

# Land reform and protection of communities' rights

Report of the seminar on information sharing  
on the land reform process and the protection  
of communities' rights in the implementation of  
forest policies and climate initiatives in the DRC

Kinshasa, Democratic Republic of Congo, March 2016





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## Foreword

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The Democratic Republic of Congo is engaged in a land reform process under the Government's action plan. A number of reforms for enhancing economic growth are planned, including those that relate to the principles established for governing property, and the use and management of land resources and improving their productivity and contribution to social development. This concern is expressed in the Government's intention to improve land governance, which is understood as meaning all the processes involved in reaching and implementing decisions on access to and use of land resources, including the ways in which land tenure disputes are resolved through the appropriate socio-political and administrative structures.

In July 2012 a consensual road map for land reform was adopted but subsequently downgraded to a 'programming paper', considered as an instrument for technical planning, implementation, monitoring and evaluation of the land reform process.

The actions as planned in the road map were intended to initiate a participatory process for all the stakeholders in the land reform activity. Stakeholder involvement was envisaged at different levels: at debate level within the Steering Committee, at technical level within the thematic commissions set up by the Technical Secretariat, and at local level through the provincial committees.

After three or four years this process should have resulted, specifically, in a national policy relating to land governance being drawn up, and in the creation of a revised draft land law and the measures for its implementation. However, several years on, the reality is a bitter disappointment: very few of the activities outlined in the programming paper have been implemented. Discussion did take place within the National Commission for Land Reform (CONAREF), which led to recommendations

which should have revitalised the reform process. However, since then, the situation has barely changed, even if, in recent times, there have been some positive signs.

It was this state of lethargy that inspired Forest Peoples Programme (FPP), Réseau Ressources Naturelles (RRN) and the Dynamique des Groupes des Peuples Autochtones (DGPA), in collaboration with other civil society organisations and the Ministry of Land Affairs, to organise a workshop from 22 to 24 March 2016 on the progress of land reform in the DRC and the prospects for promotion and respect of local communities' and indigenous peoples' rights.

The workshop provided the opportunity for communities affected by the implementation of forest and climate policies and of conservation programmes to share their views of both land reform and forest governance within the country.

The present report, which is now available to the public as well as all stakeholders in the forestry, environment and land sectors, is the result of work and analysis by official as well as civil society experts, research institutions and United Nations agencies, on the key issues currently affecting land law in the DRC. There is no doubt that the spirit in which the seminar was conducted, in particular the exchanges between participants, is reflected in the quality and relevance of the conclusions and recommendations from this conclave.

The seminar took place at a crucial moment, just as the land question was being debated in the DRC, in particular because of its repercussions on the country's political, social, cultural and economic situation.

The current land reform process provides an opportunity for courageous and sustainable decision making, to clearly define the status and the legal provisions for securing and

protecting land rights in accordance with local custom and use, in keeping with statutory or written land law. In a context in which 70% of the land is under customary ownership and in which the majority of the population lives in rural areas, it is evident that the clarification, recognition and security of customary and community land rights must be one of the priorities in the current reform process.

With the Government's clearly stated political will to reform all the key sectors so as to foster economic growth and sustainable development, the land reform process would appear to provide an opportunity to improve forest governance. For this reason, while pursuing its goal of stimulating productive investment and increasing State revenues, the Government should also aim to clean up the land sector so as to limit, if not eradicate, land conflicts and to secure the customary land rights of marginalised communities, including indigenous peoples and local communities.

Experience from across the world shows that interventions to guarantee sustainable livelihoods as well as land security for indigenous peoples and local communities enable poverty reduction targets to be achieved. The Government's development targets, as well as its poverty reduction programmes, however legitimate, will only be achievable if they are based on an economic system that works for everyone, in other words, an economic system that serves society. This means an economy in which the communities are guaranteed access to the land and land ownership rights, and that they are able to access and use the natural resources on their land, and that they fully profit from the benefits linked to development programmes and projects at the national level. Rightly, the emerging climate initiatives such as REDD+ and the new forest funds, are required to take into account social, cultural and local economic contexts, and to respect environmental and social sustainability.

It should also be emphasised that land reform involves an ongoing and long-term commitment, and as a consequence, so far, very few development agencies have expressed a willingness to provide support. This is why we commend the commitment by UN-HABITAT to support the reform process, as well as the British Department for International Development (UKAID), the Swedish International Development Agency (Sida) and the European Union (EU) for the financial support which has enabled this dialogue to take place, and at the same time we invite all the technical and financial partners to become actively involved in the land reform process currently underway.

Finally, we reaffirm our support for this work and the pertinent recommendations contained in this report to bring a positive influence to bear on the ongoing land reform process.

**Dr. Justin Kenrick**

**Africa Regional Coordinator  
and Policy Advisor**

## Acknowledgements

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We are particularly grateful to all the participants from a variety of disciplines and socio-professional strata, including the representatives from the different ministries linked in various ways to the land reform process, the representatives from the local communities and indigenous peoples, the members of civil society, as well as FPP's traditional partners in the DRC including: RRN; le Réseau pour la Conservation et la Réhabilitation des Écosystèmes Forestiers (Réseau CREF); DGPA; le Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV); Actions pour les Droits, l'Environnement et la Vie (ADEV); as well as le Cercle pour la Défense de l'Environnement (CEDEN) for their effective assistance and their valuable contribution to the organisation of the seminar.

We would also like to express our gratitude to the MPs, the members of the parliamentary group for the promotion and protection of indigenous pygmy peoples' rights, for their support in attending this meeting, namely the Hon. Mirindi Carhangambo and the Hon. Bruno Lapika Dimomfu.

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Finally, we offer our profound gratitude to our funders, thanks to whose financial support this seminar was able to take place: the British Department for International Development (UKAID) for funds allocated under the DFID Forest Governance, Markets and Climate programme; as well as the Swedish International Development Agency (Sida); and the European Union (EU).

## Acronyms

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ADB	African Development Bank
AM	Arrêté ministériel
CACO	Cadre de concertation de la société civile pour la réforme foncière en RDC
CAFI	Central African Forest Initiative
CBD	Convention on Biological Diversity
CEDEN	Le Cercle pour la Défense de l'Environnement
CFLEDD	Coalition des femmes leaders pour l'environnement et le développement durable
CONAPAC	Confédération nationale des producteurs agricoles du Congo
CONAREF	National Commission on Land Reform
CNONGD	Conseil national des ONG de développement
DGM	Dedicated Grant Mechanism
DGPA	Dynamique des Groupes des Peuples Autochtones
DRC	Democratic Republic of Congo
ER-PIN	Emissions Reduction Program Idea Note
ERA	Ecosystem Restoration Associate
FAO	Food and Agriculture Organization of the United Nations
FIP	Forest Investment Program
FLEGT	Forest Law Enforcement Governance and Trade
FODI	Forêt pour le développement intégral
FNPSS	Fonds national de promotion de sécurité sociale
FPIC	Free, prior and informed consent
GLTN	Global Land Tool Network (of UN-Habitat)
GTCRR	Working Group on Climate and REDD+ rénové
ICCA	Indigenous and Community Conserved Areas
ICCN	Institut congolais pour la conservation de la nature
ILO	International Labour Organization
IPs	Indigenous peoples
KBNP	Kahuzi-Biega National Park
LC	Local community
LCFC	Local community forest concession
LUP	Land use planning



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MAF	Ministère des Affaires foncières
MECNDD	Ministère de l'Environnement, Conservation de la Nature et Développement durable
NC-REDD	National Coordination REDD
NSC	National Steering Committee
NGO	Non-governmental organisation
NTFP	Non-timber forest products
PES	Payment for environmental services
PIDP	Programme d'Intégration et de Développement du Peuple Pygmée au Kivu
SMP	Simple management plan
REDD+	Reducing emissions from deforestation and forest degradation
REPALEF	Réseau des Populations Autochtones et Locales la gestion durable des Ecosystèmes Forestiers de la RDC
RFUK	Rainforest Foundation UK
RRI	Rights and Resources Initiative
RSPO	Roundtable on Sustainable Palm Oil
EU	European Union
UNDP	United Nations Development Programme
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UN-Habitat	United Nations programme working towards a better urban future
VPA	Voluntary Partnership Agreement
WWF	World Wildlife Fund

## Executive Summary

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The DRC Government has joined a number of international programmes or mechanisms to combat deforestation, such as REDD+, as well as the negotiation process of the Voluntary Partnership Agreement (VPA) with the European Union (EU).

If the REDD+ process has achieved significant progress since January 2009, in particular the development of the REDD+ Readiness Plan, approval of the Forest Investment Program (FIP), development of the national REDD+ framework strategy, and also acceptance of the concept note of the Emissions Reduction Program Idea Note or ER-PIN of Mai-Ndombe, the FLEGT VPA process, on the other hand, has ground to a halt. In 2013, even the negotiations were suspended.

The signing of the decree on community forestry<sup>1</sup> on 2 August 2014 was an important turning point in the quest to secure land rights for forest communities in the DRC. In the context of approximately 70% of the land being under customary ownership, community forestry clearly raises the communities' hopes of securing their traditional forests in the long term, and paves the way towards definitive forest and land ownership.

Serious challenges remain, however, and the lack of security of customary land tenure is exacerbated by anachronistic laws which neither recognise nor sufficiently protect the customary collective rights of forest peoples over their land. Concessions (for mining, logging and conservation) are granted to Congolese and foreign companies without the communities' prior consent.

Likewise, the expansion of oil palm cultivation with its corresponding extensive land grabbing poses a potential threat to communities' survival.

Furthermore, national and global efforts have failed to identify the underlying causes of deforestation thereby contributing to further stigmatisation of indigenous peoples and local communities. In addition, large-scale land acquisition by foreign investors, or small-scale acquisition by national and local elites, are having an impact on customary ownership, on livelihoods and the environment. These factors risk further jeopardising the lives of rural peoples when genuine respect for the communities' human rights is not prioritised.<sup>2</sup>

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<sup>1</sup> Decree No 14/018 of 2 August 2014 (*Décret No 14/018 du 02 août 2014 fixant les modalités d'attribution des concessions forestières aux communautés locales*)

<sup>2</sup> Séverin Mugangu, *La tenure foncière coutumière en République démocratique du Congo : état des lieux et perspectives pour la réforme de la législation*, Rights and Resources Initiative, 2014

### Forest peoples' lack of security of land tenure

The present land law<sup>3</sup>, dating back 40 years, is no longer fit for purpose nationally nor with regard to the current situation of indigenous peoples (IPs) and local communities (LCs). The current land tenure system, inherited from the colonial regime, dispossesses IPs and LCs of the land and their customary rights. To gain a better understanding of the precariousness of customary land rights, it is necessary to go back to 1973 when the legislator sought to ensure the Congolese State's economic independence by transferring land ownership to the State. Indeed, the Congolese land tenure system gives the State a free rein as 'sole owner'<sup>4</sup> (*propriétaire exclusif*) of the land to dispossess the communities of their land and then, for example, to make the land available to investors in the name of public interest. In this way, private ownership of land having been abolished, private individuals (including IPs and LCs) may only acquire enjoyment rights over land within the State's private domain through the so-called 'concession'<sup>5</sup> process. Enjoyment is thus the only recognised right for communities; ownership is excluded. In practice, however, gaining access to the right of enjoyment is difficult for communities to achieve because of a multiplicity of constraints linked, on the one hand, to the inadequacy of the legal framework, and on the other, to the unsuitability of the current land ownership system. In principle, only land that has been developed can be registered for land title.<sup>6</sup> This could be discriminatory against IPs, whose lifestyle is different to that of the other dominant groups in society, in that they do not leave visible traces of their activity on the land. This is the case,

in particular, with hunting and gathering. Furthermore, one fundamental characteristic of the DRC's land ownership system is the continuing discrepancy between the affirmed principle of the State's exclusive ownership of the land and the constitutional provisions which assert the right to private property.<sup>7</sup>

Forest peoples' lack of security of land tenure reveals itself in many forms. It could be in the form of dispossession, expropriation, rejection of the traditional ways of occupying and using the land, land-grabbing of customary land-use areas, deforestation, restriction of access to natural resources and other means of subsistence, or IPs' and LCs' exclusion from conservation areas (protected areas). Furthermore, international initiatives intended to combat deforestation or reduce emissions due to forest degradation, such as the REDD pilot projects, restrict IPs' and LCs' access to the land and to the forests by virtue of conservation policies based on exclusion.

