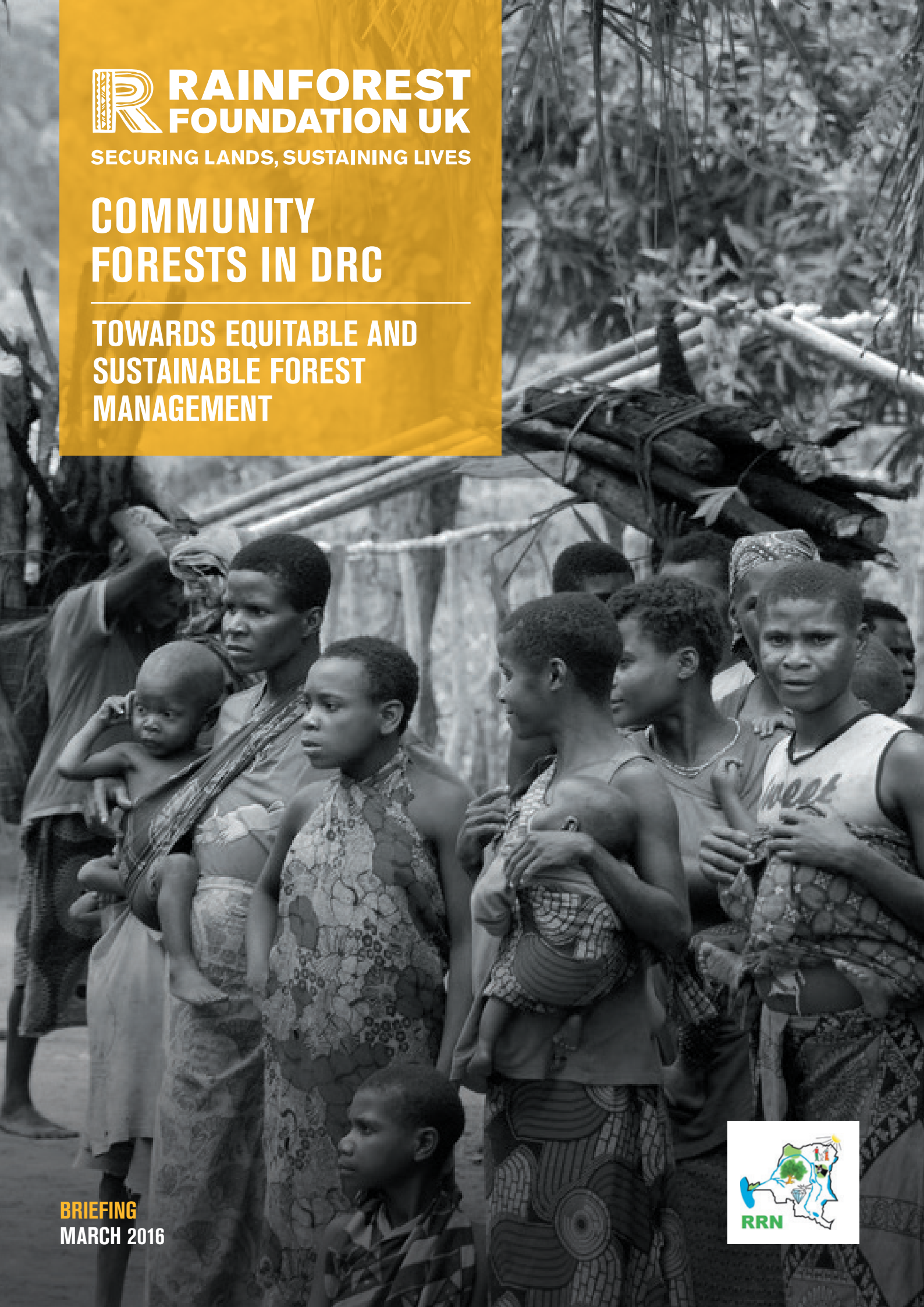
RAINFOREST FOUNDATION UK

SECURING LANDS, SUSTAINING LIVES

COMMUNITY FORESTS IN DRC

TOWARDS EQUITABLE AND SUSTAINABLE FOREST MANAGEMENT



BRIEFING

MARCH 2016

RRN



On February 9th, 2016, the Ministry of Environment, Nature Conservation and Sustainable Development in the Democratic Republic of Congo (DRC) signed legal Arrêté 025 setting out the management procedures for community forests[1], thereby establishing the implementing legal framework for community forests some 14 years after the concept was first introduced in the 2002 Forest Code.

