue 5 below for details). This is because there are complex land conflicts resulting from colonial and post independence resettlement policies and social marginalisation. We found that the company which had negotiated consent using the landuse mapping approach had the best relationship with communities living in their concession. Contentment of both parties with the arrangement is evidence of a working FPIC. Other solutions may be equally successful, but we did not come across them.

Of course even when financial compensation is managed by a committee at village level it is still vulnerable to mismanagement and abuse. However, managing benefits through associations at the village level offers more transparency and accountability than if large concession-wide funds are available to individuals. Both local government representatives and forestry companies need to keep a close eye on the projects that are financed

through these schemes. With proper support the projects should lead to the visible improvement of local living conditions, and be managed and monitored on the basis of continuous improvement. Local people should be helped to develop sustainable projects that last longer than the period when their forest is being harvested. If this is achieved then forestry operations can unambiguously be linked to the sustainable development of the region, and reduce the dependency of the local population on the forestry company. With this approach it is possible to arrive at equitable solutions for all parties and reach sustainable consent.

2.3 Awareness of negative impacts from industrial forestry operations

The range of negative impacts that industrial exploitation might have on communities' livelihoods, especially those of hunter-gatherers, were never properly explained to the communities we interviewed during this study. Only one company explicitly informed local Pygmy hunter-gatherers that there could be negative impacts by asking them to map resources that could be damaged by industrial activities.

Many of the negative impacts of forestry exploitation are indirect. That is to say, they are not the result of felling trees but of the infrastructural modifications that support extraction. Foremost of these is the presence of forestry roads, paradoxically one of the contributions most widely appreciated by local villagers.

Roads enable outsiders rapid access to remote forest areas, leading to a variety of activities which put pressure on resources. For instance, the increase in commercial poaching invariably associated with the arrival of forestry roads has several consequences. If left unchecked, increasing numbers of commercial poachers install themselves in areas rich in game to supply urban dwellers with meat. Faunal populations rapidly decline and

forest people, especially Pygmies, can experience difficulty in finding game. Eco-guards are often employed to patrol the forest, but their poor training and surveillance can lead to them abusing their position of power.

Roads also link isolated forest populations into a wider market of commodities and money. From an outsider's point of view the benefits for hunter-gatherers are debatable. While the road can bring useful goods such as medicine it can also bring disease. Most noticeably the increased availability of alcohol to isolated hunter-gatherer populations is having an unquestionably negative impact. Dependency on alcohol leads to problems of health, poverty, and domestic and social violence. Mimicking the intoxication of their elders, some Pygmy children are involved in substance abuse, often using vulcanising solution available in nearby towns as an inhalant. Related to these negative impacts is the rapid decay of unique local systems of religion, thought and subsistence.

Forest communities cannot be expected to be aware of the potential consequences of these indirect impacts of forestry exploitation. Indeed, not all apply in every concession. However, in order to make an informed decision about whether to grant consent, local populations must be aware of the possible implications of their decision. Forestry companies need to have procedures in place to ensure that potential negative impacts are communicated to populations from whom they are seeking consent. Involving local NGOs and people from other areas with knowledge of such impacts in the information process could be one way of achieving this important aspect of awareness raising.

Recommendations

- Active input from both parties:
  The process of awareness-raising should work in both directions with company and community learning from each other. The company should ask the community what they want to know about forestry operations rather than just providing them with a preformed set of information.

- The awareness-raising programme and the negotiations must include discussion of:
  - the populations' right to say 'no' to forestry exploitation;
  - the economic value of the trees to be felled on communities' usage zones;
  - the question of compensation for forestry operations through revenue sharing;
  - the negative impacts of industrial forestry activities on communities' rights and resources and their management.

- Some important steps to consider in the negotiation process:
  - provide communities with information on the possible direct and indirect negative impacts of industrial forestry operations, or invite third parties and forest populations with knowledge of such negative impacts to participate in the awareness raising process;
  - map community usage zones by going with people into their forest areas (the use of a global positioning system (GPS) using iconic software developed for hunter-gatherers' use is preferable);

- identify and value the trees to be felled on each community's usage zone;
- identify areas with a high value in terms of sacred trees, cemeteries, rich in medically and culturally important trees, to be spared from forestry activities;
- negotiate appropriate compensation on an individual village basis; this should include both money and sawn timber;
- establish associations in each beneficiary community to ensure that the redistribution of the benefit package is equitable, and that it is used for local development rather than for the personal enrichment of local elites;
- provide documentation giving evidence that the above procedures have been enacted;
- establish a process aiming at ongoing improvement through monitoring, constant exchange of information and inputs from experts.

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Caterpillars can cause conflicts: They are an important source of protein for forest communities at a time of difficult hunting. But they depend on large emergent sapelli trees that are most demanded by forestry companies for the timber's high value on international markets. If these competing claims are not resolved they lead to conflict.

ISSUE 5 – Resource access and livelihoods

People rely heavily on forest resources for their livelihood, especially those located on their customary lands. Resources are both economic and cultural and include arable land, medicinal trees, fruit trees, sacred trees and places, water-sources, fishing sites and hunting grounds. Large-scale forestry operations affect many of those resources, particularly game, caterpillars and medicines. They impact particularly heavily on semi-nomadic hunter-gatherers' livelihoods because their subsistence practices are more forest-dependant, more geographically wideranging and more linked to hunting than those of settled populations (Lewis 2002: 72).

For FPIC to be achieved, both the companies and the local communities must be aware of the implications of industrial forest exploitation for resource use. We found three key issues to consider here:

- The protection of key economic and cultural resources;

- The mapping of usage zones;
- The importance of involving local people in the management of possible negative impacts of industrial forestry on resource use.

These are difficult and sensitive questions to address, but they cannot be left unresolved if local communities are to have an informed discussion with companies about what consent over forestry activities entails.

1. GPS mapping of key economic and cultural resources

We found two companies using global positioning systems (GPS) to map the key resources of the local communities living on their concessions. One system is based on visual icons representing different categories and types of ecological and cultural resources such as trees, fishing sites, hunting grounds and sacred places. It is created for use by non-liter-

ate people and to correspond with the local population's use of the forest. The GPS systems are used by the *communicateurs sociaux* of the companies to identify with the help of members of each community the resources they want to protect from exploitation. After their identification with the GPS, the resources are marked with paint (pink proved to be a more visible colour for forest workers). They are also marked on specially made maps of the locality which are then given to the local communities and to the forest worker teams before cutting.

