

The Forest Dialogue Field Dialogue on Free, Prior and Informed Consent

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Background Paper

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Introduction

The aim of this short briefing paper is to provide some basic information about the Democratic Republic of Congo (DRC) in order to help visitors better understand the context of this DRC field dialogue. We therefore review its forest sector, and the main laws regulating its management and use, and the overall legal framework linked to the potential application on the ground of the concept of Free, Prior and Informed Consent (FPIC). In particular the paper summarizes the key elements of the DRC's REDD programme, including the kinds of REDD pilot projects already underway across the country, and highlights some of our own perspectives about the key risks and challenges to making REDD work for local and indigenous peoples. This broad overview is targeted to people from outside the DRC, and is intended to encourage discussion and debate, and to help set the scene for the visit to the Luki Reserve. The views presented in this paper are the authors alone, who are responsible for any incorrect information – and we welcome all feedback in order to improve our work to support forest communities to benefit from the outcomes of investments in REDD projects.

General Overview of the DRC

Straddling the Equator at the heart of Africa, the DRC is the second largest country on the continent, and has the third largest population in Sub-Saharan Africa. The nation is endowed with formidable natural resources but has been struggling since its independence because of mismanagement and weak governance. The situation has been aggravated by series of wars since 1996 that claimed an estimated six millions lives either as a direct result of fighting or because of diseases and malnutrition. According to the UNDP development index, the country now ranks the last in the world, with over seventy percent of the population living in absolute poverty, and a formal unemployment rate at over eighty five percent.

After a long period of rupture, the DRC government reopened relations with international financial institutions and international donors in 2002. The economy is largely dominated by the primary sector: agriculture, forestry and extractive industries, which together represent nearly 53 percent of the GDP. The DRC has important mineral wealth including diamonds, copper, gold, cobalt, coltan, zinc, tantalum, tin, cassiterite, and other base metals. Enormous natural resources including abundant water resources, fertile soils, ample rainfall, and oil are important assets to this heavily forested country at the heart of Africa. The economy is very dynamic and much economic activity still occurs in the informal sector, and most of this activity by the energetic Congolese population is not reflected in official GDP data.

The vast tropical rainforest of the DRC covers approximately 145 million hectares, representing 58% of the national territory, and is home to over a thousand species of plants and hundreds of species of mammals, birds, reptiles and amphibians. Second largest in the world after the Amazon, the tropical forests of the DRC are particularly rich in biodiversity,

making the country rank fifth for plant and animal diversity in the world, and harboring five Natural World Heritage sites, more than the rest of Africa combined.

These forests provide food, medicine, energy, building materials, livelihoods and revenue to some 40 million Congolese, including a large number of indigenous peoples. The country's great diversity of cultures, with well over 200 different languages (Ubangian, Nilo-Saharan and, mainly, Bantu), matches its biodiversity. Most of these peoples lived in self-governing communities, chiefdoms and kingdoms, until the colonial era, and still today most of these communities govern their daily affairs and manage their lands and forests through customary law. Unfortunately, since the colonial period, Congolese forests have been poorly managed by imposed government institutions, and forest-dwelling communities, including indigenous peoples, still languish in extreme poverty. The last two decades of wars and civil conflicts have only exacerbated the situation, and the government's institutional capacity remains weak and characterized by complex governance challenges.

Deforestation rate in DRC is estimated at 0.25%^{iv}, and the causes of deforestation may be divided into two groups: direct causes and indirect causes. Direct causes include commercial logging (legal and illegal), subsistence farming and firewood collection, infrastructure development, and mining exploitation. Indirect causes of deforestation figure population growth, poverty, and political and institutional factors^v. It is expected that in the future the rates of deforestation will increase substantially due to developments in the DRC infrastructure, the farming and mining sectors, and biofuel development.

Laws Regulating Forests and Land

Until 2001, the forest sector was still regulated by colonial forest law, with little or no enforcement of regulations. Prior to and during the Congolese civil conflict, the majority of the country's productive forests were allocated to commercial interests. By 2002, over 43 million hectares (twice the size of the United Kingdom) were subject to 285 contracts with logging companies that were usually signed with no transparency, no local consultation, and no clear role of and benefits for local and indigenous peoples. Royalties owed to the Government under these contracts were often low and many remained unpaid^{vi}.

