

## Involvement of Civil Society for the Improvement of a Text on the Sharing of Forest Benefits : The Case of Gabon

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### ABSTRACT

Benefit-sharing is a crucial element for good forest governance as it increases the income of rural communities. The Gabonese Forest Code of 2001 (Article 251) provides forest concessionaires to share the benefits from logging operations with communities. Without an implementing decree, the article's implementation has been left to the discretion of concessionaires applying it (or not) in a discontinuous and arbitrary manner, thus encouraging rural conflicts. Since then, as part of its partnership development, the Ministry of Water and Forests (MWF) has strengthened national civil society's capacities by creating a Legal Working Group (LWG). One of the first results of this LWG was designing of a model agreement for sharing the benefits from forest exploitation, enabling the implementation of Article 251 mentioned above. This model was subsequently presented and consolidated at a national multi-stakeholder (civil society, government and logging companies) workshop. Following the workshop's recommendations, the MWF promulgated Order No 105 establishing the 'model contractual specifications'. This text provides for benefit sharing in the form of financial to development community interest projects developed by the communities concerned. The MWF has also expressed its intention to see at least 30 benefit-sharing agreements finalised in the coming year. To achieve this, MWF has asked the LWG to provide technical assistance by drafting a "Technical Guide for the Implementation of Order No 105", which details all the Order's steps. This guide should accompany the Decree's implementation to guarantee a coherent application that respects all parties's rights.

**Keywords:** forest code, multi-actors, benefit-sharing, contractual specifications.

### INTRODUCTION

Gabon is located in Central Africa in the Congo Basin, its surface area is 267,667 Km<sup>2</sup> of which 85% is covered by forest. The Gabonese forest cover is divided between forest allocations (142000 Km<sup>2</sup>) and protected areas (41000 Km<sup>2</sup>). Economically speaking, the forestry sector occupies a significant place in Gabon, being the 2nd largest employer after the State and providing 8% of the world's wood (Wasseige *et al.*). In addition Gabon's forests' economic attractiveness, they are also indispensable for the rural population's food security, health, lifestyle, and customs. Forests, therefore, represent a real asset for the country's socio-economic development.

More than 13% of Gabon's population of 1,672,000 is considered 'rural' (MEF, 2013). The rural population refers to communities living outside urban areas who depend on the forest for their livelihoods. This includes both local communities and indigenous peoples. In this

regard, there is a growing body of sectoral legislation that refers to 'local communities' as including indigenous and village communities. Therefore, throughout this article, the formula 'local communities' will be retained to refer to these populations.

The rules governing logging are grouped in forestry legislation and notably in Law N° 16/2001 of 31 December 2001 on the Gabonese Republic's Forestry Code. Despite some efforts made by the legislator to recognise local communities' rights in the context of logging operations, their substantive rights and procedural rights remain limited and/or/ poorly enforced and, for some, non-existent.

Substantive rights include the right to share the benefits from logging operations, which is recognised by Article 251 of the Forest Code. Nevertheless, the implementation of this provision to support development actions of collective interest initiated by local communities through concession holders' contribution has

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often been lacking due to the absence of a regulatory text to support its application. Thus, since the adoption of the Forest Code in 2001, only a few cases of 'benefit sharing' exist in Gabon, often limited to the initiatives of certified companies. In the absence of a regulatory framework, 'benefit sharing' in Gabon has always been carried out arbitrarily and intermittently, at the discretion of concessionaires and/or according to the negotiating and claiming capacities of local communities.

Since 2001, regulating benefit-sharing has been the subject of several consultations, particularly between the private sector and the government, without this leading to a consensus and, therefore, legislative tools. The participation of civil society in these consultations has always been very limited or even non-existent. This was linked to most of its members' weak technical skills and the often tense relations between civil society and the government. This study aims to present the work and mobilisation of civil society that led to the adoption of the Decree that introduced a Contractual model Terms of Reference (TOR) to implement benefit sharing in Gabon.

