



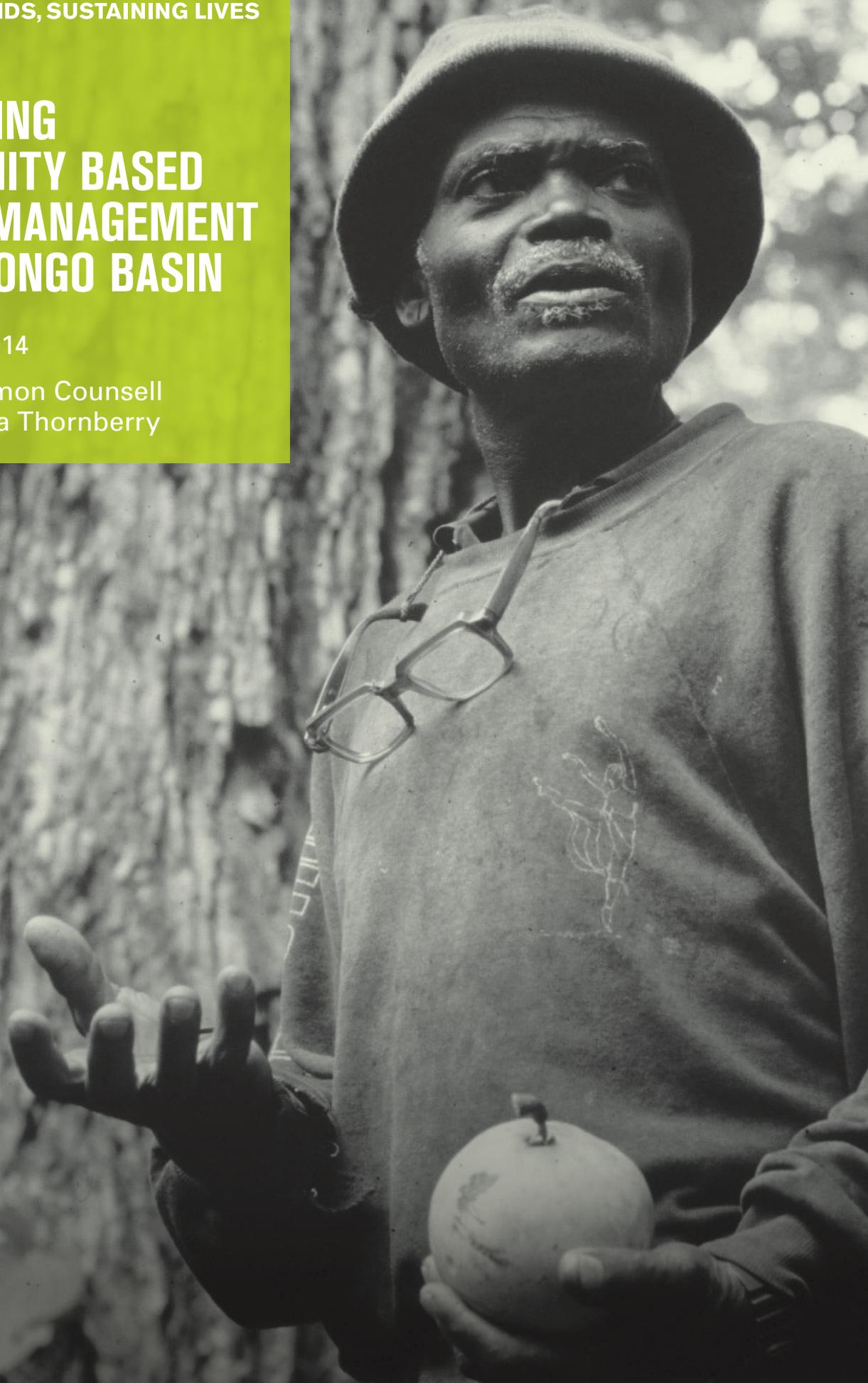
SECURING LANDS, SUSTAINING LIVES

# RETHINKING COMMUNITY BASED FOREST MANAGEMENT IN THE CONGO BASIN

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PART OF THE  
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SERIES



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# MAJOR FINDINGS



- The political economy of the Congo Basin forest sector is geared almost exclusively in favour of large-scale land allocations, and as such is inherently problematic for community based forest management. Whilst forest policy narratives are usually couched in terms of bringing economic development, especially in poor rural areas, there is little evidence that the main uses of forest land – large-scale industrial logging and strict nature conservation – have delivered real or sustainable benefits to impoverished forest communities.
- Examples from around the world show that with the right legal and policy environment, community based forest management can work and may indeed be preferable in the long term to large-scale forest concession allocations. There is increasing evidence that it may well be the best route to reducing poverty and protecting forest areas, depending on the legal basis and level of security of tenure offered to local communities.
- Externally imposed 'one size fits all' community forest concepts found in the region are ill-adapted to the customary systems and needs of forest dwelling peoples. Heavy and costly bureaucratic procedures have made community forests out of the reach of most people, which can lead to capture of control of supposedly community-run forests by powerful elites and exploitative third party arrangements.
- In the absence of overarching legal frameworks in Congo Basin countries that allow for full collective ownership of land (as is the case in, say, Latin America), community forests currently offer the only viable option for communities to gain some degree of legally enforceable rights over their forest lands. However, community forest models should be made compatible with any possible future improvements on more secure forms of land tenure.
- Ongoing land reform processes, forest zoning and REDD initiatives in the region must clarify and secure customary rights. This would align national policy and donor support with international standards and other legal obligations, provide space for self-sustaining development and reduce and mitigate the inevitable conflicts that result from overlapping land claims.

### SUMMARY RECOMMENDATIONS

Governments in the region need to reconsider what is the purpose, expectations and objectives of forestry, and define the priorities and policy options for achieving these. As the forests in most of the countries become progressively exhausted of commercial timber, governments might find it possible to switch to approaches to forest management that benefit the rural poor instead of the foreign shareholders of logging companies. Similarly, donor fatigue with expensive and unsustainable strictly protected areas might mean that greater responsibility for protection has to be devolved to local communities.

#### **Governments throughout the region need to take a range of specific actions, including:**

- Carrying out spatial planning processes which clarify customary land tenure and resource usage systems.
- Legally recognising forest communities' and indigenous peoples' use of land and resources as valid forms of land-use.
- Resourcing decentralisation policies to genuinely transfer management responsibilities
- Providing incentives for the grouping of community forests into economically viable units.
- Creating a policy environment to encourage private sector investment in community forests.
- Developing the institutions needed to administer the differing needs of community forests.
- National laws for community forests need to incorporate the relevant international standards, treaties and agreements.

Detailed recommendations to **specific governments within the region** are found at the end of this report.

International donors have a vital role to play in supporting reform efforts. As with regional governments, they need to review whether the unsustainable industrial scale logging/strict nature conservation model is 'fit for purpose'. Some donors have already started to do this, and are moving to a more community-centred approach but there is a need for more coordination, and acceptance that substantial time and investment is going to be needed to get the region's forest management onto a more sustainable basis.

#### **Specifically, we encourage international donors to:**

- Undertake a multi-donor review of the long-term, strategic approach to developing the forest sector in the region, and whether it is achieving social and environmental objectives.
- Scrutinise how current and planned major land allocations fit with Congo Basin governments' engagements with international processes concerning the supposed conservation and management of forests.
- Support more experimental and pilot programmes to test out a variety of models of community based forest management in order to provide examples of good practice and learning.
- Provide support to the establishment of a clear legal, regulatory and operational basis for community based forest management in the region.
- Align support programmes with international rights agreements and tools safeguarding the rights of local and indigenous peoples; (e.g. by linking the application of community forest provisions to access to funding) to provide clear, secure, enforceable and non-discretionary resource rights over trees, forests, and by extension, carbon.
- Make clarification of tenure rights a legal requirement of the Voluntary Partnership Agreement (VPA) processes.

Although Governments maintain overall responsibility for ensuring institutional and technical capacity exists for ensuring the adequate implementation of laws concerning community forests, **civil society organisations** both in the Congo Basin region and the North have a huge role to play in holding donors and governments to account and can also support the capacity development of local communities. There is now a wealth of knowledge and expertise that needs to be shared and disseminated outside capital cities.

**Specific recommendations include:**

- Testing and developing pilot projects and approaches to community based forest management.
- Supporting communities and indigenous peoples to navigate the complexities of community forests.
- Creating national networks to developing knowledge sharing and advocacy with government and donors.
- Undertaking research on issues relating to, for example, social exclusion, discrimination and governance, and the relationship of this to community forests.



A black and white photograph of a dense rainforest. In the foreground, a large, weathered tree trunk lies horizontally across the frame. To the right, a banana plant with large, broad leaves is visible. The background is filled with a thick canopy of trees and foliage. A bright green rectangular overlay is centered on the page, containing the word 'INTRODUCTION' in white, bold, uppercase letters.

# INTRODUCTION

The inclusion of community forests in the 1994 Cameroon Forest Code set a legal precedent for local communities in the Congo Basin to be able to manage their forests, albeit that it fell short of full recognition of land rights. Two decades on, however, progress towards implementing effective models of community based forest management in the region has been very limited.

After 20 years, only 3 percent of forest land in Cameroon has been attributed as community forests and only a handful of pilot projects to establish community forests exist in the other Congo Basin countries, some of which do not even have a basic legal foundation.

This study considers the constraints and opportunities for community based forest management in the region with a careful examination of indigenous and customary systems of forest resource management and rights. Part A sets out the context, including a brief overview of tenure and governance systems (section 1); an analysis of the political economy of the forest sector which favours large-scale foreign interests over local communities (section 2); and a comparison of existing national community forest policies and rights frameworks in the countries (section 3).

Part B focuses on the conditions necessary to achieve a sustainable, equitable and rights-based approach to forest management in the region. The study then examines lessons from community based forest management from elsewhere and the potential for adapting such models to the Congo Basin context (section 4); and concludes with specific national and stakeholder level policy recommendations (section 5).

The study has been developed with the support of a community forestry specialist, an anthropologist and a lawyer, all with relevant experience. It is largely the result of a desk study and as such is intrinsically limited by the literature consulted and the people interviewed. The Congo Basin is a large and diverse region, comprised of six countries with varying economies, recent histories and socio-political contexts. One of these countries, Equatorial Guinea, is only superficially covered due to difficulties in gathering credible information on the national forest sector.

### Definition of Community Forests

In its broadest sense, community forestry can be considered as 'forestry for the people and by the people'.

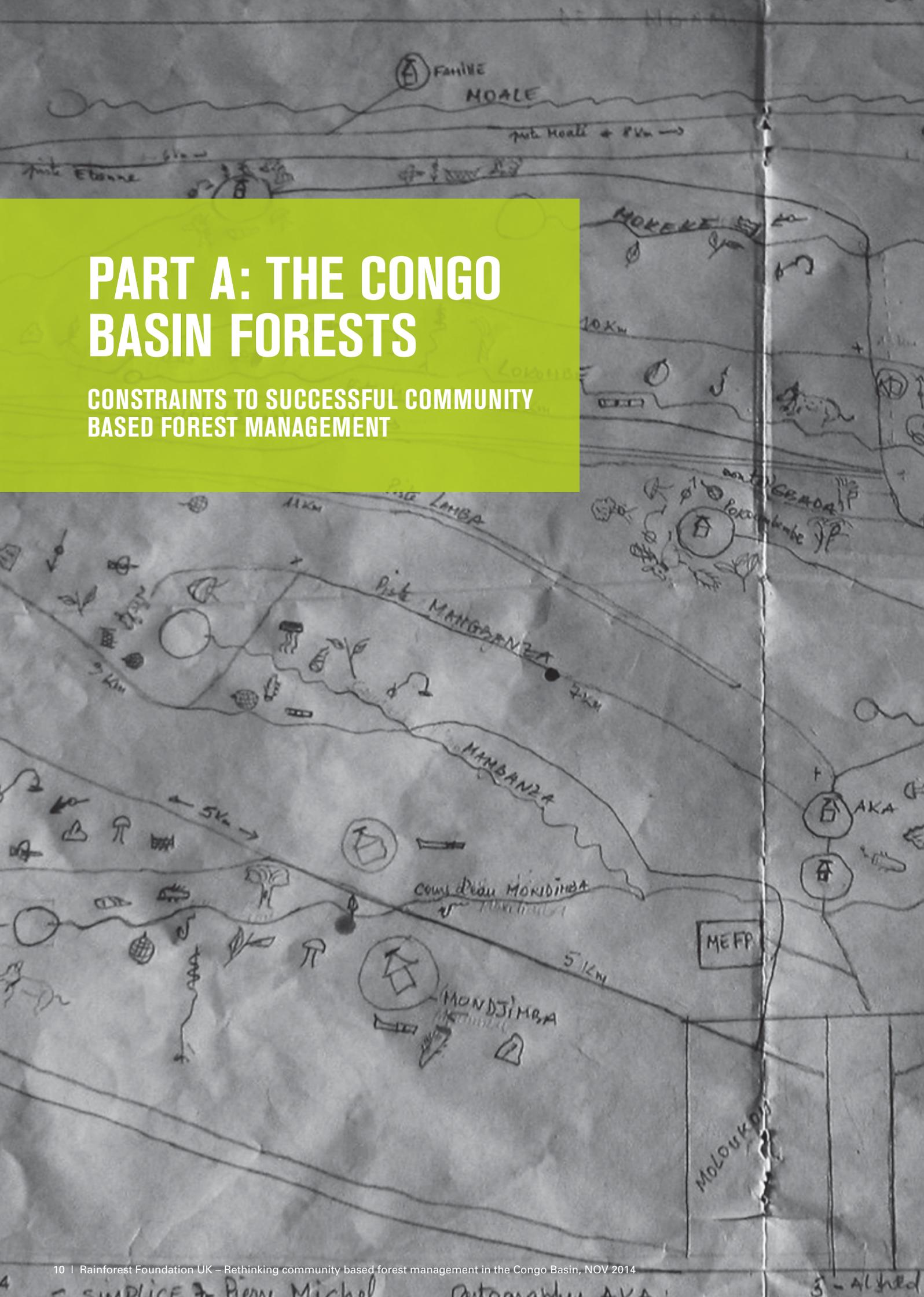
Local forest communities around the world have always been involved in managing their forests to various degrees of intensity through locally defined and negotiated rights within and between communities. However, the term 'Community Forest' as it is commonly used in current policy discourse implies that the responsibility for management over a clearly and legally defined forest area is transferred from the state to a community, usually through a designated or elected user group, for the benefit of that community. The community may not have full ownership rights but leases the forest for a period of 20-30 years renewable by the government, which retains some degree of oversight and control.

This is the sense in which the term is used throughout this study, recognising that other interpretations and definitions can be used.



# PART A: THE CONGO BASIN FORESTS

## CONSTRAINTS TO SUCCESSFUL COMMUNITY BASED FOREST MANAGEMENT



## SECTION 1 – THE CONGO BASIN AND ITS PEOPLES

### 1.1: Demography of the Congo Basin

Covering about 180 million hectares, the Congo Basin is the second largest contiguous rainforest on the planet with comparably far lower rates of deforestation than the Amazon and South-east Asia. A massive reserve of biodiversity and a carbon store of global significance, it is also home to an estimated 50 million forest-dependent people, encompassing some 150 different ethnic groups and including up to 700,000 indigenous peoples collectively known as “Pygmies”<sup>1</sup>.

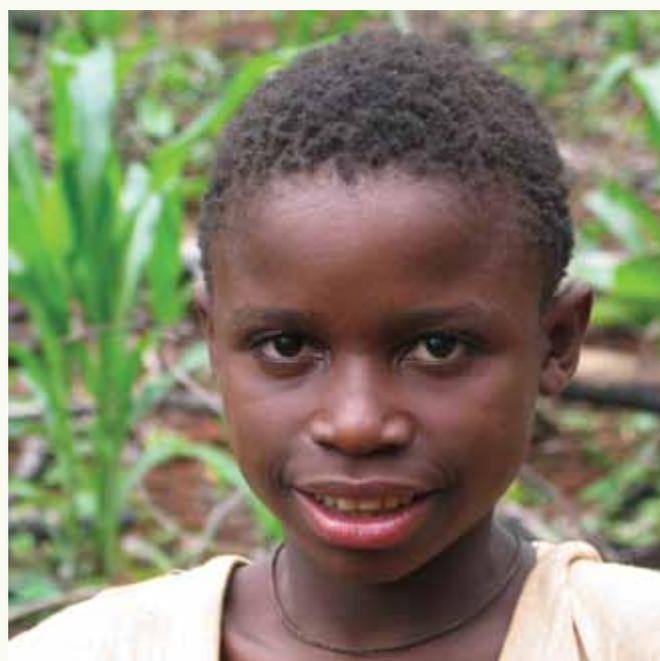


Table 1: Land area, population and GDP in the Congo Basin

| COUNTRY/AREA                     | TOTAL LAND AREA ('000 HA) | TOTAL POPULATION ('000 HA) | POPULATION 2008           |                               |                           | GDP 2008                |                               |
|----------------------------------|---------------------------|----------------------------|---------------------------|-------------------------------|---------------------------|-------------------------|-------------------------------|
|                                  |                           |                            | DENSITY (POPULATION/ KM2) | ANNUAL GROWTH RATE (PER CENT) | RURAL (PER CENT OF TOTAL) | PER CAPITA (PPP) (US\$) | ANNUAL GROWTH RATE (PER CENT) |
| Cameroon                         | 47,271                    | 19,088                     | 40                        | 2.3                           | 43                        | 2195                    | 3.9                           |
| Central African Republic         | 62,300                    | 4339                       | 7                         | 1.9                           | 62                        | 741                     | 2.2                           |
| Republic of Congo                | 34,150                    | 3615                       | 11                        | 1.8                           | 39                        | 3949                    | 5.6                           |
| Democratic Republic of The Congo | 22,6705                   | 64,257                     | 28                        | 2.8                           | 66                        | 314                     | 6.2                           |
| Equatorial Guinea                | 2805                      | 659                        | 23                        | 2.6                           | 61                        | 33,899                  | 11.3                          |
| Gabon                            | 25,767                    | 1448                       | 6                         | 1.8                           | 15                        | 14,575                  | 2.3                           |

Source: FAO – Global Forest Resources Assessment (2010)

<sup>1</sup>“Pygmy” can be considered to be a derogatory term referring collectively to a series of different, geographically separated indigenous peoples in equatorial Africa who share (or shared) certain cultural and economic practices, such as hunting and gathering’ (Lewis, 2002:48).

It has been reclaimed by some indigenous groups as a term of identity whereas it is seen by other groups as pejorative.