WHY THIS IS IMPORTANT

This is arguably the most significant and long-awaited legal development related to Congo Basin tropical forests in recent years. In excess of 75 million hectares of forest, on which tens of millions of people depend for their livelihoods, will potentially be available for community-based forest management. However, whilst this is an enormous opportunity to establish pro-poor forestry at scale, there are also significant challenges. In the absence of strong administrative capacities to manage community forests at the sector, provincial and national levels, provisions in the law and implementation measures could be misused, opening the door to corruption, mismanagement and environmental damage.

Building on the RFUK briefing on decree 14/018 fixing the modalities for the attribution of local 'community forest concessions' published in September 2014, this document considers some of the key features, challenges and opportunities emerging from this legislation. It highlights the need for government, civil society and international actors to commit to a collective, long-term vision for community forests in DRC.



[1] Arrêté Ministeriel 025 Portant Dispositions Specifiques Relatives A La Gestionet A L'exploitation De La Concession Forestiere Des Communautes Locales

A COMPELLING CASE FOR A NEW APPROACH TO FOREST MANAGEMENT

Two decades of forest reforms and hundreds of millions of dollars in foreign aid in support of the current forest sector paradigm - so-called 'sustainable forest management' and strict nature conservation – have achieved very modest social and environmental outcomes.

Such is the parlous state of the logging industry that none of the conditions attached in 2005 to the logging moratorium have been met, while only one of the existing concessions is operating with a government-approved management plan[2]. Supposed 'trickle-down' benefits in the form of tax revenues or direct development assistance have been meagre, and conflicts with local communities commonplace[3].

The other side of the coin, the protected areas' system, has had similarly poor impacts. A major upcoming study by The Rainforest Foundation UK, (RFUK), on 34 protected areas in the region has revealed unacceptable impacts on local peoples' livelihoods, human rights and land rights, whilst finding scant evidence that this model of conservation has been successful in protecting biodiversity. Populations of megafauna are in sharp decline[4].



