Challenges and opportunities in the adoption of community forestry by local communities and indigenous peoples in the Republic of Congo
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List of Acronyms

**CDA:** Community Development Area

**CF:** Community Forest

**CIB:** *Congolaise Industrielle des Bois*

**DFID:** Communautés Locales et Peuples Autochtones

**DFID:** Department for International Development (UK)

**DRC:** Democratic Republic of Congo

**EU:** European Union

**FDL:** Fonds de Développement Local

**FPP:** Forest Peoples Programme

**FAO:** Food and Agriculture Organization of the United Nations

**FMU:** Forest Management Unit

**FPIC:** Free, Prior and Informed Consent

**FPP:** Forest Peoples Programme

**Ha:** Hectare

**IFO:** *Industrie Forestière de Ouesso*

**IPLC:** Indigenous Peoples and Local Communities

**LDF:** Local Development Fund

**NGO:** Non-Governmental Organisation

**NTFP:** Non-Timber Forest Product

**ODDHC:** Organisation for Development and Human Rights in Congo

**REDD+:** Reducing emissions from deforestation and forest degradation

**VPA:** Voluntary Partnership Agreement
Introduction

Securing access to land, territories and natural resources promotes the autonomous development of indigenous peoples and local communities (IPLCs). Conversely, inadequate and unsecured land leads them to become more vulnerable and impoverished. In the Republic of Congo (hereinafter referred to as Congo), the statutory forest regime giving the State absolute control of forest resources has not succeeded in achieving sustainable forest management, even less so in reducing poverty or improving livelihoods for IPLCs. The precarious nature of existing land tenure systems has left communities increasingly marginalised from both traditional economic activities and from the decision-making process regarding the use of natural resources. They face the growing threat of dispossession. In the absence of a land tenure system establishing clear collective ownership rights, community forestry now appears to be the most efficient option to secure customary land tenure in Congo.

In recent years, community-led forest management has become increasingly recognised as a potential way to reduce deforestation and improve the livelihoods of rural communities that rely entirely on forests to make a living. Indeed, there is a consensus that areas of forest under community control often deliver the best results from a social and environmental point of view. The possibility for IPLCs to manage the traditional forests on which they subsist has not yet been formally established in Congo. There is still no precise legal definition of community forest or effective transfer of forest management to local communities in the general sense. Nonetheless, national forest legislation does provide some options for forest management by IPLCs. For instance, forest concession land use plans include community development areas (CDAs) to be established to promote community-led local development initiatives. In their current state, however, the CDAs are not able to gain community forest status. CDAs are namely zones within forest concessions that logging companies are obliged to set aside for local communities to carry out livelihood and development activities. These zones are generally positioned close to villages and areas with customary use rights and are identified while forest concession land use plans are being drawn up. Because they are established by the land use plans, usually without the involvement of IPLCs, CDAs are only valid for the for legal period covered by the land use plans.

The rhetoric around community forestry has become increasingly positive. One instance of this is the forest policy document of 2014-2025, which aims to promote community forestry. The existing Forest Code envisages the opportunity to promote community forestry by establishing and implementing support programmes for associations, NGOs and rural peoples with an aim to improve soil productivity and reduce natural forest destruction and intense logging.