In an attempt to reform the forestry sector, the government published a new forestry code in 2002 with the support of the World Bank. The new law aimed to establish a framework for equity and sustainability in forest management with the intention of using DRC's forests as a tool for poverty alleviation. Compared to the former forest management law, the new forestry code brought in many innovations, including the consideration of traditional user rights; the requirement for forest management plans; the recognition of the right of local communities to be involved in the management of their customary forests; the distribution of 40 percent of logging taxes to local provinces and, in theory at least, to local communities; the establishment of social responsibility contracts between logging companies and local communities; and the consultation of local communities prior to forests' allocation. However, many civil society organizations and local communities claim that they were not adequately associated with the development of this law, and applying its basic provisions on the ground is still a great challenge for the Congolese government.

One of the many weaknesses of the new forest code is the fact it does not recognize indigenous peoples specifically. The law assimilates them into local communities who already have formal government recognition. This lack of specific recognition for indigenous peoples prevents most of them from claiming and/or benefiting from land rights to which

they should be entitled on the basis of their long time occupation and use. Furthermore, the code requires that 40 percent of taxes paid by legal concessions go to local communities, but since 2003 almost nothing has been redistributed to them^{vii}.

Under an agreement linked to the 2002 forestry code, the World Bank agreed to provide \$90 million of development aid to DRC with the condition that the government would not issue new concessions granting logging companies the right to exploit forests, imposing therefore a moratorium, and the deal also prohibited the renewal of existing concessions^{viii}. In the effort to improve forestry management under the new law during the moratorium period, the government repealed 163 logging titles in 2002, representing 25.5 million hectares of forest^{ix}. Unfortunately there are continuing allegations that this moratorium was violated between 2006 and 2010 with the granting or amending of 108 titles representing around 15.5 million hectares of forest^x. The granting of these new titles would not only have violated the moratorium but also the new forest code regarding the allocation of industrial logging titles. It is alleged that many of these new titles were granted without proper consultations of provincial authorities and local and indigenous communities, fueling new tensions among stakeholders^{xi} in a country where natural resources have been at the heart of conflict for decades.

The legal framework for Free, Prior and Informed Consent in the DRC

The right to free, prior, and informed consent (FPIC) is well established in international human rights law and is grounded in several international conventions.^{xii} This right was and continues to be developed to protect indigenous peoples from losing their livelihood, culture, and identity by recognizing their right to give or withhold consent to proposed development, conservation and other projects that may affect the lands they traditionally own, occupy, or otherwise use. Respecting the right to FPIC requires informed, non-coercive consultations, discussions, negotiations, and meetings between investors, companies, governments and indigenous peoples prior to the development and establishment of projects on customary lands. It is designed to allow indigenous peoples to reach consensus and to make decisions according to their customary systems of decision-making or other institutions of their own choosing. Ultimately, indigenous peoples have the right to decide whether or not they will agree to a project following a complete and accurate understanding of the implications of the project for them and their customary lands.

Whilst FPIC is a well-settled part of the international human rights law of indigenous peoples^{xiii} and was and continues to be closely associated with indigenous peoples' right to self-determination, its application is gradually expanding to include "local communities", a generic phrase which may include indigenous and tribal peoples, but also ethnic minorities, marginalised and remote villages, fisherfolk, pastoralists, rural settlements in general, as well as to slum dwellers and other urban congregations.^{xiv} The growing recognition of the right to FPIC beyond the realm of indigenous peoples' rights is taking shape notably through the jurisprudence of human rights bodies^{xv} and through its increasing inclusion as a key principle in the operational policies of international financial institutions^{xvi} and non-state entities more generally.^{xvii}

The DRC is a party and signatory to most of the international and regional conventions that protect the right to FPIC and therefore has a legal obligation to integrate and implement this right into its domestic system.^{xviii} In fact, the African Commission on Human and Peoples' Rights, the Committee on Economic, Social and Cultural rights, as well as the Committee on

the Elimination of Racial Discrimination have all expressly called on the Congolese government to respect indigenous peoples' right to FPIC.^{xxix} However, little has been done to date to recognize and implement the right to FPIC in the country's legal system which neither makes any provisions for nor recognizes the right to FPIC.