Despite a wealth of natural resources, countries in the region rank very lowly in human development indexes. Even in Gabon and Equatorial Guinea, where oil resources have pushed economies towards the middle income bracket, conditions in remote rural forest areas remain largely similar to elsewhere in the region. There is notable migration to urban centres such as Libreville, Kinshasa, Brazzaville, Bangui and Douala although this trend can be somewhat offset against high rates of population growth in rural areas. The social composition in more accessible regions is also changing, with an influx of migrant workers and return from urban centres of some young people who had moved away in search of jobs<sup>2</sup>.

### 1.2 Diversity of forest peoples and forest settlements

A key characteristic of the Congo Basin is the diversity of forest peoples and settlements. Colonial resettlement policies which forced many people to the roadside or rivers to improve access to State services (but also freeing up areas for natural resource exploitation) were continued by the independent states. Research and participatory mapping indicate, however, that traditional systems have been highly resilient to these external forces and are generally well established, with much of the forest land today being considered to be under customary ownership.

Marked fluidity of the social structure has remained, and communities are far from homogenous and cohesive groups of people<sup>3</sup>. It is, however, generally possible to distinguish two main groups found in forest settlements; settled Bantu and Ubangian farmers and fisher people, and indigenous mostly hunter-gatherer peoples.

#### 1.2.1 Settled Bantu farmers

Bantu forest settlements were historically composed of small groups of kin, some with lineages of clients or slaves, with a tendency for junior kin to split off to form new settlements<sup>4</sup>. There is a huge range of Bantu and Ubangian farmer and fisher groups in the Congo Basin. Common livelihood and income generation activities revolve around the production of food crops (e.g. cassava, coco, yams, oil palm), perennial cash crops such as cocoa and coffee but also to varying degrees, hunting, gathering and fishing. Bantu peoples are generally believed to have started migrating eastwards into the Congo Basin region about 3,500 years ago<sup>5</sup>.

Customary land tenure systems are typically clan-based, where rights-holders are associated with specific forest areas, normally, but not always, lying adjacent or near to the village and whose boundaries may be demarcated by streams, rivers or other natural features. Such systems are generally very well defined and accepted in local forest areas<sup>6</sup> but are poorly understood by policy makers and receive only scant or token recognition in formal national law.

In general, forest settlements in the Congo Basin exhibit little institutional unity. Bantu farming communities may have an 'official' government chief, as a result of colonial and post-colonial administrative structures, but the effectiveness of the chief depends on the level of legitimacy, customarily or otherwise, he has from village members. This can vary greatly<sup>7</sup>.

Within many Bantu settlements, the 'elders' (or notables) and local elites are relatively influential compared to young and middle-aged people who are generally excluded from power. Traditional conflicts between youth, on the one hand and elders and elites, on the other, have focused on politics but also on the control of natural resources, land and timber royalties<sup>8</sup>.



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<sup>2</sup> Oyono, 2005; Karsenty, 2008

<sup>3</sup> Ezzine de Blas et al., 2009, Burnham, 2000

<sup>4</sup> Burnham and Sharpe, 1997

<sup>5</sup> Vansina, 1990

<sup>6</sup> See, for example, [www.map.mappingforrights.org](http://www.map.mappingforrights.org)

<sup>7</sup> Graziani and Burnham, 2005: 183

<sup>8</sup> Burnham and Sharpe, 1997; Oyono, 2005, Karsenty et al. 2010

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## 1.2.2 Indigenous Peoples

There are at least 26 indigenous (Pygmy) ethnic groups with differing customs and languages. There has been no reliable census undertaken in the Congo Basin, partly due to the transitory nature of many communities' and their livelihoods, but also because of perceived sensitivities of disaggregating data by ethnicity.

**Map 1 – Indicative map of Administrative areas in the Congo Basin known to be inhabited and used by indigenous peoples ('Pygmies').**

Different indigenous groups may have similar cultural traits. Spatial, seasonal and social mobility is common among many groups such as the Mbuti, Efe, Aka and Baka, whose livelihoods depend to a large extent on hunting, fishing and gathering of forest products. Forest conservation, timber extraction and other commercial activities by outsiders have led to a reduction in the quality and quantity of forest resources available to many hunter-gatherers<sup>9</sup>. This has driven some groups into a more sedentary existence, often on the edge of Bantu villages where many face endemic discrimination and some have increasingly become labourers for Bantu farmers and in some cases recruited by commercial hunters.



Source: RFUK/MappingForRights, DGPA

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<sup>9</sup> Lewis et al. 2008: 5; Woodburne, 2012:10

Some indigenous Pygmies live directly next to Bantu farmers while others live in separate but nearby areas of Bantu villages. These are usually known as ‘campements’ but in some cases can consist of substantial settlements in their own right (although they are often not legally recognised as such). Typically, many Pygmy groups will divide their time between villages and a network of forest camps which can be many tens of kilometres into the forest<sup>10</sup>. Research indicates that Bantu farmers may use 0.5 – 3 hectares of cultivated land and 15-250 square kilometres for hunting, and between 120 – 4831 square kilometres for hunter-gather communities<sup>11</sup>. The traditional hunting areas of Pygmies may thus overlap multiple Bantu customary forest use areas.

The composition of indigenous communities can be very fluid, as individuals or family units move to live with other groups for social and economic reasons. Membership of communities is not homogenous or static, and can change due to seasonal mobility, disputes and cultural gatherings (rituals, births, deaths). Campement ‘membership’ can be claimed through a variety of ties including kinship, clan membership, marriage ritual association or longstanding residence<sup>12</sup>.

Governance and decision-making processes among different Pygmy groups can exhibit important differences that have implications for land and resource management. However, RFUK research and other literature suggest that they also exhibit certain common characteristics<sup>13</sup>. Social structures are generally non-hierarchical with little evidence of formal leaders. Instead there are individuals (or kombeti) who are recognised for their particular skills and related opinions<sup>14</sup>.

The ‘flat’ social structure and transitory nature of many Pygmy social groups and low status accorded to them in most areas means they are vastly under-represented in public office, often lack official papers, have far lower enrolment in schools and vaccination programmes and are generally much less able than Bantu groups to negotiate their rights with outside interest, such as that of logging companies.

### 1.2.3 Inter-community relations

The relationship between Pygmy groups and neighbouring Bantu communities is often deeply complex, with the two having in some cases engaged in exchange/trade relationships for thousands of years, and have thus developed a longstanding interdependency. Historically, some Pygmy groups, such as the Mbendjele in the north of the Republic of Congo and the Bayaka in South-western CAR, associated themselves with particular farmer villages or specific patrilineages within farmer village<sup>15</sup>. Contemporary farmer/hunter-gatherer relations vary greatly from friendship to exploitative patron-‘servant’ relations. Pygmies are often acknowledged as ‘first-comers’, admired for their hunting skills and play a central role in traditional ceremonies, but are nevertheless generally perceived to be of a far lower status. They often face extreme social, economic and political marginalisation<sup>16</sup>.

In some areas, part of this power asymmetry can be attributed to different and often overlapping conceptions of land between Bantu communities and indigenous pygmy groups. Many Bantus consider Pygmies to be squatting on their customary lands, and use of these areas is ‘sanctioned’ on a permissive basis only. Many Pygmies have little other option than to work for neighbouring Bantus, especially where access to local forests is restricted for one reason or another, and can be exploited to the point of suffering conditions amounting to forced labour.

In other areas, the patchwork of overlapping land and resource rights are often seen as not exclusive. Sharing of land and resources between farming and Pygmy groups is tolerated or negotiable<sup>17</sup>. Mbendjele patrilineal clans go beyond a single territory meaning that they have access to a wide range of forest areas to carry out livelihood activities, visit clan relatives and associated groups or to find work and consider all forest use to be an inalienable birth right<sup>18</sup>.

In general, customary or traditional rights concepts and practices are not static and may refer to a whole bundle of different rights such as: rights to access, to extract, to manage, to exclude, to alienate, to fair treatment and compensation<sup>19</sup>. Any of these specific rights may be attributed for a specific length of time only.

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<sup>10</sup> Woodburne, 2012:9; Graziani and Burnham, 2005:183

<sup>11</sup> Long, 2007:23

<sup>12</sup> Graziani and Burnham, 2005:184; Moise n.d.:34

<sup>13</sup> Lewis, 2002; Moise nd; Woodburne, 2012

<sup>14</sup> Lewis 2002:73; Woodburne, 2012:30

<sup>15</sup> Lewis, 2008:6; Moise n.d.:33

<sup>16</sup> Woodburn, 1997: cited in Lewis 2008; Köhler and Lewis, 2002

<sup>17</sup> Hoare, 2007

## SECTION 2 – THE POLITICAL ECONOMY OF FORESTS

Over the past few decades, the political economy of the Congo Basin forests has been dominated by a dual model of industrial logging and strict nature conservation, with more recent expansion in the mining, oil and agro-business sectors. This section explores the net gains and impacts of this system on the region’s population, with a particular examination of tenure and forest governance issues, in order to identify the major challenges to the potential for community based forest management.

“We are going to live like birds... without a place to put our feet” – Jeanne Noah, indigenous Bagyeli leader (South-Western Cameroon)

### 2.1 Competing tenure and governance systems

A duality exists in the Congo Basin between customary and formal systems of tenure and land governance. Despite their widespread existence, customary rights are poorly recognised or defined in national legal frameworks, which can create confusion and a dichotomy between de jure and de facto situations. Virtually all land in the Congo Basin countries is either under the ownership (DRC, CAR) or in the custody (RC, Cameroon, Gabon) of the State. It is roughly divided into public and private domains with management or use rights granted to other actors in the first case; and in the public, private (property of the state and private individuals) and the national or rural domains in the latter (see Table 2).

Table 2: Summary of State ownership of land in Congo Basin countries

| COUNTRY/AREA        | LAW   | LEGAL OR DOMANIAL CATEGORIES  |
|---------------------|---|---|
| Cameroon            | 1974 Order  | Individual domain, National domain, Private State domain  |
| CAR                 | Law No. 63/441 of 20 January 1964   | Public Domain, Private State domain   |
| DRC                 | Law of 20 July 1973   | Public Domain, Private State domain   |
| Republic of Congo   | Law of 21 April 1983  | Public domain, Private State domain, Private domain of local governments, Private domain of public entities |
| Gabon <sup>21</sup> | Gabon currently has no national land policy per se. The best current summary of the land regime is Law No. 3-2012 of 13/08/2012 – ratifying Ordinance No. 5 of -2012 13/02/2012 fixing the system of land ownership in the Republic |   |

Source: COMIFAC (2013) Considerations politiques sur l’utilisation des terres dans le bassin du Congo.

<sup>18</sup> Lewis, 2002:73

<sup>19</sup> RRI, 2012

<sup>20</sup> Food and Agriculture Organization of the United Nations, ‘Legal recognition and allocation of tenure rights’ - from:

<http://www.fao.org/nr/tenure/activities/recognition-and-allocation-of-rights/en/>

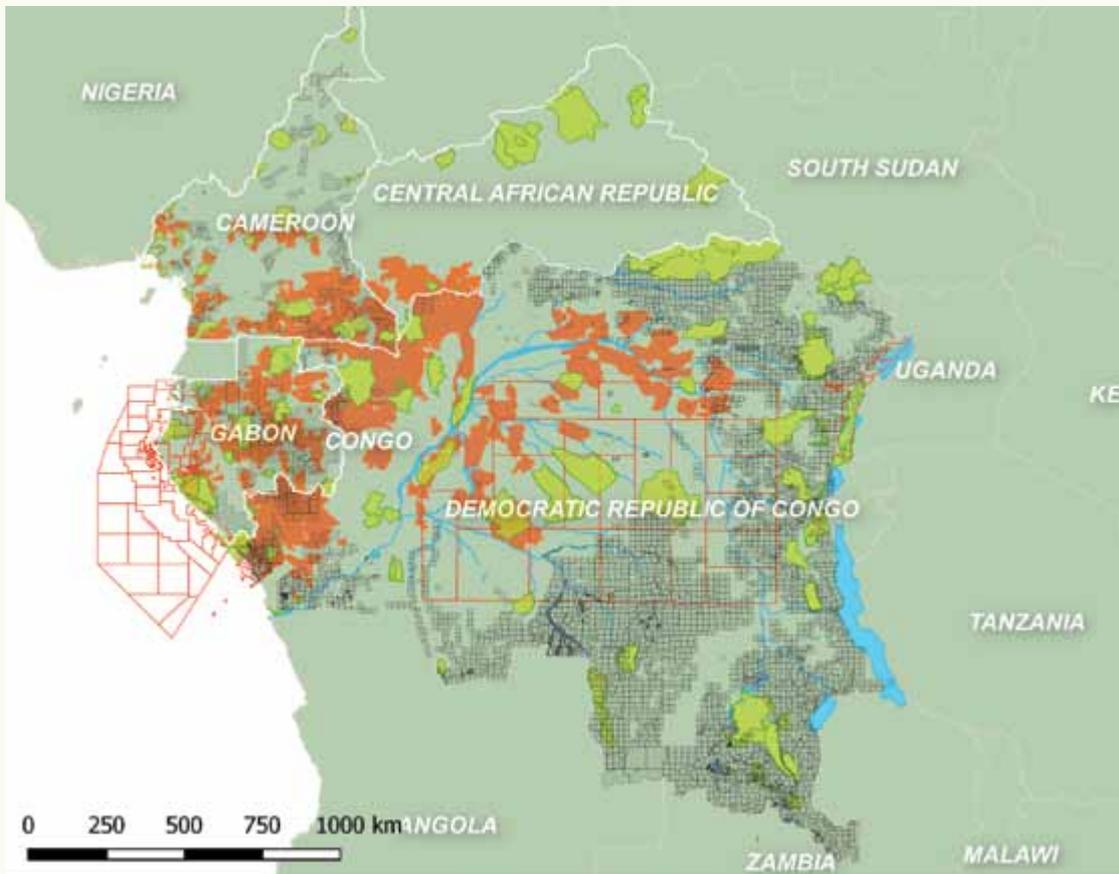
<sup>21</sup> <http://www.clientearth.org/ressources-externes/gabon/foncier/Loi-3-2012-regime-propriete-fonciere-consolidee.pdf>

The forest area is divided into permanent and non-permanent forest estates. The permanent forest estate is largely reserved for conservation purposes (such as for national parks and other protected areas) that form part of the public domain, and production forests which are generally leased by the state to industrial logging companies as concessions as part of the private domain. The non-permanent forests (in Gabon, the *domaine forestier rurale*, or in DRC, *forêt protégée*) are the remaining forests that do not fit into the two categories of forests mentioned above and can be considered as a bank of forest land for future use, including for community forest initiatives and forests owned by individuals. These classifications have been established largely arbitrarily and may not correspond with customary systems; some areas do have the potential to be reclassified (see section 3).

As map 2 and Figure 0.1 show, the vast majority of the forest has been allocated as logging concessions or as strictly protected areas. These are usually managed by foreign interests, often on land that may otherwise be used and/or claimed by local and indigenous peoples under existing customary systems. The current designation would prevent them from being available for alternative models of forest management. Such allocations can be highly contested by local people, who may only be granted some form of 'traditional' usage rights in these areas, though mostly not in state forests. Even non-permanent forest areas that have not been deemed suitable for timber extraction or biodiversity conservation are prone to being reclassified into the other forest domains or alternative (non-forest) land-uses.

**Map 2 – Allocation of logging concessions, oil and petrochemical permits, mining permits and protected areas in the Congo Basin.**

-  Mining concessions
-  Protected Areas
-  Logging Concessions
-  Oil concessions



Source: World Resources Institute, RFUK/MappingForRights

**Table 3: Summary of main forest tenure designations in Congo Basin countries**

| COUNTRY             | LEGAL TEXT          | NOMENCLATURE OF FOREST DOMAIN TERRITORIES  | LOGGING (CONCESSION SIZES, DURATION OF AGREEMENTS, AWARD PROCESSES)  |
|---------------------|---------------------|--|--|
| Cameroon            | Forestry law (1994) | Permanent Forest Domain (PFD) with a target of 30 per cent of national territory surface area) versus non-Permanent Forest Domain (nPFD) | PFD (Implementation of the development plan is incumbent on the economic operator, 15-year logging agreement, renewable for surface areas of no more than 200,000ha for Forest Management Units (FMU). It is important to note that this agreement must be preceded by a 3-year provisional agreement) nPFD (sale of felling areas covering 2,500ha for a 1-year period; community forests with surface areas of 5,000ha for a term of 25 years) |
| CAR                 | Forest code (2008)  | Permanent Forest Domain and non-Permanent Forest Domain  | In CAR, there are two types of permits awarded within PFD premises, namely the artisanal mining permit (1 year with a surface area limit of 10ha) and a logging and development permit whose term is equal to the company's lifespan (awarded by presidential decree). Thus concessions are granted for an indefinite duration.  |
| DRC                 | Forest code (2002)  | Classified forests (target of 15 per cent of national territory surface area), protected forests and permanent production forests        | Classified forests are exempted from all forms of logging pending the issuance of a classification law; protected forests may be subject to a concession based on a contract for a term of 25 years. Local communities are entitled to the acquisition of some or all of their customary forests in the form of a local community forest which shall not exceed 50,000ha.  |
| Republic of Congo   | Forest code (2000)  | State forest domain (PFD and nPFD) and private entities' forest domain   | In theory, there is no limit to the surface area of FMUs in the PFD. It may range from 200,000 to more than 1,000,000ha. There is an industrial processing agreement (15 years) which is different from the development and processing agreement (25years) which are both awarded by tender.   |
| Gabon <sup>22</sup> | Forest code (2001)  | Rural forest domain (10 million hectares), Permanent forest domain (production forests – 8 million ha, protected forests 4 million ha)   | Three permits. Sustainably managed forest concessions (CFAD), may only cover a surface area between 50,000 ha and 200,000 ha. A single logging company can be granted many CFADs, however the cumulative area granted to one company cannot exceed 600,000 ha. Permis forestiers associés (PFA), for forests surfaces included between 15,000 ha and 50,000 ha, and the Permis de gré à gré (PGG).   |

Source: COMIFAC (2013) Considérations politiques sur l'utilisation des terres dans le bassin du Congo.

