

# NEW COMMUNITY FOREST DECREE IN THE DEMOCRATIC REPUBLIC OF CONGO

Opportunities, Risks  
and Implications for  
Forest Governance



# PURPOSE OF THIS BRIEFING

On August 2nd 2014, the government of the Democratic Republic of Congo (DRC) passed into law decree 14/1018 fixing the modalities for attributing local 'community forest concessions', enacting Article 22 of 2002 Forest Code<sup>1</sup>.

This briefing considers some of the potential opportunities and risks for the DRC's forests arising from this new legislation, as well as the likely implications for wider governance reforms. It is intended only as a preliminary statement, as there are many factors yet to be determined that will have a bearing on how the new law is actually implemented, not the least any legal arrêtés setting out the modalities for management of the 'community concessions'. RFUK will shortly publish a comprehensive review of community based forest management arrangements in the Congo Basin.

## THE CURRENT SITUATION IN THE DRC

43.4% of the country or 101,822,000 ha is covered by forest of which:

0%

Area formally allocated to communities



25.4%

Area under protected status



14.7%

Area for logging concessions



## KEY ISSUES

**1** There are positive aspects of the text which could potentially make community forests more accessible and appropriate to the needs, constraints and customary systems of local forest communities in the DRC, though not all. However, this is in itself unlikely to deliver sustainable and equitable outcomes unless serious institutional capacity gaps are addressed both in the national, provincial and local forestry administrations;

**2** In the absence of strong administration, weaknesses in the law and implementation measures could open the door to widespread forest destruction and other perverse outcomes;

**3** A 'lesson-learning' and phased development of community forestry should be a priority; aimed at testing implementation of the new regulation, and building capacity to administer it properly;

**4** Community forests should be 'future-proofed' to be compatible with possible advances of more secure forms of community land rights, but should be progressively embedded in current land reform, zoning and REDD efforts.

<sup>1</sup> <http://www.mappingforrights.org/files/DECRET%2014-018%20DU%2002%20AOUT2014%20SUR%20MODALITES%20ATTRIBUTION%20CONCES.pdf>

Source of data: The Inter-ministerial Commission on Forests in Central Africa (COMIFAC), 2010.

# STANDOUT FEATURES OF THE DECREE

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On the face of it, the new DRC legislation is far better suited to the reality of forest communities and their customary land ownership and use than the restrictive, top-down community forest rules found elsewhere in the region<sup>2</sup>.

The decree sets the maximum permitted area of the 'community concession' at **50,000** hectares, ten times the permitted size in Cameroon and the Central African Republic (CAR). This may better correspond to actual customary tenure areas, particularly those of indigenous peoples (though not all). Assuming that the future might bring more substantial land reforms in the DRC, this might potentially make any future transition to more secure land rights an easier one by recognising existing possession rights on forests<sup>3</sup>.

Articles 2 and 15 also specify that the concession is **perpetual**, a significant departure and improvement from the 15-30 year leasehold arrangements typically offered in most community forest laws. Attempts have also been made to place responsibility for the management of the community concession in the hands of **customary representatives** (Article 7) and thus **reduce the administrative (and financial) burden** on communities wishing to establish community forest concessions<sup>4</sup>.

However, there are also potentially serious weaknesses in the decree, and concerns about the institutional framework that would be required to implement it. These are described below under four interlinking themes: limited rights frameworks, benefit-sharing and representation, legal loopholes and institutional weaknesses.

## LIMITED RIGHTS FRAMEWORKS AND LEGAL COHERENCE

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There are major caveats about the level of rights that local communities can expect from community forests, particularly in relation to the security of tenure they provide and how accessible they are to large segments of the rural population.

Forest concessions are, by definition, dedicated to the production of wood<sup>5</sup> and this applies limitations to the extent of truly recognised rights. Article 22 of the Forest Code states community forests concessions are taken from the *Forêts Protégées* forest domain, essentially a 'basket' classification that can be converted into other land uses such as industrial logging concessions or protected areas. It automatically excludes the thousands of communities, that occupy and use land that fall within the other forest classifications, from being able to establish community forests in these areas.

This exposes fundamental injustices in the forest classification system itself and flaws in the wider land tenure regime to address multiple and overlapping land claims, including from the mining, agriculture and oil sectors<sup>6</sup>. The decree recognises the principle of existing possession rights on forests outside community concessions, and that the securing of land rights should not be limited to those areas. However, as this is not necessarily reflected in the legal framework on land tenure, there could be a risk that this legal ambiguity falls short of ensuring that traditional customary land, extending beyond areas recognised as community forests, is not seen as 'vacant', and therefore available for claims by other actors.

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<sup>2</sup> Community forest models found elsewhere in the Congo Basin are highly restrictive in terms of the permitted size and duration of the concession, heavily bureaucratic (and costly) procedures which put them out of the reach of most forest communities, without significant external support, which has made them susceptible to elite capture.