This system is an efficient tool to protect people's local resources. Local communities reported few cases where resources protected by this system were damaged by forestry operations. The cases mentioned to us occurred only when the system was in the process of being implemented. Now, problems seem to be solved and a major step forward in respecting local communities' resources and use rights appears to have been achieved by using this participatory mapping tool.

Despite its success, participatory mapping could engage the local population more fully in the management of the forest. Only one or two members of each community were involved as guides in the identification and marking of their resources and this often leads to ignorance within the wider community as to what exactly has been identified in the forest by the guides and the *communicateurs sociaux*. In the event that the company needs to fell or damage a key resource and therefore negotiate compensation with the affected community this could be difficult if the guides are away and no one else knows exactly which resource is being discussed. This problem is compounded by the absence of efforts to teach members of the community to read the icon maps that are given to them. Widening participation would ensure that a larger sample of the community has knowledge of which resources are protected. It could also

avoid conflicts within communities and between communities and the companies about the resources that have been or should have been protected.

Although the GPS apparatus with iconic software was designed for use by local people, in fact it was operated by the companies' *communicateurs*. This means local people are less likely to be able to 'read' the icons on the maps and hence be unable to monitor how well the company protects their key resources. The team of people involved to guide the communicators was generally composed of 'elders'. In those two concessions, most of the 'youth' we asked were unable to identify the resources that had been marked for protection and use by their community. Given the long-term nature of the company's relationship with these communities efforts should be made to involve young people in these activities.

One company had a specific problem with its procedures. In this concession, community representatives were only involved in the first stage of the participatory mapping (the identification by GPS of their local resources). After that, the forest manager made the decisions regarding which trees would be marked with paint to signal to foresters that they were not to be felled. However, he did not mark all the trees identified by the community as valuable as many of these had no commercial value. He decided instead to mark only those with potential value for timber, despite the obvious fact that workers' camps, skidder trials and roads could damage many of the other important sites for these communities. Local people did not understand why all the areas they had identified as key resources had not been marked. This led to a loss of faith in the process and weakened the interest of the local population in an activity which was designed to be useful to them. It also increased the likelihood for the company to make mistakes in marking and mapping people's resources and therefore to cause them actual damage during forestry operations.

2. Mapping of usage zones

Our research showed that although companies have carried out participatory mapping of some key local community resources, they have made no maps which show which communities use which zones. The practice of mapping usage zones is a necessary task for addressing FPIC since unless usage zones are mapped the possible diminishing of communities' resources cannot be foreseen, monitored and addressed. Predicting changes in resource use is vital if local populations are to be in a position to make an informed decision about consent.

Usage zones often – but not always – coincide with community customary land. However, we suggest that it is more sensible to map usage zones than it is to map customary lands, for the following reasons.

The first reason is that hunter-gatherer groups' land rights are often not recognised by other communities. Many Pygmy communities' land rights are denied because they are not considered full human beings. In other cases their forefathers were ritually cheated of their claims to forest by being incorporated as juniors in village clans. The second reason is that the land rights situation is often complex due to the resettlement policies developed by several states in the Congo Basin during colonial and postcolonial times (Gabon, RC), whereby villages were moved onto other villages' customary territories. They were given a part of that land to settle but have not been given the right to claim it as their new land, despite depending on it as much as others. These land issues appeared clearly in our research in Gabon because the company visited addressed FPIC by looking at its activities on each village's customary land. The company researched and mapped the customary lands of the local communities and discovered that some of them did not have 'customary' land. Customary chiefs excluded them

from any benefits linked to the exploitation of forests they depend on. For the company to address this issue required long and difficult negotiations before FPIC was achieved from the marginalised communities. The result was that in future areas of exploitation the company adopted a usage zone approach for every community to ensure revenue-sharing was as widely distributed as possible.

The important thing is to clarify who has use rights and where. There is no more reliable way to map usage zones than by going with people into their forest areas and mapping the areas they use. In order to prevent fraudulent claims some objective measures of actual and current usage needs to be agreed for each concession. Mapping local communities' usage zones is fundamental to the FPIC process. Consent cannot be reached until the resource use of all communities using the forest to be harvested from is identified and mapped. Companies need to know whose resource use their operations might restrict or perturb.

Companies also need to know whose trees they have felled in order to organise appropriate and fair revenue sharing. Mapping usage zones provides the most equitable way of calculating how revenue will be shared, which is an important element of the consent process (see Issue 4). It also makes it possible for unused areas to supply revenue to a general concession-wide fund for community projects even when their area is not being harvested. The company which had negotiated consent through this approach was the one that had the best relationship with communities living in their concession. The full acceptance by both parties of the arrangement is evidence of a working FPIC.

3. The importance of involving local people in the management of possible negative impacts of industrial forestry on resource use

Forest management is a complex affair involving not just the forestry company and forest dwellers but also the state and conservation organisations. This creates a situation where responsibility for diminished access to resources and other negative impacts cannot lie solely with the company. However, industrial forestry operations do impact upon resources forest people use. The building of roads for timber exploitation, for instance, puts pressure on resource use by opening up the forest to other users such as commercial poachers. The consequences of this are one of the most conflict-ridden areas of forest management in the concessions visited, and provide an illuminating example to illustrate this point.

In the context of enforcement approaches to comply with state laws and FSC Criterion 6.2[25] in RC, foresters act in partnership with conservationists and the state to protect wildlife resources through the imposition of conservation zoning and the employment of locally trained ecoguards to police hunting activities on their concession. Even if this policing were to be well regulated (and there is evidence that it is not), by excluding forest people from such partnerships foresters become implicated in a process which can diminish forest peoples' access to resources, particularly hunter-gatherers. This could be seen to contravene FSC Criterion 3.2, that states, 'Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.' Affected local and indigenous people claimed that they had abandoned hunting due to the fear of ecoguard persecution, the reduction of their traditional hunting grounds, and their inability to afford hunting permits or even knowing how to obtain them. There is evidence that hunting skills and associated religious activities are being lost. Such issues led one group of companies to publicly declare that it 'has made it a point of principle not to pursue forestry activities in any areas inhabited by nomadic indigenous peoples'[26].

The absence of participation by local communities in the elaboration and execution of wildlife management planning and activities is at the heart of the intense resentment some communities feel towards current wildlife management strategies. This must not be confused with a disregard for wildlife management, but rather with resentment of the perceived abusive and contradictory behaviour of ecoguards.