<sup>22</sup> <http://risk.forestlegality.org/countries/647/laws><sup>11</sup> Long, 2007:23

**DEMOCRATIC REPUBLIC OF CONGO**

43.4% of the country or 1,018,220km<sup>2</sup> is covered by forest of which:



**GABON**

83.4% of the country or 223,249km<sup>2</sup> is covered by forest of which:



**CAMEROON**

39.2% of the country or 186,402km<sup>2</sup> is covered by forest of which:



**CENTRAL AFRICAN REPUBLIC**

11.1% of the country or 69,152km<sup>2</sup> is covered by forest of which:



**REPUBLIC OF CONGO**

50% of the country or 171,165 km<sup>2</sup> is covered by forest of which:



**EQUATORIAL GUINEA**

73.6% of the country or 20,639 km<sup>2</sup> is covered by forest of which:



Area formally allocated to communities



Area protected in national parks



Area for logging concessions

Source of data: The Interministerial Commission on Forests in Central Africa (COMIFAC), 2010. Data for Cameroonian community forests based on best estimates as at July 2012. Data for Equatorial Guinea logging area taken from Chatham House, [www.illegal-logging.info](http://www.illegal-logging.info)

**2.2 (Un)sustainable forest management**

For the last 50 years, the largest land-use in the region, by far, has been industrial-scale logging. According to the FAO (United Nations Food and Agriculture Organisation) State of the Forest Report, there are roughly 40 million hectares of such concessions allocated in the region, compared to 414,000 hectares for community forests<sup>23</sup>. In fact, this figure is likely to be closer to 51 million hectares as approximately 10 million hectares of concessions have been awarded in the DRC since the source was published.

The concept of ‘sustainable forest management’ has been promoted by donors such as the World Bank and AFD since the 1990’s, based on the premise that a finite number of large-scale logging concessions managed over a period of 20-30 years could, if regulated and rationally managed (e.g. through selective logging, forest management plans and forest certification initiatives), stimulate economic growth, local development and reduce forest degradation and outright destruction.

Despite donor support for this approach running into hundreds of millions of dollars, there is little evidence that the promised benefits have materialised. Currently, only around 55 per cent of these concessions are operating under government approved management plans, of which 4.4 million, or just over 10 per cent, are certified by the Forest Stewardship Council<sup>24</sup>. Even where management plans or certified concessions do exist, this is no guarantee of genuinely sustainable forest management<sup>25</sup>.

The underlying political, economic, social and environmental problems with the large-scale logging concession model have been explored in detail in a previous Rainforest Foundation and Forest Monitor report called ‘Concessions to Poverty’<sup>26</sup>. Such is the parlous state of the forest sector in the DRC – potentially the largest timber producer in Africa – that the logging moratorium has been in place since 2002, and is supported by most international donor agencies<sup>27</sup>.

<sup>23</sup> [http://www.observatoire-comifac.net/docs/edf2010/EN/State\\_of\\_the\\_Forest\\_2010.pdf](http://www.observatoire-comifac.net/docs/edf2010/EN/State_of_the_Forest_2010.pdf) . This is despite a logging moratorium being in place since 2002.

<sup>24</sup> AFD, 2013

<sup>25</sup> LA study in 2006 of 20 World Bank-approved management plans in Cameroon and the extent to which they satisfied 40 legal and extra-legal criteria found that none met all the legal requirements; less than half met sixty percent or more of the legal criteria, and only two met over seventy percent of criteria. Moreover, a greater area of FSC certified forest has been decertified, cancelled or ‘suspended’ than currently

remains certified, despite much investment and support for certification over 15 years or so, not the least from the World Wide Fund for Nature (WWF). Even concessions which were recently considered as ‘flagship’ sustainable operations (and certified as such) have been forced to close due to the exhaustion of timber stocks (<http://www.fsc-watch.org>).

<sup>26</sup> RFUK/Forests Monitor, Concessions to Poverty; The environmental, social and economic impacts of industrial logging concessions in Africa’s rainforests, 2007

<sup>27</sup> World Bank Inspection Panel Report, 2007

## 2.2.1 The rights/benefits trade-off

The classic neo-liberal doctrine is that pre-existing rights need to be sacrificed for structural adjustment policies to enable foreign investment, macro-economic growth (usually assuming that there will be 'trickle-down' wealth redistribution). In reality, very few of the benefits of economic growth and revenues from, for example, the oil and forestry sectors, have been invested in infrastructure development and provision of health and education services in rural forest areas – although there are exceptions, such as around Sagmelima, the native area of Cameroon's President, Paul Biya.

Many of the Congo Basin States' development responsibilities in rural forested areas have been transferred to foreign logging companies. By law, such companies are typically obliged to pay part of their taxes in the form of a 'cahier des charge' (a social contract), negotiated with communities for the construction and maintenance of roads, schools, or local medical facilities. This means that in remote areas forestry companies can dominate local economies and arguably have more impact on peoples' livelihoods than the state<sup>28</sup>.

At the same time, forest ministries are mostly unable to monitor the implementation of such community agreements or forest management plans, and are often dependent on the logistical support of these same logging companies to monitor compliance. Independent monitoring schemes in the region over the past decade have documented many breaches of forestry regulations but to date this has rarely resulted in appropriate government action. Conflicts between communities and companies over cahiers de charge or other commitments are very commonplace, sometimes leading to violence and damage to property.

As Table 4 shows, the overall contribution of industrial logging to national economies is fairly limited in most countries, especially in relation to the total land area under concession status. It is likely to diminish still further with the growth of the agro-industries and mining sectors in the coming years.

**Table 4: Forestry sector's contribution to national GDP and direct employment creation in the Congo Basin**

| COUNTRY /AREA     | FORESTRY SECTOR'S CONTRIBUTION TO GDP |              | NUMBER OF DIRECT EMPLOYMENTS |      |
|-------------------|---------------------------------------|--------------|------------------------------|------|
|                   | VALUE % (PER CENT)                    | YEAR         | VALUE                        | YEAR |
| Cameroon          | 6                                     | 2004         | 13,000                       | 2006 |
| Congo             | 5.6                                   | 2006         | 7,424                        | 2009 |
| Gabon             | 3.5                                   | 2009         | 14,121                       | 2009 |
| Equatorial Guinea | 0.22                                  | 2007         | 2,000                        | 2007 |
| CAR               | 13                                    | 2009         | 4,000                        | 2009 |
| DRC               | 1                                     | 2003         | 15,000                       | 2007 |
|                   |                                       | <b>TOTAL</b> | <b>55,545</b>                |      |

Source: FAO, State of the Forests Report, 2010

<sup>28</sup> Lewis, 2002:42

Logging can create some level of formal employment and cash income in remote areas but this only amounts to around 0.1 per cent of the total estimated forest-dependent population of the Congo Basin, according to these figures, or equivalent to just over one employee per 738 hectares under concession based on the FAO numbers. Moreover, jobs often go to immigrant workers brought in with the company. Most of the timber value chain is generally transferred elsewhere, with raw logs being exported often to Europe and Asia for processing into wood products (though the Gabonese government partially bucked this trend by banning the export of raw logs in 2010). Pay and working conditions can be poor, especially so for indigenous people who can be employed as trackers or low level manual workers, and often paid at lower rates than other workers<sup>29</sup>. There is some evidence that the logging sector provides some support to the informal economy in rural areas but any positive impacts on people's livelihoods tend to remain limited to the lifetime of the forest operations or cutting cycles which as noted elsewhere are generally fairly short as most operations are, in forestry terms, unsustainable.

The presence of logging operations can be the cause of numerous social problems. Weak and socially divisive 'compensation' measures for timber-felling on customary lands have created tensions between the youth and elders. The lack of reliable and equitable mechanisms for benefit-sharing is a problem that is particularly acute for marginalised indigenous groups<sup>30</sup>. New logging roads have also opened up the forest to commercial hunters, leading to a greater scarcity of forest resources and bushmeat which is a crucial source of protein for both indigenous peoples and local Bantu groups<sup>31</sup>.

### 2.2.2 Tax and spend

The third pillar of the concessionary model, along with the principles of sustainable forest management and social contracts between loggers and local communities, is the collection and partial re-distribution of tax revenue at the local administrative level.

As part of 1990's reforms, all of the Congo Basin countries, other than Equatorial Guinea, introduced forestry-specific fiscal arrangements whereby taxes ('Redevance Forestière Annuelle' – RFA) are paid on the total area of the concessions, volumes of logs extracted and the volume of logs and sawn timber exported<sup>32</sup>. In theory, such mechanisms should increase the amount

of cash reaching local communities to be used for development purposes, but there is very little evidence that it has contributed to poverty alleviation at the local level. One study of a sample of communes in Cameroon has shown that it is not always easy to trace how funds are used by local mayors<sup>33</sup>, while another estimated that on average only about 20 per cent was ever invested in local development activities<sup>34</sup>.

Moreover, the area taxes in the Congo Basin are extremely low, both in comparison to levels elsewhere in the world, as well as in relation to the value of the timber to be found in the area of forest<sup>35</sup>. Government collection of forest taxes is often also very poor, with some of the missing 'rent' often being paid directly to forestry officials and decision-makers. A recent analysis by Global Witness in the DRC found that in 2012 only 10 per cent of the potential forestry surface taxes ('taxe de superficie') were actually collected by the government<sup>36</sup>.

### 2.2.3 Hidden agendas

The legitimacy of the concessionary regime in the Congo Basin has to a large extent been undermined by opaque land allocation processes and third party management structures which have sometimes been linked to vested interests at the highest levels of political office and state institutions in both Congo Basin and donor countries<sup>37</sup>. Burnham and Sharpe point out that forest resources (usually in the form of concessions granted to leaseholders) can be connected to national politics via two routes: as political capital for rewarding supporters of the regime or as a mean of constituency building for politicians in local areas<sup>38</sup>.

It has been argued that the structural adjustment programmes of the 1990s led to a drastic reduction in the income of many civil servants, which, in turn, created an environment of personal 'rent-seeking behaviour'. The policy choice to keep forestry taxes very low in relation to the resource value means that, simultaneously, forestry administrations command little of central government funding, and also that officials, rather than the state, are able to privately capture (though corruption) some of the substantial profits of forestry operators. Donors have had little appetite to address systemic corruption, preferring instead the narrative of 'weak institutional capacity'; hundreds of millions of dollars have been targeted, over several decades, towards sectoral and institutional capacity strengthening and reform, evidently with little success.

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<sup>29</sup> RFUK field research

<sup>30</sup> Graziani and Burnham, 2005:190; Oyono, 2009; Burnham, in press, Moise n.d.:19

<sup>31</sup> Lewis, 2002: 85; Woodburne 2012:108; Newing, 2007

<sup>32</sup> Bigombe Logo, 2010

<sup>33</sup> Cerutti et al. 2010

<sup>34</sup> Milol and Pierre, 2000 cited in Bigombe Logo, 2010 concessions in Africa's rainforests, 2007

## Implementation Gaps

Across the region, decrees and arrêtés necessary to implement over-arching forest laws are often not passed, thus creating a major implementation gap. Governments can be fast to sign international conventions and agreements (notably on indigenous peoples' rights), and thus in doing so mobilising certain donor funding, but with minimal follow up. A further institutional barrier to policy implementation is the gap between central and regional administrations. Even when a new forest law implementation decree is passed, it may take years for the information to reach field officers (let alone communities) that may then be left to interpret the law<sup>39</sup>.



Table 5: Relevant international instruments by country

| INSTRUMENT   | TYPE                     | CAMEROON | CAR | CONGO | DRC | GABON |
|--|--------------------------|----------|-----|-------|-----|-------|
| UNDRIP   | Declaration              | X        | X   | X     | X   | X     |
| FAO voluntary guidelines   | Voluntary                | X        | X   | X     | X   | X     |
| AU Land policy initiative  | Declaration/<br>Regional | X        | X   | X     | X   | X     |
| ILO 169  | Treaty                   |          | X   |       |     |       |
| CBD  | Treaty                   | X        |     | X     | X   | X     |
| African Charter on Human and Peoples' Rights   | Treaty/Regional          | X        | X   | X     | X   | X     |
| International Covenant on Civil and Political Rights   | Treaty                   | X        | X   | X     | X   | X     |
| International Covenant on Economic, Social and Cultural Rights   | Treaty                   | X        | X   | X     | X   | X     |
| International convention on the elimination of all forms of racial discrimination (ref specifically General Recommendation No. 23) | Treaty                   | X        | X   | X     | X   | X     |

<sup>35</sup> RFUK/Forests Monitor, *Concessions to Poverty; The environmental, social and economic impacts of industrial logging concessions in Africa's rainforests*, 2007

<sup>36</sup> Global Witness Press release: October 28, 2013: 90 Percent of DR Congo's Logging Revenues Lost to Tax Avoidance in 2012

<sup>37</sup> Labrousse, 2000

<sup>38</sup> Burnham and Sharpe, 1997:9

<sup>39</sup> Buchy, field work notes, 2013

**Legality**

The Forest Law Enforcement Governance and Trade (FLEGT) initiative of the European Commission (EC), designed to halt the import of illegal timber into the European Union, (EU), is an attempt create economic incentives for tropical forest countries to improve governance and transparency in the forest sector through bilateral voluntary partnership (VPA) agreements. VPAs have been ratified in Cameroon (December, 2011), the CAR (July, 2012), the Republic of Congo (March, 2013) while negotiations between involving the DRC and Gabon have been ongoing since 2010. At the time of going to print, the EC appears to be some way off issuing its first FLEGT licence for legally imported timber in the region. Obstacles have included the diminishing importance of European timber markets for Congo Basin governments, the emergence of the mining and agriculture sectors, the problem of an increasing amount of timber coming from ‘conversion’ of forest to agricultural land, associated land governance issues, greater interest from certain governments and donors in REDD processes and the prohibitively high costs of implementing legality assurance systems and meeting the European Union Trade Regulation (EUTR).

Furthermore, there is some evidence that the increased focus on legality definition and verification in the FLEGT VPA era may actually be serving as a disincentive to community forests in the region. Compliance with additional legal requirements may be possible for major industry players but remain beyond reach of most local producers, in effect of creating illegality in the domestic sector, such as for artisanal or community timber producers.

**2.3 Protected area system and landscapes approach**

The creation of forest protected areas in the Congo Basin has a long history, dating in some cases back to the colonial era. The rapid expansion of the extractive industries in the Congo Basin has meant the need to protect biodiversity has been increasingly recognised by policy makers in recent years. International conservation organisations such as the World Wildlife Fund, (WWF), the World Conservation Society, (WCS), African Wildlife Foundation, (AWF) and Conservation International, (CI), have mobilised hundreds of millions of dollars to develop the regional protected area network which has grown considerably over the past decade.

**Table 6: Protected areas (IUCN categories I to VI) in in Congo Basin**

| COUNTRY                      | NUMBER OF PROTECTED AREAS | AREA (HA)  | PROPORTION OF NATIONAL TERRITORY (%) |
|------------------------------|---------------------------|------------|--------------------------------------|
| Cameroon                     | 174                       | 10,437,336 | 22                                   |
| Republic of Congo            | 14                        | 3,513,438  | 10                                   |
| Central African Republic     | 73                        | 17,330,015 | 28                                   |
| Democratic Republic of Congo | 50                        | 26,314,330 | 11                                   |
| Gabon                        | 17                        | 2,431,367  | 9                                    |
| Equatorial Guinea            | 13                        | 590,955    | 21                                   |

<sup>41</sup> M. Cernea and Kai Schmidt-Soltan, 2003  
<sup>42</sup> www.map.mappingforrights.org

<sup>43</sup> RRI, 2011  
<sup>44</sup> See for example, Atelier de Présentation des Cartes des Communautés Vivant dans et Autour de la Reserve Tumba-Lediima. Lukolela, du 24 au 25/03/2014 – Communiqué Finale.

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### 2.3.1 People and parks

Whilst the protected area system may have made a contribution to biodiversity conservation in the Congo Basin, it has been considerably less successful in addressing the needs of local forest-dependent and indigenous peoples. Despite the requirements of legally binding international instruments such as the Convention on Biological Diversity, (CBD), and numerous indigenous and community safeguard policies, the region has in fact seen the proliferation of a strict conservation model which aims to preserve vast ‘wildernesses’ untouched by humans – even though the North American ‘wilderness’ habitats, upon which these are modelled, were in fact populated by indigenous peoples.

One 2003 study found in a sample of 12 protected areas in the Congo Basin that over 50,000 people had been evicted or had their lands expropriated<sup>41</sup>. Although these numbers have been contested, this does seem consistent with much of the field-based research carried out by local civil society organisations in the region, and evidenced by participatory maps<sup>42</sup>, shows there is often weak consultation with local communities and poor recognition of their rights in the creation and management of such protected areas.

Indeed, despite evidence to suggest that traditional forms of forest management have contributed to high levels of biodiversity found in the region<sup>43</sup>, forest-dependent communities have often been perceived as threats rather than partners in conservation. Anti-poaching drives, often brutally enforced by eco-guards, target local subsistence activities rather than powerful commercial hunting networks, whilst offering very little in terms of compensation or alternative livelihood activities<sup>44</sup>. This has created an opposition to forest conservation efforts within large sections of the rural population.

### 2.3.2 CARPE Landscapes

The Central African Regional Program for the Environment (CARPE) was first authorised by the U.S. Government in 1995 and was initially proposed as a 20-year regional initiative divided into three strategic phases, the last of which began in 2014. The majority of CARPE funds are allocated to support integrated landscape approaches to conservation essentially managed by a consortium of U.S based conservation organisations, in conjunction with the Commission des Forêts d’Afrique Centrale (COMIFAC) and other regional entities. Today around 40 per cent of the Congo

Basin is designated under twelve priority CARPE/CBFP ‘landscapes’, – a number of which are trans-boundary. Each of the landscapes are sub-divided into different management categories including many of the region’s protected areas (PA), extractive resource zones (ERZ) and community based natural resource management (CBNRM) areas. Land-use zones are identified through ‘spatially explicit conservation planning models’ which assess criteria such as highest and lowest areas of human influence, wildlife corridors, areas of highest conservation activity and areas most suitable for future agricultural expansion. By 2010, a land-use planning process had been completed in five out of the twelve landscapes of which three [had] been formally adopted by government agencies. Sixty-five out of a total 147 macro-zones were attributed as CBNRM areas, constituting the largest land-use covering more than 21 million hectares<sup>45</sup>.

While these seem like impressive figures, concerns have been raised about the methods used to determine land-use plans and indeed the actual value of these so-called CBNRM areas. Analysis of the land-use plans appears to show that CBNRM zones are largely based on satellite imagery of forest clearance from rotational agriculture, revealing very little about other resource use patterns, such as hunting, and customary rights. It is also not entirely clear what weighting is given to different social, economic or conservation values, with a number of communities clearly located inside PA or ERZ zones. This risks giving a distorted picture of existing land-use which may privilege conservation objectives, such as the existence wildlife corridors, over community rights<sup>46</sup>.