<sup>3</sup> Law No 73-021 of 20 July 1973 (*Loi No 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, telle que modifiée et complétée par la Loi No 80-008 du 18 juillet 1980*)

<sup>4</sup> In this context see Article 53 of the Land Law

<sup>5</sup> See Articles 57 and 61 of the Land Law

<sup>6</sup> See Article 58 of the Land Law

<sup>7</sup> In this context see Article 34 of the Constitution

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## Issues with community forestry and challenges

Over and above the enthusiasm generated by the adoption of the Decree of 2 August 2014 pertaining to community forestry (perceived as a collection of procedures, methods and practices relating to the management of forests by local communities for socio-economic development purposes), the issues and challenges linked to this process warrant particular attention by all the stakeholders as well as the adoption of a clear, specific and realistic roadmap in order to achieve effective implementation.

In the DRC, the success of this model of community forest management will, out of necessity, be achieved through improvement of the legal and regulatory framework relating to land ownership as well as through institutional capacity building for those institutions or departments with responsibility for forest administration. The inadequacy of local communities' technical capacity to produce a simple management plan (SMP), for example, combined with the weak operational capacity of the local Forest Authority, has often served as the pretext for justifying the failure of previous experiences of community forestry in the Congo Basin. In the DRC, the model for community forestry, as intended under the Ministerial Order of 9 February 2016<sup>8</sup>, should, therefore, be based as much on strategic choices as the failures of the past.

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8 Ministerial Order No 025/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 9 February 2016 (*Arrêté ministériel n° 025/CAB/MIN/ECN-DD/CJ/00/RBM/2016 du 09 février 2016 portant dispositions spécifiques relatives à la gestion et à l'exploitation de la concession forestière des communautés locales*)

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**Rights and legality in the REDD+ and FLEGT VPA processes**

The REDD+ process, as with the VPAs, needs proper legal reforms capable of improving the governance and respect of IPs' and LCs' customary land rights. Studies carried out within the framework of the REDD+ readiness proposals have identified a misdiagnosis of the drivers of deforestation, wrongly accusing local communities of being the main perpetrators or agents of deforestation. Although slash and burn agriculture does exist in rural areas, it does not necessarily mean that this is the main driver of deforestation in the DRC.

This trend of making scapegoats of the communities, if not corrected, could result in legitimisation of the growing marginalisation of and the continuing human rights violations against IPs and LCs within REDD+ initiatives, as well as in the VPAs. If the definition of legality, in the context of the VPAs' legality matrices, can be understood to mean complying with current legislation, then the legislation should be adjusted according to the relevant provisions of international law and the international treaties ratified by the Congolese Government. The NC-REDD national framework strategy has incorporated social and environmental safeguards into REDD+. These should now be tested in the field, in particular within the Mai-Ndombe Emissions Reduction Program.

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### Participation, consultation and FPIC

Under Congolese legislation, *‘Every individual has the right to participate in the decision-making process with regard to the environment and the management of natural resources’*<sup>9</sup>. In practice, however, the communities’ right to participation is limited to passively receiving information about a given project, whereas they should be playing a far more active role. The main concern is the lack of consultation of the communities in the process of granting logging concessions or mining titles. As a consequence, these titles are allocated on communities’ land or on the areas in which they carry out customary activities, without their free, prior and informed consent (FPIC). Consultation mechanisms are virtually non-existent in the DRC and FPIC has not yet been fully integrated into the legal system. Nevertheless, CN-REDD has taken the encouraging step of undertaking the standardisation of all the FPIC initiatives at national level by producing a single, standardised methodological guide to better integrate FPIC within REDD+. The next stage will be to carry out consultations in an experimental phase in order to test the guide in the field by incorporating not only IPs’ and LCs’ concerns, but also those of all other actors relevant to or involved with the REDD+ process.

*“Every individual has the right to participate in the decision-making process with regard to the environment and the management of natural resources”*

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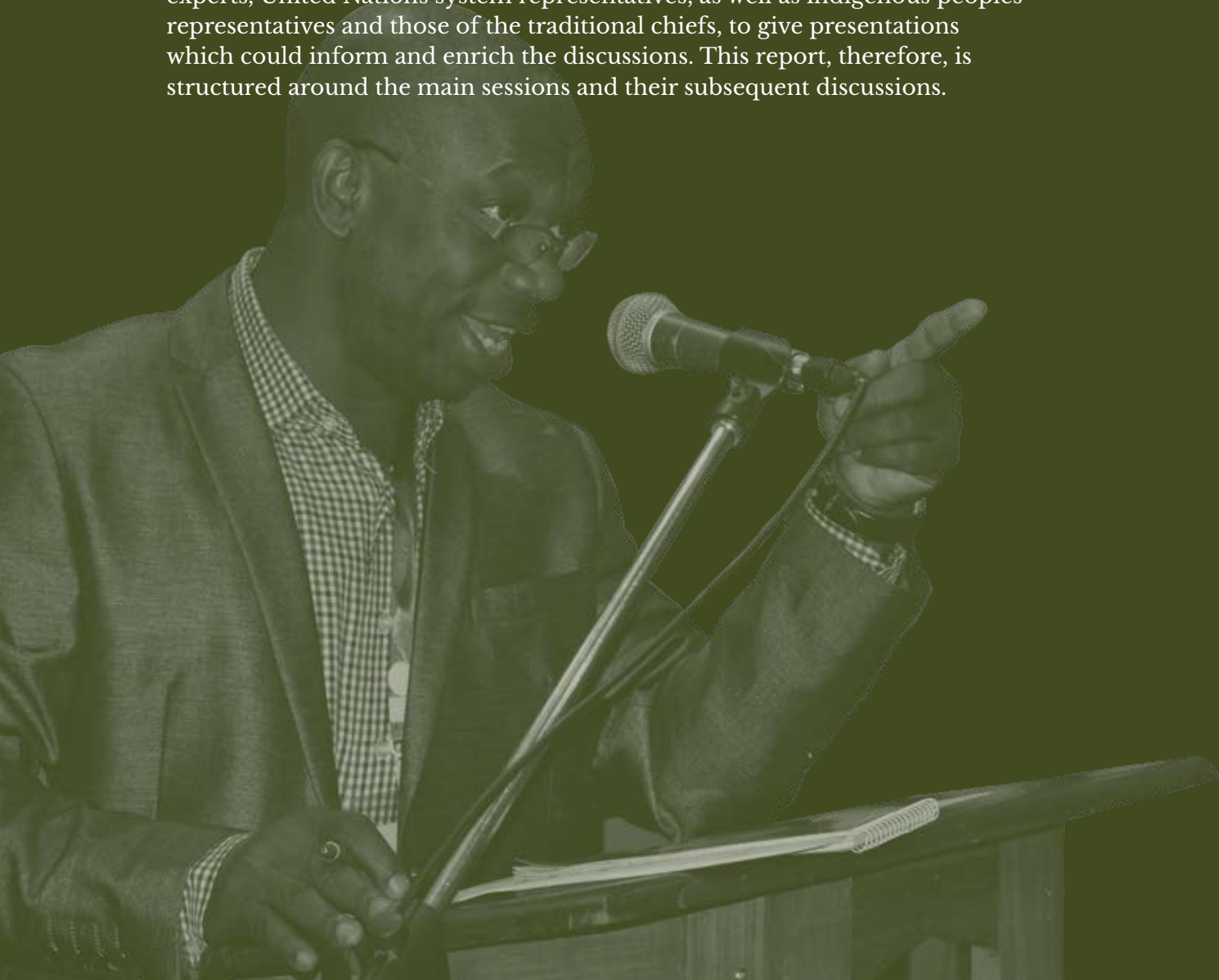
9 « Toute personne a le droit de participer au processus de prise de décision en matière d’environnement et de gestion des ressources naturelles » In this context see Article 9 of the Law of 9 July 2011. (La Loi du 9 juillet 2011 portant principes fondamentaux relatifs à la protection de l’environnement)

# Part I

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## Land reform and opportunities for strengthening communities' rights

The information-sharing seminar on the land reform process and the protection of communities' rights in the implementation of forest policies and climate initiatives in the DRC comprised a number of discussion panels with three to four speakers, followed by exchanges, discussions or group work sessions. The seminar organisers invited members of the National Assembly, several governmental agencies, civil society organisations, international NGOs, national experts, United Nations system representatives, as well as indigenous peoples' representatives and those of the traditional chiefs, to give presentations which could inform and enrich the discussions. This report, therefore, is structured around the main sessions and their subsequent discussions.



## Session 1.

# Current status of the reform process in the DRC

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During this session there was discussion on the issues and challenges, as well as the prospects of land reform. Particular emphasis was placed on the implications for the reform process as a result of Decree No 15/021 of 9 December 2015 amending and supplementing Decree No 13/016 of 31 May 2013 on the creation, organisation and functioning of the National Commission on Land Reform (CONAREF).

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## Presentations

### I.1 The issues, challenges and prospects for land reform, the main pillars of the process and proposal for a roadmap for the next steps

*Maître Pierre Maduka, Acting Permanent Secretary of CONAREF*

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#### Reform issues

- Lack of a national land ownership policy
- 40-year-old Land Law (1973) inappropriate for current national, regional and international issues
- National context characterised by socio-economic disparities and gaps in the legal system
- Continued land disputes in rural and urban areas
- Land reform necessary in order to reduce, if not eradicate, land disputes
- Land reform necessary in order to better protect both private persons' and legal persons' land rights, with particular attention to vulnerable and marginalised groups, including IPs, LCs, women, children, etc.
- Land reform necessary in order to stimulate commitment to respecting environmental and social sustainability and to increase Government income

#### Challenges

- Unsuitability of the present land registration system for communities living in rural areas (inaccessibility because of cost, conflict between the law and customary practice in rural areas)
- Nationalisation of the land, increased vulnerability of individuals' rights and ambiguity over local communities' land tenure status
- Local communities' land rights are neither documented nor archived
- Legal pluralism and an uneasy relationship between the law and customary practice
- Competition between Government land registration authorities and customary authorities over land allocation
- Institutional disputes linked to the lack of consultation between ministries involved with land management
- Lack of financial support to carry through reform
- Failure to capitalise on national and international experience



**Opportunities and prospects**

- Clearly stated political will to further the land reform process
- Land reform has been an integral part of the Government Programme between 2011 and 2015
- A consensual roadmap for reform was adopted in July 2012 with the support of development partners, the expected major results being a new national land policy and revision of the current Land Law
- Land reform is focused on six major themes or pillars, which constitute a genuine opportunity to secure communities' customary land rights: (i) clarification, recognition and securing of local communities' land rights; (ii) institutional support and capacity building; (iii) governance, information and administration of land ownership; (iv) land tenure conflict management; (v) cross-cutting aspects and emerging issues; (vi) land policy and legislation

**Next steps and activities to be undertaken by CONAREF**

CONAREF's technical unit plans to provide a twice-yearly programme starting in January 2016.

