

Group 2

What is need in order to guarantee
legally secure representation?

Initial questions

- Why the emphasis on legal?
- Can legal representation co-exist with other forms of representation? E.g., traditional, customary
- Do we mean legal based on recognition by government or courts?

Comites

DRC decree recognizes local management comites and development comites - formed for specific projects & may include legal as well as customary leaders and others.

Issues

- Do not necessarily have the resources or capacities needed to function.
- Do not necessarily have the mandate of the community.
- May be more than one comite working on an issue: 1 recognized by the government, 1 by the community.
 - There was an example where it was difficult for a project to be implemented because there were 2 comites within a community who did not agree. They decided to come together to form 1 comite accepted all community members. They are now recognized at the national level by the government, as well as the community.

Community Mandate

Community recognition and support is critical

- In India, the Panchaya system recognizes the authority of the village council, which is elected. If there is no elected council the local government asks the village to form a council. This council has authority over natural resources, although it is limited in scope and power.
- In South Africa, Mondi works with 2 communities that have each developed and recorded their protocols/rules for the community, including selecting representatives
- In DRC, communities also develop protocols.

Maintaining Community Mandate

Representatives with a mandate must ensure they represent their community

- In Kivu, there is a problem with leaders (who are chosen for life) forgetting about the needs of the community. In these cases they must be evaluated by the community and changed if necessary.
- The chief cannot represent everyone; others must be included in a representative body
- Representatives must be trained on how to communicate with community members and other actors (government/NGO)
- Representatives must also keep up training in issues (FPIC, REDD) and continuously update community members on changes in projects, ideas, implementation
- States can help facilitate the activities of community representatives, e.g., by providing office space and training; but they must also respect the independence of the representatives.

Legality can also be ensured in the form of legally binding agreements

- Documentation of agreements that will stand up in court – e.g., notarized documents and statements, tape recordings, videos, photographs

Suggestion for DRC:

- FPIC must be included in the approval process for REDD projects, as it has been for timber concessions.
- State should recognize legal and customary representatives, and these will be ideally organized into one supra-committee
- States should help facilitate community representation (training, resources) while respecting their independence.