An evaluation of the CARPE programme concluded that land-use planning operations were “generally conducted without [the] involvement [of indigenous peoples]” despite them being “the most forest-dependent peoples of the sub-region”<sup>47</sup>. ‘Micro-zoning’ activities conducted around the Tumba Lediima Reserve (in the DRC) in the Lake Tumba landscape have, for example, faced strong opposition from local communities, many who perceive the exercise to be more about limiting their access to land and resources<sup>48</sup>.

Moreover, the CBNRM areas themselves have questionable legal basis and are highly vulnerable to being ‘reclassified’ into other land uses, whereas the strictly protected conservation areas are legally designated and enforceable. More independent field research is required in these areas to assess the level of recognition of customary rights and support provided to communities in terms of alternative livelihood activities.

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<sup>45</sup> State of the Forest (2010), pages 225- 226

<sup>46</sup> Note that land-use planning guides have been developed for landscape level and macro zones, and micro-level planning.

<sup>47</sup> CARPE Phase Two Evaluation

<sup>48</sup> Atelier de Présentation des Cartes des Communautés Vivant dans et Autour de la Reserve Tumba-Lediima.

### 2.4 Industrial logging and strict nature conservation – a failing paradigm

Two major recent evaluation reports of two of the biggest backers of forest reforms over the past two decades, AFD and the World Bank, suggest that the industrial logging model supported by donors has fallen well short of delivering convincing poverty alleviation<sup>49</sup>. The Independent Evaluation Group (IEG) report on the World Bank Global Forest Sector Programme between 2002 and 2012 makes two important points:

- 1) Though the World Bank Group's forest interventions show positive environmental impacts, the impacts on poverty have not been satisfactorily addressed<sup>50</sup>;
- 2) It is projects that apply genuine principles of participatory forest management which have been the most successful at balancing poverty reduction, environmental aims and livelihoods<sup>51</sup>.

On protected areas' management, the IEG evaluation goes on to state, "poverty can be exacerbated by limiting or restricting communities' access to forests through the creation or expansion of a park or a protected area if due consideration is not paid to livelihoods".

In its response to the IEG evaluation, the World Bank management reiterated its belief in the role that participation plays in the management of protected areas and sustainable management. Historically the World Bank Group has had a relatively bad record in developing policy reforms through effective, inclusive, multi-stakeholder processes<sup>52</sup> and was heavily criticised by the World Bank Inspection Panel 2007 review of its work on industrial logging and forest zoning on the DRC.

The evaluation of 20 years of AFD intervention in the Congo Basin confirmed that "the social component remains the weakest link and that the spin offs for the local communities are still marginal"<sup>53</sup>.

Despite such failings highlighting the need to develop alternative means of forest management, donor efforts continue to expand both industrial logging and the network of strictly protected areas in the region. Such developments could further reduce the space available for community based forest management.

### 2.5 Fast-changing dynamics

For a long time, the logging industry in the Congo Basin was controlled by European (mostly French, Italian and German) and Lebanese firms exporting high-quality logs for the European markets. More recently, changes in national policies and the entry of new players from Asia (especially China and Malaysia) are reshaping the sector. Asian markets will buy lower quality timber, which impacts on the types of species harvested. At the same time, countries like Gabon, Republic of Congo and Cameroon are promoting new policies towards become emergent economies by 2030-35 which favour the development of infrastructure projects, the mining sector and agro-industries<sup>54</sup>. With land at a premium in South-East Asia, many companies appear to be using forestry as an entry point to access land for conversion and future investments as forests become more degraded and logging less profitable<sup>55</sup>. This raises questions about whether any of the forestry concessions are ever likely to achieve sustainability, even in simple terms of timber output (though substantial profits can be made from clear-cut conversion timber<sup>56</sup>).

Land and resource allocations in the Congo Basin countries are notoriously chaotic. Resource concession maps of the region can resemble a jumbled patchwork of overlapping concessions, permits and jurisdictions which can amount to as many as five or more tenure claims on one area of land. Outdated land codes and limited forest classifications are inadequate to respond to this changing landscape.

Efforts to reduce emissions from deforestation and degradation (REDD) are creating some policy incentives for governments to address these core governance issues, particularly in the DRC. Given new impetus by the Warsaw REDD+ framework in November 2013<sup>57</sup>, this has to some extent reopened debates about community based forest management and increasingly wider issues around tenure security in the region<sup>58</sup>. Pressure from civil society and indigenous peoples' groups has led, in some cases, to more consultation and often to new sections of text in the national REDD plans as these have slowly started to emerge (though this often falls short of internationally-recognised standards concerning consultation and land rights, among other things).

However, pushing in the opposite direction have been two forces, both linked to financing. First, countries are

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<sup>49</sup> AFD 2013; and IEG 2013 : XV

<sup>50</sup> IEG, 2013: XVIII

<sup>51</sup> EFI, 2013: XVIII

<sup>52</sup> Karsenty, 2013

<sup>53</sup> AFD, 2013:10

<sup>54</sup> Woodburn, 1997: cited in Lewis 2008; Köhler and Lewis, 2002

<sup>55</sup> Buchy field work interviews Gabon, 2012



in competition with each other for a limited pot of donor money and governments believe that dealing with land rights may delay them in advancing with REDD and accessing funding; and second, potential financial flows from REDD are likely to go to land owners, currently states, or leaseholders such as logging companies and private REDD project concessionaires. Hence the selling of carbon rights arguably increases tenure insecurity of local populations, who have little possibility by law to own land in most Congo Basin countries, and may even limit the potential for community forests in these areas. Moreover, REDD+ initiatives disproportionately target traditional community livelihood activities, such as rotational farming, fuel wood or charcoal collection, rather than emerging deforestation drivers from the agro-industries, mining sectors and associated infrastructure development – though there is currently very little evidence that the projects have either the knowledge or resources to adequately and equitably transform large parts of the rural economy in the REDD project areas.

## 2.6 Taking stock

Future possibilities for community based forest management and other more secure forms of land tenure in the Congo Basin must be understood within wider governance challenges of the region. These include incomplete and often contradictory legal frameworks concerning land allocations, forest management and community rights, the lack of institutional capacity, particularly in areas of forest monitoring and community forestry, the gap between policy and implementation, and the growing tendency of governments and individuals within them, to seek to benefit from the sale of land for large-scale intensive agricultural development.

Forest communities have little way of claiming land titles to areas they have, in some cases, inhabited for hundreds of years. Increasing empirical evidence suggests that as well as being fundamentally unjust, this situation poses serious environmental risks<sup>59</sup>.

<sup>56</sup> Nguiffo pers comm – the value of timber from the 20,000 ha Herekles palm oil plantation has been valued at 25 billion CFA.

<sup>57</sup> <http://unfccc.int/methods/redd/items/8180.php>

<sup>58</sup> Rothe and Munro-Faure, UN REDD Policy Brief, 2013

<sup>59</sup> RRI, 2011

### SECTION 3 – COMMUNITY FORESTS IN THE CONGO BASIN TO DATE

#### The rights of forest communities and indigenous peoples

In the Congo Basin countries, the state exercises exclusive ownership rights to land, only permitting varying degrees of usage (resource) rights to communities, either formally or on a customary basis, or ceding management rights to third parties in the form of concessions and leases<sup>60</sup>. The existing model of community forests in the region falls well short of delivering full property or ownership rights to forest-dependent communities and is particularly at odds with commitments under international law and standards concerning the land rights of indigenous peoples.

In recent years there have been some important steps taken on this issue, with CAR in 2010 becoming the first African country to ratify ILO Convention 169 on the rights of indigenous peoples, and the Republic of Congo in 2011 passing an indigenous peoples' law, both of which contain specific and legally binding provisions on collective land possession and ownership<sup>61</sup>. In both countries there is a strong argument for going beyond the leasehold arrangements offered by community forests, but progress on the implementation and integration of both into the wider legal and institutional frameworks has been limited.

In the absence of legal frameworks to allow for better security of land tenure, community forests thus currently offer the most pragmatic route for securing some albeit limited rights of local communities to forest resources on which they depend. The following section provides a brief examination of the history, scope and limitations of existing models found in the region. Section 5 provides specific recommendations on how these can be strengthened.

#### 3.1 The history of Community Forests in the Congo Basin

The concept of community forests was first introduced in the Congo Basin in the 1994 Cameroon Forest Law, and supplemented by the application decree 95/531/PM of August 1995. This provided a blueprint for a series of subsequent forest laws in the region that were passed as part of World Bank-backed reform programmes for the various countries' forest sectors, aimed at increasing

the contribution of forests to national economies. All but the Republic of Congo included legislation on community forests, although, tellingly, the number of actual concessions have been restricted to just a handful of pilot projects outside of Cameroon<sup>62</sup> (see below and Table 6).

Today there is something in the region of 300 community forests in Cameroon, the stated aim of which, as set out in the 1994 Forest Law, is to increase the participation of local populations in forest conservation and management and to secure substantial benefits for village communities. Although there are some good examples, there is large consensus in literature and among key informants that community forestry in Cameroon has thus far not achieved the expected outcomes.

Recent empirical research has reiterated the importance of the forest for local livelihoods but that the potential for change offered by community forestry is being compromised by conflicts within communities, between communities and other actors, overly bureaucratic and centralised governance, sharp differences between the economic and financial returns, conditional factors including communities' technical and managerial skills, access to finance, legal resources and market information and the communities' capacity for vertical integration<sup>63</sup>.

#### 3.2 Poorly formulated and unviable community forest models

The failings of the community forest experience in Cameroon are often the reasons given by some donors and government officials as evidence of why it won't work, in principle, either there or in other countries (thereby providing a rationale for the continued emphasis on industrial logging, agro-industries and strict nature conservation). However, this view doesn't account for the number of identifiable fundamental flaws in the design and implementation of community forest policy in Cameroon and in subsequent legislation developed elsewhere in the Congo Basin. The following section considers, through a comparison of rights frameworks and the institutional environment, whether community forest policies across Cameroon, Gabon, CAR and DRC, in their current form, are likely to deliver sustainable and equitable outcomes.

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<sup>60</sup> Whereas constitutional law actually does provide for property rights in most Congo Basin countries, land legislation renders these provisions inapplicable by transferring all property rights to the state. See Kenfack, 2014

<sup>61</sup> Law no. 5, Title VII, 2011; ILO 169, Articles 13-19

<sup>62</sup> For example, as of October 2013, there were two officially recognised community forests in Gabon.

<sup>63</sup> Mbolo, 2013; Lescuyer, 2012; Beauchamp and Ingram, 2011

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### 3.2.1 Top-down approaches

In Cameroon, community forestry was conceived, planned and implemented by high-level decision-makers as a donor conditionality and without any consultation at national level or participation of lower level forest officials, NGOs, community-based organisations or forest communities themselves. Community forests in Cameroon were viewed almost exclusively in terms of their timber-producing potential rather than on the right of a community itself to define how its forest land should be managed. From the start, this didn't bode well for a process that needed to respond to complex and multiple realities in the field.

The process of obtaining and managing a community forest has remained widely out of reach of most forest communities without some kind of external support. The complex procedure requires the community to be formally recognised and registered as a forest management institution, an administrative entity recognised by Cameroonian law – after which an application is lodged to the Ministry of Forests and Wildlife. Various documents also need to be provided, along with a 'simple management plan'. Once the authorities approve this plan, a community forest management convention can be signed and finalised. However, the 'simple' management plan is, in fact, a very complex and expensive process for most rural communities (costing the equivalent of around US \$1,500 dollars), requiring a socio-economic survey of the community, a forest inventory comprising a timber stock assessment, planned exploitation activities and a program of development.

The law required that designated forestry technicians had to be employed in the preparation of the management plan, but the availability of such technicians was very limited. This pushed up the cost of applying for designation of a community forest to the point where communities had to rely on NGO support, or more likely, loan money from elite members of society or timber companies, in return for which future supplies of timber were committed. This has left communities with limited or no experience in formal forest management and business, and the door open to third party interest, such as that of commercial loggers, to exploit the community forests once designated.

High investment costs for both communities and contractors created the incentive for quick returns which led to increasing pressure on forest resources and the non-respect of cutting cycles. Communities have usually not been paid the market rate for the timber product, but have been left with degraded forests. Many community forests in Cameroon today resemble mini-logging concessions.

A review of the legal framework in Gabon indicates that few lessons from this aspect of the Cameroon experience have been learned. The procedure to establish a community forest requires a very detailed seven step process<sup>64</sup>, the costs and technical requirements for which are likely to be prohibitive factors for most forest communities, particularly in areas where there are low rates of literacy.

Analysis of the community forest attribution processes in the DRC and the CAR is somewhat inhibited by the incomplete nature of the legal framework (see below). The recently passed Community Forest Decree in DRC does attempt to reduce the administrative (and financial) burden on communities wishing to establish community forest concessions<sup>65</sup>, but costs could quickly start mounting for communities unless serious attention is paid to capacity gaps in national, provincial and local forest administrations charged with overseeing the community forest sector.

In the CAR, the Forest Law only states that a management agreement has to be signed between the community and the Ministry for Forests after which it will need to integrate a 'simple management plan'.

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<sup>64</sup> The procedure to establish a community forest involves (1) a preliminary information meeting; (2) participatory mapping; (3) a 'consultation' (concertation) meeting chaired by the Préfet or sous-préfet; (4) the constitution and submission of the 'attribution folder' (dossier

d'attribution); (5) a provisional management convention; (6) a simple management plan; (7) the signature of a management agreement.

<sup>65</sup> Article 15 of the decree states allocation of community concessions is free.

Table 7: Status of Community Forest Legislation in the Congo Basin

| NATIONAL PROVISION  | CAMEROON | CAR | DRC | CONGO | GABON |
|---|----------|-----|-----|-------|-------|
| Community forests operational   | X        |     |     |       | X     |
| Community forest provision in law but not operational due to lack of implementation measures. |          | X   | X   |       |       |
| Series agricoles/development <sup>66</sup>  |          | X   |     | X     |       |

### 3.2.2 Incomplete and Incoherent Legal Frameworks

Land legislation in the Congo Basin has largely been inherited from French and Belgium colonial legal systems. A common feature of land regimes is that they vest all or large areas of land in the State – even if this in some cases is contrary to constitutional provisions providing for property rights<sup>67</sup>. There are very few areas in which land legislation recognises either possession or ownership rights of forest communities or indigenous peoples. Mostly, the strongest form of rights that communities can expect to be able to access are usage rights, and these tend to be on a concessionary basis<sup>68</sup>. Although some legal frameworks do recognise customary law, this has not necessarily translated into legal rights to land for communities. A further challenge to the securing of land rights for forest communities, and in particular for indigenous peoples, is the condition that to access any form of rights, their lands must be put into productive use ('mise en valeur'), which may discriminate against traditional forms of land-use, particular those of indigenous hunter-gatherers.

Whereas, as mentioned previously, some countries have adopted legislation that provides for indigenous peoples' land rights, this remains incompatible with existing land laws, and therefore generates incoherence and confusion about the applicability of such laws, which remain unimplemented.

Community forests, as yet, have been a form of concession that provide for use rights of forest communities over their resources – sometimes for limited periods, and sometimes "in perpetuity" – in a prescribed manner, which may not always be compatible with the customary usage of land or

resources by forest communities. However, in the context of current legal frameworks that vest land in the State, this is seen as the most pragmatic manner of securing any form of rights for communities, in the absence of larger scale legal reforms of land rights frameworks.

Gabon, the DRC, Cameroon and the CAR are all currently undergoing reform of land-use planning systems and/or land codes, which will be examined in Part B.

One of the key indicators of government and donor commitment to community based forest management in the region are the legal and institutional frameworks in place for the establishment and management of community forests. While Gabon, the CAR and the DRC have all adopted new forest codes which contain the main principles concerning community forests, the development of the necessary detailed laws for the implementation of these legal principles is at very different stages<sup>69</sup>.

Of the three countries, Gabon has developed the most comprehensive legislation on community forests, having in 2013 passed a decree and an order of application which in theory operationalises the provisions in the Forest Code – although, as we shall see below, a lack of geographical space available to local communities, compounded by weak political will and institutional capacity, raises questions about how feasible it will be to implement these laws.

The legal framework in the two other countries is less developed. The long awaited decree on the attribution of community forests in the DRC was finally passed in August 2014 but still requires the adoption of

<sup>66</sup> Series agricoles or developpment are areas that logging companies are obliged to set aside for local communities to undertake subsistence farming or development activities within the concession – but do not in the opinion of this report's authors constitute community forests as they are largely left to the discretion of the concession holder.

<sup>67</sup> See for example, Article 34 of the DRC Constitution (2006)

<sup>68</sup> Kenfack, 2014

<sup>69</sup> This poses certain challenges for such a comparative analysis but also raises wider questions about the legal basis of community forests in the region.

further supporting legal *arrêtes* to fully ‘operationalise’ the allocation and management aspects of the law. Similarly, the necessary supporting legal apparatus necessary to enact community forest legislation in the CAR Forest Code (2008) has yet to be adopted. A community forest manual and draft legal *arrêté* has been developed through collaboration between the RFUK, local NGOs and the Ministry of Forest in 2011, but hasn’t been formally approved.

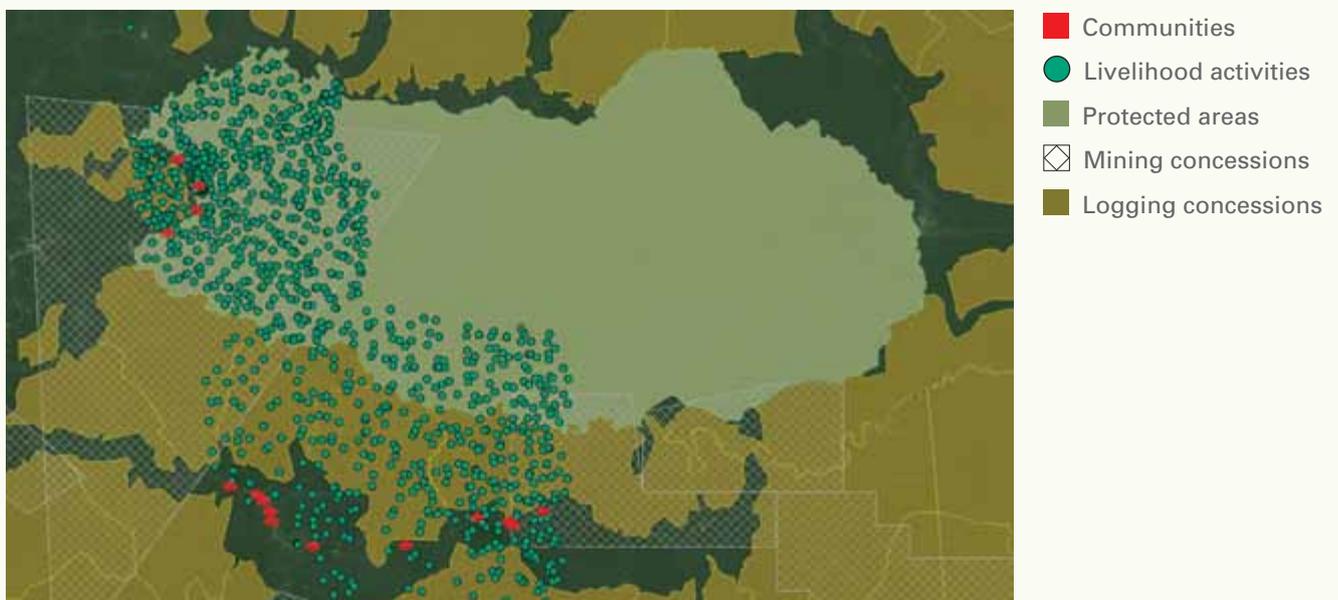
The Republic of Congo currently has no legal basis for community forests although there has been provision in draft versions of the new Forest Code being elaborated as part of legal reforms being made under the FLEGT VPA with the EC.