- Meeting of the Technical and Financial Partners Committee in December 2015
- Meeting of the Pilot Committee on 30 March 2016
- First activity: create and set up the provincial committees as laid down in the decrees
- Hold national consultations at the local, provincial and national levels
- Create a Working Group with the mandate of producing draft land legislation in conformity with international human rights standards

*“80% of the cases pending before the domestic courts relate to land”*

Maitre Pierre Maduka

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## I.2. Civil society support for the relaunch of the land reform process

Joseph Bobia Bonkaw, National Coordinator of Réseau Ressources Naturelles (RRN) and member of the Cadre de concertation de la société civile pour la réforme foncière en RDC (CACO)

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### Challenges

- A reform process that never really got underway despite Decree No 13/016 of 31 May 2013 establishing CONAREF, as well as validation of the programme document
- A reform process that stalled following the changes within the Office of the Ministry of Land Affairs at the end of 2014
- With an insignificant number of civil society representatives in the CONAREF Pilot Committee, civil society is in no position to influence the land reform process in a positive way
- Relaunching the land reform process and including IPs' and LCs' rights

### Opportunities and prospects

- Civil society's continued commitment to land reform, principally through the organisation of national workshops as well as undertaking research projects, such as the DRC land tenure baseline study
- National workshops held annually since 2013 to review the process and to validate the studies carried out by the NGO members of CACO (studies on land rights in Katanga, community forestry, and the community's land rights project)
- Publication of the tenure baseline study (TBS) (October 2015)
- Publication of the report *In Search of Land Laws that Protect Forest Peoples in the DRC* (October 2014)
- Land tenure in Inongo territory and community participation in the WWF/ERA concession in the province of Mai-Ndombe (January 2016)
- Civil society participation through the GTCRR in the discussions on the REDD+ investment plan
- Establishment of CONAREF provincial coordinators in the 26 provinces with the participation of all the stakeholders

### I.3. The decree of 9 December 2015 and the challenges to participation and dialogue between the various stakeholders in the land reform process

*Simplice T. Mutombo, A. Rubuz, Secrétaire exécutif de la Confédération nationale des producteurs agricoles du Congo (CONAPAC)*

CONAPAC's mission, at both national and international level, is to represent and defend the interests of Congolese agricultural producers to enable their active participation in society and to help them to thrive.

#### Challenges

- Customary practices relating to access to the land vary according to different local traditions
- The stakeholders in the land reform process all have different approaches to/ perceptions of the issue of gaining access to land and security of land tenure
- The new decree (No 15/021 of 9/12/2015) on the organisation and operation of CONAREF, which amended the previous Decree (No 13/016 of 31/05/2013), was adopted without consideration of the principles of inclusion and participation needed to guarantee that all the stakeholders' recommendations are taken into consideration
- The new decree weakens CONAREF's independence in that the Pilot Committee, previously composed of all the stakeholders, has developed into a technical unit solely comprising ministers
- The deliberate intention of the Ministry of Land Affairs (MAF) to change the Pilot Committee into a political rather than a technical body
- Suspension of CONAREF's activities

#### Opportunities and prospects

- Stated political will and openness of MAF to dialogue with civil society
- MAF's will to entrust the Permanent Secretariat and provincial coordination to the civil society organisation, CACO
- CACO's members have reiterated their commitment to prioritise dialogue with MAF

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## I.4. Development of partners' support for the land reform process in the DRC

*Mr Adam Kandine, Land policy expert (UN-Habitat)*

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The overall aim of UN-Habitat, through its commitment to land reform, is to support land governance for peace, stability and economic recovery.

### Challenges

- Blocking of and uncertainty over land reform, linked to the lack of consensus between the different stakeholders in the process
- Inability of the Land Law of 20 June 1973 to contend with the new socio-economic dynamics associated with the demands of development and poverty alleviation

### Opportunities and prospects

- Mapping of development partners' interventions, at national and provincial level, in the governance and prevention of land disputes
- Support of the land reform process, a major issue now falling within the framework of inter-donor collaboration to learn by sharing experiences in the field
- Provide support to civil society through GLTN and RRI to participate in the land reform process
- Review of the land sector by the World Bank, UN-Habitat and UNDP
- Provide two evaluation workshops



## I.5. Discussions

At the end of this initial session, the delegates' questions and discussions concentrated on reform priorities, as well as IPs' and LCs' integration in the reform process and their human rights being taken into account. The delegates also voiced their disapproval of two land reform evaluation workshops having been organised with the financial support of the development partners, in particular UN-Habitat, but without, however, involving CACO. In response to the civil society delegates' complaints, the MAF representative replied that CONAREF remained a multi-actor platform and that the Pilot Committee's conversion to a political body was in response to the need for revitalisation within CONAREF by involving policy makers from across the ministries, whose remits with regard to land ownership were cross-disciplinary. In addition, the delegates drew attention to the need for land use planning (LUP) to be taken into consideration as part of the current reform process, and even suggested coupling land reform with LUP. The delegates then stated that it was essential to complete the participatory zoning and micro-zoning process in order to determine how the land should be allocated.

## **Session II**

# **Guaranteeing rights in community forestry**

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During the second session, the successive presenters provided an update and review of community forestry: its background, its development in the DRC, the issues, the challenges, and the prospects for forest peoples' rights being taken into consideration in the implementation of community forestry initiatives.

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### **II.1. Regulation of community forestry in the DRC: issues, challenges and prospects**

*Victor Vundu dia Massamba, Legal Unit, Ministry of the Environment, Nature Conservation and Sustainable Development*

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#### **Issues**

Community forestry is understood as:

- A form of forest management, entrusted to the local peoples, for their own benefit (A. Mpoyi)
- A set of procedures, methods and practices relating to the management of forests by the local communities for their socio-economic development (Article 2 (7) of the Ministerial Order of 9 February 2016)

#### **Challenges**

- Lack of technical capacity within local communities
- Lack of legal capacity within local communities, who generally call on certain stakeholders (designated representatives) to deal with their forest concessions or a higher organisation (non-profit organisation, cooperative society, etc.) to arrange the management and cultivation
- Differences of opinion between the Forest Administration and the other stakeholders about the targets to be set for community forestry bearing in mind the issues relating to the socio-economic development of the local communities
- The dynamics of increased decentralisation caused by the growing number of provinces, which is not conducive to adoption of the regulations either for the authorities charged with this task, or the local communities themselves

**Opportunities and prospects**

Community forestry involves a series of actions, practices and benefits, such as:

- The system for forest access by the local communities and other local actors (usage rights, permits, etc.)
- Revenue-sharing from logging (socio-economic clause, retrocession of forest revenue)
- All forms of forest use by the local communities (hunting, fishing, agriculture, livestock farming, ecotourism, carbon credits related to carbon sequestration, etc.)
- The consultation and participation of local communities in the decision-making process relating to local forests

Furthermore, community forestry offers other opportunities to:

- Determine the basis on which the legal framework for community forestry will operate
- Regulate the management and harvesting of non-timber forest products (NTFPs) on which local communities as well as indigenous peoples are highly dependent
- Provide the provincial authorities with a template for actions to take when allocating forest concessions to local communities, and thereby raise their awareness of the issues and provide training
- Build the technical capacity of the local Forest Administrations to deal appropriately with the administrative management of local communities' forest concessions

## II.2. Community forestry as a means of safeguarding customary areas and poverty reduction: the case of Tshiefu in Kasai Central Province

Patrick Saïdi, National Coordinator of the *Dynamique des Groupes des Peuples Autochtones (DGPA)*

### Presentation

- Since 2015, FPP and DGPA have been collaborating on the implementation of the project '*Promoting the rights and food security of forest peoples and good governance in forest and climate policy: from principles to practice*' (*Promotion des droits et de la sécurité alimentaire des peuples de la forêt et bonne gouvernance dans les politiques forestières et climatiques : des principes à la pratique*) funded by the European Union (EU)
- The activities under this project were carried out in the provinces of Kasai Central and Lomami, more specifically in the IP communities of Tshiefu and Evungu 2
- This zone comprises four Pygmy communities, living in an area of 108,367 ha
- An estimated total population of 9,500, of which 85% are IPs
- An area rich in biodiversity: wildlife (leopards, elephants, primates, birds, snakes, etc.) and flora (Afromosia, Sipo, Kosipo, etc.)

### Challenges

- Lack of security of land tenure for indigenous communities despite a title to land acquired after the colonial period
- Potential threats to the communities from neighbouring communities, the State, or other private investors with an interest in the mining sector
- An existing land title, in the name of the MIBA company, on the same land
- Multiple titles for the same land (mining as well as logging concessions)
- Poverty due to the communities' inadequate/low income
- Difficult access to the area because of the poor state of the road
- Non-existence of a specific law relevant to IPs within the Congolese law system (the draft law is still awaiting examination by the National Assembly)
- Forest zoning and LUP are two processes that are essential yet unfinished
- IPs' inclusion and effective participation in the land reform process



**Opportunities and prospects**

- Request for and granting of local community forest concessions (LCFCs) as a solution to securing customary lands acquired since the colonial era
- Implementation of the SMP and the local management structures
- Conservation of biological diversity by means of sustainable activities, including reforestation initiatives (300 ha), of benefit to the entire community
- Payment for environmental services, such as the REDD+ mechanism
- Poverty reduction through development of ecotourism projects over an area of approximately 49,000 ha
- Capacity building for IPs in non-timber forest product management and reduced-impact logging

### II.3. NTFP and logging regulations: potential gains and threats

*Jean-Marie Bolika, Project Manager, WWF*

#### Issues

Under the Forest Code:

- A local community may, on request, by means of a forest concession obtain part or all of the protected forests legally owned according to custom (Article 22)
- Logging of local communities' forests is carried out under the supervision and technical inspection of the local Forest Administration (Article 111)
- In addition to usage rights, LCs have the right to log their forests. This can be carried out by themselves or by contracting private artisanal operators under written agreement (Article 112)
- Private artisanal loggers may only operate in local communities' forests with an approval certificate issued by the Governor of the province, on the proposal of the local Forest Administration (Article 112)

Legal basis of community forestry:

- Decree No 14/018 of 2 August 2014 on the conditions for assigning forestry concessions to local communities
- Ministerial Order No 025/2016 of 9 February 2016 establishing the specific provisions for the management and logging of local communities' forestry concessions

#### Challenges

- Weak capacity within the local Forest Administration to develop SMPs and monitor logging activities
- Risk of increase in illegal activities
- Potential conflict between different government bodies
- Weak technical and management capacity of the Decentralized Territorial Entities (DTE) to manage the inventory, production and implementation of the operational plan
- Method of distributing revenue is unclear
- No agreement finalised between loggers and local communities
- Weak governance and lack of capacity for forest monitoring
- Unfair competition with industrial operators

**Opportunities and prospects**

- Possibility for a local community seeking an LCFC to form a non-profit organisation (Article 20, LCFC Decree and Decree 04, and Ministerial Order 025/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 9 February 2016)
- LCFCs foster the creation of a transparent governance framework, particularly through the establishment of management bodies such as community assemblies, local management committees, local monitoring committees, and committees of wise persons (le Comité des sages), Article 5, Ministerial Order 025/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 9 February 2016
- SMPs allow for a reasonable chance of sustainability within LCFCs
- Possibility for communities themselves to undertake logging on their LCFCs or to use a third party provided they sign a contract (Article 34)
- Timber harvesting is subject to a community permit being issued by the Sector Chief/Chiefdom (Article 41)
- Use of light equipment for logging the LCFC (Article 47)
- A large area – 50,000 ha – is provided for under the Ministerial Order on the LCFC (Article 18)
- Multi-functional character (PES, NTFPs, wildlife, etc.)
- Possibility of creating numerous concessions
- Revision of the timber regulations currently in progress
- Separation between logging and development
- Development of a national forest policy

## II.4. Pilot community forest project in North Kivu: good practices and lessons learned

Maurice Nsase (FODI)

FODI (*Forêt pour le développement intégral*) is a Congolese environmental civil society organisation which has been active in community forestry since 2010 in North Kivu province, Walikale territory. FODI is a member of Réseau CREF (*le Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers*).