FORESTS BY THE PEOPLE, FOR THE PEOPLE

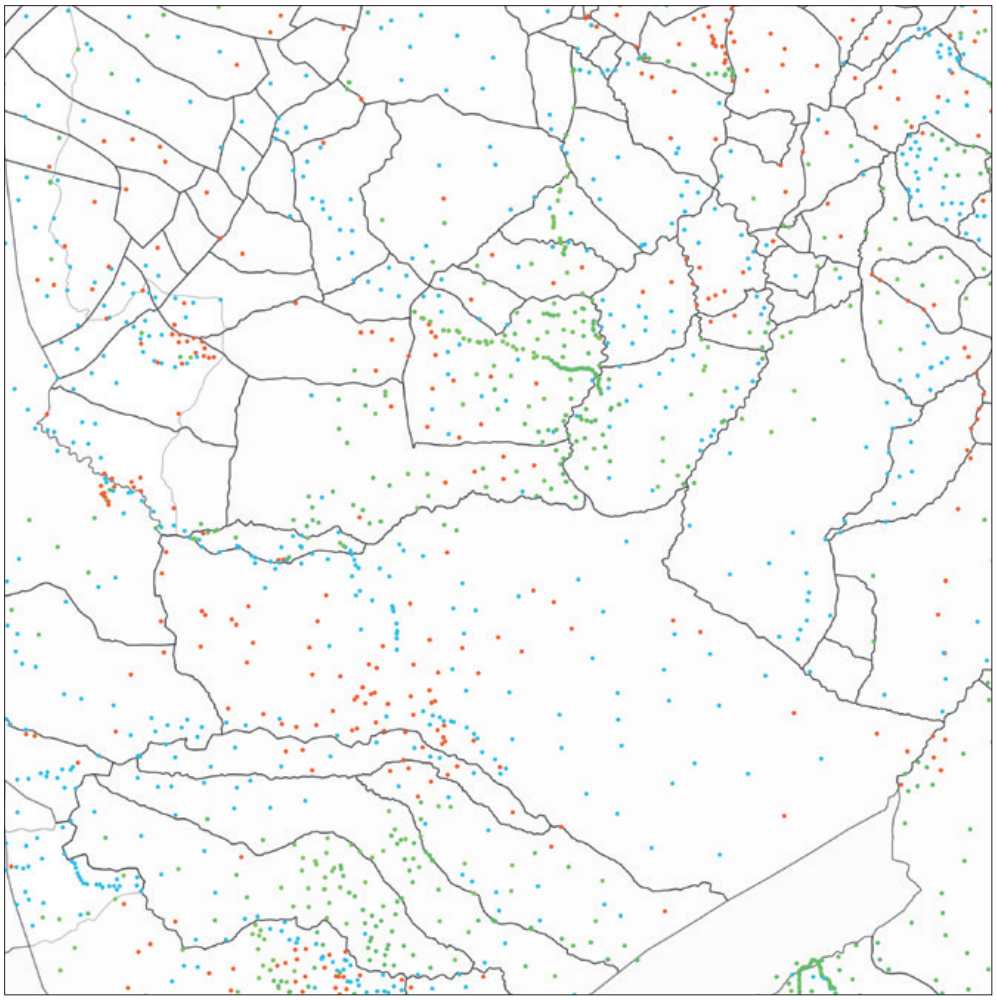
There is growing consensus underpinned by a body of scientific and economic evidence that formalising customary land tenure systems is one of the most effective strategies to protect forests and tackle poverty[5]. Although, in practice, 'informal' community forest management is extremely widespread across the Congo Basin, the few formal arrangements (mostly in Cameroon) have been heavily bureaucratic and are ill-adapted to community needs and realities[6].

The DRC Community Forest Law addresses this, allowing communities themselves to establish and enforce rules concerning access and use of forest areas according to their own customs[7]. It also sets precedents in terms of the security of tenure it offers, with community concessions held in perpetuity and up to a maximum of 50,000 hectares, 10 times the area which has previously been allowed in other countries in the region.

[2] Cites, Pc22 Doc. 12.1, « Rapport Sur L'avis De Commerce Non Prejudiciable Pour Pericopsis Elata En Republique Democratique Du Congo, » 19-23 October 2015, p.2,

[3] http://blog.mappingforrights.org/wpcontent/uploads/20160301PolicyBriefonDRCloggingmoratoriumFINALENG.pdf

[4] Pyhälä, A., A Osuna Orozco and S. Counsell (2016) Protected areas in the Congo Basin: failing both people and biodiversity? The Rainforest Foundation UK, London [in press].