Indigenous people recognise the importance of wildlife management and most have traditional systems to do this. However, with the increased access of outsiders into their forest and dramatic technological improvements to hunting equipment, these traditional systems are often ineffective. A number of Pygmy men expressed dismay at the havoc poachers were wrecking on wildlife in their hunting areas. One Pygmy man even requested that he be taken out by car so he could indicate where all the poachers' paths were so they could be stopped. There are clearly important synergies to be exploited in wildlife management if local forest people are associated, consulted and participate appropriately in implementation strategies. Wildlife management strategies that involve them will serve their long term interests and could substantially reduce policing costs by enabling enforcement activities to be efficiently targeted.

To begin such a process would involve openly explaining the negative impacts with affected groups, thus allowing the development and testing of measures to reduce negative impacts on wildlife from over-hunting. Relevant experts with intimate knowledge of both wildlife management and hunter-gatherers can support the development of solutions with government representatives, forestry companies, indigenous groups and conser-

Young Mbendjele Pygmy men explain to an older man how they can map their forest related activities with picture-driven software on handheld GPS receivers.

vationists. Until indigenous people are active partners in the design and implementation of wildlife management and in wildlife monitoring it is unlikely that this conflict will be resolved.

Recommendations

- Participatory mapping of all key resources should be carried out using GPS or a similar system.

- Resource marking should be carried out by the local population in collaboration with the *cellule d'aménagement*.

- In order to make mapping truly participatory, a representative team from the local population (including women, individuals of different ages, and members of all ethnic groups) should participate in both the GPS identification and the marking of resources. The members of this team should be chosen by the population in a full community meeting, at which the purpose of the exercise is fully discussed. Including all age groups will encourage the young to learn from older people where important resources are sited.

- Where iconic software is available, the mapping tool should be operated by local people.

- Communities' and/or lineages' customary rights and usage zones should be researched and documented, preferably using an independent specialist.

- All potential threats to resource access caused directly or indirectly by the presence of industrial forestry exploitation should be made known to local communities.

- Steps should be taken to prevent any such threats becoming realised, through negotiations with the local populations and through inputs from experts.

ISSUE 6 – Forest management partnerships

The presence of multiple stakeholders living and operating in forestry concessions can create conflicts of interest that are detrimental to all parties, particularly to the least powerful among them, namely hunter-gatherer populations. One way of regulating relationships is through multi-partner arrangements for the management of forest concessions. The operation and regulation of these partnerships can have a marked impact on forest communities. In the section below we discuss their operation under the following headings.

- The role of forest management partnerships in FPIC;
- Partnerships and forest people;
- The need for accountability and responsibility in investigating and resolving problems;
- Dispute resolution procedures.

1. The role of forest management partnerships in FPIC

We encountered several forest management partnerships, usually comprising forestry companies, the state, local communities but also local NGOs and conservation organisations working to protect particularly rich and rare flora and fauna and to diminish the activities of commercial hunters using forestry roads.

Partnerships between these stakeholders are necessary to fulfil FSC requirements for both conservation and social issues, and as such they relate closely to FPIC. In this capacity they can be a valuable means of regulating the relationship between local communities and the company as they can involve other partners in a mediation role. However, our research showed that in practice these partnerships are hard to manage and maintain, which means they are less efficient and effective at addressing social issues and maintaining sustainable consent than they should be.

There are various reasons for this: conservation organisations do not always prioritise human issues; local community platforms face problems of elite capture; and the level of support and involvement from governments is often low, leaving forestry companies with the task of becoming government providers. The existence of multiple actors in the partnership can create a vacuum of responsibility in which each partner tends to blame the others for deficiencies which remain. As a result, problems are not resolved and opportunities are missed. The victims are the local populations, who are powerless to have their social, economic and cultural needs and rights addressed in relation to their resource use and provision.

Properly managed functional partnerships are important for FPIC. FPIC cannot be maintained if problems of access use linked to the multi-partner forest management remain unresolved. Efficiently managed partnerships can provide the means by which to address problems and ensure equitable resolution for all stakeholders. It is crucial, though, that forest people are included as equal partners.

2. Partnerships and forest people

Although the different partners share responsibility for forest management, they each have their own agenda. Neither the forestry companies nor the conservation organisations target local people as the principle beneficiaries of their work. The state and local authorities do little for forest people, and some partners claim that authorities only participate in the partnerships to access their resources. Forest dwellers fall into the gaps between the agendas of these more powerful forest management actors.

While such roads can be the vectors of economic development, they can also bring unwelcomed incursions such as illegal forest activities, poaching and diseases.

For example, we visited one small village close to a national park, whose fields are continually damaged by elephants. The buffer zone around the park is managed in a four-way partnership comprising an international wildlife NGO, the Ministry of Water and Forests, the forestry company and (on paper at least) the local population. Villagers explained that damage by elephants makes cultivation a wasted effort. The partnership proposed income generation projects managed by the NGO to link the population to the market economy to replace farming. Many of these schemes have not prospered and the population is now dependent on food imports, which are sold to them. However, only those with a fixed monetary income (such as those working as eco-guards for the partnership or for the national park) can afford this. Consequently, the economic situation of numerous villagers has deteriorated severely and social cleavages have been widened.

The problem described above resulted from pressure created by the priorities of powerful partners (conservationists) dominating decision-making within the part-nership. The partnership has been unable to resolve the issue as forest people have no effective say within it. If FPIC was applied properly in this situation the partnership would have been likely to have found satisfactory solutions to support local people's livelihoods. However, if local people have no ability to resolve the situation to their satisfaction then genuine FPIC is unachievable and the partnership will be fraudulent and unsustainable.

3. The need for accountability and responsibility in investigating and resolving problems

When problems occur in forest management it is important that the different partners be held accountable and take responsibility for addressing them. If the statutes and principles of the partnerships are clear and robust then these partnerships can be effective means of forest management and means of addressing and maintaining FPIC.

The complexity of this issue is illustrated by the following example. Forest communities in several concessions made alle-

gations of abuses by eco-guards trained, equipped and paid by forest management partnerships comprising forestry companies, conservation organisations and government ministries. We heard numerous allegations of abuses but we were unable to substantiate them all. Responsibility for investigating such claims and resolving any problem lie with all members of the partnership: the ministry, since it trains the ecoguards, and the forestry company and the conservation NGO, since they pay and manage the ecoguards. There is also a platform of local NGOs which should be carrying out independent investigations into these claims. As part of the partnership, the forestry company has a responsibility for this situation.