### Experimental sites

Four contiguous forests belonging to the Basengele, Banisamasi, Bananzigha and Bafuna-Bakano communities in the Bakano sector.

### Activities carried out

- Environmental education sessions for LCs and IPs in every village covered by the project
- Participatory mapping of LCs' and IPs' land use and rights
- Multi-resource inventory
- Census of chimpanzees and gorillas
- Studies on socio-economic and environmental conditions
- Participatory development of the management plan structured around three core components: (1) the operational component; (2) the REDD component; and (3) the institutional component
- Facilitation and establishment of the community organisations which will manage LCFCs
- Conflict resolution: delegates from the Banakinkalo and Bafuna clans signed a memorandum of agreement on 4 February 2016 ending the forest/land ownership dispute that had run for over 10 years

### Good practices

- The communities themselves are monitoring the use of resources in the LCFCs. In particular, this has led in to the confiscation of game caught by poachers hunting without prior authorisation from the LCFC managers (the case of Bananzigha)
- Promoting sustainable fishing practices. For example, the communities no longer use poisonous plants for fishing
- Two disputing clans have agreed never to sell their land as from now on it belongs to the entire community
- Artisanal loggers seeking to carry out logging in the part of the forest targeted for community forestry are, from time to time, sent back by the Administrator or Head of the Sector to obtain prior consent from the management body of the pilot LCFC site

**Lessons learnt**

- Community forestry offers an opportunity for the peaceful resolution of land ownership or forest disputes between two or more neighbouring communities
- Collective adoption of community forestry is a gradual process, requiring constant awareness-raising among those members of the community who are sceptical or uncertain about the process
- Community forestry is generating real hope and tremendous enthusiasm amongst IPs and LCs for the safeguarding of their forests and land as well as the improvement of their social conditions and socio-economic rights
- Women are still victims of prejudice and under the sway of custom
- Field trips by partners or State services strengthen the communities' faith in the community forestry process

**Opportunities and prospects**

- Proceed with setting up sub-offices of the Community Forestry Division at the provincial, territorial and local levels
- Using a consensual approach produce a national guide to the development of the Simple Management Plan
- Initiate community-based REDD+ pilot projects in the LCFCs to inform and enrich the current development of the various legal texts governing community forestry in the DRC

## II.5. Signing of the Ministerial order which governs specific provisions for the management and operation of local communities' forest concessions: a positive step towards the local development and well-being of local communities and indigenous peoples

*Nadia Mbanzidi (FPP)*

### Challenges

- Safeguarding of customary land ownership
- A community deprived of its land is a community deprived of its livelihood
- Combining traditional forms of management with a far more modern approach
- Illegal logging and failure to respect the principles of transparency, equality and equity in forest governance

### Opportunities and prospects

Community forestry makes it possible to:

- Receive income/profits from management of the LCFCs
- Achieve the objectives of sustainable development, as well as sustainable biodiversity use, benefit-sharing and participation by IPs and LCs
- Promote ecological and environmental services, ecotourism, the pharmacopoeia, REDD community projects and carbon sequestration
- Ensure IPs' and LC's self-determination, as well as their right to free choice of economic, social and cultural development, as provided for in Article 1 of the International Covenant on Civil and Political Rights, ratified by the DRC on 1 November 1976
- Ensure economic development as well as nature conservation (Chapter 7 of Ministerial Order No 025)
- Strengthen the autonomy of the communities by setting up accountable institutions at the local level for the use and management of natural resources, allowing the Management Committee, amongst other things, to make appropriate decisions about natural resources. This applies in particular to the Community Development Fund, provided for in Articles 62, 63 and 64 of Ministerial Order No 025



## II. 6. Discussions

One of the main recommendations to emerge from the discussions is the need for all the stakeholders in community forestry to produce a (consensual) national guide for developing the SMP. From the participants' discussions it became clear that, given the communities' lack of technical capacity, the SMP might appear too abstract to them. A national development guide could serve as a capacity-building reference tool for the communities when devising and implementing the SMP on the ground. The delegates also expressed their concerns about the risk of multiple land titles (mining and logging concessions), which constitute an obstruction to the development of community forestry. This is the case, for example, with MIBA in Kasai Central, who hold title to the land claimed by the indigenous communities for community forestry. The delegates also raised the question of the planned creation of provincial sub-offices, which they considered essential to effective community forestry. This is all the more important in the context of decentralisation, as it could resolve the problem of a competent authority to arbitrate/settle forest-related disputes. With regard to the strategies under consideration, the delegates requested that all existing LCFC initiatives be identified, as well as actively starting some of the pilot community forestry projects. These would then serve as textbook cases or models to test the current regulatory framework and from which to learn lessons. Lastly, the delegates suggested that advocacy for effective implementation of the international conventions ratified by the DRC would serve to promote the rights of IPs and LCs in the land reform process, as well as in community forestry.

## Session III.

# Communities' land rights in the DRC

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This session focused on the issue of customary land ownership in the DRC. The various presentations dealt with the current legal status of customary land rights in the DRC, specific case studies of the threats associated with IPs' and LCs' land ownership, and traditional examples or models of safeguarding customary areas. The aim was to draw up concrete proposals for incorporating the promotion and protection of customary land rights and the securing of IPs' and LCs' traditional forests into the reform agenda

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### III.1. Customary land tenure in the DRC and opportunities for reform

*Professor Alphonse Maindo (Tropenbos International)*

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#### Customary land tenure in the colonial era

- Colonial legislation was vague and imprecise in its approach to indigenous rights to the land
- The principle of *terra nullius*: the colonial system contended that there was no human presence on the land. The justification of this principle was that it served the interests, needs and ambitions of the colonial powers, who needed sufficient land and space to accomplish their mission

#### Customary land tenure post independence

- The current land tenure system is a legacy of the colonial era
- Following the example of the colonial rulers, post-independence laws dispossessed the IPs and LCs of their customary rights. Indeed, formal (written) law transferred land ownership to the State: '*The soil is the exclusive, inalienable and imprescriptible property of the State*' (Article 53 of the 1973 Law)
- The Land tenure law of 20 July 1973, as well as the various agrarian (2011), forest (2002) and constitutional (2006) laws which followed the colonial period, remain just as equivocal about local communities' land ownership, the type of rights that members of local communities have, and the competent authority for managing this land
- The colonial licensing authorities were succeeded by the Land Offices, who had sole jurisdiction for allocating land titles within their respective districts, and who, following the example of their predecessors, readily and happily brokered (indigenous) local communities' land



### Precariousness of customary land rights

*‘The Congolese system of state ownership of land gives total discretion to the State, as owner of the land, to make available to an investor any portion of its domain.’*

Professor Alphonse Maindo (Tropenbos International)

- Customary land rights in the DRC are vulnerable. They enjoy no probative legal recognition. They do not have the same value as a land title granted by the State
- The majority of IPs and LCs have no protection of their land rights
- The compensation provided under the law in the event of expropriation is inadequate
- The multiplicity of official and informal bodies within the decentralised land management system makes it impossible to standardise practices
- The proliferation of rural, interpersonal and collective land disputes attest, furthermore, to the failure of the social institutions and mechanisms that should be guaranteeing social cohesion and protecting customary tenure
- Recent legislative and/or Government interventions in agriculture and forestry show that preferential option has been given to agro-industrial logging and forest concessions, to the detriment of forest communities who, however, make up almost three-quarters of the Congolese population

### The land title allocation process’ inability to deal with the realities presented by the communities

- Under Article 56 of the Law of 20 July 1973, the State’s private domain comprises all land which is not allocated for a use or public service, including IPs’ and LCs’ traditional lands
- Enjoyment rights can, however, be established on land belonging to the State’s private domain by obtaining a concession by means of a registration certificate for the title granted (Article 219)
- The registration certificate is an important document with a stated probative value: *‘the registration certificate is evidence of the concession, real use and, potentially, the ownership rights recognised therein. These rights are unassailable (. . .)’* (Article 227)
- However, in practice, the process to obtain land title or a registration certificate is lengthy and expensive
- Land title is an individual title whereas indigenous peoples, including local communities, govern their land according to customary law
- Only those customary laws which have been converted into land titles are recognised
- Furthermore, obtaining a land title is subject to the condition of developing the land, which is incompatible with the lifestyles of IPs (Articles 58, 153, et seq.)

*“The Congolese system of state ownership of land gives total discretion to the State, as owner of the land, to make available to an investor any portion of its domain”*

Professor Alphonse Maindo (Tropenbos International)

### Gaps and inconsistencies in the legal framework

- Article 219 of the Land Law of 20 July 1973 provides that *'the only means of legally establishing the right of enjoyment of land is by a registration certificate for the title granted by the State'*
- However, Article 19 of the law on fundamental principles relating to agriculture demonstrates the gaps and inconsistencies as well as contradictions in the current land tenure system: *'the collective or individual exercising of customary land rights is not subject to a registration certificate'*

### Legal pluralism

- Despite having been assigned to the State's private domain, local communities' land continues to be governed by local custom
- In practice, enjoyment rights over LCs' land are governed by customary law
- Article 388 of the Land Law of 1973 stipulates that: *'land occupied by local communities is that which the communities live on, cultivate and work in any way – individually or collectively – in accordance with local custom and practice'*
- Article 36 of the Forest Code relating to forest usage rights states that *'the forest usage rights of peoples living within or in proximity to the forest estate are those that result from local customs and traditions insofar as these are not contrary to law and public order'*

### Weaknesses in community forestry regulations

- The decree establishing the terms for allocating LCFCs has studiously avoided organising the legal system to accommodate local communities' forests, merely choosing to define the conditions and procedures for acquisition of a forest concession by a local community
- The decree has established a preferential option which clearly favours forest concessions, thereby converting an LCFC into a permanent production forest
- One provision which has not been implemented: in the absence of a forest concession, the local community may only extract limited – food-related – benefits from its forest. This implies that only a concession can really open the door to logging, despite **Article 112 of the Forest Code** which provides that: *'In addition to usage rights, the local communities have the right to carry out logging in their forests'*

### Solutions or recommendations

- Establish a legal framework which takes account of the land rights conferred by custom
- Develop a national land policy
- Develop a new land law clarifying the conditions for access to the land by IPs and LCs and which defines the rights applying to the land over which they have usage, and guarantees the titles by virtue of which they may enjoy these usage rights
- Incorporate into the new land law a clause specifying the **traditional occupation and use of the land** by IPs and LCs as a **condition for access to the property**
- The land and forest rights derived from custom must be clearly stated and recognised as a **right of ownership**
- Clarify the legal status of IPs and LCs by granting them legal personality
- Clearly state that equal access to the land and forest resources is granted to men and women, LCs, IPs, as well as other vulnerable groups
- The methods for determining customary ownership should be simplified, and appropriate and secure titles (including registration certificates) should be issued to forest communities
- Organise a system for registering rights. This should entail recording rights in land registers or at the land registry (*le cadastre*)
- Participatory mapping, together with land surveys, could be particularly constructive in the rights registration process
- Plan a mechanism for local monitoring of these operations. A joint structure including representatives of the traditional authority and interested customary rights holders, Land Administration representatives, and civil society organisations could be established for each operation and could assess the value of the communities' and individuals' claims in the course of these procedures

## III.2. Communities' land rights and forced evictions: the case of Batwa families evicted from the Kahuzi-Biega National Park (KBNP)