3 Community forestry is a resource and development management strategy whose aim is to support local communities in the control, management and use of forests and to explore the social, economic and cultural relationship between rural communities and forests (FAO, Proceedings of the International Workshop on Community Forestry in Africa. Participatory Forest Management: A Strategy for Sustainable Forest Management in Africa. 26-30 April 1999, Banjul, Gambia) FAO, Rome, 2000
4 Decree 2002-437, of 31st December 2002 fixing the conditions pertaining to the management and use of the forest (Article 24) and Order 5033 of 19th June 2007 defining the national directives for sustainable development of forest concessions (Articles 5 and 18)
6 “Community forestry should be planned on two levels. Firstly, customary practices (the ‘terroirs’, or customary territories) should be considered, reflecting real-life relationships, without necessitating the creation of formal institutions. This level of planning can nonetheless benefit from political recognition to instil co-management principles in cases of overlap with large-scale concessions or protected areas as identified through participatory mapping. Secondly, institutional innovation (the ‘community concession’ model) is needed, drawing on customary practices while remaining distinct from the latter, constituting the basis of future community-based enterprises.”
7 See, in that effect, article 105 of Law 16-2000 of 20th November 2000 on the Forest Code, and article 34 of Decree 2002-437, of 31st December 2002 fixing the conditions pertaining to the management and use of the forest
Elsewhere, the Forest Code draft legislation is breaking new ground by expanding the definition of community forestry as currently stipulated in the existing Forest Code. The Volunteer Partnership Agreement (VPA) between Congo and the European Union (EU) also pushes for community forestry. The agreement commits Congo to drafting implementing regulations allowing for the creation of community forests. Finally, a regional initiative piloted by the Food and Agriculture Organization of the United Nations (FAO) has drawn up a roadmap for participatory forestry in countries of the Congo Basin, with the current Minister of Forestry Economy acting as the initiative’s ambassador.

Despite the opportunities that community forestry offers for IPLCs to secure customary land rights and improve their livelihoods, a number of constraints and challenges persist in relation to land tenure insecurity and overlapping.

Since 2016, Forest Peoples Programme (FPP) and the Organisation for Development and Human Rights in Congo (ODDHC) have conducted a number of consultation missions with six IPLC groups in the department of Sangha as part of the implementation of the CoNGOs project (“NGOs collaborating for equitable and sustainable community livelihoods in Congo Basin forests”) financed by the British Department for International Development (DFID). These consultations have occurred in the Kabo and Pokola FMUs (Forest Management Units) of the logging company Congolaise Industrielle des Bois (CIB) and in the Ngombe FMU of the logging company Industrie Forestière de Ouesso (IFO). Between 20th and 29th May 2018 FPP and ODDHC conducted a specific mission consulting each of the six indigenous and Bantu communities in the aforementioned FMUs. The mission aimed to gather IPLCs’ opinions, challenges and perspectives regarding community forestry. The methods involved holding plenary meetings and individual interviews with certain members of the community. Separate meetings were held with indigenous and Bantu groups and with men and women. A questionnaire on the subject of land and resource access was discussed with the communities.

Consultations with IPLC groups in Ngombe Carrefour (Ngombe FMU), Ngatongo (Pokola FMU) and Kabo (Kabo FMU) showed that a beneficial and effective approach to community forestry should be founded on the rights and aspirations of IPLCs. This would necessitate improving the legal and regulatory framework on land matters, establishing a clear and coherent legal structure to create an environment conducive to the creation and management of CFs, capacity-building for IPLCs and for institutions and authorities responsible for forest administration, and strengthening community governance.
**Overlapping land tenures: when community forestry overlaps with FMUs**

FMUs are defined by article 54 of the Forest Code as the basic units of permanent forest estate. According to the Forest Code draft legislation, community forests are included in permanent forest estate. CFs are generally understood to be concessions on forest land of a maximum area that varies between countries, with management rights transferred to local peoples following the approval of a Simple Management Plan. In Congo, the Forest Code draft legislation proposes that a CF be defined as follows: "Any natural forest located on a managed forest concession’s community development area, any forest plantation on a local community’s or indigenous people’s land, any forest whose creation and sustainable management has arisen from a local community initiative, and any natural forest located on a local community’s or indigenous people’s land which has been classified for their profit, is considered to be community forest (…). The community forest is to be supported by a Simple Management Plan to be approved by the Departmental Director of Water and Forests."

In contrast, within logging concessions that are part of Permanent Forest Estate, CDAs are areas set aside by logging companies for IPLCs to conduct subsistence agriculture and development activities in the FMU. Their creation is thus the result of the concessionaire’s initiative rather than that of the community, and they are therefore not considered an example of community forestry as such. Rather, a CDA is an area developed for the use of neighbouring communities located inside an FMU. It is composed of village territories and boundaries, and centres around trees, forests and other resources that can contribute to the economic development of rural communities and the fight against poverty. It can include natural and artificial forest, agricultural land, fallow, and fishing and hunting zones.