According to the country's Constitution, the state exercises sovereignty over the country's soil, subsoil, resources and forests. This principle is reaffirmed in the country's general land law adopted in 1973, which represents the fundamental text pertaining to land in the DRC and regulates the allocation of concessions on land. The only reference to communities' right to participate in the granting of a concession concerns the "enquiry prior to concession", the objective of which is to evaluate the nature and scope of the rights that communities and others have on the land in question. According to this procedure, a hearing must be held for those who wish to formulate their claims or observations. This enquiry does not give communities the right to withhold consent to the granting of a concession and provides no compensation if the land communities occupy is granted as a concession. What is more, the "enquiry prior to concession" is often not carried out and, on those occasions when it is, the enquiry is often incomplete.^{xx}

In parallel to the general land law, and as mentioned above, the DRC government adopted the Forest Code in 2002, which reiterated State sovereignty over forests. Under this code the rights over forests can be granted through forest concession contracts, but this too is supposed to be preceded by a public enquiry. As with the general land law, the public enquiry procedure under the Forest Code falls short of satisfying the right to FPIC and forest concessions are regularly granted without informing communities, even when they live within the concession zone.^{xxi} The Forest Code also provides for "prior consultations" in cases of forest classification^{xxii} and during the development of management plans by concessionaires.^{xxiii} Again, these provisions are insufficient to respect the right to FPIC.

The mining industry is regulated by the Mining Code, which was also adopted in 2002. It stipulates that all applications for mining concessions must be accompanied by a report on the consultations with local and administrative authorities, and with the representatives of neighbouring communities. These consultation procedures in themselves are insufficient to respect the right to FPIC, and in any event these procedures aimed at protecting the rights of communities are rarely implemented.^{xxiv} The situation is similar with regards to the newly adopted agricultural code, which requires no more than an environmental and social impact study as a condition to obtain an agricultural concession.

So, in general, domestic law in the DRC contains no requirement that communities be meaningfully consulted, participate in decision-making processes, or give their free prior and informed consent to activities on their traditionally owned lands and territories. Some provisions provide for the consultation of communities prior to granting a concession but these provisions fail to satisfy the right to FPIC. The challenge of protecting and implementing FPIC is made more difficult by the Congolese peoples' complex, traditional, and community-based land tenure systems that coexist with new legislation on land, forests, mining, and agriculture, resulting in great uncertainty that is regularly exploited by commercial and sometimes interest groups.^{xxv} This situation is resulting in serious failings by the government to uphold the internationally recognized rights to free, prior and informed consent and to the ownership of lands these peoples have traditionally owned occupied or otherwise used.

While Article 207 of the Constitution recognizes customary authority (*l'autorité coutumière*) and provides that customary authority is vested in accordance with local custom in so far as it is not contrary to public order and morality, the Forest Code and the general Land Law do not refer to customary institutions as such. That said, the general Land Law provides that the land occupied by local communities is the land inhabited, cultivated or exploited by these communities, individually or collectively, *in accordance with local customs and use* (article 388). The Forest Code provides that local populations have use rights to forest products, *in accordance with their customs and local traditions* (article 36). The failure to recognize and protect the rights of customary authorities fully is perpetuating the precarious conditions faced by indigenous peoples and local communities, thereby increasing their political and economic marginalization, and contributing to land-related conflict throughout the country.

Forest Protection and Climate Mitigation in the DRC

The vast forests of the DRC and the significant threats they face continue to draw global attention because they are said to play a crucial role in the regulation of the global climate. It has been estimated that Congo basin forests as a whole sequester and store 10 to 30 billion metric tons of carbon^{xxvi}, an ecosystem service that is becoming increasingly important as concerns about human induced climate change continue to grow. Over the past few years projects targeting Reductions of Emissions from Forest Degradation and Deforestation (REDD) have been developed to enable direct payments to forest owners to slow forest loss, and current thinking has widened these schemes so to enable provision of funding to establish protected areas and to plant trees, the so-called REDD+ idea.

