

Community Forest Tenure Mapping in Central Africa

The Republic of Congo case study

1. Legal and regulatory context

All of the forests in Congo are owned by the state; the state can grant other users (logging companies, communities) certain forms of legal access and use in the form of logging concessions or recognizing customary user rights. The origins of the state's exclusive ownership of the forest are in the colonial era and thus very entrenched in thinking about forests and their management. In this respect, Congo is not unique in the Congo Basin region, and indeed all other countries there have a similar system.

Land rights, which are not dealt with in the Constitution of the Republic of Congo, are primarily covered by Law No. 10-2004 on general principles applicable to the dominial and land regimes. Article 31 of this Law recognized customary land rights and allows for such rights to be of either an individual or a collective nature. Importantly, this Law also guarantees preexisting customary rights where they are not incompatible with existing legal titles. In the case of dispute, the law foresees a mechanism whereby such contestation can be resolved. It also addresses titling for customary lands.[1]

Forest areas are covered by the 2000 Forest Code, (*Loi n° 16-2000 du 20/11/2000 portant Code forestier*), a law based on the "principles of sustainable, participatory forest management" (Titre Premier, Article Premier, Loi n° 16-2000 du 20 novembre 2000 portant code forestier) with a major role for the private sector (logging) and a minor role for local communities The government policy aims for the development of forest inventories, followed by the preparation and implementation of management plans for all Forest Management Units (FMU - logging concessions) across the country.

The Congolese Forest Law favours industrial logging with currently 34 FMU's, ranging from 200,000 to 1 million ha (see the prevalence of logging concessions in the North and South in Figure 1). There is also a target for 100,000 ha of new eucalyptus plantations within a decade. Logging is now entirely run by the private sector, including many small and medium-sized enterprises, and the country is an important supplier of tropical timber to both Europe and China[2]. The previous Forest Law of 1974 covered forest management principles, community forests and subcontracting. The new law, which confirms forest management principles and industrialization objectives, greatly reduces local community involvement (except for local 'municipal' forest, and involvement in zoning exercises for example).

Though the law makes no provision for community forests or customary rights, it does address community use rights. In Article 41 the 2000 Forest Code states that in the State Private Domain the management plans of logging concessions can recognize use rights; however the consistency and conditions for the exercise of user rights (*droits d'usage*) are determined by the authors of the management plan. Significantly the user rights can be exercised by all local people even foreigners, thus in a sense customary rights can be infringed by the user rights extended to everyone present locally.

The 2000 Forest Law explains user rights, once enshrined in a management plan, would allow communities to exercise these limited rights, such a gathering timber for domestic use, hunt, fish and gather those forest products that are permitted under the law. The communities can also open up farming plots, keep bees in hives, graze their animals or gather fodder.

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[1] Article 23 states that, *« les biens et les droits réels constitutifs du patrimoine des particuliers font l'objet de titres fonciers délivrés sur base des droits coutumiers d'origine collective dûment constatés sur les sols »*

[2] http://www.illegal-logging.info/sub_approach.php?subApproach_id=69

However, customary rights are provided for under the 2004 Land Law (*La Loi no l0-2004 du 26 mars 2004 fixant les principes généraux applicables aux régimes domanial et foncier)* states in Article 31 that the government tenure regime guarantees the pre-existing customary rights that are not contrary or incompatible with delivered and registered titles[3]. This also refers to collective and individual customary rights to land.

A 2002 SGS study[4] concluded that community involvement in forest management at the national level was poor, with little or no consultation. The study voiced concern about the plight of 'Pygmy' groups, noted for being particularly dependent on forests for their subsistence livelihoods, and judged to be key stakeholders in the forest sector. The study notes a disturbing lack of involvement of 'Pygmies' in consultation processes concerning forest management (i.e. the creation of logging concessions).