While the notion of establishing community forestry in CDAs appeals to some communities, for others the limits of CDAs are too restrictive to effectively implement the community model of forest management. In some cases, CDAs are only suited to subsistence agriculture, with no possibilities for the communities in question to explore the other community management options offered by community forestry, such as ecotourism, reforestation, recreational hunting, community conservation and timber exploitation. The area limitations of CFs confined to CDAs can prove to be an insurmountable challenge for certain communities. For example, while the IPLCs of Ngombe Village and Ngombe Carrefour share an area of 6,372 ha, Ngatongo’s IPLCs can only access 220 ha for subsistence agriculture activities. CDAs often comprise large expanses of marsh and swamp, considerably reducing the total area available for subsistence agriculture. Kabo’s CDA covers an area of 3,200 ha, but its IPLCs have complained that their rights have been infringed by the illegal activities of external parties, including artisanal mining and artisanal logging.

For other communities, the geographical area covered by a CDA is not an obstacle in establishing a CF. However, the legal nature of CDAs means that any attempt to implement community forestry therein would be tenuous. A number of gaps and shortcomings must be bridged before an effective community management model can be put in place, including:

- The lack of a management plan for certain existing CDAs;
- The lack of profit sharing mechanisms for CDAs (management committee, etc.);
- The lack of reliable conflict management procedures in CDAs;
- Communities hardly involved in the planning and resource management process or in monitoring and evaluating the layout plan;
- The lack of any real empowerment for communities in forest resource management.

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13 Article 9 of Draft Legislation on the Forest Code, January 2019 version
14 Article 14 of Draft Legislation on the Forest Code
15 Eulalie Guillaume “La foresterie communautaire : opportunité ou mirage pour les femmes dans le bassin du Congo” (in French); Fern 2019
16 Article 18 of Order 5053 of 19th June 2007 defining the national directives for sustainable development of forest concessions
The issue of the “Sangha Sangha” in Community Development Areas: a case of disputed legitimacy

Article 19 of Order no. 5053 of 19th June 2007 laying down National Directives on sustainable management of forest concessions states that the aim of CDAs is “to meet the needs of local peoples for forest products and to enhance their income”, thereby allowing for “sustainable economic development for rural communities and a reduction in poverty”. This means that IPLCs must be involved in the planning and resource management process and in monitoring and evaluating the layout plan.17

However, accessing land in CDAs has been made difficult by landowners commonly known as “Sangha Sangha”. These landowners hold the titles to land that they sell or lease to individuals of their choice, including nationals of neighbouring countries. Within certain CDAs, including that of Ngombe Carrefour, a large portion of lands are occupied by foreign nationals (with authorisation from land chiefs [chéfs de terre]) who use the land for maize and cassava agriculture. Large-scale harvesting, meanwhile, favours the interests of foreign investors over those of IPLCs. This means that IPLCs do not have free and full access to land within CDAs. Landowners, and other land chiefs, effectively have the authority to sell and redistribute lands within managed forest concessions. This de facto authority is strongly contested by IPLCs - who wish to play a larger role in the participative management of customary lands - and serves to highlight the precarious nature of customary tenure for IPLCs. The uncontrolled selling of land by certain elite community members, the creation of large plantations by traders (from Rwanda and DRC) and the arrival of cocoa agriculture have all served to significantly reduce the existing limits of certain CDAs. The land rental scheme used by communities in CDAs has had the same effect.

The new land act, which classifies four categories of land in Congo – namely State-owned rural lands, customary lands, urban lands, and suburban lands – has further increased the risks of land-grabbing on IPLC lands. This has been seen in the family council’s appointment of an authorised agent for all management procedures on customary lands as derived from article 14 of the act, which threatens to undermine the legitimacy of customary rights holders within a given community. This delegation of power could raise the risk of private land ownership and elite land-grabbing. Furthermore, poorly designed models of representation imposing a hierarchical framework on communities could ultimately erode the legitimacy of CFs, which are themselves based on existing customary institutions.19

18 Law 21-2018 of 13th June 2018 laying down rules for the occupation and acquisition of lands
19 RFUK, Rethinking community-based forest management in the Congo Basin, October 2015
The new act also makes it harder for customary land rights to be recognised, despite these being guaranteed by the indigenous peoples act\textsuperscript{20}, in article 31\textsuperscript{21}.