The DRC REDD+ process has been held up as a good example for the Congo basin region by the World Bank's Forest Carbon Partnership Facility (FCPF). Laying out an ambitious three-year roadmap for REDD+ readiness, the country's Readiness Preparation Proposal (R-PP) was assessed and approved during the fifth Participants Committee meeting (PC5) of the FCPF, and the UN-REDD Policy Board in March 2010. The DRC Readiness process aims to prepare the country to participate in a future international REDD+ system and to benefit from international and bilateral REDD+ finance flows.

Considering the vast extent of DRC forests, REDD+ has rightly become a major national strategic issue in the country. In some ways, the DRC REDD+ process has advanced further than virtually any other country in the Congo Basin, or even the African continent, although some argue that the process of consultations on these initiatives has been uneven. While the DRC has been at the forefront of many REDD initiatives globally, and is among the early pioneers of the FCPF, UN-REDD and Forest Investment Program (FIP) processes, successful implementation will require substantial advances in the nation's technical and institutional capacity and the informed engagement of forest peoples. This includes the ability to coordinate and harmonize land use policies with the view of mitigating future impacts on forest cover, while ensuring that benefits from forests actually flow to forest-dependent communities and indigenous peoples.

The Country R-PP implementation grant of USD3.4 million was signed in March 2011, of which USD 700,000 has been already disbursed, and the country expects to have at least 50% of the funds committed by June 2012. The National REDD Coordination has prepared a USD 9 million project proposal to raise additional funds for R-PP implementation. Thematic Coordination Groups (TCG) covering 30 sector-based and cross-cutting options to fight deforestation and forest degradation have been established and are working to inform the

development of the National REDD+ Strategy, which the government aims to have ready by January 2013. A workshop and consensus report on the study on causes of deforestation and forest degradation was held in November 2011. An initial workshop on benefit sharing took place in January 2011. A second workshop took place in July 2011, where the basic concepts around benefit sharing were discussed (notion of benefit, actors entitled to receive benefits, rights, models of benefit sharing) and international experiences were presented. As a result, a roadmap for the preparation of an options paper for a benefit sharing mechanism in DRC was prepared.

The accreditation and validation process for REDD+ projects in DRC was adopted formally by the Government in 2011. It institutionalized the process with which actors interested in initiating a REDD+ project in DRC must comply before getting an authorization from the Ministry of Environment. It also formally established the national REDD+ registry. But DRC civil society has been raising concerns about the need to abolish this Decree because they say (a) the Decree was developed without consultations of stakeholders engaged in the REDD+ process in the country, and (b) the Decree excludes local and indigenous communities and civil society organizations from initiating REDD+ projects.

The work on the Strategic Environmental and Social Assessment (SESA) process is also well underway. After a 6-month period of consultations, the SESA process aims to produce the Environmental and Social Management Framework (ESMF), which will be applied during the Readiness-Package implementation stage. National civil society has led, with UNEP support, a consultative process to establish social and environmental standards for REDD+.

These social safeguards are important elements of any REDD+ scheme because they all target forests which overlap local and indigenous communities' customary territories. The extreme poverty faced by forest communities mean that any changes to the way their forests are managed could have very negative impacts on their livelihoods because their subsistence is directly dependent upon maintaining their access to forests where they hunt, gather and open fields for cultivation. Limiting community access to this primary resource will in almost all cases result in immediate decreases of community incomes and welfare. In the longer term such schemes tend to undermine community rights over their customary lands that should be protected under international jurisprudence. Given DRC's weak governance and the forest reliance and political marginalization of communities, social safeguards are an essential element of any climate mitigation scheme.

However, the successful implementation of REDD safeguards in the DRC remains to be seen. As noted by the FCPF in the DRC R-PP Assessment Note: "the DRC institutional capacity for the monitoring and implementation of REDD+ safeguards is very weak, at all levels (national, provincial and local) and across Ministries (environment, agriculture, mines, and land issues)." The body mandated by Ministerial decree to review and approve the evaluation of social and environmental impact assessments, the Groupe d'Études Environnementales du Congo (GEEC), has neither human nor technical resources to effectively carry out its mandate. A new law - Loi Cadre sur la Gestion et la Protection de l'Environnement - was discussed in Parliament and mandates the creation of a National Environment Agency "Agence National de l'Environnement (ANE)", which would replace the GEEC as the national agency with overall responsibility for social and environmental impact assessments.