LEGEND

- Farming
- Fishing
- Gathering
- Hunting
- Other
- Traditional Tenure

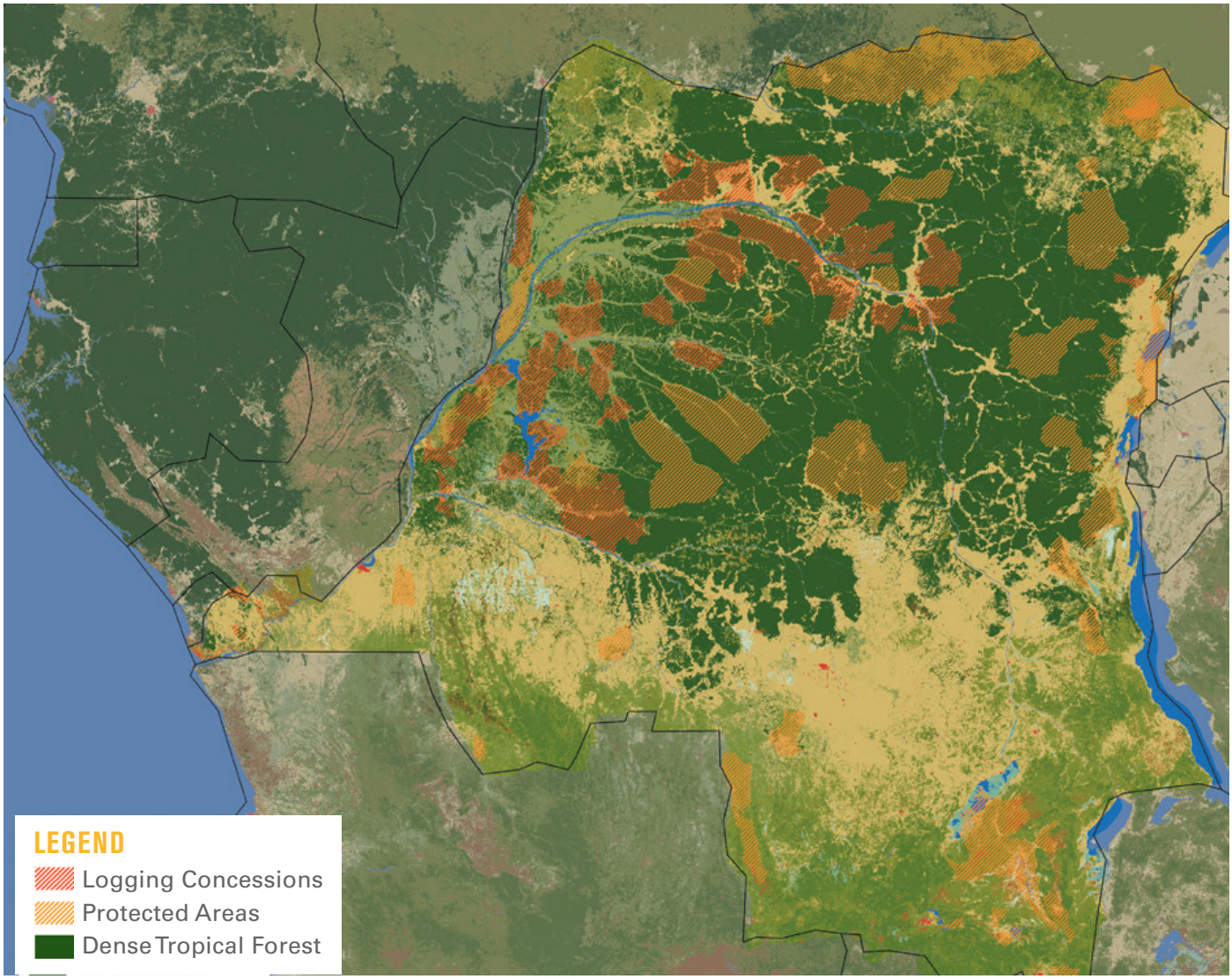
Map showing an example of customary tenure rights and resource use in Equateur Province. These forest management systems are generally very well defined and contiguous across DRC's forests, and could possibly provide a basis for formalised community forests.

Source: MappingForRights/GASHE

[5] See, for example, http://www.wri.org/sites/default/files/securingrightsfullreportenglish.pdf
[6] Rethinking Communitybased Forest Management in the Congo Basin, Chapter 3
[7] See for example Decree 14/018, Article 7 and Arrêté 025 Article 4

SPACE TO GROW

Whereas community forests in neighbouring countries have been treated as a residual forest category, and limited to mostly degraded areas deemed unfit for commercial logging or biodiversity conservation, there is potentially in excess of 75 million hectares of forest in DRC available to communities for self-sustaining development (due, in part, to the moratorium on the allocation of new logging concessions).



Based on an estimated tropical forest cover of 103 million hectares in DRC[8], this map shows an area of 75 million hectares is potentially available for community forests, once existing allocations for industrial logging and protected areas have been factored in. This figure does not include other forest categories such as dry and mixed savanna forests.

Sources: ESA Land Cover data 2010, World Resources Institute.

[8] The estimated forest area considered suitable for community forests has been derived from ESAs CCI land cover data of the Intact Forests dataset. The convex hull provided an upper bounds which determined an extent of forest cover including secondary and degraded forests. There is no single accepted definition of forest cover and other methods may result in different calculations.