When such problems arise it seems that individual partners have sometimes been abdicating responsibility. Sometimes they have blamed the other members of the partnership, and this has led to the issue not being investigated and addressed. It is vital that all partners act together to improve coordination and communication within the partnership and to act in concert to address problems. One group of hunter-gatherers reported to us that the abuses had ceased for the time-being. Indeed, the forestry company involved claimed that it had brought pressure to bear on the other partners to improve ecoguard conduct. It is this kind of action that is needed to maintain the good relationships so central to FPIC.

The proper regulation of the forest management partnerships is an important issue for companies for gaining and maintaining local communities' FPIC. Local communities cannot be expected to give or maintain their FPIC if their economic situation is worsening due to the indirect impact of logging roads on hunting and to the poor management of this impact by the partnerships in which forestry companies are involved. If forest partnerships exist all partners bear equal responsibility for resolving problems.

4. Dispute resolution procedures

Widely known dispute resolution procedures should be developed that cover the main areas that the company is responsible for in its dealings with forest people. This procedure should be developed in consultation with forest people and include support for them, so that in the case of a dispute, they can understand proceedings and the adjudication process as well as represent themselves effectively.

4.1 Complaint procedure

Companies need a clear complaint procedure that is added to all standard procedures where complaints might occur. This procedure must be communicated to the forest people and must describe exactly to whom complaints have been addressed, where to go if not satisfied, how people get information necessary for them to follow developments as their problem moves through this complaint procedure, and so on. Conflicts will remain, but they will have to be managed in a transparent and fair way.

4.2 Major conflicts

If major conflicts arise a company should be able to prove that it is not active in the area in question as long as the conflict remains unresolved. The conflict has to be carefully documented, including the process by which arbitration is sought, the solutions suggested and their implementation. Every conflict should have a dedicated file so that the whole process is monitored and kept up to date.

A wider analysis and description of all conflicts and complaints that occur should classify the different issues that the company is responsible for and those that do not concern it.

Recommendations

- Forest management partnerships should include members whose principle objective is the social welfare of forest populations. In the case of weak capacity amongst local organisations support should be sought from other local or international NGOs, universities and agencies.

- Forest partnerships should be set up in such a way as to include forest people as equal partners and facilitate their full participation.

- Specific programmes of capacity building tailored to the needs of forest communities should be developed to ensure they can participate effectively in partnerships.

- It may be necessary to provide independent facilitators to act on behalf of forest peoples until capacity is built.

- Government representatives should have a more proactive role as both arbiters and intermediaries supporting the communities and companies to establish balanced relationships in which both have an equal say in decision-making processes.

- Clear indicators should be set for measuring the degree to which forest people are able to use partnership platforms to resolve issues they have with forest management in their areas.

- Forestry companies should make other partners aware of the demands of FPIC and solicit their help in resolving problems that might jeopardise it.

- The roles and responsibilities of each partner (state, conservationists organisation, local NGOs, commercial forestry companies, local communities) need to be clarified and their performance monitored.

- The partnerships should call upon bodies with professional expertise in managing and facilitating multi-stakeholder partnerships, perhaps from international NGOs or academic institutions or management consultancies.

- Complaints and dispute resolution procedures need to be developed in consultation with forest people.

ISSUE 7 – Transparency

For effective public relations, transparency has to be at the core of operational values through the whole process of developing and implementing the company's social programme. A clear commitment to transparency should be part of the company's public statement.

Transparency is essential at three different levels:

- In relation to local forest people;
- At the national level;
- At the international level.

1. Transparency in relation to local forest people

Forestry companies have to be transparent in the conduct of their relations with the local population. This is fundamental if FPIC is to be an effective basis for long-term sustainable relations with local communities. Most major problems we were told about between local people and companies were due to misunderstandings, lack of information, or misinformation. These problems often require a great deal of effort and time to resolve. This can be avoided by transparency and effective structures to ensure communication (see also Issue 2: Institutional capacity building).

Transparency is essential for good relations with local people. This has wide-ranging implications: from ensuring all participate in public consultations; that adequate information and translation is provided of important discussions and key texts; that timetables structuring relations with the company are developed in a participative manner and agreed upon; that people are given sufficient time to consider new information before being asked to take important decisions; that they get appropriate and timely feedback when they are not able to be present

when important decisions concerning their forest area are made; and that they know the reasons for eventual delays, or are consulted before plans are changed, etc. During exploitation local people should know how much timber was felled in their areas, how much this timber is worth and how much they gained in benefit-sharing schemes. Consent agreements, disputes and other important documents regarding the company's relations with forest people should be available for inspection. Consent agreements should be publicly available.

2. Transparency at the national level

As company procedures for managing relations with forest people are developed the company must make use of independent and recognised specialists in relevant areas to contribute to, and eventually approve, the elaboration of procedure(s). During research we discovered a wide range of links established for this purpose between forestry companies and relevant government representatives, university departments, NGOs, other forestry companies, charities, international organisations and research institutions.

Invited outsiders who are accepted by all parties can also play a key role in monitoring company relations with forest people and mediating between them if there are problems. Two companies visited had instituted systems attempting to do this but local people were mostly unaware of its existence and had no say in the choice of partners. Also, according to company staff, participating NGOs were inadequate to the task. But the companies concerned had not developed programmes with these NGOs to address this. Facilitating attendance at relevant training sessions and workshops would be an obvious place to start.

Companies that have made the considerable efforts required to achieve FPIC from the populations in the forest they harvest timber from can publicise their success most effectively if independent specialists, pressure-groups, NGOs and others have contributed to developing solutions, or can visit freely. When independent people communicate their findings it is far more effective than in-house reporting. Although there is an added cost to companies in welcoming visitors, there are significant benefits in terms of the technical assistance and positive publicity. The visits need not necessarily take up large amounts of management time if members of the social team are trained to look after visitors. Part of this training should include understanding the line between transparency and the need to protect issues confidential to the company for reasons of competition etc.

3. Transparency at the international level

The need for transparency also applies to the international level. Companies should welcome journalists, researchers and visitors from international institutions and NGOs. They should promote their commitment to responsible and sustainable forestry to their customers all over the world.