*Pacifique Mukumba (CAMV)*

### Background

- Forced evictions are not exclusive to the DRC
- There have been expulsions of indigenous peoples from their ancestral lands for at least two centuries (International Union for Conservation of Nature (IUCN), 2005)
- In England in the 11th century, the 'new forest', the first royal hunting ground, forced 2,000 people to be relocated in the name of the sport of kings
- The Shoshones of the USA's Yellowstone National Park were evicted in 1877 following a skirmish in which 300 people lost their lives
- Almost 600,000 tribal peoples have been relocated by protected area managers in India (Society for Participatory Research in Asia (PRIA), 1993)
- 30,000 indigenous peoples have been evicted from the Kibale Forest National Park and wildlife corridor in Uganda
- Approximately 6,000 Twa have been forcibly evicted from their ancestral lands in the KBNP
- In the DRC, the forced eviction of indigenous peoples from their ancestral lands for the creation of national parks began during the colonial era with the Royal Decree of 1925 which created the Virunga National Park
- Following independence, two further parks were created: the Maiko National Park in 1970 and the KBNP in 1975

### Forced evictions in the KBNP and their impact on the everyday life of the Batwa communities

- The KBNP is a forest reserve which was created in 1937 and converted to a National Park in 1975, under Order No 70/318 du 30/11/1975
- With an area of 3,361,760 hectares, it extends from the Congo River basin near Itebero-Utu to the western border, north-east of Bukavu
- The communities evicted from the KBNP are in a very precarious situation. Nowadays they are condemned to a life on the move, exacerbated by the lack of security around places of shelter
- The leaders of the evicted communities have lost both their influence and their legitimacy within the communities they were supposed to protect
- Living conditions for the evicted families are difficult from every point of view, in particular housing, health, economic activity and education
- The families are at risk from epidemics because of their lack of access to good quality health facilities
- Their main income-generating activities consist essentially of gathering NTFPs (caterpillars and mushrooms), as well as subsistence farming, the produce of which is sold at derisory prices to their host communities

### **The difficulty of reconciling national conservation requirements with respect for the rights of IPs and LCs**

- In 2008, a dispute arose between the IPs evicted from the KBNP and the park management, in this case the Congolese Nature Conservation Institute (ICCN). A case was brought to court by the evicted communities in December 2008 and is now pending at the Supreme Court (CSJ)
- The KBNP co-management policy is now called into question
- A General Management Plan for the KBNP (2009–2019) recognises a number of challenges facing the park. In particular, these include:
  - The relocation/evacuation of indigenous peoples without compensation
  - Inadequate benefit-sharing between the KBNP and the communities
  - The growing impoverishment of the communities
  - The extension of the park without the communities' prior consultation and compensation
  - The lack of a national community conservation policy
  - The lack of delimitation of the park

### **Dialogue**

- From 25 September to 4 October 2014, at the specific request of some of the indigenous Pygmy leaders evicted from the KBNP, CAMV and FPP facilitated a direct dialogue which brought together the communities, IPs, provincial government delegates, members of the government, the ICCN and the managers of the KBNP
- Launch of the campaign for open discussion to seek FPIC of all the IPs neighbouring the KBNP and to determine the methodology for dialogue with all the stakeholders in the process
- As a result of this dialogue a roadmap was adopted with the following recommendations:
  - Guarantee access for IPs to land, health, education, and work, as well as resettlement of the IPs evicted from the KBNP
  - Ensure that the benefits from the park management are shared, and seek alternatives for the evicted communities to their access to the park's natural resources

### III.3. The contribution made by ICCAs to securing indigenous peoples' and local communities' customary areas

*Diel Mochire (PIDP)*

#### Definitions

- Indigenous and Community Conserved Areas (ICCAs) are '*. . . natural and modified ecosystems incorporating significant biodiversity, ecological services and cultural values voluntarily conserved by indigenous peoples and local communities through customary laws or other effective means . . .*'
- ICCAs constitute the oldest form of governance of protected areas
- ICCAs are very often traditional ceremonial sites, sites dedicated to the memory of ancestors, sacred sites (such as sacred forests), sites for the transmission of knowledge to future generations (initiation, rites of passage, etc.), and natural resource conservation
- ICCAs have three defining characteristics:
  1. A specific relationship between an indigenous people or local community and a territory, area and/or its natural resources (a cultural and/or subsistence-related link)
  2. The community is the decision-maker (de jure or de facto) as regards management of the territory, zone or its resources
  3. The management decisions and the efforts of the community result in conservation of the territory and resources (even if the management is not initially intended for biodiversity, but rather for spiritual purposes, security, and also sustainable use of resources, etc.)

#### Challenges linked to protected areas in the DRC

- In the DRC protected areas have been established on the lands traditionally maintained by IPs and LCs
- Access to the resources within protected areas (usage rights) is forbidden to IPs and LCs even in areas located outside the parks
- IPs and LCs are constantly marginalised from the governance and management of protected areas
- Excluding IPs and LCs from the management of protected areas leads to conflicts of coexistence with the management authorities, in particular the ICCN
- IPs' traditional skills and knowledge are still unrecognised, ignored and excluded from the methods used for management and governance of protected areas

### **Opportunities offered by the project for legal recognition of ICCAs in the DRC**

Legal recognition of ICCAs will make it possible to:

1. Bring peace to and improve the effectiveness of the protected areas that are currently conflict-prone, and broaden the forms of governance of protected areas
2. Fulfil and undertake the international commitments made by the DRC under the Convention on Biological Diversity (CBD)
3. Increase the area covered by and the management efficiency of the country's protected areas in accordance with Nos. 11 and 18 of the CBD's Aichi Biodiversity Targets
4. Strengthen indigenous peoples' traditional rights over their ancestral lands and affirm their cultural identity in order to ensure good conservation of nature

### **Opportunities and prospects**

- Integration of ICCAs into the national strategy for community conservation
- Take ICCAs into account in the Land Use Plan for protected areas and allow access by IPs into ICCAs located within protected areas
- Integrate ICCAs in the DRC's National Biodiversity Strategy
- Integrate ICCAs in the preparations/ approaches for community forestry
- Locating and mapping of ICCAs in other parts of the DRC
- Mobilise the stakeholders in the process (Government, civil society, IPs and LCs, development partners, etc.) to give recognition to ICCAs
- Preparation of the 2015–2017 strategic plan, and follow-up of the 2015 annual operational plan



### III. 4. Discussions

The delegates were concerned about the precarious situation of customary land rights in the DRC. They also expressed concern about the restrictions and prohibitions of access to the KBNP experienced by the indigenous communities. In addition, the delegates had a particular interest in the ICCAs, which they perceived as a new way of managing and securing indigenous lands.



## Session IV.

# Protection of communities' rights in international and regional law

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### IV.1. Communities' land rights in international human rights instruments: recognition and mechanism for implementation

M. Adam Kandine (Land policy expert (UN-Habitat))

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#### Land rights in the Universal Declaration of Human Rights (UDHR) of 1948

- Land rights are not provided for under human rights but they are essential to their implementation (Article 25: right to food, and to housing)
- The right to land is the most emblematic element of the right to property: *'Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property'* (Article 17)

*“Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property”*

#### Land rights in the ILO Convention

- The ILO Convention makes land rights a fundamental tool for the achievement of progress and equity within human societies by stating that the measures required to improve the lives of farmers must include, amongst others, the respect of customary land rights
- The Convention states that *'the rights of the peoples concerned to the natural resources pertaining to their lands (. . .) [also] include the right of these peoples to participate in the use, management and conservation of these resources'* (article 15(1))
- Seven of the 44 articles of this convention relate directly to the land
- The Convention establishes the special relationship of indigenous peoples with their land, stating that the *'rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised'* (article 14(1))
- The Convention requires States to adopt special protective measures in favour of indigenous peoples, and to provide guarantees against the relocation of indigenous peoples away from their traditional territory, with procedural safeguards
- The Convention requires States to adopt adequate *'procedures within the national legal system to resolve land claims by the peoples concerned'* (article 14(3))

### Land rights in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

- The UNDRIP affirms the need to recognise the collective rights of indigenous peoples in order to allow them the enjoyment of their fundamental rights
- It reiterates that indigenous peoples' rights are, by definition, collective rights
- It states, furthermore, that '*Indigenous peoples shall not be forcibly removed from their lands or territories (. . .) without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return*' (article 10).
- The FAO adopted its policy on indigenous and tribal peoples in 2010, basing it on the United Nations Declaration on the Rights of Indigenous Peoples. It operates in areas of importance to indigenous peoples, such as food security, land rights, natural resources and biodiversity

### Inclusion of communities' land rights in the different agencies of the United Nations System

- **IFAD** (the International Fund for Agricultural Development) administers the Indigenous Peoples Assistance Faculty which makes small grants for microprojects undertaken by indigenous peoples to strengthen their culture, identity, knowledge, natural resources, intellectual property rights and their human rights
- **UN-Habitat**, the United Nations programme for human settlements, whose mandate covers the urban and rural environment, is developing tools for securing 'pro-poor' land tenure and access to land. UN-Habitat provides the actors with best practice for securing land rights and access to land. The Global Land Tool Network (GLTN) has been created by UN-Habitat in response to demand by UN Member States and local peoples throughout the world
- **GLTN's** objectives, amongst others, are to improve and develop pro-poor land management
- **The FAO** has made available to States its Voluntary Guidelines on Tenure. Its objectives are to promote responsible governance of tenure for land, fisheries and forests taking into account all forms of tenure: public, private, communal, indigenous, customary and informal

**Recommendations**

- To incorporate the content of the United Nations Declaration on the Rights of Indigenous Peoples in the DRC's land reform framework
- To build a strong social consensus driven by an equally firm commitment and political will
- Adoption of all the fundamental principles of international human rights law with a view to securing IPs' and LCs' land rights during the current reform process

*“Indigenous peoples shall not be forcibly removed from their lands or territories (. . .) without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return”*

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## IV.2. Forced evictions and forest peoples' land rights: legal safeguards in international law

Lassana Koné (Lawyer, FPP)

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### Extent and nature of forced evictions

- At times, the pursuit of development is used by States as an excuse to justify violations of communities' rights to land and resources
- Forced evictions exacerbate inequality, social conflict, segregation and 'ghettoisation', and invariably affect the poorest and the most socially and economically vulnerable sections of society, in particular women, children, minorities and indigenous peoples (Basic Principles and Guidelines on Development-based Evictions and Displacement)
- Forced evictions constitute flagrant violations of internationally recognised human rights, which include the right to adequate housing; food; water; health; education; work; security of the person and home; freedom from cruel, inhuman or degrading treatment; and freedom of movement
- Both IPs and LCs have been displaced in order to create protected areas and establish environmental standards. They have been evicted without compensation or being allocated alternative land. This is what occurred with the KBNP in 2006
- Several families are illegally living on land to which they have no rights and are constantly at risk of being evicted

### Development-based evictions include:

- Those which are frequently planned or carried out under the pretext of serving the '*public good*', in particular those associated with development or infrastructure projects (such as the construction of dams or other major industrial or energy projects, or else mining and other extractive industries)
- Land-acquisition measures for urban renewal programmes, slum rehabilitation, housing modernisation or city beautification, or other land-use planning (including for agricultural use)

### Expropriation in the public interest

- The provisions for expropriation included in the national laws of some countries grant the State the power to seize private property in the public interest, even without the owner's consent
- In the DRC, **Law No 77-001 of 22 February 1977** establishes the procedure for expropriation in the public interest
- *'Expropriation in the public interest applies to: (a) real estate; (b) real rights over immovable property, with the exclusion of mining licences and mining concessions, which are subject to special legislation; (c) claim rights for the acquisition or enjoyment of property; (d) local communities' enjoyment rights over State land; (Article 1)*
- The public interest is defined as *'of such a nature as to apply to the broadest needs of society, particularly in the spheres of the economy, security, military defence, public services, health, aesthetics, protection of natural beauty and monuments, tourism, plantations and livestock, road systems and construction including works of art' (Article 2)*
- The public interest assumes that the property taken over by the State will serve a useful purpose to all, or to a specific community (**Article 2**)