In summary, the legal framework currently in place is not adequate and requires improved recognition of customary rights in order to guarantee IPLCs the right to own and access the forest resources of the lands they have traditionally used and resided on: lands recognised and protected by multiple international and regional legal instruments and ratified by Congo.

**Strengthening community governance to ensure the economic viability of the community forestry model**

**Preventing illegal/unauthorised logging**

Consultations carried out in November 2016 with the IPLCs of Ngombe Carrefour in Ngombe FMU revealed that communities benefitted financially from the selling of CDA timber in 2011 to the degree of 2 million CFA francs. They had earned another 2 million CFA francs thanks to an agricultural project, and had also managed a community pharmacy. However, the limited capacity of communities to manage microprojects, coupled with failing community governance, have meant that these projects have had mixed results at best. Further studies and consultations\textsuperscript{22} have shown that projects led by families and individuals have a higher success rate that those run on a community level, reflecting a lack of community spirit.

CDA management guidelines state that plant species located within the CDA boundaries are community property\textsuperscript{23}. However, in 2015, reports of timber logging by certain forestry companies inside Ngombe Carrefour’s CDA were heard from communities and civil society champions. *Sapelli* and *Wengue* were among the marketable species felled by the companies. What is worse, this timber was purchased from communities at an absurdly low rate, with communities unable to negotiate a fair price. This example serves to illustrate just how vulnerable IPLC groups can be in the implementation of community forest initiatives without adequate capacity-building, a crucial step in the prevention of such abuse. If community forestry is to take shape in a meaningful way, IPLCs will be required to manage the forests themselves, meaning capacity building efforts in terms of CF governance and sustainable management must be stepped up.

**Diversifying management options**

Community forestry models must be adapted to the various realities that are specific to each community. The communities consulted in this study stated that community forestry would be used in the cultivation of maize, cassava, cocoa and oil palm, as well as for artisanal timber logging. They are also planning to re-plant rare tree species such as *Sapelli* and to use the land for hunting, fishing and harvesting Non-Timber Forest Products (NTFPs). IPLC capacity building also entails raising awareness of the diversity of CF management options. In CDAs where subsistence agriculture is the only community forestry option

\textsuperscript{20}Law 5-2011 of 25th February 2011 on the Promotion and protection of the rights of indigenous peoples

\textsuperscript{21}“Indigenous peoples have collective and individual ownership, possession, access and land use rights for lands and natural resources that they traditionally occupy or use for their livelihoods, traditional medicine and work.”

\textsuperscript{22}Support for the Local Development Fund mechanism in the forest sector of the Republic of Congo, final report from technical assistance: July 2015

\textsuperscript{23}See, to that effect, articles 18, 19 and 20 of Order 5053 of 19th June 2007 defining the national directives for sustainable development of forest concessions
available, alternative solutions must be considered to give neighbouring communities the choice to develop additional community forestry activities. Unlike Kabo’s CDA (covering an area of 3,200 ha), those of Ngombe Carrefour and Ngatongo (only 22 ha) are not suited to developing options such as ecotourism.

Learning from the management of Local Development Fund micro-projects in order to introduce fair and effective profit-sharing mechanisms for joint use of CFs

Logging companies in Congo share a portion of their revenue to contribute to local socio-economic development in two main ways: by fulfilling the social clauses stipulated by their contractual obligations [cahiers de charges]\(^\text{24}\), and by contributing to a Local Development Fund (LDF)[^25] to finance micro-projects to be proposed and implemented by IPLCs.