Additionally, all companies that are multinationals with their headquarters in OECD-Countries (Organisation for Economic Co-operation and Development members) should adhere to the OECD Guidelines for Multinational Enterprises, Revision 2000. These guidelines provide advice on the key areas of disclosure, environment, employment, combating bribery and taxation, amongst others.

Recommendations

- Transparency at the local level:
  - facilitate maximum participation of local people in all dealings with the company;
  - favour mediums and strategies that will reach the greatest number of people;
  - provide comprehensive evidence of their consultations with communities that includes when, where, who and what was discussed or agreed;
  - ensure communication strategies between company management and communities are robust and effective in both directions. Be able to provide documentary evidence of this access to any financial information they request about timber taken from their area;
  - consent agreements, and other important documents regarding the company's relations with forest people should be publicly available;
  - involve independent organisations to monitor and mediate company relations with forest people.

- Transparency at the national level:
  - engage independent experts and recognised specialists to advise on and approve company procedures towards FPIC;
  - companies should be open to outsiders, visitors and critics. Funds should be made available for this where appropriate;

- companies should publish information showing:
  - their commitment toward implementing FPIC
  - the amount of money earned
  - the amount of timber felled
  - the communities they are working with
  - the state of relationships with communities
  - all agreements made with the communities

- Transparency at the international level:
  - welcome international visitors of all kinds;
  - promote their commitment to responsible and sustainable forest management;
  - adhere to OECD Guidelines for Multinational Enterprises, Revision 2000.

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Hope for the young generation: This girl should have the possibility to continue to live in this area in a sound environment and to be able to decide about her future.

CONCLUSION

FPIC is a complex notion. The complexity exists in defining at which point it can be said that people's *informed* consent has really been gained. In our study of seven concessions in three countries, we found only one case where the local communities expressed satisfaction with the existing arrangement for forest management. Surprisingly, this company had no legal document explicitly describing this as consent. By contrast, elsewhere we found signed documents used as proof of consent while many villagers were dissatisfied with the relationship they had with the company exploiting the concession they lived in.

For FPIC to work, both parties need to be satisfied with their relationship, confident that if they have a problem they will be able to raise it with the other and resolve it satisfactorily. A signed document cannot prove this. Genuine and sustainable consent requires that no doubt, regret or discomfort is experienced by either party. This is mainly achievable through actions, not words: by honouring commitments; by behaving respectfully towards one another; by being willing and able to resolve disputes and accommodate differences of opinion; and most importantly, by listening and acting on this in forest management decision-making. True consent is an ongoing relationship of mutual trust.

This document has raised the seven issues that our research revealed as most relevant to address FPIC. We hope this can usefully serve as guidance on which to build successful strategies for taking a *free, prior and informed consent* approach to relations between forestry companies and forest people. In terms of building the robust and sustainable relationships on which socially responsible and sustainable forest management is based, our proposals outline processes which practitioners on the ground can refine to suit their cultural context, and improve upon as experience builds up. FPIC does not have a format set in stone – it is an organic process.

Below we offer a summary of the twelve key steps that our research suggests are fundamental to achieving relationships with forest people based on *free, prior and informed consent* in forestry concessions in the region. These are followed by recommendations addressing the wider legal, commercial and social constraints on implementing FPIC in the Congo Basin.

The twelve-step FPIC process

1. **Build institutional capacity**
   The company's social team is crucial to gaining FPIC. It needs significant investment to provide it with the human and material resources to carry out its work. It should be fully integrated into the company structure, and fully supported by the management. This includes ensuring that basic social aspects are understood and respected by all company staff members.

2. **Develop appropriate communication and information strategies**
   It takes research, expertise and patience to find the most effective ways of communicating with forest people. Awareness-raising needs to be treated as a two-way dialogue.

3. **Create a participative decision-making process**
   Forest people need to be included in decisions. It is important to create mechanisms to bring all the community into the process and to create a culture of full participation through deliberate social inclusion.

4. **Develop functioning partnerships**
   Forest people must be included in forest management partnerships. To be effective partners they must receive the training to put them on a footing with other partners. Partnerships should have clear self-regulatory procedures.

5. **Understand the different models of consent**
   It is important that both parties understand the other's notion of consent and that both are respected as far as possible in the relationship.

6. **Map local communities' usage zones**
   It is important that *all* forest users' resource usage be mapped. This is best achieved by accompanying people into the forest rather than relying on a few spokespeople.

7. **Protect the resources located on their usage zones**
   This should be carried out by the company's social team, guided by a team of community members representing the variation in that community (young and old, women and men, all ethnic groups, etc.). It should be very clear to all community members which of their resources have been protected.

8. **Inform the local communities of the possible impacts of impending forestry operations**
   Forest people need to know about *all* potential impacts (direct and indirect, positive and negative) of industrial forest exploitation on their usage zones and on their lives, and develop measures to reduce these negative impacts together with the local communities.

9. **Negotiate compensation and benefit-sharing with all forest users**
   This is best carried out on the basis of the trees to be felled in each usage zone, on a village-by-village basis. The benefit shall lead to improved living condition of the local population and be constantly monitored and improved.

10. Build and empower local community associations to manage benefits at village level
It is important to circumvent elite capture of benefits and to encourage transparency.

11. Formalise the consent process
This can be done both legally on paper if necessary, but also through an appropriate ceremony to mark that the agreement is of mutual satisfaction.

12. Maintain the relationship of consent
Channels of communication between the company and the communities must be kept open at all times, even after exploitation has finished. The relationship can also be nurtured through exchange of benefits which can be formalised.

RECOMMENDATIONS TO SUPPORT THE INTEGRATION OF FPIC INTO THE LEGAL, COMMERCIAL AND SOCIAL CONTEXT OF FOREST MANAGEMENT IN THE CONGO BASIN

The draft of this report was received constructively by those forestry companies that participated in the research. They recognise the need to avoid an over-dependence on certification schemes (which are potentially vulnerable to changing market circumstances or loss of confidence from the industry) in determining their policy and relations with forest people in their concessions. The enshrinement of FPIC in so much international law makes it an attractively robust and stable standard on which to base the elaboration of their social programmes with forest people. Responsible forestry companies are seeking to invest in long term sustainable strategies for social forestry management.

However there are a number of constraints that need addressing if their enthusiasm for a FPIC approach is to be sustainable.