The above examples are symptomatic of general incoherence in national forest sector and wider policy frameworks in the region. Laws relating to mining, agriculture, environmental protection, and land rights often evolve in parallel and do not necessarily integrate any provisions for community forestry as provided for in forest sector legislation or indeed any applicable international laws.

### 3.2.3 Community forests as ‘residual categories’

As we read in section 2, land regimes in the Congo Basin are geared towards large-scale land allocations and are therefore inherently opposed to forms of community based forest management. Legislative measures to ensure State ownership of land and the specific manner in which land and forests are categorised represent a significant barrier to the recognition and protection of community land and resource rights. Throughout the region, community forests form part of the non-permanent, or rural, forest domain, a ‘residual’ category consisting of what is left over from the other categories within the forest nomenclature.

Map 3 – Community map showing overlapping land uses and claims in southern Cameroon.



### This raises several interrelated issues:

1. A residual category often bears little relation to existing forest tenure systems and prejudices against the thousands of communities who occupy, claim or use land which falls within the permanent forest estate. The Cameroon forest zoning plan in 1995 for example allocated the vast majority of the forest as logging concessions or for strict conservation purposes, leaving only mostly degraded roadside forest areas for community forests. In Gabon, the existence of logging concessions, protected areas, agro-plantations and mining permits leave little space in which to develop the rural forest domain, the category in which community forests could be established, making a government commitment of 10 million hectares for this classification highly unrealistic<sup>71</sup>. In the CAR, practically all of the tropical south-western forest estate has been designated as industrial logging concessions or protected areas. Only the DRC, under the existing forest classification system, offers the potential for community forestry for large segments of the population, where most of the forest remains in the residual category (thanks in part to the moratorium on allocation of new logging concessions in place since 2002).

2. The non-permanent forest domains which community forests form part of can be more easily declassified, or subsequently reclassified into other categories. While there are potential loopholes for conversion of logging titles into agro-plantations<sup>72</sup>, the Forest Codes foresee no mechanism through which areas of permanent forest domain can be declassified into areas deemed appropriate for community forests.

3. The forest classification system inadequately addresses emerging non-forest sector land-uses such as agriculture, oil and mining. Mining codes normally indicate that mining would take precedence over forestry unless these are classified in the protected or classified category of forests, though in reality there are a number of large-scale infrastructure projects, mining and oil exploration ongoing or planned in the region's national parks<sup>73</sup>.

### 3.2.4 Limitations of area and duration

Provisions concerning the area permitted for the establishment of a community forest, and the duration of the concession, vary from country to country. This represents various challenges, notably the absence

of long term secure useage rights. In many cases, limitations on the geographical extent of community forests means there is no possibility of legal recognition of the totality of the customary land of any given community.

In Cameroon a limit of 5,000 hectares is imposed on community forests. While this surface area may be suitable for some agriculture-based communities, it may not conform to existing customary tenure systems and is particularly inappropriate for indigenous groups such as the Baka who can require areas far greater in order to meet their subsistence needs and undertake cultural practices. Moreover, the limited 'lease' of 25 years (renewable) granted to communities means that any rights are temporary, and may not provide for long enough security to make options such as long-term investment in sustainable community forestry possible.

In Gabon, the legal framework imposes a similar size but states that the duration and size of community forest concessions will be determined by and subject to conditions set out in the management agreement. This gives complete control of the main terms of any community 'concession' to the officials responsible for its development and approval, makes the process much less clear for communities and renders the process a 'transaction' rather than a legal right.

The CAR Forest Code places a 5,000 hectare limit on the size of community forests though even this figure seems unrealistic in the south-west forest estate dominated by industrial logging companies, who are relied upon to grant such areas to communities within their concessions in the form of series agricoles<sup>74</sup>. The draft manual of procedures for allocating community forests in CAR foresees a mechanism whereby community forests could be larger than the stated 5,000 hectares when not contested.

The community forest decree in DRC does attempt to address this issue, foreseeing the Concession Foret Communauté Locale (CFCL) as being perpetual and up to a maximum surface area of 50,000 hectares, with communities retaining customary rights over any surface area additional to this<sup>75</sup>. Indeed the perpetuity of the concession appears to go beyond, and be incompatible with, the current exclusivity of the state ownership tenure regime.

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<sup>71</sup> 2005 Programme Sectoriel Forêts et Environnement (PSFE) foresaw upto 10 million hectares, around 40 per cent of the total forest area, would be set aside as the rural forest domain.

<sup>72</sup> In Cameroon for example, a logging title in the permanent forest estate may be converted for agricultural use, as long as the equivalent area is reallocated elsewhere – further limiting the space available for community auto-development.

<sup>73</sup> See for example, oil exploration in the UNESCO World Heritage Virunga National park in Eastern DRC.

<sup>74</sup> Areas designated for subsistence agriculture as part of a logging management plan (a similar system exists in the Republic of Congo known as series developpment).

<sup>75</sup> Article 18, Decret Fixant les Modalités d'Attribution des Concessions Forestiers aux Communautés Locales

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### 3.2.5 Representation and Customary Institutions

The issue of community representation is central to the legitimacy of community forests, not only in terms of the negotiations with the authorities and other actors but also concerning rights-holders within a given community. Legal texts in the four countries lack clarity on the issue of representative institutions that will be in charge of the management of the community forests in a number of important and yet different ways. In most cases, a strong emphasis is placed on the role of local leadership and conformity with pre-determined governance structures.

In both Cameroon and Gabon, the complex procedures for setting up a community forest require that a community be registered as a formal or legal association in order for it to be recognised by the relevant authorities. In Cameroon, two main types of organisation exist for this purpose, associations and Groupements d'Intérêt Collectif (GIC), with the majority of community forests being managed under the latter. For the most part, these externally imposed structures have little resonance or legitimacy with traditional forest management practices and existing customary institutions, nor do they sufficiently take into account power dynamics within local communities. Statutes can be poorly understood and respected, meetings held irregularly and information flows poor, meaning that many management decisions are often taken by elites with little transparency, accountability or buy-in from other community stakeholders<sup>76</sup>. This problem has been particularly acute for indigenous peoples, who, as we explored in section 1, commonly lack the hierarchical structures to effectively represent their needs or to deal with heavy bureaucratic

#### Council Forests in the Congo Basin

Within the Cameroon Forest Code (and also being tested in eastern DRC) is the concept of a 'council' forest, whereby responsibility for management and oversight of these concessions is devolved to an administrative entity headed by a Mayor. This may help to broaden the scope and economic viability of forestry operations but may only be partially successful in transferring power to local communities in an equitable and appropriate manner as it very much depends on the good will, capacity and transparency of the local administration.

procedures, and can be severely marginalised in decision-making processes and local governance. Conditions for the management of community forests are not compatible with their forms of decision making, and lessons from elsewhere clearly point to the inefficiency of imposing externally-conceived management mechanisms over traditional forms of governance.

The law in Gabon does not go into detail as to what constitutes a representative body, instead focusing more on the role that the management entity (entité de gestion) would play once a community forest has been attributed – although it is not entirely clear or precise on the legal nature and composition of this entity. Similarly, the CAR Forest Code (2008) lacks clarity on how a community forest would be 'organised' or represented and whether this requires official recognition<sup>77</sup>. Presumably, the issue of representation of the community is left to be determined by a future application decree or order.

One of the major risks with these legal texts is that, in some cases, there may be communities or persons with no customary link to the land that could apply for or obtain a community forest on the customary land of others. Problems may also arise where there is already existing overlapping land claims, for instance between certain Bantu and indigenous groups as highlighted in section 1. This could result in an even further erosion of community rights and may be particularly troublesome should more secure land rights come into force in the future. A further issue lies in the inappropriateness of management structures prescribed by law for traditional communities.

There has been some attempt through legislative processes in the DRC to address this issue of customary legitimacy. Article 22 of the DRC Forest Code states that a community can, based on its request, obtain a forest concession title for a section or the totality of the protected forest regularly used by virtue of its custom. However, the issue of legal responsibility in the supporting decree also 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<sup>78</sup>.

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<sup>76</sup> [http://www.cifor.org/publications/pdf\\_files/events/documentations/durban/papers/Paper17TsanaEnamaandMinsouma.pdf](http://www.cifor.org/publications/pdf_files/events/documentations/durban/papers/Paper17TsanaEnamaandMinsouma.pdf)

<sup>77</sup> Footnote to go here

<sup>78</sup> <http://www.mappingforrights.org/files/37742%20RFUK%20CF%20Briefing%20Statement.pdf>

### Elite capture and inequality

Top-down, poorly defined models of community representation can undermine the legitimacy of community forest models using existing customary institutions. Compounded by heavy bureaucratic procedures, technical requirements and associated start-up and management costs, this exposes community forests in the Congo Basin to the risk of elite capture.

The complicated nature of the community forest application process in Cameroon has given unfair advantage to educated local elites who have the resources and means to deal effectively with state officials and commercial loggers. Poor internal governance, transparency and accountability often results in money disappearing into a few individuals' pockets leaving the community divided, poor and with even less forest resources.

Social elites are likely to be more educated, better connected socially and politically and thus have more access to information and to tend to capture a larger share of the benefits<sup>79</sup>. In Nepal and India,

for example, forest user groups were for a long time dominated by higher castes and wealthier landlords who took all the decision-making positions at the user group board levels. Elites are also likely to be less dependent on the collective natural resources for their livelihoods.

The consequence of elite capture is threefold:

- 1) It creates exclusion, as a select group controls the circulation of information and is solely aware of opportunities;
- 2) It reinforces unequal power relationships, as many elites have used such platforms as a springboard into local politics, leaving landless villagers who are dependent on the land lords for access to employment in a weak position to challenge the elite, and;
- 3) It can maintain or reinforce economic inequity and those who need the most tend to benefit the least.

Unless counter-balanced by robust implementation measures, possible loopholes in the Decree around third party support (i.e. Articles 15 and 20) may create perverse incentives and encourage rent-seeking behaviour. Fifty thousand hectare areas are potentially highly lucrative economic units and could be used as a way of bypassing the logging moratorium. 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<sup>80</sup>.

### Community Based Forest Management initiatives around conservation areas

With the exception of the logging-orientated community forest model in Cameroon, most donor-funded experiments in the region have generally been conceived as tools to promote conservation or stop deforestation rather than as transformative or empowering processes for local communities. Projects such as the EU/WWF-funded Development of Community Alternatives to Illegal Logging (DACEFI) in Cameroon and Gabon seem to be as much about creating alternatives to illegal logging or poaching as they are about the intrinsic right of local people to manage their local forest environment for their own needs<sup>81</sup>.

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<sup>79</sup> Hunt et al, 1995; Chhetri et al, 1996; Granier, 1997

<sup>80</sup> <http://www.mappingforrights.org/files/37742%20RFUK%20per cent20CF%20Briefing%20Statement.pdf>

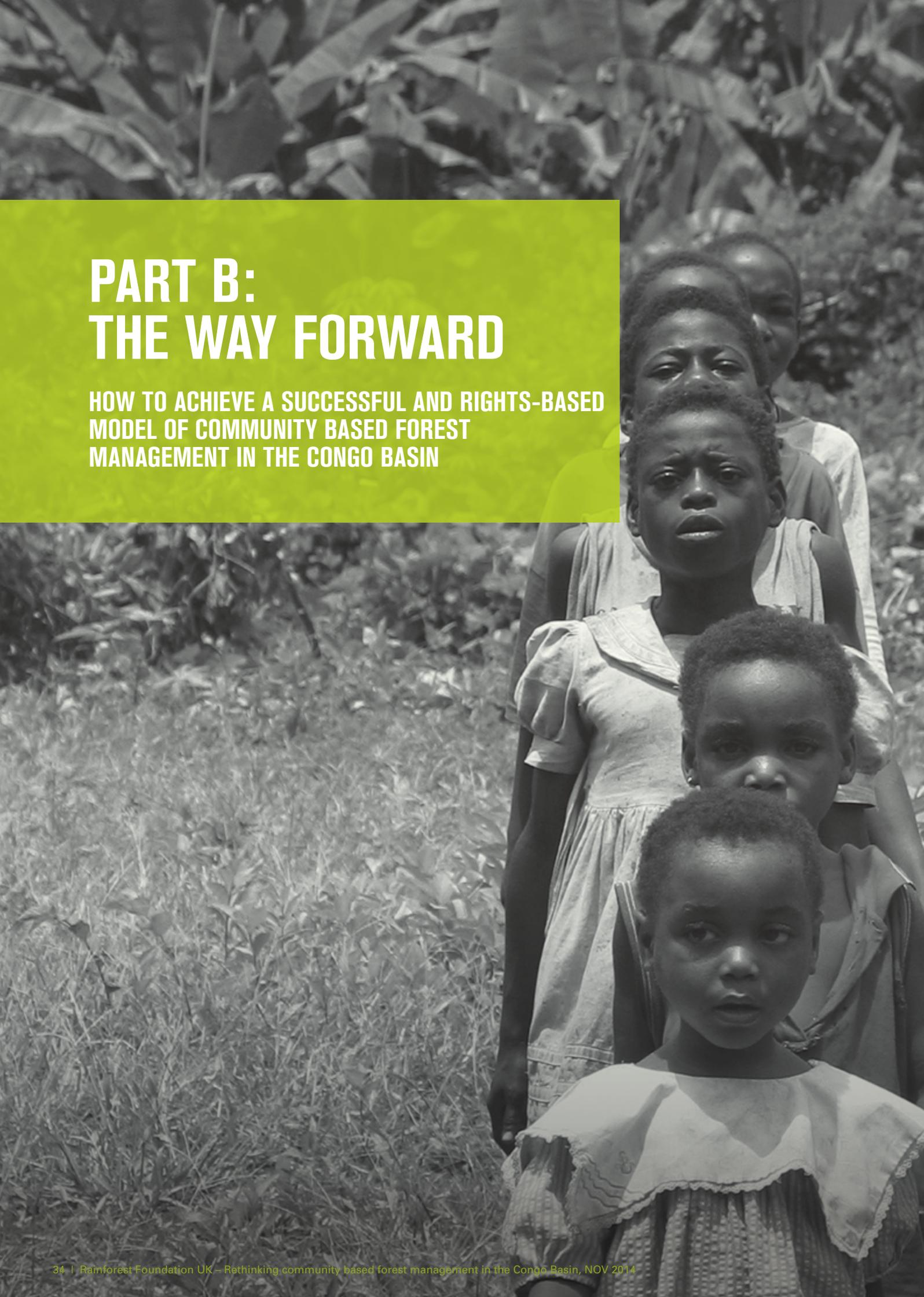
<sup>81</sup> The full acronym 'Development of Community Alternatives to Illegal Exploitation of Forests' is rather revealing

### 3.4 Institutional capacity

A key measure of government and donor support for community forestry in the Congo Basin is the level of institutional capacity in the region to support community forest processes, particularly outside of Cameroon. RFUK field visits to the region have found that there is, on average, around only two or three junior staff in the central Forest/Environment ministries dedicated to community forests, and that forest institutions can be virtually non-existent on the ground.

In general, most of the new laws and decrees of application relating to community forests do not tackle the problem that most forestry departments are chronically under-resourced.





# **PART B: THE WAY FORWARD**

**HOW TO ACHIEVE A SUCCESSFUL AND RIGHTS-BASED  
MODEL OF COMMUNITY BASED FOREST  
MANAGEMENT IN THE CONGO BASIN**

Part A examined the constraints to successful models of community based forest management in the Congo Basin with an analysis of the political economy of the forest sector which favours large-scale foreign interests over community rights. It addressed the combination of factors at play, including political orientation of governments and donors, poor legal and regulatory frameworks, weak institutional capacity and lack of recognition of customary systems.

Taking these factors into account, Part B of this report considers the conditions necessary to develop appropriate models of community based forest management in the region. These include, in Section 4, examining which lessons learnt from community forest experiences elsewhere could be adapted to a Congo Basin context, and in Section 5, a detailed a set of country-specific recommendations for policy, institutional and market reforms.

### Section 4 – Creating an enabling environment for change – Lessons moving forward

Lessons from around the world show that with political will and an enabling policy and institutional environment, community based forest management can be a viable and indeed desirable alternative to industrial-scale forest management. The examples from Guatemala, Mexico, Brazil, Nepal, Tanzania and others below show that communities are able to manage their resources and deliver social, human, economic and environmental benefits.

#### 4.1 Adapting land rights to local and indigenous realities

Customary or indigenous tenure over land is prevalent throughout the Congo Basin. Much of the forest is beyond effective state control, and natural resources are managed through traditional norms, values and rules<sup>82</sup>. However, as we explored in section 3, existing community forest models in Cameroon and, more recently, in Gabon bear little resemblance to these systems and require communities to undergo extremely technical and costly application processes to obtain temporary rights to any remaining (mostly degraded) forest areas which have been deemed unsuitable for industrial-scale logging or nature conservation.

Ignoring local realities in this way is highly unlikely to deliver tangible benefits for large segments of the rural forest population in the Congo Basin. Indeed, the best community based forest management outcomes from around the world emerge where there is adequate recognition of land and resource rights and customary or traditional forms of occupation, use and management of land. In Latin America, which has some of the best examples of community based forest management, legislation has largely been shaped around existing and better secured indigenous tenure systems, which allow communities themselves to establish and enforce rules governing the access and use of forests. Communities in the region legitimately manage 216 million hectares, or one third of all forests<sup>83</sup> – compared with just over 400,000 hectares in the Congo Basin.