### Methodology

The adoption of the Decree mentioned above resulted from political opportunities and reforms and a commitment from civil society, not to mention the construction of multi-stakeholder dialogue. These different stages will be described below :

#### *The Voluntary Partnership Agreement (Vpa)*

In 2010, Gabon began negotiations with the European Union (EU) to sign a Voluntary Partnership Agreement (VPA). The VPA is a bilateral trade agreement between the EU and timber exporting countries that commits the parties to trade only in legal timber. The first step in these negotiations is to agree on the definition of legality.

A major challenge in the negotiations of any VPA is to strengthen multi-stakeholder dialogue, recognising the role of non-state actors such as the private sector and civil society in decision-making. Thus, civil society was consulted when Gabon developed its 'definition of legality'. On this occasion, it was able to identify legal gaps, particularly with regard to the rights of local communities and among these, the absence of a

regulatory text to enforce Article 251 of the Forest Code aimed at sharing the benefits of logging.

In order to strengthen the legal capacities of civil society during the VPA negotiations, Ministries and NGOs, a civil society platform was set up and supported by a Legal Working Group set up for this purpose.

**Figure1.** *Civil Society Working Group*



#### *Legal Working Group (Lwg)*

The LWG comprises of people with complementary assets and expertise (environment, natural resources, forests, human rights) and varied qualities within civil society (NGO representatives, representatives of indigenous peoples, researchers, etc.). The participation of women in this LWG was also encouraged.

Having noted the absence of a regulatory text allowing the implementation of Article 251 of the Forest Code, the work of the LWG focused on the elaboration of a Contractual model Specifications (CMS). This should correspond to a model contract between the logging concessionaire and the local communities exercising the rights of use within the concession. It will set out the modalities for sharing the economic benefits from logging operations with the said communities to contribute to their economic and social development. Thus, ten (10) workshops were organised to develop a model adapted to the Gabonese context. At the end of these workshops, the work carried out was presented to civil society which then validated it.

#### *Partnership Agreement with the Ministry of Water and Forestry (MWF)*

The VPA negotiations, which had identified the lack of a regulatory framework for 'benefit sharing', were repeatedly interrupted. To compensate for the lack of signature of a VPA and the resulting legal reforms, and to contribute to the improvement of forest governance in Gabon, MWF has entered into a partnership and

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recognised the existence of the LWG, whose mission is to develop "legal and structured advice on proposed forest laws/regulations/decrees". For its part, the MWF undertook "to capitalise on the technical orientations resulting from the reflection exercises carried out by the LWG". This partnership has thus enabled civil society's involvement in the elaboration and implementation of legal reforms in the forestry sector.

### *National Multi-Stakeholder Workshop*

Following the conclusion of this Partnership Agreement, a National Multi-stakeholder Workshop on the rights of communities in the Gabonese Republic's forest sector was organised under the patronage of the MWF. Eighty (80) people participated in this workshop. They included representatives from the central administration, the private sector, the EU, national and international civil society, local communities, and delegates from Cameroon and the Democratic Republic of Congo invited to share their experiences of 'benefit sharing' from forest exploitation. This workshop was an opportunity to present the CMS model developed by the LWG and validated by the civil society platform. Group work was also organised to make proposals to finalise the CMS model. Each group had the mission to work in detail on one of the model's aspects: i) the local development fund, ii) the contract's stakeholders, and iii) the eligible development projects. In addition, it should be noted that for each group, particular attention was paid to the representation of each category of stakeholders, such as the administration, the private sector, local communities and civil society.

At the end of this workshop, one of the major recommendations was the adoption of an order making the CMS model compulsory and enforceable to allow benefit sharing in accordance with the provisions of Article 251 of the Forest Code. The MWF then made a public commitment to promulgate such a decree.

**Figure2.** *National multi-stakeholder workshop for validation of the CMS model*



## RESULTS

At the end of the consultations, the MEF thus promulgated "Order n° 105/MEFFPRN/SG/DGF/DDF/SACF establishing the contract model specifications (CMS)".