In the meantime, the DRC has prepared a USD 60 million FIP Investment Plan that was approved in July 2011 by the FIP Subcommittee. The plan is supposed to promote sectoral

(biomass energy and community forestry) and enabling activities (land tenure securitization, land management, support to business development) around three key deforestation hotspots (the supply area of Kinshasa, Kisangani and Mbuji May/ Kananga), as well as support private sector engagement in REDD+ activities and promote small-scale promising REDD interventions throughout the country. Addressing technical and institutional difficulties—which are compounded by ongoing governance challenges in the forest sector, the lack of secure land tenure, and lack of clarification of the role of local and indigenous communities in the design, implementation and monitoring of REDD initiatives—is key to any successful implementation of REDD+ and FIP processes in the country.

REDD pilots, Communities and FPIC in the DRC

A recent evaluation of the DRC's RPP and REDD programme funding strategy by PriceWaterhouseCoopers^{xxvii} highlights the huge amount of money already committed to DRC REDD-related and conservation-orientated activities, including \$5.5 million from the United Nations REDD Programme, \$3.4 million from the World Bank Forest Carbon Partnership, and \$250 million towards the National Forest and Conservation Programme from bilateral donors. In addition, other REDD project funds are being targeted to support provincial level activities by conservation organisations on the scale of at least \$10 million, along with another \$250 million of non-REDD forest conservation projects that are in the pipeline. Very little of this funding of over \$500 million specifically targets spending on forest communities in DRC, for example via supporting their consultation or participation in planning, or the protection of their land rights, despite the fact that forest communities' rights and livelihoods will be affected (or threatened) by all of the activities that will be funded.

In the DRC there is a wide range of REDD+ projects that are being developed and implemented in 6 geographically integrated REDD pilot zones spread across the country. These projects broadly include a combination of initiatives that aim to protect forest blocs and their biodiversity generally by strengthening wildlife law enforcement, for example through the establishment or strengthening of protected areas, and projects to reduce the impact of traditional slash and burn agriculture on forest clearance, through interdictions and investments in new agricultural methods like biochar or agricultural intensification with fertilisers. Some forest planting projects are also taking place. Most of these REDD+ schemes possess at least some investments in the development and introduction of alternative income strategies that communities are encouraged to take up, thus creating an alternative development path that bypasses forest exploitation. Most schemes actually aim to become a combination of forest protection and benefit-sharing schemes, ultimately using revenues from donors and carbon sales to fund their work.

Given the large revenue streams involved (actual and imagined) the potential benefits to rural forest communities from such REDD initiatives in DRC are considerable, given that they are the main users and custodians of the forests targeted by these REDD+ projects. Proposed benefit-sharing arrangements deriving from new REDD+ schemes could bring much needed resources into rural areas to support long-term development efforts – something that has been lacking in the DRC for many decades. However current arrangements for enabling such re-distribution and investment towards rural areas in the DRC continue to be hampered by the lack of participation of forest communities in the development of REDD+ plans, the almost total lack of information at local and community levels about what is being proposed, weak community capacities, and insecure community land tenure facing pressures from outside. Current debates and proposals for channeling REDD+ funds to rural areas in DRC remain largely theoretical, and under present arrangements, communities expect to receive nothing

while urban elites will become wealthier - all at the expense of increased pressures on rural communities' land rights.

FPP's preliminary research with local partners^{xxviii} working in Bas Congo, Bandundu, Equateur, Oriental, and North and South Kivu Provinces has so far identified up to 20 REDD pilot projects or initiatives which seek the conservation of forests upon which local and indigenous peoples rely. There is no doubt that in aggregate these projects areas overlap millions of hectares of communities' customary territories. Our research in all 6 provinces has also determined that so far local and indigenous communities around these projects remain largely uninformed and uninvolved. This conclusion contrasts sharply with the widespread impression amongst external donors and conservation agencies that DRC is at the forefront of REDD implementation efforts, a key justification for the fact that the DRC is one of the top priority countries for the release of REDD funds. It also contrasts sharply with the idea that communities are able to provide or withhold their consent to REDD+ schemes targeting them.