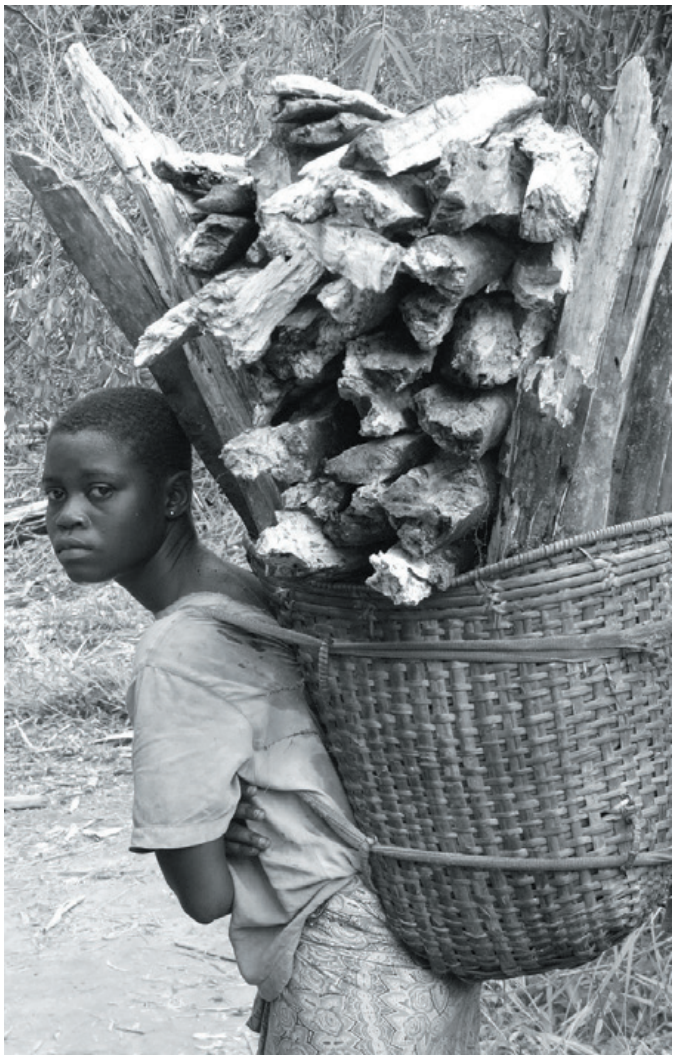
Community forests therefore offer unprecedented, if still limited, opportunities for forest-dependent communities to gain legal rights to use forest land and resources. However, for the full benefits of them to be appreciated in the long term, lessons from elsewhere show there is a need for reform of overarching national land and resource rights laws to permit the transference of full forest possession and ownership rights from the state to local communities[9].

As such, it is important that community forests are not treated as isolated examples but rather embedded in broader land-use planning processes. They should also be integrated into any future provisions for more secure land rights which may emerge from the (faltering) national land reform process and the indigenous peoples' law, under development in DRC.

IMPLEMENTATION OPTIONS

In contrast to the 'one size fits all' community forest models found elsewhere in the region, and in opposition to the 'logging-only' restrictive option, the DRC law gives flexibility in both customary management arrangements and the specific purposes of the community forests. For example, articles 65 and 67 of the Arrêté open up the possibility of them being used as indigenous and community conserved areas, which could now be considered as a means for the DRC government to attain its target of 17 per cent of the national territory under protected area status.

In theory, community forests could also provide a basis to channel benefits to communities from REDD schemes and other payments for ecosystem services (PES) initiatives. The major REDD programmes under development in DRC do recognise the importance of community forests as a means of facilitating payments to forest users for preventing deforestation – though there are probably unrealistic expectations as to how fast and how many community forests can be established and brought under formal management, within the timeframe of the respective projects.



[9] Rethinking Community based Forest Management in the Congo Basin, Chapter 5

RISKS AND BARRIERS

While containing legal innovations, the community forest law also contains a number of challenges and weaknesses that could lead to resource grabs, elite capture and other perverse outcomes[10].