### Challenges

- In principle, government expropriation is only legal if it is in the public interest
- However, the definition of the public interest in the sense of the Law of 22 February 1977 is rather vague and somewhat restrictive
- Today, the concept of a State exercising its power of expropriation on the basis of its will is legally obsolete and inconsistent with the emerging legal standards in national, regional and international law
- Evictions should only be carried out in exceptional circumstances, in accordance with the law and in full compliance with the relevant provisions of international human rights law and international humanitarian law

### Legal restrictions

- Given their adverse impact on the rights of indigenous peoples and local communities, evictions must be fully justified
- Any eviction must be: (a) permitted by law; (b) carried out in compliance with international human rights law; (c) undertaken for the sole purpose of promoting the common interest; (d) reasonable and proportionate; (e) regulated to ensure full and equitable compensation and rehabilitation; (f) carried out in accordance with the guidelines on development-based evictions and relocations
- International law requires, therefore, that evictions only take place in exceptional circumstances: to be on grounds previously established by law; to be necessary; to be proportional to the public interest; to aim to achieve a legitimate objective in a democratic society
- Furthermore, States must then comply with three essential safeguards to ensure that the restrictions imposed by the concessions granted on indigenous or tribal territories do not deny them the means of survival as a people:
  - The State must guarantee the members of the affected community **effective participation** in all plans for development, investment, exploration or extraction on their territory
  - The State must guarantee that the community will receive a **reasonable profit** from every concession granted on their territory
  - The State must ensure that no concession be granted on a people's land and territory without a **prior environmental and social impact study** having been carried out by an independent organisation with the requisite technical expertise, under State supervision

### Opportunities and prospects

- The procedures for expropriation in the public interest need to be reviewed in the context of the current land reform process in order to prevent abuse
- They need to be reviewed to:
  - Define objective indicators for assessing the public interest
  - Guarantee a clear procedure for informing and consulting the public
  - Include the right to FPIC within the legal system

### IV.3. Forced expropriation and widespread land grabbing: the case of Bukanga Lonzo

*Maître Éric Kassongo (Lawyer at the Court of Appeal and member of the African Commission working group on extractive industries, the environment and human rights violations; Consultant to CNONGD)*

#### Presentation

- Le Conseil national des ONG de développement (CNONGD) is a network of several grassroots NGOs from all provinces in the DRC
- Since 2014, thanks to financial support from the Open Society Initiative for Southern Africa (OSISA), CNONGD has been working on a project focusing on cases of land grabbing and food security in the DRC, with special emphasis on:
  - The socio-economic impact of large-scale agricultural investments
  - Large-scale acquisition/allocation of land in the provinces
  - Analysis of procedural compliance in the land allocation process
  - The emergence of foreign multinationals, who are jeopardising natural resources management and dispossessing the IPs and LCs of their land as well as their natural resources

#### Principles

- Expropriation has similarities with legal dispossession of property
- Whether forced or not, expropriation must be legal, otherwise it equates to land grabbing
- **Land grabbing** comes down to helping yourself to something, to keeping for yourself (something that others desire)
- It is called land grabbing when natural or legal persons, private or public entities, seize a property that others claim or wish to preserve (for survival or cultural reasons)
- **Widespread land grabbing** is when agro-industrial developers seeking large areas of land appropriate IPs' and LCs' forests or traditional lands
- For IPs and LCs, the land has two crucial and social functions:
  - A life-sustaining function (hunting, gathering, fishing, traditional remedies)
  - A spiritual function around symbolic sites, sacred or initiation sites

**Trickery and intimidation as means of land grabbing at Bukanga Lonzo**

- Using false information to gain the interest of the chiefs responsible for the land
- Manipulation of the Sector Head and the territorial Administrator to influence and force the consent of the chiefs
- Using false promises of agricultural rehabilitation projects for villages
- Violation of administrative procedures
- Failure to respect the procedure laid down under Articles 181 et seq. and 193 et seq. of the Land Law on the rules governing the enquiry to be carried out prior to awarding a concession in rural areas and of the penalties
- Intimidation campaigns led by representatives of government authorities
- Signatures gained through extortion, as well as transactions with minors (the case of the village of Baringa Ngashi)
- Lack of FPIC or community participation in the process for establishing a park
- Abusive and wrongful use of the slogan *'the soil and the subsoil belong to the State'*, whereby the State can appropriate the land, even without the prior authorisation of the chiefs responsible for the land





#### IV. 4. Discussions

The disparity between international, regional and national law with regard to the different sectoral laws (in particular, the laws relating to land, mining, forestry, agriculture) was emphasised by the delegates. For example, the forest law does not recognise the customary rights of IPs and LCs, whereas the law on agriculture makes provision for discrimination in terms of access to the registration certificate. All the domestic sectoral laws establish the State as sole owner of the soil and subsoil. However, in international law, the concept of ownership has changed significantly and it recognises LCs and IPs as owners, according to the principle of first occupant. International law, therefore, is proving an essential tool for securing customary ownership of community land and resources. In addition, the delegates were able to identify priorities with a view to reviving the land reform process. In particular, these entailed ensuring the effective participation of LCs and IPs in the land reform process through the creation of working groups at the grassroots level; and developing a structure for and setting up of provincial coordination units of CONAREF. In this way, IPs and LCs will be able to take ownership of the process, for which integrating all the stakeholders is one of the keys to success. The delegates were also concerned about the terms of land acquisition and establishment of the Bukanga Lonzo agro-industrial park. With regard to the multiple irregularities surrounding its establishment, the Bukanga Lonzo agro-industrial park is a clear-cut case of land grabbing; its socio-environmental consequences as well as the negative impacts it has had on the communities must be taken into account in the current reform in order to remedy the situation. The delegates also expressed regret over the fact that at the operational level, the ministries with responsibility for the Environment and Land Affairs had been excluded from involvement in Bukanga Lonzo, to the detriment of the Office of the Prime Minister and the Ministry of Agriculture.

## Session V.

# Guaranteeing rights in the REDD and FLEGT VPA processes

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## V.1. The definition of legality in the negotiations on FLEGT VPA

*Maître Jules Katubadi, Conseil pour la Défense Environnementale par la Légalité et la Traçabilité (CODELT)*

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### Context

- The European Union Timber Regulation (EUTR) having come into effect on 3 March 2013, attention has focused on the legality of the timber being traded in international markets
- The EUTR, which is regarded as the applicable legislation in the countries of harvest, aims to ensure the observance of forest law in the timber producing countries, for whom it also constitutes a factor in guaranteeing the rule of law
- The question of the legality of cargo of Congolese origin had, therefore, encouraged the State to increase its efforts to improve the governance of the forestry sector with a view to promoting healthy and harmonious development in compliance with the legal and regulatory requirements in force
- This is the context in which the Technical Commission for negotiations with the EU, which was set up by the Congolese Government, put great effort into identifying on the one hand those elements for ensuring legality which it was imperative to verify before Congolese timber could be considered legal in the context of the VPA, and on the other hand specifying and formalising the procedures to be implemented in order to carry out the verification.

### Elements for ensuring legality

- *Legality* can be defined as compliance with the current legislation
- At the time when the Technical Commission for negotiations was set up, given the urgency, it was limited to working only on the elements for ensuring legality in industrial logging concessions. Consequently, the Technical Commission concentrated on three elements:
  - Legal entity
  - Access to the resource
  - Social aspects
- Added to this are questions relating to the rights of LCs and IPs and aspects relating to the formal undertakings in their favour, in particular, the establishment of Local Management Committees and Local Monitoring Committees; agreements relating to social clauses or contractual requirements; the guarantee that community members have priority in recruitment; setting up of social responsibility systems, as well as compensation for damages to the communities and provisions relating to traditional usage rights

**Flaws in the definition of legality, and prospects**

- The legality matrix must be updated with regard to developments in Congolese law as a whole (OHADA law (Organization for the Harmonization of Business Law in Africa), and the adoption of enabling legislation of the Forest Code)
- The legality matrix is in the form of a chart which should be simplified, commented on or annotated with a view to making it easier to understand/use
- The legality matrix, as well as the other supporting documents, should be tested in the field
- The definition of legality should also include international law as well as the international treaties ratified by the DRC

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## V.2. Social and environmental safeguards in REDD+: analysis of the national safeguards standards

*Rubin Rashidi (NC-REDD)*

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### Concept of safeguards

- The implementation of REDD+ implies not only important social and environmental advantages, but also potential risks for the communities and the environment. And it is these risks which justify the consideration of safeguard measures
- This is why the Cancun safeguards were introduced into the United Nations Framework Convention on Climate Change (UNFCCC)
- The DRC is one of the REDD+ countries which developed approaches to integrate UNFCCC and World Bank requirements relating to safeguards into their REDD+ environmental and social management systems

### National REDD+ standards

- REDD+ activities must be in a position to:
  - Protect the natural forests
  - Promote an increase in environmental services and strengthen biodiversity conservation
  - Promote transparency and good governance, as well as the emergence of new economic opportunities conducive to the sustainable development of IPs and LCs
  - Share equally the economic and social benefits generated by REDD+ activities
  - Establish mechanisms for fair and equitable redress to minimise potential losses and damage sustained by the local communities
  - Plan effective and appropriate remedies for the benefit of the communities
  - Ensure the effective participation of all the stakeholders, including the IPs and LCs, taking into account their local characteristics (culturally appropriate procedures)
  - Respect human rights, as well as the IPs' and LCs' right of access to the land and natural resources

### V.3. Overview of the FLEGT VPA in the DRC: issues, challenges and prospects

*Pastor Matthieu Yela Bonketo (Le Cercle pour la Défense de l'Environnement (CEDEN))*

#### The EU FLEGT Action Plan

- The countries of the European Union (EU) remain the principal import markets for tropical timber
- In 2007, for example, 80% of the volume of timber officially exported by the DRC was intended for this market. Nonetheless, European public opinion is worried about the impact their consumption of tropical timber has on the producing countries
- In order to address the issue of illegal logging, in 2003 the European Commission implemented the FLEGT action plan to improve forest governance and strengthen the basis for legal logging in producing countries
- FLEGT aims to improve forest law enforcement and governance by using the trade in timber as the driving force
- Above all, FLEGT is based on negotiation and concluding what are called Voluntary Partnership Agreements (VPAs) between the producing countries and the EU
- The purpose of such a partnership agreement is to set up a joint system to verify the legality of the timber, guaranteeing that all the wood exported from a signatory producer country to European markets is definitely legal, and thus contributes to poverty reduction while at the same time protecting the environment

#### Overview of the VPA negotiations in the DRC

- On 4 February 2010, the DRC officially requested that negotiations be opened with the European Commission in order to conclude a VPA with the aim of continuing and strengthening the forestry sector reforms initiated by the Congolese Government in 2002
- On 20 October 2010, in Brussels, the DRC signed a joint declaration on the opening of negotiations with the primary aim of ratifying a VPA by the middle of 2013
- Once negotiations had been opened, the Congolese delegation appointed a focal point for the negotiations and convened a VPA Technical Commission, composed of 33 members representing all the stakeholders from the forestry sector: Government officials (27); civil society (3); private sector (3); the provinces, to date, having no representation in the Technical Commission
- Negotiations centred primarily on the following:
  1. The definition of legality (the conditions to be met in order for timber produced in the DRC to be recognised as legal)
  2. The traceability of the timber, to ensure that it can be traced from the forest through to the point of sale or export
  3. The legality assurance system, to prevent illegal timber from entering the wood-tracing chain of custody
  4. Issue of a FLEGT licence, which will become mandatory for timber destined for European markets

### Challenges and prospects

- Illegal logging deprives the Government of substantial financial resources, while at the same time causing deforestation and depriving LCs and IPs of the resources on which they depend
- Illegal logging also damages forest ecosystems and fuels intercommunity conflict and conflicts between logging companies and the neighbouring communities
- Corruption is one of the reasons for the increase in illegal logging
- The VPA is a legally binding trade agreement
- Challenges with the funding of the VPA negotiation process
- Suspension of the Technical Commission's activities and the VPA negotiations
- The Congolese Government must meet its obligations by taking responsibility for the costs and logistics of the Technical Commission's activities, the testing phase for the VPA implementation tools; the mechanisms for stakeholder participation; the legality matrix, as well as the legality assurance system
- Resumption of VPA negotiations and development of a new roadmap
- The legal and regulatory reforms resulting from the FLEGT VPA must recognise and protect the communities' rights to land, as well as to their livelihoods
- The VPA legality matrix must take due consideration of IPs' and LCs' human rights
- Community forestry offers an opportunity to devise a further legality matrix relating to the timber that will be produced from this new form of forest concession
- Effective implementation of the laws with a view to strengthening forest governance
- Increase efforts at the national level to combat corruption in the forestry sector

## V. 4. Discussions

While acknowledging the importance and challenge of the FLEGT VPA, the delegates were critical of the suspension or interruption of the negotiations in 2013. In addition, they were concerned about the lack of transparency of the negotiations and the secretive character of the meetings held by the Technical Commission. Furthermore, with regard to the REDD+ process, they stressed the urgency of starting to implement the national standards or safeguards for effective protection of the communities' rights. Finally, they expressed the need to reengage the civil society platform in the FLEGT VPA.