Currently several large logging companies in the Republic of Congo have obtained or are seeking Forest Stewardship Council certification. This is opening up new ways of addressing community tenure but is also likely to increase the gulf between well-managed logging concessions and 'rogue companies'.
In 2006 the Government of Congo-Brazzaville produced a decree creating an ad-hoc organ to determine customary land rights. This decree goes with the 2004 Land Law. The language of the decree indicates it is mostly targeted at conflicts over buildings, but it does offer broader opportunities. The committees, to be created at the district and '*arrondissement'* levels, are charged with: noting customary land rights; determining the limits of lands; establishing the traditional use of the land; establishing the public use of the land; establishing the regime and modalities of the access and use of water; intervening where conflicts arise between customary lands rights and titles issued by the governments.

At the district level, the committee would be composed of: the divisional officer, the village chief of the area concerned, a member of the cadastre and five resource people chosen for their knowledge of the area. The decree is not more specific on consultation, other than calling in everyone susceptible to be knowledgeable about a case, and determining a consensual process of decision making with all parties.

The decree proposed a non-exhaustive list of documents to be produced to the ad-hoc committees by any claimant to prove customary ownership. The production of many of such documents would pose significant problems in particular for indigenous "Pygmy" forest communities. Decisions of the committees are to be made in a consensual manner, and rendered by a statement signed by all parties.

Any decision of the ad-hoc committee will be rendered by a statement signed by all parties (sic). Any decision is made in a consensual manner between all parties present, although it is not clearly stated that this should include the plaintiff.

Though the initiative undertaken will mean an advance in addressing customary tenure rights the creation of these ad-hoc committees is unlikely to affect the larger proportion of rural communities.
Most of these communities will have neither land titles nor be able to prove 30 year "mise en valeur" (productive use) of a plot. This is especially true of 'Pygmy' communities that often lack even individual identity papers.

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[3] *« outre les droits relevant de la législation moderne, le régime foncier garantit la reconnaissance des droits coutumiers préexistants non contraires ou incompatibles avec des titres dûment délivrés et enregistrés »*

[4] SGS Trade Assurance Services - Sustainable Forestry Programme. *Forest Law Assessment in Selected African Countries- Final Draft for the World Bank / WWF Alliance*, Geneva, Switzerland, 30th October 2002