LOOPHOLES

Unless measures are put in place, it is foreseeable that provisions related to third party engagement[11] could be exploited by the likes of corrupt local elites, politicians, loggers, and 'carbon cowboys' to gain easy access to highly lucrative concessions. Moreover, the law omits any conditions related to benefit-sharing mechanisms for such contractual arrangements[12], which could see communities allowing their forests to be exploited for well below their real value, and left devoid of resources.

ELITE CAPTURE AND INEQUITY

There will need to be sound oversight, monitoring and accountability measures in place within communities to ensure that any income or benefit generated can be absorbed in a fair and appropriate manner[13]. Adequate participation of marginalised groups such as women and indigenous peoples in planning and management processes needs to be assured throughout community forest projects. To this end, certain aspects of the proposed management structures set out in Articles 5-18 of the Arrêté may need further clarification, as will the role and mandate of community chiefs in Article 21.

CAPACITY GAPS

Community forestry in DRC is starting from a very low capacity base. The danger is that there could be a proliferation of community forests in the coming years which would be grossly disproportionate to the capacity of the forest authorities to adequately administer and oversee them. In the context of the national political decentralisation process, which is slowly being shaped, the main responsibilities for community forests are given to decentralised territorial entities ('sectors'), which are presently either non-existent or barely functioning. They will need technical, financial and human resources to respond to the demands that will be placed on them. Similarly it will be important to establish what kind of oversight of community forests there will be at the provincial and national levels.



Article 75 of the Arrêté acknowledges that several management guides, tools and models have not yet been developed. This would require an integrated approach between all the different stakeholders (e.g. NGOs, academics, consulting groups, etc.) working on such technical aspects, and would involve elaborating upon the simple community forest management plans, contracts for exploitation, community logging permits and participatory mapping, all of which would also need to be field-tested and revised if necessary. NGOs, communities and their customary institutions will also need stronger capacity when applying for community forests, as well as at the point of implementation and management procedures.

[10] Some of the risks related to community forest allocations are further examined in the 2014 briefing on Decree 14/1018.
[11] See Decree 14/018, Articles 15 and 20 , and Arrêté 025, Articles 2 and 34)
[12] Arrêté 025, Articles 34, 35, 36, 50
[13] Arrêté 025, Articles 62 to 64

RECOMMENDATIONS

The DRC government, along with the Congolese civil society that worked with it to develop the new law, should be commended for the passage of legislation that surpasses its regional equivalents in its potential to genuinely devolve forest management responsibilities. However, a constellation of enabling conditions needs to be brought together for this to become reality:

TAKE THE LONG TERM VIEW

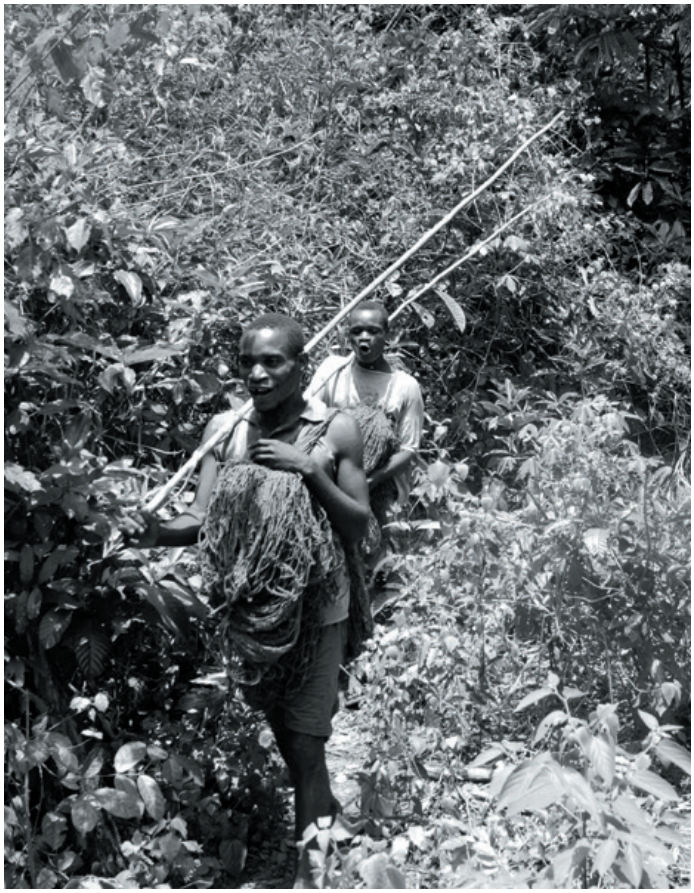
There are no quick fixes. It will take the kind of substantial investment that has been afforded to industrial logging and protected areas over the past two decades to put community forests onto a sustainable and mainstream footing in DRC[14]. This will require high levels of commitment and coordination from government agencies, NGOs and development partners, and a plan to follow a consensual, integrated and sustainable approach to implement such a new process. **The National Community Forest Roundtable**, which has already met once, is a very positive sign of a willingness to cooperate in this endeavour. One of the priority tasks of the roundtable is the drafting of a **National Community Forest Strategy**, which should aim to provide a framework for the future actions of the different stakeholders involved in community forest development.