The revenue for most of these micro-projects has not been fairly distributed among neighbouring communities in Ngombe, Pokola and Kabo’s FMUs. All benefits received have been under the control of certain community leaders who have managed the revenue generated from these micro-projects with a complete lack of transparency. Lessons should therefore be learned for the management of future LDF micro-projects. Indigenous peoples have been hit the hardest, not only in terms of revenue share received, but also in the broader failure to select micro-projects that take into account the situation of these peoples. When they have co-managed micro-projects with Bantu people in the past, indigenous peoples say they have been discriminated against and denied their fair share of the revenue. This situation demonstrates the need for distinct profit-sharing mechanisms for Bantu and indigenous communities. Relations between the two communities are extremely unstable due to the disrepute and contempt with which the Bantus view indigenous peoples[^26]. For example, indigenous people in Ngatongo have stated that when funds for managing micro-projects were entrusted to the Bantu chief, they were excluded from the process and did not benefit from the micro-projects’ revenue.

LDFs are financed by a levy of 200 CFA francs per square metre of marketable timber logged by logging companies[^27], through subsidies from the departmental board, and through gifts and bequests from various donors. Collaborative councils have been set up to manage the LDFs and select micro-projects to implement from those proposed by IPLCs. These councils are regulated by the ministerial decrees establishing the LDFs, and are comprised of representatives from logging companies, local administration, and IPLC groups. Collaborative council members are not paid, but individual transport and accommodation fees for meetings should in theory be covered by the forest concessionaires. Daily allowances are paid for out of the LDF budget. Although the LDF system is already in operation, a number of issues are hindering it from running effectively. This can be seen in the administrative hurdles faced by LDFs and their management bodies, and in the lack of local community involvement in the selection and implementation of micro-projects. It is worth noting that there has been no ongoing follow-up to gauge how effectively involved local communities and indigenous peoples have been in the implementation of micro-projects approved for certain FMUs. The communities of the three FMUs mentioned above and the forest concessionaires have both criticised the poor management of the LDF budget and improper use of resources in the running of the collaborative council.

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[^25]: LDFs, which are not specifically referred to in the Forest Code, are governed by ministerial decrees from the forestry department. Only logging companies that have developed and validated management plans have implemented LDFs. There are currently LDFs in the FMUs of Kabo, Pokola, Ngombé, Loungoungou Toukoulaka, Mokabi Dzanga, Lopola and Missa.
[^27]: See, to that effect, Order 2667/MDDEFE/CAB on the organisation and operation of the local development fund for the community development area of Pokola forest management unit (AMPC) of the Unité forestière d’aménagement de Pokola.
Due to the ongoing exclusion and discrimination faced by indigenous communities in villages, it may be preferable to explore the option of separate CFs for Bantus and indigenous peoples in some cases. In certain communities, such as Ngatongo, the lack of real indigenous leaders and capacity shortage due to illiteracy mean that indigenous residents remain in a position of relative dependence on their Bantu neighbours. But despite these challenges in the development of their own governance system, indigenous peoples spoken to during the consultations clearly stated their preference for having a separate CF from the Bantus.

Women have also been left out of the decision-making process concerning the management of LDF micro-projects in communities.

Supporting and strengthening IPLCs’ technical capabilities and level of information on the concept of community forestry

Support is needed during the CF application and management process if communities are to truly benefit from these initiatives. Among other things, this support should cover the writing up of Simple Management Plans and tackling administrative formalities in requesting and obtaining CFs. One cause for concern in community forestry is communities’ low level of involvement in ongoing discussions about the management model of traditional forests and the total non-participation of IPLCs in the development of the new land act and forest code draft legislation.

An independent review by the CoNGOs project found a rudimentary level of adoption of the community forest model. In this study, discussions with local organisations, communities and officials from the departmental authority for forests in Sangha showed that adoption of the concept remains low. This points to a broader pattern of introducing new concepts with

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28 Law 21-2018 of 13th June 2018 laying down rules for the occupation and acquisition of lands
29 Patrice Kamkuimo-Plam, “Suivi de la mise en œuvre des recommandations de l’évaluation interne à mi-parcours du projet CoNGOS en République du Congo” (in French), September 2018
no foothold at a grassroots level. This alienation can partly be explained by the geographical isolation of (rural) communities, who are far removed from the policy-making process in Congo, which predominantly takes place in Brazzaville. IPLCs likewise remain on the fringes of the national debate on community forestry. It is crucial that communities be effectively incorporated in these discussions by shifting the debate from national to local level. Furthermore, progress made in terms of land tenure security has recently been compromised by the passing of the Law of 13th June 2018 laying down regulations for the occupation and acquisition of lands. The rapid way in which this law was passed with no prior consultation of civil society or ILPC groups could have negative repercussions on the process of institutionalising community forestry in Congo.