These constraints are:

- The legal status of FPIC in national laws;
- Uncertainty as to the implications for company's financial and human resources;
- The lack of regional capacity in social forestry management;
- The absence of capacity among many local populations to negotiate FPIC;
- The lack of familiarity with the concept of FPIC.

Below we propose five programmes of action to address these constraints. The programmes should be undertaken concurrently. They need a long-term approach which reflects both the 30-year cutting cycles practised by forestry companies and the time needed by all parties to build ongoing relationships based on trust.

1. Integrating FPIC into national laws in the Congo Basin

As current forest laws stand there is little consideration for the right of forest people to refuse consent to forestry operations. Rather, the relations between the forest 'owner' (the state) and the tenant (the forestry company) are contractual. In a dispute, a judge will only consider the contract between these two parties. Therefore if forest or indigenous people block exploitation the 'owner' (the state) could be in a position to prosecute the forester for non-compliance with the terms of their contract. Clearly any serious effort to develop the application of FPIC in the Congo Basin must address this legal context.

Therefore there is an urgent need to identify the most efficient means of making the FPIC process legal and institutionally sustainable. This is a complex task, of which the basic elements are a legal analysis followed by an implementation programme at the national and local level. This will involve:

- Analysis, by experts in African state law, of existing national forestry laws in the countries concerned to identify constraints and opportunities to integrating FPIC;
- Exploration of the legal implications of allowing local populations to withhold consent;
- Resolution of any legal barriers to the right to withhold consent;
- Consideration of the tax implications of FPIC if consent is refused;
- Production of clear legal guidelines for companies to refer to when producing management plans and company procedures.

This should be followed by:

- Effective lobbying of relevant government structures to ensure the amendments and legislative changes proposed are adopted into national forestry law;
- Training for civil society in advocacy skills to promote the integration of FPIC in national laws;
- Training and support of national and local administrators to take an active role in facilitating the FPIC process;
- Support initiatives to explain and discuss FSC Principles and Criteria nationally and to develop regional standards for FSC.

2. Elaborating and testing of procedures for FPIC in the Congo Basin

While forestry companies recognise the value of the proposals put forward in this report they are also understandably hesitant about the commitment of resources required to implement them. These costs can be viewed as long-term investments necessary to the smooth running of forestry operations. Early investment in social matters brings financial benefits at the level of production. At this stage it is very difficult to predict what these investments would entail. Therefore it is recommended that pilot projects be set up to test the practical, financial and logistical issues involved in the cost-effective implementation of the FPIC approach. These would need to be externally funded so that these pioneer companies do not bear the whole financial burden of testing the FPIC approach. This pilot process needs to run for at least three years for procedures to be properly tested.

Pilot projects would involve the following steps:

- Locating funding for the pilot projects;
- The selection of companies willing to experiment with implementing FPIC procedures;

Consultation with selected companies on an action plan to identify:

- The priority procedures to address;
- Further research priorities needed to address complex issues (e.g. communication);
- What expert support to bring in;
- The required level of investment in human and financial resources;
- Appropriate monitoring and reporting procedures.

3. Developing competence within forestry companies able to implement FPIC in Congo Basin concessions

For FPIC to become sustainable it requires the development of human resources in the field of social forestry management. There is a shortage of people equipped with the necessary skills in the region. One attempt to remedy this is the Centre for Social Excellence in Forestry Management in the Congo Basin currently being set up by the Tropical Forest Trust. The aim of this centre is to train the next generation of African social forestry managers and to provide support to forestry workers specialising in social issues.

Such initiatives need to be encouraged and supported financially. It would make sense to develop complementary initiatives through existing structures such as the Centre for Social Excellence. Key areas to include are:

- Increasing the proportion of women qualified in social forestry management;
- Identification of potential in Central African universities and developing strategies to capture this potential for the forestry sector;
- Provision of in-house capacity building programmes to existing staff in forestry companies.

4. Empowering local populations to negotiate FPIC

It is important to recognise that forest communities have both strengths and weaknesses when it comes to negotiating FPIC. In order for effective long-term strategies to be developed, strengths need to be reinforced and weakness addressed. Some of the basic interventions needed are:

- Support for forest communities to understand both the positive and negative impacts of forestry operations;
- Support for exchange visits between forest populations in similar situations;
- Increasing familiarity with forest peoples' rights and the law, especially in relation to FPIC;
- Development of effective partnerships that enable local forest communities to participate and be heard in local, national and international debates on forest management;
- Elaboration of appropriately targeted programmes of support to help forest communities gain the necessary knowledge, experience and organisation to negotiate as equal partners with forestry companies and policy makers.

Locally active NGOs are natural partners in this process. However, they also need capacity building so they are able to support initiatives in the following areas:

- Development and maintenance of regular contact with the local populations;
- Identification of forest communities' particular modes of communication and organisation as a basis for developing appropriate support strategies;
- Identification of what information communities need before they can give their FPIC;
- Development of appropriate strategies for communicating that information;

- Training in facilitation techniques appropriate to supporting forest people in their negotiations with forestry companies;
- Support for forums where locally active NGOs can share experiences;
- Train NGOs to act as independent observers during negotiations;
- Develop procedures for NGOs to ensure consent agreements are respected on both sides.

5. Dissemination of the FPIC principles and process

In addition to the recommendations made above there are several strategies by which this report and the issues it raises could be made more widely known and discussed:

- African language translations;
- NGO meetings and workshops;
- Elaboration of regional guidelines for the implementation of FSC Principles and Criteria in the Congo Basin;
- Accessible summaries in pamphlet form;
- School-based materials;
- Non-literature based media (theatre, music, etc.).