NOTES

ⁱ Africa Regional Coordinator, Forest Peoples Programme.

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^{iv} Democratic Republic of the Congo. Readiness Plan for REDD (R-PP). Ministry of Environment, Conservation of Nature and Tourism. 2010. P 37-42.

^v Democratic Republic of the Congo. Readiness Plan for REDD (R-PP). Ministry of Environment, Conservation of Nature and Tourism. 2010. p 37-42.

^{vi} Forest Carbon Partnership Facility, World Bank. Readiness Preparation Proposal Assessment Note on a Proposed Grant to the Democratic Republic of Congo for REDD+ Readiness Preparation Support. 2011. p 6-8.

^{vii} Brahic, Catherine. 2007. 'Protected' Congo forest is logged regardless.
<http://www.newscientist.com/article/dn11585-protected-congo-forest-is-logged-regardless.html>

^{viii} Brahic, Catherine. 2007. 'Protected' Congo forest is logged regardless.
<http://www.newscientist.com/article/dn11585-protected-congo-forest-is-logged-regardless.html>

^{ix} CIFOR, WB & CIRAD. 2007. Forests in Post-conflict DRC: an analysis of priority agenda.

^x CIFOR, WB & CIRAD. 2007. Forests in Post-conflict DRC: an analysis of priority agenda.

^{xi} CIFOR, WB & CIRAD. 2007. Forests in Post-conflict DRC: an analysis of priority agenda.

^{xii} The right to free, prior and informed consent is mainly protected in the following international and regional conventions: the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent

Countries (ILO Convention: C107), the Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention: C169), the work surrounding the implementation of the Convention on Biological Diversity (CBD), and the African Charter on Human and Peoples' Rights.

^{xiii} In addition to being recognised in international and regional conventions, the right to free, prior and informed consent has notably been recognized expressly in the decisions and concluding observations of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Racial Discrimination. See, e.g.: UN Human Rights Committee, Communication No. 1457/2006 *Angela Poma Poma v. Peru* (2009) UN DOC; UN Human Rights Committee 'Concluding Observations of the Human Rights Committee, Columbia' (4 August 2010) CCPR/C/COL/CO/6 CCPR/C/95/D/1457/2006; UNCESCR 'Concluding Observations of the Committee on Economic, Social and Cultural Right, *Columbia*' (21 May 2010) E/C.12/COL/CO/5; UNESCR, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights, Mexico' (17 May 2006) E/C.12/CO/MEX/4; UN CERD 'Concluding Observations of the Committee on Elimination of All Forms of Racial Discrimination, Cameroon' (30 March 2010); CERD/C/CMR/CO/15-18; UNCERD 'Concluding Observations of the Committee on Elimination of All Forms of Racial Discrimination, Panama' (19 May 2010) CERD//C/PAN/CO/15-20. It has also been expressly recognised by the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the UN Special Rapporteur on the Rights of Indigenous Peoples. At the regional level, the right to free, prior, and informed consent has been recognised by the African Commission on Human and Peoples' Rights in the landmark decision regarding the Endorois people of Kenya, *Centre for Minority Rights Development, acting on behalf of the Endorois Community v. Kenya*, Communication 276/2003 (2010), and in a case dealing with oil exploration activities in Ogoniland, Nigeria, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Communication 155/96, Fifteenth Activity Report, 2001-2002, ACHPR/Rpt 15.

^{xiv} See M Colchester, 'Free, prior and informed consent: Making FPIC work for forests and peoples' (2010) The Forest Dialogues Research Paper, Number 11, p. 18-19.

^{xv} See, e.g., UNESCR, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights, Mexico' (17 May 2006) E/C.12/CO/MEX/4 and UNESCR, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights, Cambodia' (22 May 2009) E/C.12/KHM/CO/1. See also: Report of the Second Meeting of the Ad Hoc, Open-Ended, Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity (27 November 2001) UNEP/CBD/WG8J/2/6/Add.1, 11 and Akwé Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, Montreal, 2004.