In Asia, most forests are State-owned with varying degrees of usufruct rights granted to communities, though there are some notable exceptions such as the ancestral domain in the Philippines and in Papua New Guinea, where 97 per cent of land is under formalised customary tenure systems. More recently, there have been other steps taken in the region to transfer greater rights to communities. A petition by the Indonesian indigenous peoples' federation, AMAN, led to the Constitutional Court in 2013 ruling that customary forests of indigenous peoples should not be classed as falling in 'State Forest Areas'. In Nepal, regarded as having one of the more successful community forest programmes, the 1993 Forest Act effectively transferred community forest rights to all communities "wishing to and capable of managing their forests". Around 30 per cent of the forest estate is today being managed by up to 35 per cent of the national population, albeit that management of these areas is subject to certain conditions and state control<sup>84</sup> and has not been without its critics<sup>85</sup>.

#### 4.1.1 Lessons and opportunities for community based forest management in the Congo Basin.

One of the necessary starting points for a more credible community based forest management policy in the Congo Basin is a better understanding of the socio-political complexities of African tenure systems highlighted in section 1<sup>86</sup>. These are often misinterpreted by western observers because western tenure terms are often inappropriately applied – resulting in poorly formulated community forest models. Research has shown that traditional tenure

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<sup>82</sup> Blomley, 2013: 7

<sup>83</sup> Alcorn, 2014

<sup>84</sup> Pandey, Draft Discussion Paper, 2014

<sup>85</sup> Community forests in Nepal have been the subject of controversy among many indigenous peoples, who have objected to the idea as it doesn't provide them with proper land rights.

<sup>86</sup> Graziani and Burnham, 2005:177

systems have remained generally stable, resilient and adaptable in the face of colonialism and growing pressures on forest lands from the extractive industries and others. The question is how to draw these out so that they can be recognised as a legal basis for forest management in their own right. Relative to Latin America and to a lesser extent in Asia, these systems are poorly documented but new participatory mapping techniques (such as [www.MappingForRights.org](http://www.MappingForRights.org)) are starting to fill this knowledge gap.

States in the Congo Basin countries, as the sole land owners, have thus far been unwilling to relinquish control over resources to local institutions and communities. While the concept of customary rights is fairly ubiquitous in legal codes, it is often poorly defined, can refer to the 'custom' of the dominant population (e.g. Bantu), thus serving to exclude other forms of custom exercised by less dominant populations, and rarely extends beyond limited usage rights (gathering, fishing, legal hunting etc.) in forest areas, though typically not in protected areas. The encroachment of industrial agriculture, mining and logging concessions on such undefined and unrecognised community lands is placing ever greater pressure on forest resources on which livelihoods depend<sup>87</sup>, a problem made further acute by high population growth.

This highlights a very apparent need to clarify and strengthen land rights laws in order to create the conditions for community based forest management to succeed. Below is a brief overview of the tenure related governance reforms ongoing in the region, in addition to community forest policies, which could provide opportunities to develop and implement effective and equitable forms of community based forest management.

### 4.1.2 National land reform and land-use planning processes

Increasing pressure on forest land and resources from competing interest groups (national and foreign governments, private sector, local communities, rebel movements etc.) has pushed the need for reform of national tenure systems to the top of the policy agenda. DRC, CAR and Cameroon have all recently started processes of revising outdated land codes that are rooted in colonial land administration policies.

These intensely political processes will have a critical impact on prospects for community based forest management in the region and overall rights frameworks more generally. Pushing in one direction, land reform can be viewed as an attempt to create an

enabling environment for foreign direct investment, as regional governments seek to become emerging economies over the next twenty years. Land Governance Assessment Framework (LGAF) studies conducted on behalf of the World Bank in the DRC and Cameroon to inform such processes have been criticised for purveying a western-centric concept of tenure based on individual, rather than collective rights<sup>88</sup>.

On the other hand, there are also promising signs for community based forest management with explicit objectives for clarifying and securing customary and indigenous tenure appearing in some national policy documents. These appear to take into account some limited elements of international standards such as the FAO Voluntary Guidelines on Tenure, the African Union Land Policy initiative and the UN Declaration on the Rights of Indigenous Peoples<sup>89</sup>. However, putting these into practice remains a significant challenge.

To ensure compatibility with internationally recognised standards in this area, it is also important that any areas demarcated as community forests be made compatible with future developments in the area of possession or ownership rights, and do not result in areas of land under traditional customary ownership that may extend beyond areas recognised as community forests being registered 'unclaimed' as a consequence, which would leave forest communities at an increased risk of dispossession of these areas.

Other meaningful reforms could involve the ending of the state monopoly on land and the broadening of land classifications beyond the public or private realms to include a new category which enables local communities to assert property or possession rights (see section 5).

Policy efforts are also getting underway to rationalise chaotic and overlapping spatial governance in the region through land-use planning, or forest zoning (see map 2). Gabon, DRC and Cameroon have embarked on national and provincial land-use planning. Such processes hold potential to leverage greater recognition of indigenous territories and customary rights, creating the conditions necessary for community based forest management to be viable for large segments of the rural population – but this is very much dependent on the level of participation and the kind of techniques used. An overreliance on satellite imagery and remote sensing data could result in land allocations being made purely on the basis of, for example, timber stocks, soil type or biodiversity levels rather than existing forest occupation.

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<sup>87</sup> See for example, interview with Jeanne Noah, [http://www.mappingforrights.org/Jeanne\\_Noah](http://www.mappingforrights.org/Jeanne_Noah).

<sup>88</sup> Nguiffo. Pers comm, 2014. Such an outcome could have the effect of transforming production and consumption patterns in the region,

possibly further sedentarising populations into individually-held small holder plots and freeing up forest areas and natural resources for industrial use.

<sup>89</sup> See for example, DRC Land Reform Programme Document.

It is crucial that the timing of forest zoning (or re-zoning) exercises allows for the identification of community lands 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>90</sup>. New geo-spatial technologies and methodologies are becoming available that can document customary boundaries and resource use with a high degree of accuracy and at significantly reduced time and cost, allowing for such techniques to be applied at scale<sup>91</sup>.

In general, it is unclear what level of commitment there is to these reform processes from different government ministries or donor agencies which, bound by short term and results-based funding cycles, may lack the appetite to undertake genuinely participatory

land-use planning and tenure reform that are likely to take a number of years if conducted properly. Weak or token engagement of civil society groups and existing rights holders increases the likelihood that such processes will be dominated by conservation or private sector interests.

There are also a number of other policy reform efforts underway which will impact on the possibility of developing equitable community based forest management (see table below); these will receive further attention in Section 5. For now, it will suffice to say that weak coherence or coordination between them threatens to further inhibit progress towards more sustainable and equitable forest governance.

**Table 8 – Key existing policy provisions and ongoing reforms relevant to Community Based Forest management in the Congo Basin**

| COUNTRY           | EXISTING LEGAL AND POLICY PROVISIONS   | ONGOING LEGAL AND POLICY REFORMS   |
|-------------------|--|--|
| DRC               | Community Forest Law (2002) and Decree (2014)<br>Agricultural Code, Article 18 (2011)                                  | National land-use planning (forest zoning)<br>National land reform process<br>National REDD Strategy<br>Community Forest arêtes pending<br>Draft Indigenous Peoples Law under development<br>FLEGT VPA under negotiation |
| Gabon             | Community Forest Law (2001) (operational) and Decree, Arête (2013)<br>Indigenous Peoples Development Plan (2005)       | National land use planning<br>Sustainable Development Law and national carbon offset market<br>FLEGT VPA under negotiation   |
| Republic of Congo | Indigenous Populations' Rights Law (2011)<br>(no implementing measures)  | Revision of Forest Code<br>National REDD strategy<br>FLEGT VPA signed  |
| Cameroon          | Community Forest Law (1994) (operational)<br>Communal Forest Law (1994)<br>Indigenous Peoples Development Plan (2003)  | Provincial and national zoning processes<br>National Land Reform process<br>Revision of the Forest Code<br>National REDD strategy<br>FLEGT VPA signed  |
| CAR               | ILO 169 (signed 2010) – slow implementation of provisions<br>Community Forest Law (2008)<br>(no implementing measures) | National Land Reform process<br>National REDD strategy<br>Community Forest Decree pending<br>FLEGT VPA signed<br>Constitutional revision   |

<sup>90</sup> See 1994 Cameroon forest zoning plan

<sup>91</sup> Separate research from RFUK and RRN indicates community land can be mapped for as little as \$0.50 per ha. This compares very favourably to the cost per hectare of a logging management plan. For example, the

figure for the CIB FMU Kabo concession was £3.50 dollars – [www.itto.int/direct/topics/topics\\_pdf.../topics](http://www.itto.int/direct/topics/topics_pdf.../topics)



### 4.2 Adapting community forests to customary institutions and contexts

The task of conceptualising a workable rights-based framework for community based forest management in the Congo Basin a complex one – given the political, ideological and regulatory barriers outlined in sections 2 and 3. There are also practical challenges inherent in setting up community based forest management entities in remote forest areas that are accountable and representative to a diverse range of interest groups. Clear tensions exist between an extractive natural resource management model which benefits mostly outsiders, and a collaborative and inclusive rights-based approach steered by local communities for their own benefits.

One of the big challenges is to define the physical, cultural or conceptual boundaries of the community which can be based on a territory, lineage, family, administrative entity and historical ties<sup>92</sup>. Often, outsiders come with their own definition of a ‘community’ whilst local people themselves may have different definitions and should be allowed to articulate their perception. Evidence from Latin America shows that community based forest management models that have been ‘discovered’ and rooted in the existing realities of traditional governance institutions and secure land tenure arrangements are far more likely to deliver sustainable outcomes than those that have been ‘designed’<sup>93</sup>. In Brazil for example, a group of indigenous people can claim a territory independently of the population size living on it as long as they can show historical and cultural links<sup>94</sup>.

While the actual forms of community forest tenure across Latin America may vary, the essential aspect is that the tenure bundle includes rights to access, control others’ access, establish and enforce rules, harvest and market products, and make management decisions<sup>95</sup>. In Guatemala, for example, there is considerable diversity of collective forest tenure regimes, including communal forests (belonging to communities), ‘parcialidad’ (village) forests (held under kinship systems), municipal forests (belonging to municipalities but influenced by the collective use and decisions taken by neighbouring groups), forests awarded as community concessions (granted to up to eight community groups by the State) and forests held by rural cooperative associations and enterprises. According to a survey of communal land in Guatemala, 1.5 million hectares are subject to some form of land tenure, corresponding to 16 per cent of the total country’s forest cover<sup>96</sup>. The use of forest resources under any form of tenure is still regulated by the State through the Forest Act (Decree 101-96) and Protected Areas Law (Decree 4-89). Nonetheless, the State has undertaken various efforts in terms of forest decentralisation, delegating supervisory functions to municipalities and charging the Office of Municipal Forests with the issuance of forest use licences<sup>97</sup>.

While not eliminating the risks of elite capture and corruption, devolution of decision-making to local agencies is likely to engender far greater accountability than highly centralised forms of forest management presently found in the Congo Basin.

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<sup>92</sup> Karsenty, 2008

<sup>93</sup> Alcorn, 2014

<sup>94</sup> Long, 2010

<sup>95</sup> Schlager and Ostrom, 1992

<sup>96</sup> Elias, 2014

<sup>97</sup> Ibid.

## Key Governance Principles<sup>98</sup>

Hobley and Buchy identify four main questions to investigate in order to assess the quality of governance needed:

- **Who controls the forest resource?** The problem is not so much who owns the resources per se but the clarity and the stability of the ownership. In Nepal and Mozambique the State owns the land but has transferred management and user rights to the community. In Peru and Gambia there are examples of communities owning the land and managing it and there are clear, established procedures for communities to gain access to ownership<sup>99</sup>. In Mexico, forest communities own the land thanks to a law dating from the 1920s. A multitude of scenarios exist and can work well.
- **Who decides how forest resources are used?** There are two levels of decision making: one at the more macro level (are decisions taken at government level or are decisions decentralised to the regional/local level?) and one at the community level (are the decisions taken by a select group favouring the interest of a small group?) Not every decision needs to be taken by everyone all the time, but the people making the decision have to be representative of the social, ethnic and gender diversity in the user group. This will ensure a better spread of choices between different options.
- **Who decides how the value ('rents') of the resources is distributed?** Does the community have total freedom to decide how the resources can be shared, or does the forest department continue to control this process? Are the people making these decisions within the community representative of the social, ethnic and gender diversity? What is the legitimacy of these decision makers? Have they been elected or co-opted?
- **What is the quality of the processes through which these decisions are taken?** Is the process transparent? Is every user informed and aware of the procedures and the outcomes? Does the deliberation process in place allow for multiple voices to be heard? Is the process democratic?

## 4.2.1 Lessons and opportunities for community based forest management in the Congo Basin

As we have read in section 1, there is a multitude of different forest tenure and management arrangements in the Congo Basin. For example, semi-nomadic people will often have a different perception of tenure than sedentary farmers though their territories constantly overlap. It is also not uncommon for urban or semi-urban based people to claim legitimate membership of a village due to family or ancestral ties. The cultural and social realities of indigenous communities in particular, with their fluidity, high mobility, acephalous structures, non-hoarding culture, high levels of forest dependency and marginalisation are in sharp contrast with the requirements of formal, rigid, bureaucratic and expensive models developed by outsiders in a top down fashion.

It can be argued that community forests, with their clearly demarcated boundaries, regulations and emphasis on their productive value are by definition ill-adapted to indigenous hunter-gatherer, nomadic systems. However, anthropological research indicates that many Pygmies perceive inclusion into broader politics as vital to assist them in the struggle for resource access and equality between them and Bantu farming neighbours<sup>100</sup>.

## 4.2.2 A diversity of models

**Finding a 'one size fits all' community forest model which reflects this 'web of interests', a network of people, formal, informal and social obligations and relationships, is neither possible nor desirable<sup>101</sup>. The challenge is to find ways and processes which will enable indigenous and local people to construct models of forest management that respond to their local stakeholder institutions and values and then to balance these with the need for external support and regulation.**

As with Guatemala, a legally pluralistic approach which sets out two or three key principles of sustainable management but which can accommodate a diversity of implementation options may make community based forest management more viable in the Congo Basin countries. This may require significant reform of existing legal and policy frameworks (which are further outlined in section 5).

<sup>98</sup> Hobley and Buchy, 2011

<sup>99</sup> Long, 2010:11-12

<sup>100</sup> In his research on the integration of Bayaka world views into community forest policy in the Central African Republic, Moise found that kombeti may well be able to respond to decision-making processes in a formalised community based forest management setting. They were reported to agree that a male and female representative from each

major clan should be included in community forestry committees and that such people should be individuals "de capacité" – true "leaders" in the traditional sense. Bayaka informants also suggested that the youth should be involved, particularly in relation to mbeti (written documents). See also, Woodburne, 2012:39

<sup>101</sup> Meizen-Dick and Mwangi, 2008

There is some evidence that community forestry may deliver sustainable forest management even in the absence of formalised rights and may even provide the impetus policy change in this area. As part of a useful series of literary reviews of lessons learnt from community forestry and their relevance for REDD+ commissioned by USAID/FCMC, Robert Fisher highlights that experiments in community forestry in Nepal continued for at least 15 years in the absence of clear rights, before they were encapsulated in forest legislation<sup>102</sup>. Indeed there are already some interesting extra-legal cases emerging in the Congo Basin, notably pilot projects being developed in North Kivu province in eastern DRC by Congolese NGO Réseau Cref.

### 4.3 Customary institutions, participation and representivity

The quality of participation is sometimes measured by the role people take in decision-making<sup>103</sup>. The greater the role played by outsiders (development professionals, policy makers) the less say local people have and the lower the quality of their participation. When the quality of local participation is low, the chances are that community forestry processes will be controlled by more powerful groups in the community. Power and power relations are central to participation and to community involvement<sup>104</sup>, but these are complex issues often misunderstood and overlooked by policy makers and donors.

Inherent to community based resource management approaches is the principle of people's participation. However, participation promoted by donors and civil society organisations since the 1990s has not been without its caveats and its critics<sup>105</sup>. It is not always clear what participation means; who participates, in what capacity and for what end.

The issue of representivity (ensuring legitimate representation of a given community or similar entity by those who have the mandate to represent them) is of crucial importance in this respect. Community forest policy is often based on the 'myth of community'<sup>106</sup> – the idea that there are homogenous and harmonious groups of people sharing common interests and working towards a similar agenda. In reality, communities in most countries are divided along social, ethnic, age and gender lines with each group having distinct needs, rights and opportunities, which may or may not necessarily conflict with each and which need to be negotiated and taken into account.

Another challenge is the strategy of 'désaccumulation' where the power of 'non-coercion' – witchcraft, segmentation and migration – are used by communities in the Congo Basin as a levelling strategy to prevent individuals from becoming too successful<sup>107</sup>.

Désaccumulation is a particular issue for Pygmies as the process of accumulation, whether through employment or other income generation, contradicts one of the basic Pygmy cultural tenets – that of equal relations<sup>108</sup>. Several different strategies can be used, such as absencing from work, sharing and spending surplus money quickly (often by buying and sharing large amounts of alcohol) to maintain equal relations and reduce the risk of witchcraft attack and accusations<sup>109</sup>. Such cultural beliefs militate against models of community forestry which might rely on typical western concepts of enterprise, capital accumulation, investment and development.

In addition to this, there are added complexities in ensuring that the different forms of customary institutions, entities and decision-making processes can be accommodated in any revised model of community based forest management. As discussed previously, despite that, in many cases, statutory provisions exist for the recognition of customary institutions and laws, these are limited in that they are commonly applied to recognise only a limited range of such institutions, which are commonly linked to either the custom of the dominant population, or indeed to administrative entities which are not fully representative. This presents particular challenges for indigenous peoples, for example, whose more fluid, and sometimes less hierarchical forms of social organisation and level of marginalisation means that their forms of governance are not captured or fully respected<sup>110</sup>.

In one view, responsibilities for the management of a parcel of land called a 'Community Forest' in Central Africa cannot be devolved to an existing customary institution if it is not legally recognised<sup>111</sup>. On the other hand, allowing communities the right to self-determined responsibilities can be equally problematic by giving political authority to unelected customary chiefs who may or may not be acting according to the community's overall interests. Safeguards must be built into legislation and management procedures to ensure this dichotomy is addressed and resolved.

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<sup>102</sup> Fisher, 2014

<sup>103</sup> Cornwall, 2008, Pretty, 1995

<sup>104</sup> Buchy and Maconachie 2014

<sup>105</sup> Cooke and Kothari 2001, Hickey and Mohan, 2004, Mosse, 2005

<sup>106</sup> Guijit and Shah, 1998

<sup>107</sup> Copet-Rougier, 1987; Geschiere 1995; Karsenty et al. 2010:4

<sup>108</sup> Woodburne, 2012:40

<sup>109</sup> Ibid.