Endnotes

1. 'Pygmy' is an academic term referring to the diverse groups of forest hunter-gatherers in the Congo Basin. It translates the local concept of 'forest people' (Lewis 2001; Koehler and Lewis 2002). Despite sometimes being used negatively, it is increasingly being used by Pygmy groups themselves to express solidarity with other Pygmy groups.
2. John Nelson, personal communication 30.04.2008.
3. From the online APFT Pilot Report http://lucy.kent.ac.uk/Sonja/RF/Ukpr/Report132.htm
4. African Commission on Human and Peoples' Rights 2006.
5. For several definitions of indigenous peoples in a Central African context see for example Nobirabo (2007), p. 61. In relation to Pygmy hunter-gatherers see Klieman (2003) chapter 3.
6. Article 13 of the DRC constitution stipulates that *'Aucun Congolais ne peut, en matière d'éducation et d'accès aux fonctions publiques ni en aucune autre matière, faire l'objet d'une mesure discriminatoire, qu'elle résulte de la loi ou d'un acte de l'exécutif, en raison de sa religion, de son origine familiale, de sa condition sociale, de sa résidence, de ses opinions ou de ses convictions politiques, de son appartenance à une race, à une ethnie, à une tribu, à une minorité culturelle ou linguistique.'*
7. World Bank Inspection Panel Report 2007: 149, quoting http://www.irinnews.org/webspecials/pymy/52582.asp
8. Article 8 of the 2002 Republic of Congo Constitution states: *'Tous les citoyens sont égaux devant la loi. Est interdite toute discrimination fondée sur l'origine, la situation sociale ou matérielle, l'appartenance raciale, ethnique ou départementale, le sexe, l'instruction, la langue, la religion, la philosophie ou le lieu de residence…'*
9. World Bank Inspection Panel Report 2007: 149.
10. The official name: Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, 1989.
11. Prof. W. Delvignt, personal communication 30.05.2008.
12. United Nations Development Programme 2007, https://hdrstats.undp.org/countries/data_sheets/cty_ds_COD.html
13. UNESCO 2005: 28-29 lists over thirty groups of Pygmies living in DRC's forests.
14. From Chatham House and TTAP websites: http://www.illegal-logging.info/sub_approach.php?subApproach_id=68, http://www.timbertradeactionplan.info/sub_approach.php?approach_id=6&subApproach_title=Gabon#document_anchor
15. Status 2005
16. United Nations Development Programme 2007, http://hdrstats.undp.org/countries/data_sheets/cty_ds_GAB.html
17. The following general trends are taken from Chatham House and TTAP websites (see endnote 14).
18. http://www.illegal-logging.info/sub_approach.php?subApproach_id=68,
19. This paragraph is based on http://www.timbertradeactionplan.info/sub_approach.php?approach_id=6&subApproach_title=Gabon#document_anchor.
20. Loi N° 016/01 portant Code Forestier en République Gabonaise, article 251.
21. 'Pour promouvoir l'aspect social de la politique de gestion durable, il est mis en place une contribution notamment financière, alimentée par les titulaires de ces concessions pour soutenir les actions de développement d'intérêt collectif initiées par les dites communautés. La nature et le niveau de cette contribution sont définis par le cahier de charges contractuelles lié à chaque concession. La gestion de cette contribution est laissée à l'appréciation des assemblées représentatives des communautés concernées.'
22. http://www.timbertradeactionplan.info/sub_approach.php?approach_id=6&subApproach_title=Gabon#document_anchor.
23. We assume that the use of 'free and informed consent' rather than 'free, *prior* and informed consent' in the FSC standards is due to the need to ensure that all current and future exploitation is conducted with the free and informed consent of affected communities, rather than to retrospectively seek free and informed consent from communities affected by forestry activities in the past. This is peculiar to the FSC standard, and not to international legal interpretations of FPIC.
24. The term 'forestry operations' refers principally to timber harvesting, but is also relevant for other types of forest use such as mining or conservation.
25. FSC Criterion 6.2 requires that safeguards exist that will protect rare, threatened and endangered species and their habitats' resources.
26. http://www.preciouswoods.com/index.php?option=com_content&task=view&id=46&Itemid=105

REFERENCES

African Commission on Human and Peoples' Rights (2006) *Presentation to the UN Permanent Forum on Indigenous Issues,* 15 - 25 May 2006.

African Development Bank (2007) *Selected Statistics on African Countries. Volume XXVI.* Statistics Department, Tunis, Tunisia. http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/STATISTICS/SELECTED%202007_WEB_0.PDF, accessed 30 April 2008.

Albrecht, Brigit et al. (2007) *Der Fischer Weltalmanach 2008. Zahlen, Daten, Fakten.* Frankfurt a.M.: Fischer Taschenbuch Verlag.

Bahuchet, Serge and H. Guillaume (1982) Aka-Farmer relations in the Northwest Congo Basin. In: Leacock, E. and Lee, R.B. (eds.) *Politics and History in Band Societies:* Cambridge University Press. pp. 189-211.

Carter, Jane with J. Gronow (2005) *Recent Experience in Collaborative Forest Management A Review Paper.* CIFOR Occasional Paper 43 Jakarta. CIFOR.

Carter, Jane (1996) Recent *Approaches to Participatory Forest Resource Assessment.* Rural Development Forestry Study Guide 2. Overseas Development Institute. London.

Christy Patrice, R. Jaffre, O. Ntougou and C. Wilks (2003) *La Fôret et la Filière Bois au Gabon.* Libreville, Gabon: Multipress.

Clist, Bernard (1999) Traces des très Anciennes Occupations Humaines de la Forêt Tropicale au Gabon. In *Central African Hunter-gatherers in a Multidisciplinary Perspective: Challenging Elusiveness.* K. Biesbrouck, S. Elders and G. Rossel (eds.) CNWS, Universiteit Leiden, pp. 75-88.

Commission on Human Rights (2003) Economic, Social and Cultural Rights: Commentary on the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. E/CN.4/Sub.2/2003/38/Rev.2.http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/29378ff2003ceb0c1256d7900310d90/$FILE/G0316018.doc, accessed 4 February 2008.

Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Right, Working Group on Indigenous Populations, Twenty-second session, 19-23 July 2004.

Commission on Human Rights (2005) Standard Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent. E/CN.4/Sub.2/AC.4/2005/WP.1. www2.ohchr.org/English/issues/indigenous/docs/wgip23/WP1.doc, accessed 4 February 2008.

Debroux Lewis, T. Hart, D. Kaimowitz, A. Karsenty and G. Topa (2007) *Forests in Post-conflicts Democratic Republic of Congo. Analysis of a priority agenda.* CIFOR, Jakarta.

Forest Monitor (2001) *Sold down the river. The need to control transnational forestry corporations: a European case study.* Forest Monitor.

Greenpeace (2007) *Carving up the Congo.* Greenpeace.

Greenpeace (2005) *Greenpeace Report on the site visit to CIB in Congo-Brazzaville, December 2004.* Greenpeace Switzerland.

Grinker, Roy Richard (1994) *Houses in the Forest.* Berkely: University of California Press.

Hiernaux Jean (1975) *The People of Africa.* New York: Scribner.