^{xvi} A number of international financial institutions have incorporated into their operational policies certain aspects relating to the need to obtain the FPIC of indigenous peoples for financial projects that may impact lands and resources. See for instance: World Bank, 'Operational policy 4.10: Indigenous Peoples', July 2005; International Finance Corporation, 'Performance Standard 7: Indigenous Peoples', January 2012; International Finance Corporation, 'Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts' January 2012; European Bank for Reconstruction and Development, 'Environmental and Social Policy', May 2008; Asian Development Bank, 'Safeguard Policy Statement', June 2009; Inter-American Development Bank, 'Operational Policy on Indigenous Peoples', February 2006; and International Fund for Agricultural Development 'Engagement with Indigenous Peoples Policy', November 2009.

^{xvii} The voluntary sector has also increasingly paid attention to the right of communities to FPIC. Several multi-stakeholder processes have recognised this right into their policies. See, e.g., Forest Stewardship Council, 'FSC Principles and Criteria for Forest Stewardship', 1996; Roundtable on Sustainable Palm Oil, 'RSPO Principles and Criteria for Sustainable Palm Oil Production', 2007; Food and Agriculture Organisation of the United Nations,

Responsible management of planted forests: Voluntary guidelines, planted forests and trees, Working Paper 37/E (FAO, Rome 2006).

^{xviii} The DRC is party to the International Covenant on Civil and Political Rights, the Optional Protocol to the Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Racial Discrimination; the Convention on Biological Diversity and the African Charter on Human and Peoples' Rights. It is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.

^{xix} African Commission on Human and Peoples' Rights (2010), *Concluding Observations on the Report of the Democratic Republic of Congo*, Forty-Eighth Ordinary Session 10 - 24 November 2010, Banjul, The Gambia; CESCR, *Committee on Economic, Social and Cultural Rights: Democratic Republic of Congo*, 20 November 2009, UN Document E/C.12/COD/CO/4; CESCR, *Committee on Economic, Social and Cultural Rights: Democratic Republic of Congo*, 20 November 2009, UN Document E/C.12/COD/CO/4.

^{xx} Pèlerin, E. 2010. *Étude sur la problématique foncière au Nord-Kivu, RDC*. Paris: Groupe de recherche et d'échanges technologiques (GREF), p. 25.

^{xxi} For example, indigenous communities in areas such as Yeimbo and Banga in the eastern province of Equator were not informed of the granting of a concession over their lands prior to forestry concession operations carried out on their lands by SIFORCO or SEDAF. See: CAMV, ARAP, CPAKI/RDC, APDMAC, SIPA, UEFA, and FPP. 2006. *Systematic, Pervasive and Widespread Violations of the Rights of Indigenous Peoples in the Democratic Republic of Congo – An NGO Report Submitted to the African Commission on Human and People's Rights Working Group on Indigenous Populations/Communities*, Moreton-in-Marsh: Forest Peoples Programme, para 22. Online: <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/drcachprreportoct06eng.pdf>

^{xxii} Article 15, Forest Code (2002).

^{xxiii} Article 74, Forest Code (2002).

^{xxiv} Pèlerin, E. 2010. *Étude sur la problématique foncière au Nord-Kivu, RDC*. Paris: Groupe de recherche et d'échanges technologiques (GREF), p. 27.

^{xxv} Commission Justice et Paix. 2011. *Accaparement des terres en RD Congo et la protection des droits des collectivités locales*, pp. 2-3.

^{xxvi} G.P. Dkamela, et al. Dec 2009. "Voices from the Congo Basin: Incorporating the Perspectives of Local Stakeholders for Improved REDD Design." WRI Working Paper. World Resources Institute, Washington DC.

^{xxvii} Report for the Conservation Finance Alliance: National REDD+ funding frameworks and achieving REDD+ readiness – findings from consultation. The Conservation Finance Alliance and PriceWaterhouseCoopers (2010).

^{xxviii} CEDEN, ADEV, CAMV and Reseau CREF.