<sup>3</sup> See articles 2 and 18 of the decree.

<sup>4</sup> Article 15 of the decree states allocation of community concessions is free, but the costs for communities could very quickly start mounting, especially in the absence of substantial forest administration capacities.

<sup>5</sup> Forest Code, Preamble 2.2: In the present law, the forest concession differs clearly from the land concession and constitutes an immoveable property right *sui generis* because it applies only to the wood.

<sup>6</sup> See resource allocation map of DRC, <http://map.mappingforrights.org/>

# BENEFIT SHARING AND LEGAL REPRESENTATION

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The issue of legal responsibility in the text holds significant risks of elite capture. The system prescribed is based on one or more “customarily assigned representative(s)” of the community (as legal entities) but falls short of specifying how they will be appointed or how their link to the forest should be proven.

This is important because unless members of a community can themselves define such a process, the chances are that political authority will be given to unrepresentative chiefs, who may or may not be acting according to certain interests, or those in collusion with corrupt officials tasked with approving them. This issue of legal responsibility may be particularly problematic for locally marginalised groups, such as indigenous peoples. Any implementation measure should install sufficient safeguards and clearly framed responsibilities, roles and processes for sound management of the community concessions that would promote the interests of the entire community, including poorly represented or marginalised groups.

## LOOPHOLES AND PERVERSE INCENTIVES

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Loopholes in the text around third party support (i.e. Articles 15 and 20) may encourage serious corruption and rent-seeking behaviour.

Fifty thousand hectare areas are potentially highly lucrative economic units and could be used as a way of by-passing the moratorium on the allocation of industrial logging concessions, in place since 2002<sup>7</sup>. In such a scenario, the ‘light’ administrative requirements intended to remove the burden on communities establishing community forests could actually prove to be counter-productive, and used as a vehicle by unscrupulous operators to exploit these areas with relative impunity, thus avoiding the fiscal, administrative, technical, environmental and social ‘burdens’ involved in industrial concessions management. These loopholes need to be counterbalanced by robust implementation measures.

## INSTITUTIONAL GAPS

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The likely scramble to set up community forests in the coming years (for e.g. loggers seeking legal access to timber, NGO experiments and REDD+ projects) could be vastly disproportionate to the level of institutional capacity in Kinshasa, and even less so at the provincial and local levels.

Without an adequately resourced institutional infrastructure, there is a severe risk that a community forest sector in the DRC could spin out of control even before it has got off the ground. It is conceivable that a proliferation of poorly-run community forests could even provide a pretext for lifting the industrial logging moratorium, actually serving to limit space for community auto-development in the future.

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<sup>7</sup> See [http://blog.mappingforrights.org/wp-content/uploads/NGO-statement-Moratorium\\_April-2014\\_FINAL.pdf](http://blog.mappingforrights.org/wp-content/uploads/NGO-statement-Moratorium_April-2014_FINAL.pdf) regarding the state of the industrial logging sector in DRC and the status of the moratorium

# INITIAL RECOMMENDATIONS

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The outcome of community forestry in the DRC could have far-reaching implications for wider land and forest governance reforms, including zoning, land reform and REDD, and therefore, on the livelihoods of millions of inhabitants of the world's second largest and currently most intact rainforest.

As such, we propose the following:

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**1** Form a national working group of stakeholders (community and indigenous peoples' representatives, national and international NGOs, government agencies, donors etc.) to build consensus around the risks and opportunities involved, some of which have been outlined in this document;

**2** A phased approach to develop the sector in a rational way; limiting allocations to a finite number of pilot projects in different social and geographical settings to test the legislation, implementation options, draw lessons and build capacity;

**3** That the development of community forests is consistent with ongoing reform processes, specifically, that:

- The timing of forest zoning (or re-zoning) exercises allows for community forests to be one of the building blocks of a spatial forest plan; not just an after-thought and filling in spaces between other land-use designations<sup>8</sup>;
- It is compatible with any future developments on more secure land rights which may emerge through the land reform process;
- The moratorium on the allocation of logging concessions (and any other major land allocations) is maintained until such time as the above processes have been completed to internationally recognised standards;
- Policy incentives are maintained to leverage broader reforms and institutional strengthening, being aware that community forest legislation itself is insufficient as a basis for free, prior and informed consent (or FPIC), and benefit-sharing mechanisms around REDD+ project development.



**COMMUNITY FORESTS SHOULD BE 'FUTURE-PROOFED' TO BE COMPATIBLE WITH POSSIBLE ADVANCES OF MORE SECURE FORMS OF COMMUNITY LAND RIGHTS.**

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<sup>8</sup> See 1995 Cameroon forest zoning plan



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