<sup>110</sup> Moise, 2011.

<sup>111</sup> Karsenty et al., 2010:2

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### 4.3.1 Social Exclusion

The impacts of externally-imposed community forest models are likely to be felt the most by those often excluded from decision making processes, such as women, indigenous people, or youths.

#### Indigenous peoples

As previously discussed, the ‘myth of community’ that many policy makers have applied to entities resembling cohesive communities in the Congo basin can belie a number of differences, and forms of social exclusion. This relates particularly to the situation of indigenous peoples.

Indigenous peoples’ land and resource use, and the areas of land that they traditionally occupy or otherwise use may differ considerably from those of other populations. Further, the particularities and relative egalitarianism of indigenous cultures, coupled with the often problematic relationship between indigenous peoples and their neighbouring communities, represent a specific, complex situation with significant implications for land rights and access to resources, as well as to decision making. Insofar as they may be ‘attached’ to other more dominant communities, in some cases they may face such severe marginalisation as to be subject to forced labour. They may be actively threatened for attempting participation in discussions on community rights or putting forward their own concerns. In terms of access to land and resources, this may have wide-ranging implications, most notably that they could be excluded from efforts to define the area, purpose or modalities of management of a community forest if due attention is not given to these limitations. Indeed, an entirely separate approach may be required to properly secure ‘community forests’ for indigenous people in the Congo Basin that is appropriate to their actual lands and cultures.

#### FPIC and community forests

‘Free prior and informed consent’ (FPIC), is the principle that indigenous peoples have the right to give or withhold their consent to proposed measures that may affect them, in the context of the right to decide their own priorities for development, and the development of their lands and resources. Some key elements of FPIC in the case of community forests are:

- Representativity (ensuring that the community is fully and genuinely represented during any consultations)

must be legitimate and clearly sanctioned by whichever size of entity is being consulted (a community, clan or other grouping). In the case of indigenous peoples in the Congo Basin, this may be difficult to define due to the lack of hierarchical structures in these communities. They may, for example, operate by consensus and not through a representation by individuals. This needs to be respected in any process involving indigenous peoples or communities.

- Provision of all negative and positive information about proposed actions and any alternatives that the community may choose over what is being proposed, in a manner and language that is understandable to them, in order for them to be in a position to make an informed decision about whether community forests are a desirable option for them.
- Communities should have adequate opportunity to express themselves freely and without pressure. This means respecting the processes by which communities make their decisions traditionally, as well as the length of time it may take to make these decisions traditionally.
- Being flexible in organising working time and logistics in order to take into account suggestions and proposals from the community and ensure that any process and timing of decision-making is in line with their traditional practices.
- Provision of the opportunity to confirm and reconfirm or withhold consent to any proposed measures on an ongoing basis throughout any given process.

The right to FPIC is enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which all Congo Basin states voted in favour of during its adoption by the UN General Assembly in 2007. Many of the externally-imposed community forest models in the Congo Basin outlined in section 3 demonstrate little recognition of this standard.

In the context of any discussion on community forests, this has several implications, most notably where indigenous peoples may form a minority within a given ‘community’. As it is common in the Congo Basin for indigenous peoples not to have access to decision making and to be marginalised with respect to access to land and resources when they are living alongside other communities, special care needs to be taken to ensure that any measures to secure community forests for communities in general in the Congo Basin do not serve to exclude indigenous peoples.

### Gender

Gender is a dimension of exclusion which has largely been ignored or misinterpreted by policy makers, projects and communities themselves. A number of studies have documented the importance of the role that women typically play in agriculture, the collection and management of non-timber forest products, firewood and other activities essential to food security<sup>112</sup>. Men and women often have differing priorities within the context of collectively conceived rights, but this has rarely translated into policy change. In the Congo Basin, there is a particular need to address the knowledge gap through a greater body of research to better understand gender dynamics and the socio-historical rationale behind them. This should result in gender sensitive community forest policies which reflect differentiated roles, responsibilities, needs and opportunities of men and women in managing forest resources.

### 4.4 Purposes, options and incentives for community forests

Increasing empirical evidence shows that recognition of customary tenure is one of the most effective ways to reduce poverty, reduce deforestation and protect biodiversity<sup>113</sup>. Strictly prescribed uses of community forests as economic or conservation tools may go against specific economic, social and cultural rights of communities whose traditional forms of land and resource use do not conform with these prescribed purposes. Communities may choose or express the need to use their forests in a variety of ways.

Thus, this section explores the various purposes for which community forests could be conceived based on the expressed needs, and a respect for the rights of, forest communities themselves. It explores the kind of livelihood activities that could be valorised or adapted through community forestry models in a Congo Basin context, and the bases upon which these could be built.

#### 4.4.1. The intended purpose of community forests

Different peoples and cultures have different forms of traditional governance, and varying forms of cultural or social attachment to land. Their traditional use and occupation of land and resources may also vary widely, as we have already seen. Further to this, perceptions of poverty, wealth and well-being are also shaped by different socio-economic contexts. For example,

research carried out by the Centre for the Environment and Development (CED) has shown that many Baka Pygmy groups in Cameroon measure poverty not only in terms of material wealth but also factors such as access to the forest and freedom to carry out their livelihood activities<sup>114</sup>. Therefore, community forest policies should recognise the broader contribution of forests to well-being – and not just their economic value. This would mean that prominent legal concepts such as *mise en valeur* (essentially a legal requirement for the land holder to prove that the land is being put to measurable economic use), which unfairly penalise traditional livelihood activities, would have to be redefined to include other notions of value, and to include the traditional forms of land and resource use as exercised by indigenous peoples and forest communities. If this isn't done, it would exclude them from any opportunities to access land.

Critically, such policies must be based on the intrinsic right of a community to determine this and decide how they want the forest to be used and managed – rather than pre-designed and externally imposed models based on purely monetary or conservation objectives.



<sup>112</sup> Tarh Takang, 2012; Awono et al., 2010; Veuthey and Gerber, 2010

<sup>113</sup> WRI and RRI, 2014; RRI, 2011

<sup>114</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_100518.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100518.pdf)

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#### 4.4.2 A rights-based approach

Using this analysis, underpinned by the right to self-determination and FPIC, a rights-based approach to community forests is critical and would entail several key considerations. In the absence of clear collective possession or ownership rights in the Congo Basin, community forests are currently the only option available to communities to exercise some level of legally enforceable use rights over their traditional forests. These need to be strengthened and be made amendable to take account of possible future advances in wider land rights. It should also be noted that most Congo Basin countries are party to international, legally binding instruments that contain specific obligations in the area of rights to participation, non-discrimination and a broad range of economic, social and cultural rights that have a direct bearing on the issues in hand.

These might relate to:

- The area over which rights are exercised customarily being duly demarcated, recorded and recognised to safeguard against claims to areas that fall outside the permitted area of a community forest by external actors without a customary attachment to the land.
- The intended purpose of a community forest being compatible with the right of communities to decide how their resources should be used, or how to develop their lands. This would entail validating traditional forms of land use that do not have a direct economic objective as valid forms of land use ('mise en valeur'), as well as recognising this right in the context of indigenous proposals for the use of their lands and resources that may fall outside the prescribed uses of community forests as they exist at present.
- Applying these principles taking into account fundamental and non-derogable rights to non-discrimination, particularly as regards groups that are traditionally socially excluded. This has implications for representativeness, access to decision-making, and access to land and resources, and would require a specific approach to be adopted to ensure the rights of these groups are dealt with adequately.

Of course, in an ideal scenario, in cases where there is ongoing large-scale reform of land and forest legislation, this could provide a unique opportunity for a fuller revision of the legal basis for rights to land and resources of forest communities, and a bringing into line of incompatible pieces of legislation that are often contradictory, as has been previously highlighted.

#### 4.4.3 Economic options

Should communities express an informed wish (based on FPIC) to develop their community forests for specific economic ends, community forests may well offer better prospects for poverty reduction in material terms than industrial timber concessions because they are more likely to accrue and reinvest wealth locally, promote local entrepreneurship, provide local incentives for long-term sustainable management, and be based on existing social networks and engender greater local accountability<sup>115</sup>.

A range of possible alternative income generating activities can be envisaged and tested, including: small and medium scale forest enterprises (SMFEs), rehabilitation and development of small holder palm oil concessions, management of non-timber forest products (NTFPs), livestock production and fish farming, controlled commercial hunting or community conservation of forests, payment for ecosystem services and traditional livelihoods. Of course, the feasibility of these initiatives depends on the community's consent to participate and other contextual factors such as access to markets and availability of financial and technical support. More in-depth and case-specific research would be required for each of these options, but a brief examination of some is given below.

#### Community forests and small and medium forest enterprises

Contrary to the dominant policy narrative in the Congo Basin over the past two decades that only companies and international conservation organisations (rather than communities) are able to manage forests, numerous examples from around the world have shown that community forests are able to deliver high quality and sustainable products. In Latin America, there are many examples of community forests being certified for sustainable timber production, including in Guatemala, where at present, 482,000 hectares of managed forest assigned as community concessions have been certified by the Forest Stewardship Council (FSC)<sup>116</sup>. The Mpingo Conservation and Development Initiative (MCDI) in Tanzania, which extracts, processes and exports high-value ebony wood used in the manufacture of musical instruments has become the first community forest in Africa to gain FSC certification<sup>117</sup>.

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<sup>115</sup> Chatham House, 2008

<sup>116</sup> Elias, 2014

<sup>117</sup> Bromley, 2013

However, there tends to be little domestic market for certified wood, and it is generally hard for communities to sell into the global market that is dominated by companies seeking high volumes, high quality and low prices<sup>118</sup>. The current regulatory environment in the Congo Basin is very much geared towards such exports. Subsidies, costs, and compliance with technical and legal requirements that are within reach of foreign companies may be prohibitive for suppliers of wood for local consumption. This can have the effect of fuelling the informal sector and essentially creating illegality in the local market. As discussed in section 2, the increased emphasis on legality requirements in the VPA era risks perpetuating this trend and policy makers should seriously explore policy tools to simplify and provide incentives for community forests to tap into existing local markets, whilst ensuring that the requisite level of technical support, accountable structures and safeguards are in place.

### Tapping into local markets

In many tropical 'producer' countries, domestic demand for forest products is increasing in importance relative to export markets<sup>119</sup>. Market forces have a tendency to evolve regardless of, or parallel to, legal frameworks, particularly where there is limited law enforcement, such as in the Congo Basin. For example, the early community forest programmes in Mali, Niger and Burkino Faso were said to be relatively successful because they responded to an explicit demand, in this case an impending fuel wood crisis in urban centres such as Niamey and Ougadougou<sup>120</sup>. It is necessary for community forest programmes to respond to local and national demand such as for timber fibre for furniture or house construction. Non-timber forest products (NTFPs) also play an important role in the livelihoods of local people in the Congo Basin, though a lot still needs to be understood about their economic value and possible management<sup>121</sup>.

In some cases, community forests could be adapted to contribute to demand for certain commodities. The development of sustainable small holder oil palm, a crop that is native to the Congo Basin, could for example help mitigate the severe social and environmental impacts from the proliferation of industrial-scale concessions across the region in recent years, and increase the likelihood that benefits are accrued locally.

An over-reliance on single crops or species makes community forests inherently vulnerable to these same market forces, as the cacao boom and bust of the 1970's has shown. Environmental changes linked to climate change pose an added risk. Hence, livelihood security may also be linked to a diversification of different products and skills.

### Creating the community forest value chain in Mexico

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The Mancomunados community forestry enterprise (EFC) was launched with the goal of bringing pine timber to market. When it discovered that it could not sell all the timber it had, it decided to create an additional division manufacturing furniture and has since gone on to launch a water purification plant. The Mancomunados EFC has managed to differentiate each of its product lines and it has also trained people as specialists in each area.

*Adapted from Ernesto Herrera Guerra discussion paper prepared for the community forest workshop organised by FERN in April 2014.*

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<sup>118</sup> Note that FSC is exploring rule changes to make it easier for community forests and SMFE to obtain certification, although this is no guarantee of sustainability – see [www.FSC-watch.org](http://www.FSC-watch.org)

<sup>119</sup> Chatham House, 2014

<sup>120</sup> Eckholm et al. 1984

<sup>121</sup> Hoare, 2007b

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#### 4.4.4 Traditional community livelihoods

As stated earlier, making *mise en valeur* a precondition for the recognition of any form of community rights over specific areas of land, as is the case in most Congo Basin countries' legislative frameworks, has the effect of discriminating against those communities whose traditional livelihoods do not have a market economy function. Land that is used in a traditional manner with no specific cash outcomes may be overlooked as an option for securing the use rights that community forests would provide. There are inherent risks implied by this, the most significant being that if they present no economic 'value', then areas on which traditional livelihoods are practised could be legally classified as vacant, or otherwise be left open for claims by third parties, including in terms of applications for community forests. Further, this could present problems for potential future legislative developments that may provide for stronger rights in the future. Forest communities' and indigenous peoples' traditional livelihoods that rely on forest resources for subsistence are not currently valued in their own right. Many traditional livelihoods may also serve to contribute to conservation goals (see below).

#### 4.4.5 Environmental incentives

International climate change policies have offered the opportunity to generate income through payments for ecosystem services (PES) or through initiatives aimed at reducing emissions from deforestation and degradation (REDD+). Community forests could potentially be a good basis for such schemes.

However, an over-reliance on market-based mechanisms for PES schemes such as REDD may be problematic, as they would not necessarily provide the steady flow of benefits that communities would need. There are not many accepted and understood procedures for compensation for carbon sequestration projects and distribution of benefits, meaning that decision-making remains largely in the hands of international agencies and/or at the State level directly with businesses involved in trading carbon emission rights. This may leave little opportunity for local communities to negotiate the location of these initiatives or the distribution of any benefits – potentially leading to socially divisive outcomes (such as those that have been documented from community timber

felling). Field-based research suggests that their ability to do so may be further hampered by widespread confusion about what the whole REDD/PES concept is actually about, even among community intellectuals<sup>122</sup>.

The poorly-defined tenure regimes currently found in the Congo Basin are likely to provide a much weaker basis for such schemes than the rights frameworks found in Latin America for instance. There is already evidence emerging that REDD+ is creating perverse incentives around 'carbon ownership' which may serve to actually limit forest access and rights for indigenous peoples and local communities in the region<sup>123</sup>, who in the DRC have often been wrongly targeted as the main drivers of deforestation<sup>124</sup>.

Resolving this issue may be further impeded by the eagerness of foreign donors to release funds for REDD+ activities, even though much of the so-called 'readiness packages' and national strategies (policy reforms, law enforcement, transparency initiatives, land-use planning etc.) are not in place<sup>125</sup>. It could be argued that dealing with tenure issues and testing communities' forest management regimes in REDD project areas outside of the overarching legal framework could provide much needed impetus for wider national policy reforms, though there has been little evidence of this to date.

Examples from around the world show that forests can be better managed when under the control of local community rights holders. In Latin America, there are numerous studies which show a direct correlation between areas which are under indigenous control and biodiversity levels, with far lower rates of forest clearance. Forests under communal tenure regimes in Guatemala, for instance, constitute the last remaining natural forest reserves thanks to local initiatives for conservation, especially in the form of communal forests<sup>126</sup>.

In many cases, the non-financial benefits of community-managed forests, such as secure legal access to forest products for domestic use and consumption, increased capacities, social capital and environmental services may suffice to keep community forestry worthwhile. The concept of community based forest protection is one that has been rarely explored in the Congo Basin, which has instead seen the proliferation of a strict model of conservation which often excludes local people (see section 2).

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<sup>122</sup> An community informant in the Mai Ndombe REDD+ project area in DRC stated that "the white people are coming to take away the rain" – Moise, pers comm, 2013

<sup>123</sup> De Jong 2012; Burnham in press

<sup>124</sup> Even though outright deforestation levels are extremely low compared to Asian and Amazonian rainforests, they can be expected

to rise sharply with the onset of industrial agriculture, mining and infrastructure projects.

<sup>125</sup> Note, for example that funds committed by donors to the Carbon Fund of the Forest Carbon Partnership Facility (FCPF) running into hundreds of millions of dollars are due to be dispersed by 2020.

<sup>126</sup> Elías, et al, 2008

In theory, there is still scope for developing such a model in the Congo Basin through community forests. For example, during the development of the draft manual of procedures for community forests in CAR, local populations around the Mbaéré-Bodingué National Park in south-west CAR expressed an interest in developing community based conservation based on traditional livelihoods. In DRC, there may be a case for developing these to meet the government's target of reaching 15 per cent of the national territory as protected areas, though this may require changes to current forest classifications.

### 4.5 Capacity Building

Research shows that the capacity for communities to benefit from community forestry timber harvesting improves with external capacity building support. However, the right level of support can be critical; just sufficient to allow those involved to develop enough experience to enable them to successfully participate in the various stages of the value chain. Short-term assistance, such as that linked to NGOs' project funding cycles, may be worse than no assistance at all<sup>127</sup>.

Externally-imposed community forestry models and top-down procedures such as those found in Cameroon may deter ownership and participation and be particularly prone to high levels of external support and corruption. Hence finding a balance between community ownership and external support is crucial, though additional support may be required to ensure the participation of marginalised groups such as women and Pygmies.

### Community alliances

Many of the more successful community forest programmes, for example those in Nepal and Guatemala, have strong and representative local and national networks and associations. Groups such as the Association of Forest Communities of Petén (ACOFOP) in Guatemala have emerged as influential bodies defending members' rights to access and exploit forest resources around protected areas co-founded with other groups including Ut'z CHé the National Alliance of Forest Community Organisations (ANOFCEG)<sup>128</sup>. Similarly in Nepal, the Federation of Community Forestry User of Nepal (FECOFUN) is today the country's largest civil society organisation, representing close to 20,000 Forest Users Groups or approximately 35 per cent of the population, managing over 30 per cent of the forest area<sup>129</sup>.

Such networks can improve vertical integration of community forest initiatives (broaden representation and accountability, lobbying power, reducing start-up and transaction costs and internalising value chains, access to credit and markets) and horizontal learning (training and capacity building, pooling of resources, conflict resolution). They may also provide an important spring board for scaling-up community forests at regional and national levels.

Although the historical situations in Guatemala and Mexico, where there is a history of resistance and social movements, differ to that in the Congo Basin and especially the characteristically egalitarian systems of hunter-gatherer groups – many lessons can be learned for how communities can organise themselves from the bottom up.