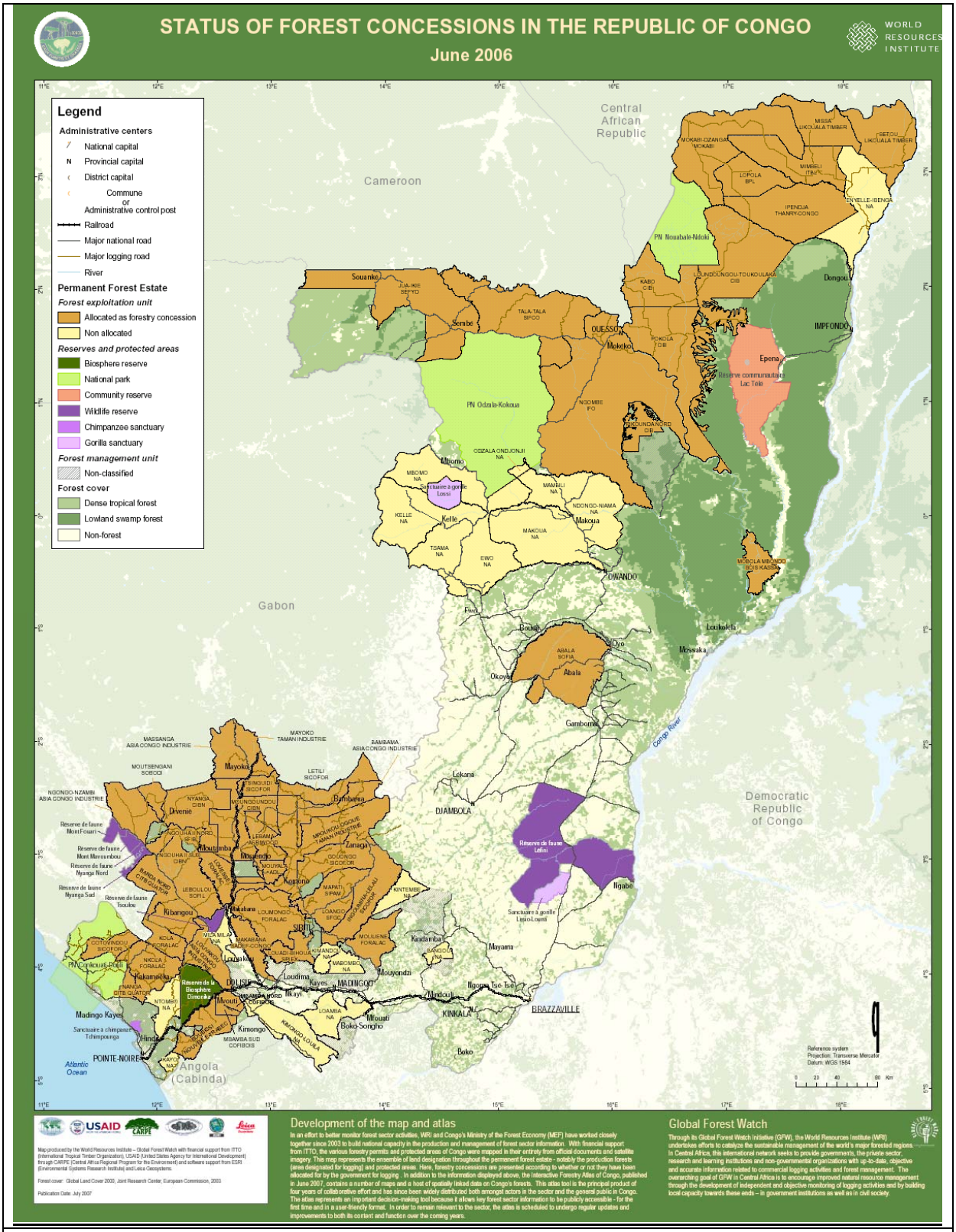


Figure 1: Logging concessions and National Parks in the Republic of Congo (map : Global Forest watch

2. Review of community mapping initiatives

Rights-recognition mapping is a not commonly used term in Congo. The current forest legislation and policy as yet offer little space for community rights to forests; other than user rights. However over the course of the last 3 years Congo has had some experiences in what could be described as Participatory Mapping.

The experiences in this study are those where mapping has taken place of community lands and resources in Congo. There appear to be several cases where substantive work has taken place:

- The participatory mapping by logging company *Congolaise Industrielle des Bois* around its Forest Concessions under Sustainable Management: Kabo, Pokola, Loundoungou, Toukalaka and Pikounda);
- The participatory mapping by logging company IFO-Danzer around its Forest Concessions under Sustainable Management: Ngombe;
- The Lossi Sanctuary (ECOFAC).

2.1 Congolaise Industrielle des Bois

Congolaise Industrielle des Bois (CIB) is the largest logging company in the Republic of Congo; the company holds four *Unité Forestière d'Aménagement(* Forest Management Unit's – FMUs – see Figure 2) and one smaller Forest Exploitation Unit, witha total surface of 1,300,000 hectares. In March 2004, CIB formally declared its intention to seek Forest Stewardship Council (FSC) certification for its forest concessions. In order to secure compliance with FSC Principles 2 and 3, which related to tenure rights by local and indigenous peoples, CIB started to work on mapping community lands, including community use zones (hunting, fishing, and gathering) and community sacred sites with community members in 2004.

The maps show what kinds of activities are executed on the land by communities. For each community a map is thus produced that also shows the historical presence of the community in the forest (by focusing on abandoned previous villages). The maps are made in close collaboration with the communities and are restituted to the communities for approval. Relevant community sites or usage is marked with paint.