BUILD IT PROGRESSIVELY

Given the substantial risks highlighted above, there should be a phased approach to the development of community forests in DRC. Ideally, there would be an agreed 'testing phase' during which allocations of community forests would be limited to a finite number of pilot projects in different social and geographical settings. This would allow for the development of the necessary capacity, testing and refinement of the legislation based on monitoring and assessment of the results of the first pilot projects, and strengthening the necessary institutions.

LEARN LESSONS AND BUILD CONSENSUS

The new national community forest roundtable will provide a space for forest experts and development practitioners to share lessons and best practices from these experiences and from elsewhere and commission research to provide an evidence base for further policy development.



[14] For example, some US $109 million was spent between 1991 and 2001 on the Guatemalan Biosphere Reserve and in Nepal close to $250 million dollars have been spent on community forestry in the last 30 years.

RECOMMENDATIONS

MAINTAIN SPACE, MONITOR CLOSELY.

During the time it takes to build the necessary capacity on community forests, measures should be taken to ensure that DRC's resource-rich forests remain available for the use and benefit of rural people, including:

- A reform of the land regime to recognise collective customary rights.
- A scaling up of community mapping and piloting of participatory land-use planning.
- Maintaining the moratorium on the allocation of new logging concessions.
- An independent cost and benefit review of the socio-economic and environmental impacts of current forest management system industrial logging and strict nature conservation – should be undertaken, and where necessary existing allocations which are not meeting their management objectives (and providing equitable local benefits) should be declassified or reclassified.
- Close oversight of forest allocations for agri-business, mining and infrastructure development on lands that would otherwise be suitable for community forests.
- Following ongoing developments related to artisanal logging, including its legal framework[15], and identifying possible contradictions and threats it could pose to the development of community forestry.
- Intensifying the monitoring and enforcement of illegal logging (inside and outside of existing concessions), including through the use of emerging community-based monitoring and joint control approaches.

CREATE AN ENABLING ENVIRONMENT FOR CHANGE.

Additional actions that should be supported include:

- Testing different models such as grouping of community forests into viable economic units, developing domestic timber markets currently being serviced by illegally-felled timber, exploring non-timber forest uses and piloting of community-conserved areas.
- Supporting the creation of community forest associations to build capacity, collective economic presence and boost access to credit and markets. Developing incentives for responsible private and public sector investment in community forests.
- Resourcing decentralisation policies that genuinely transfer management responsibilities in pilot areas.
- Supporting, raising awareness and building the capacity of local communities and the forest administration in order for them to acquire the knowledge and skills needed to ensure a controlled and integrated management of community forestry.
- Developing and field-testing community forest management tools as described in Article 75 of the Arrêté.
- Developing a registry and online geographical database of pilot community forests and other community-based forest management projects.
- Strengthening linkages with other policy processes such as REDD and FLEGT.

[15] A review / preparation of regulations relating to artisanal logging is currently in progress.



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