There is no reason why such community forest associations, with the right policy environment, investment climate and other incentives, couldn't be adapted in the Congo Basin. Historically, groups of villages with common interests have come together to hunt or act collectively in connection with outside forces – such as was the case in CAR in the pre-colonial past<sup>130</sup>. Such structures may be precisely the kind of model required and could be particularly effective in cases such as Cameroon, CAR and Gabon, where restrictions on the size of community forests (5,000 ha) may be an inhibiting factor to developing viable business models. Such alliances could improve the economic integration and political representation of remote forest communities, reducing the chances that they will sell their timber rights to commercial loggers<sup>131</sup>.

### Access to credit and investment

Lack of access to credit among local communities is a key impediment to developing viable community based forest enterprises and which makes them vulnerable to third party exploitation (see section 3). However, research undertaken by RFUK, Deutsche Bank and the Department for International Development, (DFID) in Cameroon, and elsewhere, has strongly suggested that lending money into communities may encourage corruption and theft, or purchase of expensive capital equipment which is not sustainable because the skills for maintenance and repairs do not exist. This can lead to community indebtedness and perverse incentives to overcut or sell to commercial operators to quickly recoup their investments.

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<sup>127</sup> Ezzine de Blas et al., 2009

<sup>128</sup> Merlet, 2014

<sup>129</sup> Pandey, 2014

<sup>130</sup> Moise, n.d. 37

<sup>131</sup> Footnote to go here

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In such cases, the research found that it may be better for investors to buy equity in local community enterprises or producer groups, which could be progressively transferred to the communities as they establish profitability. Capital intensive value-adding activities such as saw-milling or further processing may be better out-sourced to mobile service providers, (who can be encouraged to set up business through specific incentives), who then travel round to the various community forests. This means that there is an incentive and specialist expertise developed by the service providers, and that there will not be expensive equipment rusting in the forest and causing the communities to become indebted.

### Private sector partnerships

In terms of investment, appropriate partnerships between communities and the private sector are likely to be essential<sup>132</sup>. However, governments in the region have almost never been able to mobilise such investment effectively, though there is only ever likely to be any private investment if there is a prospect of resource security and longer term returns – which of course demands the right kind of policy environment from government.

In some cases, certification programmes have led to constructive negotiations and partnerships between communities and timber companies. A global review of 57 partnerships showed that some did bring real benefits (employment and income generation), although there were negative environmental impacts and problems associated with inequitable benefit sharing<sup>133</sup>. In general, the major players in the forest industry have typically considered the export of logs as their main business and have neglected the national and regional markets. This has driven an extractive approach to forestry which has had limited economic



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<sup>132</sup> Menzies, 2007:162

<sup>133</sup> Mayers and Vermeulen 2002 cited in Menzies 2007:162

### SECTION 5 – CONCLUSION & RECOMMENDATIONS

#### 5.1 Conclusions

The political economy of the Congo Basin forest sector continues to be dominated by a paradigm based on industrial logging and strict nature conservation. As major, independent programmatic reviews have shown in recent years, two decades of major donor support in pursuit of this model has done little to deliver social benefits in rural forest areas. The persistence of the paradigm and the emergence of large-scale extractive and agricultural industries are the single, greatest impediments to developing effective models of community based forest management in the region.

A necessary starting point would, therefore, be an honest reflection among policy makers of a) the shortcomings of the current system and b) a recognition of the value of community-led forest management in its own right, and then to resource and support it adequately. This study has shown that a constellation of enabling factors (e.g. reform of legal frameworks, institutional strengthening, investment vehicles and improving community representation) would need to come together around three core issues, which form the basis of our overarching conclusions:

- The political economy of the forest sector in the region currently strongly favours large-scale foreign interests over local communities, despite the lack of evidence that this model generates significant developmental benefit.
- Community forests offer unprecedented, but still limited, opportunities for forest-dependent communities to gain legal rights to forest land and resources. However, for the full benefits of them to be appreciated in the long term, there is a need for reform of overarching national land and resource rights laws to permit and facilitate the transference of full forest possession and ownership rights from the state to local communities.
- Community forest models need to be adapted to multiple realities, world views and needs.
- There is a need to ensure adequate representativity and non-discrimination in the implementation of community forestry.

Each of these is considered in more detail below.

#### 1) Creating an enabling environment for change (forest classifications and tenure reform) – The creation of a third land domain where possession or ownership rights apply

The State monopoly on land, the outdated and restrictive public/private domain dualism and associated forest classification systems in the Congo Basin are inadequate to address the reality of forest occupation, use and possession and effectively preclude large sections of rural forest populations from ever being able to legally manage forests which they have traditionally owned and occupied.

The conditions needed for community based forest management to succeed emerge in cases where there is some kind of wholesale transference of rights from the State to communities (e.g. Guatemala, Mexico, Nepal, Indonesia). Given this, legal regimes in the Congo Basin would need to be modified to allow for community possession and ownership via the following proposed steps:

- i. Removal of the assumption of State ownership over all lands (though the state would retain overall sovereignty)
- ii. Creation of a third domain for lands not publicly or privately owned (and where possession applies)
- iii. Restoration and recognition of possession rights on occupied and customary lands
- iv. Recognition and organisation of collective ownership rights, where these apply
- v. Simplification and amplification of ways to access ownership titles (individual or collective) to make it easier for communities to secure ownership of land<sup>134</sup>
- vi. Reviewing of conditions for 'mise en valeur' to ensure that communities are not excluded from opportunities to access land or resource rights even if they are not adding monetary value to land.

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<sup>134</sup> Kenfack, 2014

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Of course this may not address the fact that huge swathes of the region has already been allocated as part of public domain (e.g. as protected areas) or as the private domain (e.g. mining permits, logging concessions) – much of it contested under customary systems. In such cases, more emphasis should be placed on performance and accountability of concession holders and protected area management. Grievance mechanisms should be established and local authorities given greater powers to revoke or reclassify these areas where they are not meeting specified management objectives (e.g. if they do not have or adhere to a management plan, pay taxes, honour cahier de charge agreements).

Other possible measures may include tying concession renewal to compliance with certification standards or meeting VPA requirements. This would result in more land becoming available that would fall within the new land category where possession rights apply and would help reduce the logging and conservation sectors to a size where they can be adequately monitored and enforced.

## 2) A diversity of models

If the policy landscape exists where communities can gain easier legal access to their lands, then there should be a range of implementation options available to them to exercise these rights in a manner that is appropriate to them, rather than the ‘one size fits all’ model currently in existence. The challenge is how to maintain flexibility in the design of community forest models to accommodate different social contexts, world views and needs while maintaining regulatory oversight to avoid system abuse. It is important that the legal framing of community forests allows for possible future policy changes where stronger (ownership) land rights might be attributed by the State. However, governments may be more comfortable with revocable leasehold arrangements as a first step, then after 20-30 years when they find that their prejudices and fears about communities simply trashing all the forest are not justified, and then they may find it easier to let it evolve into more permanent ownership rights.

Implementation options may include indigenous peoples’ territories or community-managed protected areas – such as those found in Latin America. In many areas, for example, where there are overlapping Bantu/Pygmy land claims or if land has already been allocated in the form of concessions or protected areas, the idea of exclusive land use may not be entirely feasible – and so co-management options should be explored, or the basis for the allocation of these lands as concessions should be reconsidered using a rights-based approach.

## 3) Representativity

It is essential that community forestry models give due consideration to the complexities of community-level representation and the varying models of traditional decision-making in forest communities. This approach can have advantages in terms of minimising the potential for corruption, and maximising the effectiveness of decision-making and management mechanisms.

### 5.2 Recommendations – region-wide

#### 5.2.1 Recommendations to Governments

Governments in the region have the biggest responsibility to lead in this area of policy change. A wider debate is needed on the purpose, expectations and objectives of forestry, and the priorities and policy options for achieving these. Without these governments’ political will, little can change as it is not in the short-term interest of the private sector to promote change when it currently has a highly privileged position. Nepotism and rent seeking behaviour amongst politicians and bureaucrats at all levels are currently amongst the greatest obstacles to this. However, this doesn’t mean that things cannot change in the future. As has been noted above, as the economic importance of the forest sector declines in most Congo Basin countries, and the interests of foreign logging operators become progressively more marginal with the commercial exhaustion of the most profitable timbers, so governments might find it easier to switch to approaches to forest management that benefit the rural poor instead of foreign shareholders.

In addition to the main recommendations above, some of the specific measures which need to be taken include that:

- Spatial planning and land reform processes initiated in the region must clarify customary land tenure and resource usage systems to avoid further escalating land conflicts.
- Forest communities’ and indigenous peoples’ use of land and resources must be recognised as valid forms of land use.
- Appropriate resources and effectively implemented decentralisation policies are needed which genuinely transfer management responsibilities.

- Where appropriate, incentives must be set out for the grouping of community forests into economically viable units.
- A policy environment must be created to encourage private sector investment in community forests (probably through equity investment in small and medium forest enterprises, and for the setting up of professional mobile service enterprises (such as mobile sawmilling) which can add value to community forests without incurring high capital investment at the local level.
- New institutions are needed which are attuned to the differing needs of community forests, the variety of traditional and customary institutions of communities, and the smaller-scale activities which they entail. It must be ensured that traditional institutions and their diversity are reflected in these efforts.
- There should be incorporation into national legal frameworks of international standards and ratified treaties and agreements on land and resource rights, indigenous peoples' rights, participation and FPIC<sup>135</sup>.

### 5.2.2 Recommendations to international donors

Donors have a historical responsibility and a vital role to play in supporting such reform efforts – but have been relatively poor at applying internationally-accepted standards or indeed their own guidelines on community rights issues<sup>136</sup>. The focus should move away from propping up a failing industrial scale logging/strict nature conservation model to a more community-centred, rights-based approach based on international norms. In some cases, this would better reflect the existing policies of donors, but would need a significant shift in the policy narrative – that land can only be managed sustainably at the macro-level scale. It will no doubt require substantial time and investment. For example, US \$109 million was spent between 1991 and 2001 on support projects for the Guatemalan Biosphere Reserve and in Nepal close to \$250 million dollars have been spent in the last 30 years, mostly to develop and build the governance capacity of forest user groups<sup>137</sup>.

Specifically, we encourage international donors to:

- Undertake a comprehensive, public, multi-donor review of the long-term strategic approach to developing the forest sector in the region, and whether it is achieving social and environmental objectives.

This should incorporate and expand on some of the themes developed in recent independent evaluations (e.g. World Bank Independent Evaluation Group's 2013 report, AFD's 2013 forest sector review report, World Bank Inspection Panel report from 2007).

- Scrutinise how current and planned expansion of large-scale land allocations (such as for palm oil plantations) fits with Congo Basin governments' commitments and engagements with international processes concerning the improved conservation and management of forests, especially countries which have signed a FLEGT VPA, or are receiving official development funding related to REDD.
- Ensure closer alignment of support programmes with binding international rights agreements and policy tools safeguarding the rights of local and indigenous peoples. Use these same instruments to encourage the establishment of a clear legal, regulatory and operational basis for community based forest management in the region, ensuring that this allows for possible future developments on land and resource rights.
- Create policy incentives (e.g. by linking the application of community forest provisions to access to funding, such as through the FCPF) to provide clear, secure, enforceable and non-discretionary resource rights over trees, forests, and by extension, carbon. The international community should promote the passage of simple, low-cost and verifiable procedures for legalisation of community forest agreements and management planning.
- Make clarification of tenure rights a legal requirement of the VPA processes, and tailor and simplify legality definition and verification processes to the needs and constraints of local forest communities.
- Invest in effective capacity development in national and local governments departments, NGOs and the private sector, in order to respond to the evident capacity gaps in terms of technical abilities to manage community forests, and lack of private investment opportunities. There will also be a need to provide sufficient funding to ensure there is adequate capacity in communities involved in setting up or managing community forests.
- Support more experimental and pilot programmes to test out a variety of models of community based forest management in order to provide examples of good practice and learning.

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<sup>135</sup> Most of the countries in the region have monist legal systems. This means that international treaties come into effect immediately in the given country – even if national legislation is not revised to reflect the content of the specific treaty. Therefore, treaty provisions can be invoked, for example, in court cases. They are considered superior

to national law. (See DRC: art. 215, CAR: art. 72, Gabon: art. 114, Cameroon; art. 45, Congo: art. 184).

<sup>136</sup> RFUK, 2014

<sup>137</sup> Hobley et al. 2012

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### 5.2.3 Recommendations to civil society

Civil society organisations both in the region and the North have a huge role to play in holding donors and governments to account and in supporting the capacity development of local communities. The VPA processes in Cameroon and the Republic of Congo have provided some interesting insights on how to promote better civil society engagement in national consultation processes. There is now a wealth of knowledge and expertise which can be strengthened but also needs to be shared and disseminated outside capital cities. Specific recommendations would include:

- Supporting communities and indigenous peoples to navigate the complexities of community forests, and to understand their rights in this context.
- Testing and developing pilot projects and approaches to community based forest management which can respond to multiple realities.
- Creating national networks to develop knowledge sharing and advocacy with government and donors.
- Undertaking research on issues relating to social exclusion, discrimination and governance, and the relationship of this to community forests.

### 5.2.4 Recommendations to the Private sector

- ‘Patient capital’ is needed to provide long-term investment in community forestry, along with support for practical forest management, and business and marketing skills.

## 5.3 Country Specific Recommendations

In addition to the regionally cross-cutting recommendations above, the following are recommendations directed at the governments of specific Congo Basin countries:

### 5.3.1 Republic of Congo

Given that it has had in place an Indigenous Peoples’ Law since 2011 and is currently in the process of revising its Forest Code as part of its commitments under the FLEGT framework, the Republic of Congo has a good opportunity to develop an operational framework for community based forest management (based on more secure land rights) which responds to the political, legal and institutional challenges highlighted in the study.

Specifically:

- Include provisions for community based forest management in the new Forest Code, which allow for a variety of implementation options (more research would be required for this).
- Ensure that any provisions on community forestry in the revised Forest Code are compatible with existing provisions on collective possession and ownership rights for indigenous peoples, as stipulated in the Indigenous Populations’ Law of 2011.
- Ensure that priority is given to possession and ownership rights of indigenous peoples, over new concessions to land, in line with the law. This would also imply identifying and demarcating indigenous peoples’ lands to ensure that concessions are not handed out in these areas.
- Further, in line with the Indigenous Populations’ Law, ensure that the traditional governance institutions of indigenous peoples, and their role in decision-making on policy and its implementation, are duly recognised and actioned within the context of any developments on community forests. Embark on a process of developing implementation decrees in order to operationalise this law.
- The FCPF should not proceed with funding an Emissions Reduction programme in the Republic of Congo until there is a legal and operational basis for community based forest management in the country.

### 5.3.2 Democratic Republic of Congo

Given that more than half of its forest estate has not yet been allocated as logging concessions or protected areas, the DRC provides, by far, the largest area to develop alternative models of forest management – provided the right policy landscape exists.

Specific recommendations:

- Ensure 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;
  - It is compatible with any future provisions on more secure land rights which may emerge from the land reform process, or discussions around a possible law on indigenous peoples’ rights;

- 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;
- Form a national roundtable of stakeholders (community and indigenous peoples' representatives, national and international NGOs, government agencies, donors etc.) to build consensus around the risks and opportunities involved.
- There should be a phased approach to developing 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.
- Policy incentives need to be created 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.

### 5.3.3 Central African Republic

- The government needs to pass the necessary implementation decrees to enact the community forest law in the 2008 Forest Code, and ensure adoption and implementation of the existing draft manual of procedures.
- The government needs to ensure that relevant provisions for the protection of collective possession and ownership rights, as provided for in ILO Convention No. 169 (ratified by the CAR in 2010) are integrated into the foreseen revision of and legislative framework on land, and that the current constitutional revision process provides an adequate framework for this to happen.
- Further, in line with ILO Convention No. 169, the government needs to ensure that the traditional

governance institutions of indigenous peoples, and their role in decision-making on policy and its implementation, are duly recognised and actioned within the context of any developments on community forests.

- A trial could be commenced for community forest management in one or more of the three logging titles in the south-west forests which remain unallocated, as well as in the eastern forest region.

### 5.3.4 Gabon

- Any future, national land-use planning process should map existing customary land and resource usage.
- The government should demonstrate how it intends to achieve the target of 10 million hectares for the rural forest domain (where community forests apply) as set out in the Programme Sectoriel et Environnement (PSFE).
- The implementation of the new sustainable development law should include provisions for community land tenure arrangements.
- Lessons learnt from the DACEFI community forest pilot projects should be disseminated and methods proposed for how the sector could be scaled up.

### 5.3.5 Cameroon

- Ensure that the ongoing legal reform of the forestry law grants villages full property of their forests.
- Restrict and rationalise logging activities inside community forests to avoid illegal use of documentation, diversify activities and include efficiency as a management objective.
- Ensure that ongoing land reform and land-use planning processes give due recognition to existing traditional rights.

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<sup>18</sup> Lewis, 2002:73

<sup>19</sup> RRI, 2012

<sup>20</sup> Food and Agriculture Organization of the United Nations, 'Legal recognition and allocation of tenure rights'- from: <http://www.fao.org/nr/tenure/activities/recognition-and-allocation-of-rights/en/>

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### Abbreviations

|              |   |
|--------------|---|
| <b>AFD</b>   | Agence Française de Développement                         |
| <b>AWF</b>   | African Wildlife Foundation                               |
| <b>CAR</b>   | Central African Republic                                  |
| <b>CBFM</b>  | Community Based Forest Management                         |
| <b>CBNRM</b> | Community Based Natural Resource Management               |
| <b>CED</b>   | Centre pour l'environnement et Développement              |
| <b>DFID</b>  | (UK) Department for International Development             |
| <b>DRC</b>   | Democratic Republic of Congo                              |
| <b>EC</b>    | European Commission                                       |
| <b>FAO</b>   | Food and Agriculture Organisation (of the United Nations) |
| <b>FLEGT</b> | Forest Law Enforcement Governance and Trade               |
| <b>FMU</b>   | Forest Management Unit                                    |
| <b>ha</b>    | Hectare   |
| <b>ILO</b>   | International Labour Organisation                         |
| <b>nPFD</b>  | Non-Permanent Forest Domain                               |
| <b>PA</b>    | Protected Area  |
| <b>PFD</b>   | Permanent Forest Domain                                   |
| <b>PSFE</b>  | Programme Sectoriel Forêts et Environnement               |
| <b>REDD</b>  | Reducing Emissions from Deforestation and Degradation     |
| <b>RFA</b>   | Redevance forestière annuelle                             |
| <b>VPA</b>   | Voluntary Partnership Agreement                           |
| <b>WCS</b>   | Wildlife Conservation Society                             |
| <b>WWF</b>   | World Wide Fund for Nature                                |

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