## Session VI.

# Benefit sharing in the REDD+, FIP and DGM financial mechanisms

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## VI.1. International mechanisms for reducing deforestation: the best approach for benefit sharing?

*Patrick Kipalu (FPP)*

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### Challenges

- A number of initiatives to combat deforestation affect LCs' as well as IPs' land. This is particularly the case with REDD+, the FIP, the DGM as well as conservation, logging and oil palm concessions
- Growing expansion of protected areas
- An approach to conservation which is imposed on communities without their FPIC
- The current concession system, inspired by the colonial system, favours the interests of/advantages to companies to the detriment of communities' rights
- These complex mechanisms are creating enormous challenges, namely:
  - Problems with participation by LCs and IPs
  - Weak recognition of LCs' and IPs' rights in national law
  - Lack of consensus on identification of the drivers of deforestation
  - Inadequate safeguards and difficulties with their implementation
  - Uneven negotiations between stakeholders

- Lack of participatory mapping
- Failure to respect contractual agreements, partly due to the lack of means of exerting pressure or of effective conflict-management mechanisms
- Land grabbing restricts communities' everyday activities

### Opportunities and prospects

- Initiatives to combat deforestation, as well as national conservation policies, must accommodate local communities' and indigenous peoples' rights and livelihoods
- Clarify and secure the land rights of local and indigenous communities
- Effective implementation of FPIC
- Develop participatory mapping activities
- Develop approaches with the communities to provide them with increased benefits or income
- Establish a new approach to concessions or new conservation methods based on human rights

## VI.2. Introduction to the DGM: issues, challenges and prospects

*Keddy Bosulu (Réseau des Populations Autochtones et Locales la gestion durable des Ecosystèmes Forestiers de la RDC (REPALEF))*

### Overview

- The Dedicated Grant Mechanism (DGM) for indigenous peoples and local communities is a special additional window of the Forest Investment Program (FIP)
- FIP is a US\$ 60 million investment programme implemented through the African Development Bank (ADB) and the World Bank (WB), targeting three supply areas (Kinshasa, Kisangani, and Kananga/Mbuji-Mayi)
- The purpose of the DGM is to award grants to IPs and LCs to improve their capacity and support initiatives to enhance their participation in FIP and other REDD+ processes at the local, national and international levels
- The amount allocated to the DRC is US\$ 6 million and is based on three essential components:
  - **Enabling activities** at the territorial level such as support for local management committees, grievance redress committees, etc., local facilitation, leadership training (literacy, accounting, etc.)
  - **Support for development of alternatives** such as creating income-generating activities, improved efficiency of existing activities to reduce pressure on forests; development of sustainable agriculture; economic empowerment of women
  - **Administrative and financial management**, National Implementing Agency, financial audits, monitoring mission for social and environmental safeguard actions
- A DGM National Steering Committee (NSC) has been established and is already operating in each territory in Bandundu province, in Province Oriental, and the two Kasai provinces. It is composed of 26 members of whom 16 are representatives of the targeted territories, six delegates from REPALEF and one delegate from civil society



### Issues

- The DGM gives the communities the opportunity to manage the donations themselves
- The DGM enables communities to safeguard their rights, to manage their land and decide their own future, including their commitment to participate in programmes in which they are involved (forest, land tenure, land-use planning, zoning, REDD, PIF, adaptation to climate change, etc.)
- The DGM enables recognition of the culture and traditional knowledge of the IPs and LCs who depend on the forest
- The DGM is an opportunity to open the doors to other funds or financing from international donors (CAFI, ADB, NORAD, Green Climate Fund, etc.)
- The DGM is a means of fostering the transfer of technical knowledge to the local level for participatory management of natural resources and the perpetuation of projects at the local level

### Challenges

- The effective transfer of DGM funds for the benefit of the communities
- Skills within the communities to prepare projects and manage the funds at the local level

- Commitment of the stakeholders (civil society organisations, partners, etc.) to community capacity building
- Dissemination of information to all the stakeholders
- The communities' adoption of the DGM, satisfaction at or impact of the results and continuation of the actions at the local level
- Cohabitation between indigenous peoples and local communities in certain areas (Kiri, Ingongo and Oshwe)
- Prioritisation of the communities' needs with respect to the DGM

### Opportunities and prospects

- The third session of the DGM's NSC is due to take place in the near future to adopt the 2016 annual Workplan and the Procurement Plan
- Land reform monitoring at the national and provincial levels
- Monitoring of the draft law on indigenous peoples
- Capacity building for the actors involved in the DGM project (at national, provincial and local levels)

## VI.3. Discussions

While noting the relevance of the DGM mechanism, the delegates highlighted the need to ensure that the communities' needs are genuinely taken onto account and that identification of the DGM sites is carried out in a fair and appropriate way. In addition, the delegates expressed interest in the national fund for social security and advancement (*le Fonds national de promotion et de sécurité sociale* (FNPSS)) and sought greater accessibility for IPs and LCs to the FNPSS funding mechanism.

## Session VII.

# Participation, consultation and FPIC

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### VII.1. Community consultation in the development of the draft law on indigenous peoples

*Bruno LAPIKA Dimomfu, Member of Parliament (Député), Professor at the University of Kinshasa*

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#### Background

- In the DRC, there are estimated to be between 600,000 and 700,000 Pygmy people in 10 of the 11 provinces and in 60 of the 147 territories
- Despite the size of this population, the Pygmies are discriminated against by their Bantu, Sudanese and Nilotic neighbours
- This discrimination is particularly marked where their rights to land and natural resources are concerned
- There is no express recognition, let alone guarantee, of Pygmy rights under Congolese law
- The precarious situation of the Pygmy peoples inspired the DRC parliamentary group, therefore, to start preparing a draft law in December 2014 on *the fundamental principles relating to the promotion and the protection of the rights of the indigenous Pygmy peoples*

#### Legal basis and aims of the law on indigenous peoples

- The legal basis of the draft law is drawn from Articles 123 (16) and 51 (1) and (2) of the Constitution of 18 February 2006
- The parliamentary group also referred to UNDRIP, in particular, Articles 12, 15, 16, 19, 21, 29 and 35
- The overall purpose of the draft law is to effectively combat the discrimination, marginalisation and constant stigmatisation which the IPs are victim to in the DRC

**Challenges and ongoing violation of IPs' rights**

- Denial of political rights (the right to vote, etc.)
- Being dispossessed of their traditional land and natural resources, which increase poverty
- Being subjected to forced labour by the dominant groups, in particular the Bantu, the Sudanese and the Nilotic
- IPs' lack of representation in and absence from the political structures and decision-making bodies
- IPs are subject to arbitrary arrest on a daily basis

**Rights and fundamental principles within the draft law**

- The right of *access to justice*: this means that in any given legal process, an IP has the right to be informed of the reason for arrest, the right to defend him/herself or to be represented by legal counsel of his/her choice and the right to a fair trial
- IPs' right of access to justice derives from the principle of equality for all persons before all courts of law, without any distinction whatsoever, notably with regard to race, colour, ethnic origin, sexual orientation, gender, age, religion, creed, language, political opinion, financial status, disability, status or any other circumstances
- The right to cultural development
- The right to freedom of marriage, such as interracial marriage (between Bantu and Pygmy). Indeed, whereas a Bantu man, for example, has the right to marry a Pygmy woman, a Pygmy man does not have the right to marry a Bantu woman

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## VII.2. Development of the FPIC methodological guide within the REDD+ framework in the DRC

Rubin Rashidi, REDD+ Safeguards Expert (National REDD Coordination)

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### FPIC in context in the DRC

- In light of the DRC's extensive tracts of forest, the question of REDD+ has become a strategic issue nationally, requiring the country's technical and institutional capacity building, as well as the effective participation of forest-dependent peoples in the process.
- Technical and institutional capacity building within the REDD+ framework requires the harmonious coordination of land use policies so as to mitigate the future impacts on the forest cover, while ensuring that the profits deriving from the forests are effectively distributed to the forest-dependent peoples, in particular the IPs and LCs
- In May 2012, FPP and its local partners, in collaboration with the Congolese Government (specifically MECNDD), organised The Forest Dialogue in Kinshasa in order to consider the implementation of FPIC within the country

### Definition of FPIC

- FPIC is *free* (i.e. in the absence of all coercion), *prior* (before the start of any activity) and *informed* (with full knowledge) *consent* (agreement given by a community following consultation and effective participation)
- FPIC has not yet been incorporated into the DRC's legal system

**Standardisation of FPIC-related initiatives by NC-REDD**

- Certain international NGOs, such as FPP, WWF, CI (Conservation International) and RRN have each developed tools on FPIC
- NC-REDD has, therefore, undertaken to standardise all these FPIC-related initiatives by producing a (single) standardised methodological guide in order to enhance integration of FPIC in the REDD+ process within the DRC
- The standardised methodological guide aims to address the following concerns: who is authorised to give consent? How is consent expressed? At what stage should consent be sought within the REDD+ framework? How should FPIC be sought for a province-wide programme, or a national process? Who gives the mandate to whom, and how, etc.?
- The standardised methodological guide lists 13 stages for consideration of whether or not FPIC has been respected. It also recommends 9 principles, 16 criteria and 16 indicators with means of verification to ensure that FPIC is effectively implemented in REDD+ activities nationally
- The next step will be to hold consultations in an experimental phase to field test the guide and incorporate not only IPs' and LCs' concerns but also those of all the other actors who are relevant to or involved in the REDD+ process

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### VII.3. Community consultations: the experience of communities in the BIOPALM zone, in Ocean division (Kribi) in Cameroon

Stephen Nounah, Lawyer (FPP)

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#### Background

- FPP works with eight communities, of whom four are indigenous Bagyeli, three Bassa and one Bakoko community spread over the villages of Moungue, Gwap, Nkollo and Bella in the Ocean division, in Cameroon's South Region
- The communities are surrounded by a number of logging concessions which have either been allocated or are in the process of being allocated
- This area, which previously was *classified* has today been *declassified* in favour of agricultural production. It covers an area of 21,552 hectares
- One section, with an area of 3,348 hectares, has been allocated to Biopalm Energy Limited. There is uncertainty, therefore, over the fate of the remaining area
- Furthermore, the temporary concession, granted for a three-year period, could have been renewed at the concession-holder's request for a period of no longer than two years (there is still some uncertainty as to whether such a renewal request has been made)
- *Forest concession*: A concession for an area of 2,000 hectares was granted to MMG on 20 October 2000 under a temporary agreement; their development plan was approved in 2004
- Other companies, such as CFK and Wijma, have subcontracted some of their logging activities. Logging inventories are in progress
- *Mining exploration permits*: a mining exploration permit covering an area of 960 square kilometres has been granted to G Stones Resources SA, a subsidiary of the BOCOM Group. The permit was renewed on 26 June 2014 for a further period of two years
- Community access to these areas is virtually forbidden