This Decree thus introduces the regulatory framework for the implementation of benefit-sharing by setting out obligations for all stakeholders : as far as the logging concessionaire is concerned, these include a description of the modalities for its contribution to the Local Development Fund (LDF) and for the communities concerned, the definition of criteria for access to and distribution of the LDF, the financing of projects of collective interest and the nature of these projects.

Following the promulgation of this Decree and in agreement with all parties of the partnership, a new National Workshop on the approval and implementation of the Decree was organised in Makokou, the provincial capital of Ogooué-Ivindo. This workshop followed the same multi-stakeholder approach as the previous workshops. It was an opportunity to present the content of the Decree to the stakeholders concerned. This exercise helped to identify the issues that arose for the implementation of this Decree.

At the end of this workshop, the MWF revealed its intention to have at least 30 benefit-sharing agreements signed. To achieve this objective, MWF requested the LWG to assist in drafting a Technical Guide to implement Order N° 105. This guide was developed by the LWG and details all the steps mentioned to facilitate the conclusion of CMS and implement benefit sharing.

## DISCUSSION

After sixteen (16) years without detailed regulations to govern the sharing of benefits from logging operations, Gabon, more than half of whose territory is subject to forest allocations, has promulgated a regulatory text to fill this legal void, under the impetus and recommendations of civil society.

It is appropriate here to focus on the various elements that have enabled civil society to influence decision-making in forest management with regard to benefit sharing : i) structuring itself and speaking with one voice; ii) mastering technical matters; iii) formulating legislative

proposals; iv) establishing a dialogue with the government and the private sector.

### Be Structured and Speak with One Voice

In Gabon, civil society, already structured as a platform, has organised itself into LWG to reflect forest governance issues better. The LWG has oriented its reflection towards the real demands of local communities. Also, to further strengthen people's participation in developing these tools, all the products of the LWG's consideration have been regularly presented to all the civil society organisations (CSOs) meeting within the Platform for discussion and validation.

### Mastering Technical Subjects

The LWG is an example of cooperation between the different actors of civil society. The heterogeneity of the composition of the LWG has made it possible, through the sharing of experiences and knowledge, to carry out in-depth and comprehensive reflections on forest policy and on mechanisms for sharing benefits both socially and economically. It is this reflection that, among other things, has led to the development of a draft CMS model.

### Formulation of Proposed Legislation

Ongoing training and analysis of legal texts within the LWG have, for the first time, led to the formulation of proposals for forestry legislation from Gabonese civil society. These texts were the product of ongoing consultation between the LWG and the members of the platform. It is also necessary to focus on the civil society's capacity to remain mobilised throughout the process of elaboration and promulgation of the regulatory text, which demonstrates an ability to participate continuously in the formulation of draft laws or other regulatory texts.

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### Establish a Dialogue with the Government and the Private Sector

This process has also demonstrated that dialogue between civil society, government, and the private sector is possible and useful and desirable. To be constructive, this dialogue requires a consolidated level of expertise from all stakeholders. An informed and dynamic civil society that masters the technical areas relating to forest management is entitled to become an interlocutor and an increasingly indispensable partner for government and the private sector. It is worth noting here that the technical expertise that civil society now has in Gabon has enabled the LWG to be called upon to draw up a technical guide for the implementation of the Order.

## CONCLUSION

The process by which Order 105 was adopted confirmed civil society's role as a proponent that can now be replicated in other sectors and in other countries. However, in order to be able to replicate such an experience, it is essential :

1. That the civil society intelligently structures itself in order to build a solid technical experience. The Gabonese experience has shown that technical mastery of the subject and the applicable legislation increases civil society's chances of being involved in decision-making, but this requires that Civil Society Organisations (CSOs) and individuals making up civil society continue to build their capacities.
2. That all State and other actors be open to dialogue. Often because of divergent interests, the different actors look at each other as rivals, which is a major obstacle to dialogue. Gabon's case has shown that even on a subject as complicated and sensitive as 'benefit sharing', actors have found common ground by creating opportunities for dialogue and open-mindedness, particularly on the part of MWF representatives.

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