Hoare, Alison (2007) Resource Rights and Timber Concessions: Integrating local peoples' land-use practices in forest management in the Congo Basin. http://www.rainforestfoundationuk.org/s-Resource%20rights%20and%20timber%20concessions, accessed 4 February 2008.

International Labour Organization (1989) Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries. http://www.unhchr.ch/htm/menu3/b/62.htm, accessed 4 February 2008.

International Tropical Timber Organization (ed.) (2006) Status of Tropical Forest Management 2005. ITTO.

Karsenty, Alain (2003) *Revenue économique du secteur forestier en RDC.* Banque Mondiale – Ministère de l'Environnement de la République Démocratique du Congo. Kinshasa. République Démocratique du Congo.

Kenrick, Justin and J. Lewis (2004) Indigenous Peoples Rights and the Politics of the Term 'Indigenous'. *Anthropology Today* 20: 2, pp. 4-9.

Kenrick, Justin and J. Lewis (2001) Evolving Discrimination against the Forest People ('Pygmies') of Central Africa. In *Racism against Indigenous Peoples.* Edited by Suhas Chakma and Marianne Jensen, Copenhagen: Asian Indigenous and Tribal Peoples Network (AITPN) and IWGIA, pp. 312-325.

Klieman, Karin (2003) *The Pygmies Were Our Compass: Bantu and Batwa in the History of West Central Africa, Early Times to c. 1900 C.E.,* Portsmouth NH: Heinemann.

Köhler, Axel and L. Jerome (2002) Putting Hunter-Gatherer and Farmer Relations in Perspective. A Commentary from Central Africa. In: *Ethnicity, Hunter-Gatherers, and the 'Other': Association or Assimilation in Southern Africa?* Edited by Susan Kent. Washington: Smithsonian Institute, pp. 276-305.

Lewis, Jerome (2008) Ekila: Blood, Bodies and Egalitarian Societies. In: *Journal of the Royal Anthropological Institute.* 14:2.

Lewis, Jerome (2005) Whose Forest is it Anyway? Mbendjele Yaka Pygmies, the Ndoki Forest and the Wider World. In: *Property and Equality, Vol. 2 Encapsulation, Commercialisation, Discrimination.* Edited by Thomas Widlok and Wolde Tadesse, Berghahn Books, pp. 56-78.

Lewis, Jerome (2002) *Forest Hunter-Gatherers and their World: A Study of the Mbendjele Yaka Pygmies and their Secular and Religious Activities and Representations* PhD Thesis. London School of Economics.

Lewis, Jerome (2001) Forest People or Village People: Whose voice will be heard? In: *Africa's Indigenous Peoples: 'First Peoples' or 'Marginalized Minorities'?* Edited by Alan Barnard and Justin Kenrick, Edinburgh: CAS, pp. 61-78.

Lewis, Jerome (2000) *The Batwa Pygmies of the Great Lakes Region.* Minority Rights Group International: London.

Mercader, Julio, Runge, F., Vrydaghs, L., Doutrelepont, H., Ewango, C. E. N. & J. Juan-Tresseras (2000) Phytoliths from archaeological sites in the tropical forest of Ituri, Democratic Republic of Congo. *Quaternary Research,* 54: pp. 102-112.

Mercader, Julio, M. Garcia-Heras, & I. Gonzalez-Alvarez (2000) Ceramic tradition in the African forest: Characterisation analysis of ancient and modern pottery from Ituri. D. R. Congo. *Journal of Archaeological Science,* 27: pp. 163-182.

Nelson, John and L. Hossack (2003) Indigenous peoples and protected areas in Africa: From Principles to practice. Forest Peoples Programme: London.

Nobirabo, Musafiri P. (2007) *Droit foncier des peoples autochtones et le droit international: Cas des peuples de la forêt « Pygmées » de la République Démocratique de Congo.* Bern: Stämpfli Editions.

Observatoire congolais des droits de l'homme (2004) *The Situation of the Pygmies in the Republic of Congo.* Rainforest Foundation. http://www.rainforestfoundationuk.org, accessed 28 April 2008.

Observatoire congolais des droits de l'homme and The Rainforest Foundation (2007) *Draft: Projet de loi portent promotion et protection des droits des peoples autochtones.* www.rainforestfoundationuk.org, accessed 4 February 2008.

Oyono, Phil R. (2005) Profiling local-level outcomes of environmental decentralisations: The case of Cameroon's forests in the Congo Basin. In: *The Journal of Environment and Development* 14(3): pp. 317-337.

Transparency International (2007) *Corruption Perceptions Index* http://www.transparency.org/policy_research/surveys_indices/cpi/2007, accessed 7 April 2008.

United Nations Development Program (UNDP) (ed.) (2007) Human Development Report 2007/2008. New York: UNDP. http://hdrstats.undp.org/countries, accessed 8 April 2008.

UNESCO (2005) *Situation des 'autochthones' pygmées (Batwa) en République Démocratique du Congo: Enjeux des droits humains.* Chaire UNESCO de l'Université de Kinshasa.

Vansina, Jan (1990) *Paths in the Rainforests: Towards a history of political tradition in equatorial Africa.* Madison, Wisconsin: The University of Wisconsin Press.

Woodburn, James (2001) The Political Status of Hunter-Gatherers in Present-Day and Future Africa. In: *Africa's Indigenous Peoples: 'First Peoples' or 'Marginalized Minorities'?* Edited by Alan Barnard and Justin Kenrick, Edinburgh: CAS, pp. 1-14.

Woodburn, James (1997) Indigenous Discrimination: the Ideological Basis for Local Discrimination against Hunter-Gatherer Minorities in sub-Saharan Africa. In *Ethnic and Racial Studies* 20 (2): pp. 345-61.

World Bank Inspection Panel (2007) Investigation Report: Democratic Republic of Congo. http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/FINALINVREPwhole.pdf, accessed 4 February 2008.

World Bank Operational Manual (2005a) Bank Procedures, Indigenous Peoples. wbln0018.worldbank.org/…/Manuals/OpManual.nsf/tocall/DBB9575225027E678525703100541C7D?OpenDocument, accessed 4 February 2008.

World Bank Operational Manual (2005b) Operational Policies, Indigenous Peoples. wbln0018.worldbank.org/…/Manuals/OpManual.nsf/tocall 0F7D6F3F04DD70398525672C007D08ED?OpenDocument, accessed 4 February 2008.

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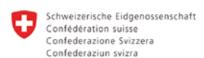
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