### The problem

- These titles were all allocated without the free, prior and informed consent of the resident communities
- The titles were granted for areas in which the local communities carry out their customary activities (the case of Herakles Farms in the Southwest Region of Cameroon)
- The communities are under threat of their land being incorporated into the State's private domain in favour of industrial operations by means of the so-called *classification* process
- Lack of consultation in the allocation process for forest concessions or mining titles
- Communities' rights are limited to giving their opinion or to being informed
- Nor is there provision for an internal mechanism for the consultation of communities in the Mining Code or its Implementing Decree

### Legal basis of consultation in Cameroon

- The mechanisms for consultation are virtually non-existent in Cameroon. However, the principle of consultation could be drawn from the UNDRIP, which Cameroon has ratified
- *'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.'* (Article 32(2) UNDRIP)
- Furthermore, in collaboration with civil society organisations, the State of Cameroon has produced *'Operational Guidelines for Obtaining Free, Prior and Informed Consent in REDD+ Initiatives in Cameroon'*

### How should FPP approach this work?

- **With regard to the Administrative bodies:** help enforce the texts and international conventions relating to consultation which have been ratified by Cameroon
- Using the legal mechanisms available to the communities is a possibility which should not be ruled out
- **With regard to Biopalm Energy Limited:** help encourage respect of the principles of the RSPO platforms to which the company has voluntarily agreed
- **With regard to Wijma and MMG:** help compel these companies, which are negotiating FSC certification, to include contractual arrangements which benefit the neighbouring communities
- **With regard to assisting the communities:** for two years FPP has been making regular visits (to the BIOPALM zone) to help organise the eight communities whose land and resources have been put under pressure
- Provide agricultural support to the indigenous Bagyeli communities in order to redress the inequalities with their Bantu neighbours
- Encourage the different sectors of the communities (women and youths) to join forces and voice their opinions on questions that concern them
- Encourage initiatives which aim to create space for dialogue and develop closer relationships with the authorities, who are often reluctant to provide information, (the mayor, decentralised government services, etc.) in order to obtain clear information on their land and resources
- Facilitate information exchanges between FPP and the communities
- Inspire hope and confidence within the communities, rather than resignation
- Provide the communities with the necessary legal tools and instruments to allow them to take action in an informed way
- Make contact with the different actors in order to obtain necessary information (administrative offices, industrial companies and their partners)
- Ensure the constant monitoring of our activities by appointing a supervisor locally
- Encourage and guide those communities who, having become aware of the pressure on their land, have decided to create community forests in their various villages
- Assist the communities to use participatory mapping to accurately identify the areas where they carry out their customary activities
- Encourage those communities who wish to express their disapproval of the BIOPALM project by writing both to the company in question and the Head of State as beneficiary of that concession
- Encourage the communities to develop new ideas for extending their land use



## Results

- The eight communities have created a community association, which meets regularly
- Women's associations have been set up, supported by FPP
- The communities are approaching the authorities themselves, without FPP's guidance, to obtain information on the use of their land by companies
- The communities have submitted a letter of protest to the President of the Republic about their land being allocated to BIOPALM, invoking the non-observance of FPIC
- A commission from the Ministry of Territorial Administration has come to inquire into the communities' view on this topic
- The communities whose corrupt chiefs have been selling off their land to illegal loggers have been openly voicing their disapproval
- Denunciations of the corruption that surrounded the allocation of the BIOPALM concession have been flying in every direction
- A fully inclusive participatory mapping process has produced maps which pinpoint the areas where the eight communities carry out their customary activities

## Challenges and prospects

- To use the national and international legal and judicial mechanisms with a view to compelling the concession-holders of FMU 003 to find demarcated areas so that the land of the neighbouring communities can be protected
- To use the community forestry mechanism to protect community areas (notwithstanding the fact that the Cameroonian Government has further complicated the administrative processes for obtaining community forests by requiring an environmental impact statement to be included with the supporting documents)
- To lift the restrictions on access to the land imposed by BOCOM, who have been granted a research permit
- To obtain the FPIC of the local communities in the allocation process for agro-forestry concessions as required under the RSPO principles which BIOPALM has endorsed
- To incorporate in the land reform process the relevant provisions of the international conventions ratified by Cameroon

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## VII.4. Practicalities of involving women in the consultation process

*Marie-Dorothee Lisenga, National Coordinator of the Coalition des femmes leaders pour l'environnement et le développement durable (CFLEDD)*

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### Presentation

- CFLEDD is a coalition of 75 IP and LC women's NGOs from environmental civil society organisations at the national and provincial levels
- Created on 26 November 2011 in Kinshasa, CFLEDD emerged from the Gender Commission of the Reconstituted REDD+ Climate Working Group (GTCR-R)
- Branches established in the provinces of Kasai Oriental, Congo Central, Équateur, Kisangani (Tshopo), South Kivu (Bukavu), Maniema (Kindu), Kasai Central (Western), and Haut-Katanga (Lubumbashi)
- CFLEDD's mission is to promote, enhance and strengthen the capacity of IP and LC women with regard to the environment, climate change, REDD+ and sustainable development

### Challenges

- CONAREF, founded on 31 May 2013, has not ensured an adequate representation of women within the Commission
- Women do not have access to land and cannot inherit their ancestors' land to carry out their daily tasks
- In rural areas, local practices are a source of discrimination against women, impeding their integration into the agricultural production and empowerment process
- Tradition and custom do not allow women to be land owners regardless of their birthright or hereditary rights
- This is a difficult situation in that women need land in order to go about their activities as well as to ensure their empowerment
- Retrograde customs and practices exclude rural women from land ownership

**Opportunities and prospects**

- Carry out an evaluation of the situation of women with respect to land tenure in the DRC
- Produce an advocacy report with the support of RRI and REFAD (Réseau des femmes africaines pour le développement)
- Carry out a consultation, awareness-raising and information campaign for indigenous women on the land reform process
- Provide indigenous women's organisations with institutional support and capacity building
- Train indigenous women's leaders in mediation processes and land dispute management
- Advocate for strengthening the role of women in the implementation of land tenure policy
- Carry out mapping of customary areas occupied by indigenous women

**VII. 5. Discussions**

The delegates were almost unanimous in their recognition of the perpetual marginalisation and discrimination linked to the burdens of tradition and negative stereotypes which afflict indigenous peoples on a daily basis. They felt that the situation justifies advocacy for adopting laws on IPs in the DRC. The lack of incentive mechanisms for the empowerment of indigenous women also justifies the need to strengthen the role of women in the land reform process through active involvement or participation. Strategies for adoption of the methodological guide to FPIC by the different ministerial sectors was also discussed.

# Part II:

## Conclusions and Recommendations

The lack of legal recognition of communities' customary land entails a corresponding denial of rights and continuing violations of IPs' and LCs' human rights. Securing customary land tenure is increasingly perceived as a prerequisite for success in any development process, in climate initiatives, in combating deforestation, and in conservation. This is why customary land rights need urgent recognition, and the flaws, contradictions and inconsistencies in the legal framework should be reviewed, corrected or clarified. The current land reform process provides an opportunity for this to take place.

There is at present a certain amount of international recognition of the importance of land ownership as a means of ensuring the success of international initiatives to combat deforestation, in particular REDD+ and FLEGT VPAs. As regards the DRC's REDD+ programme, it should be noted that the lack of a genuine land tenure assessment, carried out either independently or as part of the Strategic Environmental and Social Assessments, is jeopardising the potential success of the Mai-Ndombe Emissions Reduction Program (ER-PD). Transparency and good governance should also guide all of these international processes and thus encourage equitable sharing of the benefits or profits from logging or the implementation of REDD+ projects. The contribution made by civil society in renewed advocacy to reopen negotiations on the VPA will be crucial. And in the event that advocacy succeeds, it will then be necessary to consider revisiting the legality matrices on industrial and small-scale logging to better integrate IPs' and LCs' human rights. In addition, considering recent developments in community forestry, a further matrix should be developed with regard to LCFCs.

Of course, successful land reform requires strong social consensus, driven by active commitment on the part of civil society, and clearly stated political will by the policy makers, including the Congolese legislator.

Work and deliberations subsequent to the seminar have informed the recommendations given below:

### Reform the Land Law

- Clarify land tenure and recognise communities' right to ownership of customarily occupied land
- Reform the Land Law taking into account the right to individual or collective ownership of property acquired in accordance with the law or with custom as guaranteed under Article 34 of the Constitution of 18 February 2006
- Recognise collective property rights and simplify the procedures for communities to access the titles to their lands
- Revise the 'development' criterion so as not to exclude the communities from the process for obtaining land title or a registration certificate
- Correct the flaws and inconsistencies in the legal framework, in particular (among others) Article 219 of the Land Law which blatantly contradicts Article 19 of the Law on fundamental principles relating to agriculture
- The land-use planning process should serve to clarify the land tenure system and that of traditional resource use

- Modernise the Land Administration and strengthen the operational capacity of its officials
- Indigenous peoples' and forest communities' use of land and resources should be recognised as a valid form of land use
- The fundamental principles relating to the right of forest communities to land and natural resources, to consultation, to participation, and to FPIC, as contained in the international treaties and agreements ratified by the DRC, must be incorporated in the national legal system
- Continue advocacy for adoption of the draft law on indigenous Pygmy peoples

#### **Develop community forestry initiatives**

- Increase awareness within the provincial authorities and offer guidance, by providing them with a template of the steps to follow when allocating forest concessions to local communities
- Strengthen the technical capacity of the local forest management authorities so that they know how to deal with the administration of forest concessions for local communities
- Set up sub-offices of the Community Forestry Division at the provincial, territorial and local level
- Develop a national forest policy
- Finalise and improve timber regulation
- Regulate the management and harvesting of NTFPs for the benefit of the communities
- Guarantee the consultation and participation of local communities in the decision-making process relating to LCFCs
- In a consensual manner produce a national guide to developing the Simple Management Plan
- Initiate community-based REDD+ pilot projects in the LCFCs, with a view to informing or enhancing the development of the various legislative texts governing community forestry in the DRC
- Support and strengthen the capacity of IPs and LCs in the community forestry process
- Test and develop approaches to or pilot projects for community forestry

### **Undertake reform of national conservation policy to prevent evictions and forced expropriation**

- The procedure for expropriation in the public interest must be reviewed or regulated in the context of the current land reform process in order to prevent abuse
- As soon as possible, resettle the Batwa peoples who were evicted from the KBNP
- Ensure equitable sharing of the benefits from management of the national parks and identify alternatives to having access to the natural resources in the park for the evicted communities
- Develop a national community conservation strategy based on human rights
- Ensure the legal recognition of ICCAs, as well as their integration into the national community conservation strategy
- Extension of the boundaries of the national parks and other protected areas must take account of the communities' FPIC, adopting a participative approach
- Prioritise strategies for dialogue and consultation in the process of creating protected areas and include IPs and LCs in the governance and management of protected areas
- Guarantee the communities fair and prior compensation in the event of forced eviction or expropriation in the public interest

### **REDD+ and FLEGT VPA**

- Reopen the FLEGT VPA negotiations and establish a new consensual roadmap
- Redefine the mechanisms for stakeholder participation, as well as the legality matrix and also the legality assurance system
- The legality matrix should take into consideration IPs' and LCs' human rights
- An assessment of land ownership should be a precondition to implementation of the Mai-Ndombe Emissions Reduction Program
- The benefit-/profit-sharing agreements within the REDD+ project framework must be publicly accessible
- The remedies or grievance mechanisms must be accessible and available to the affected communities



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