In light of the above, initiatives to enhance community forestry awareness and technical support for communities must be stepped up. IPLC capacity-building in community management can also be achieved through participatory mapping of customary areas. IPLCs need to be both aware and in control of forest boundaries for more effective monitoring of the latter.

Conclusions and recommendations

The community forestry debate presents the opportunity to lay down foundations for effective, community-led forest management. Community forests remain a work-in-progress within Congolese forest legislation. What is then the best CF model to implement in Congo? In light of the issues raised in this report, the specific realities of each community should be taken into account, with different CF models considered depending on context. This means that establishing CFs should be considered in CDAs as well as on IPLC lands.

One objective of CFs is to give IPLCs control of a forest to guarantee sustainable management and the preservation of biodiversity for future generations. Community forestry also aims to improve IPLCs’ livelihoods. Many community forest models have been piloted across the world, with varying degrees of success. It would be worthwhile for Congo to take note of these models to learn from previous successes and, likewise, to avoid replicating the errors of the past. For instance, in some countries CFs have focused exclusively on timber logging. Future CFs should prioritise other management options, including the potential for: artisanal logging; processing and commercially exploiting Non-Timber Forest Products (NTFPs); preserving wildlife and biodiversity; ecotourism; payments for environmental services; REDD+ benefits, agriculture, agroforestry, fish farming, aquaculture, and livestock farming.

30 Note de discussion sur la foresterie communautaire en République du Congo Brazzaville (in French), December 2014, PGDF/FGDH/FERN, | Objectifs des forêts communautaires
**Recommendations to the Government**

- Develop a clear and coherent legal framework creating an enabling environment for the creation and management of CFs;
- Set up simple allocation procedures for CFs;
- Establish and strengthen profit-sharing mechanisms: “No community forests without community interests”;
- Evaluate the impact of other types of land use (e.g. mining exploration) and allocate sufficient space for IPLCs to develop CFs;
- Establish a fair and balanced relationship between state and local institutions;
- Step up technical capacity-building initiatives for IPLCs;
- Revise the new Land Act of 13th June 2018 so as to guarantee improved IPLC involvement and participation in the land allocation process;
- Foster participatory identification and mapping of spaces for CFs in IPLC lands;
- Govern the CF application process by implementing simplified procedures to facilitate CF acquisition by IPLCs;
- Guarantee IPLCs’ right to free, prior and informed consent (FPIC) by including specific provisions relating to FPIC in the Forest Code and other sector-specific laws;
- Consider the option for indigenous peoples to establish separate CFs from those of local communities in certain cases.

**Recommendations to civil society**

- Provide ongoing education and technical capacity-building for IPLCs;
- Support IPLCs to help them understand their rights and the implications of community forestry;
- Promote active and effective community participation in ongoing legal reform processes, including the land and forest reform (FPIC);
- Help to strengthen communities’ internal governance and social cohesion;
- Provide support to improve profit management and equitable revenue-sharing.

**Recommendations to the private sector**

- Map out traditional territories located inside FMUs, with active participation from IPLCs;
- Contribute financially to the development of management plans for existing CDAs;
- Implement profit-sharing mechanisms for entities resulting from CDAs (e.g. management committee);
- Increase community involvement in the planning and resource management process and in the monitoring and assessing of layout plans.

**Recommendations to multilateral donors**

- Conduct a review of the strategic approach towards financing community forestry throughout the countries of the Congo Basin, and in Congo in particular;
- Ensure that any funding granted to the Congo government is in line with its commitment to respect IPLCs’ human rights and international standards to improve forest conservation and management;
- Consider the opportunities that community forestry offers as a way of securing customary land tenure, improving livelihoods for IPLCs, and reducing rural poverty on a lasting basis;
- Invest sufficiently in IPLC capacity-building schemes.