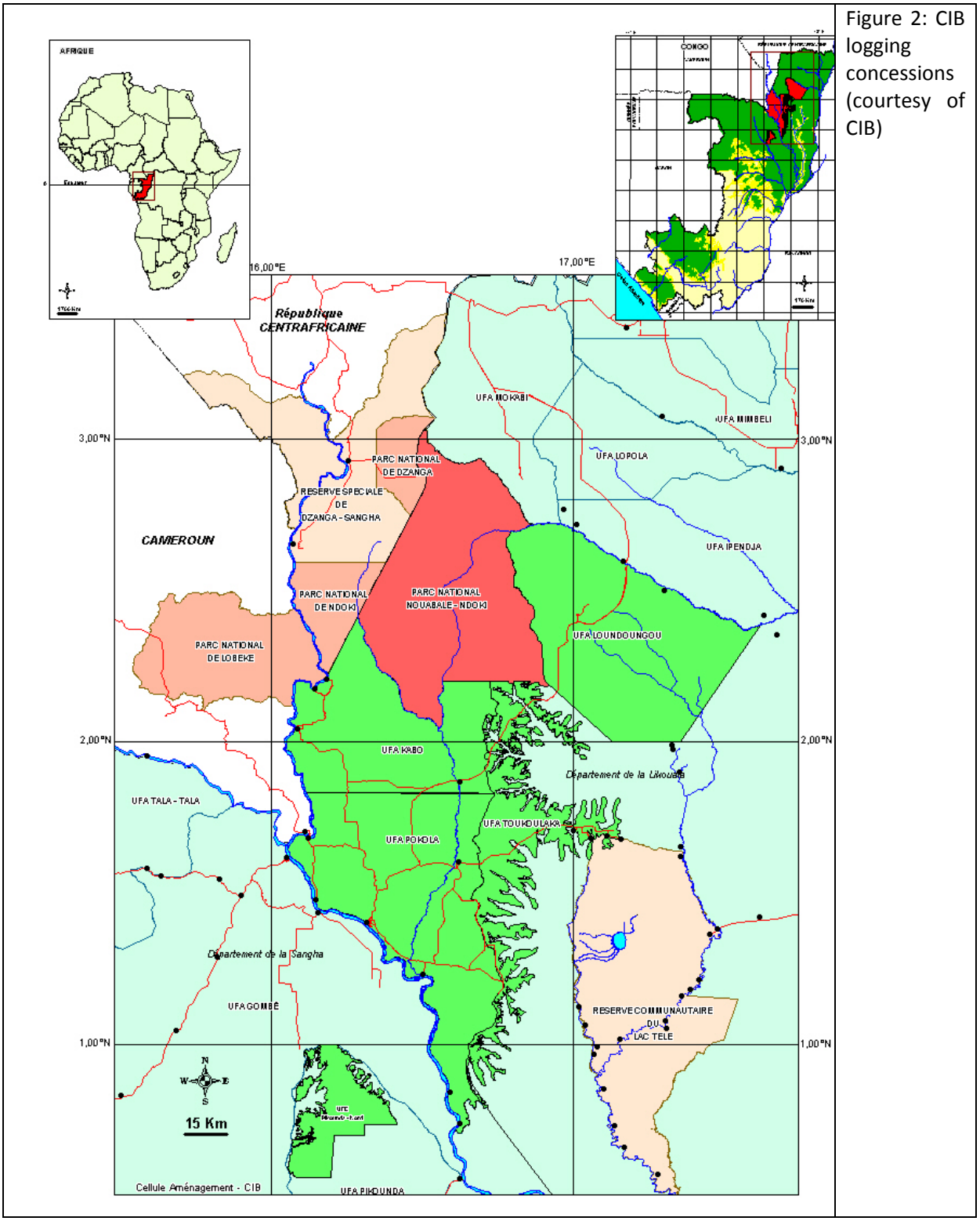


Figure 2: CIB logging concessions (courtesy of CIB)

After the restitution of the maps the community concerned and CIB discuss management rules for the forest that lead to the drawing-up of a written agreement between the community and CIB. CIB considers that the discussions on forest management with the community account for the community's Free, Prior and Informed Consent for the forest management of the affected area, which is a crucial part of the FSC certification process[5].

CIB's maps are all geo-referenced and all of the key sites are mapped with GIS points.

The maps thus produced are integrated into CIB's logging operations and the staff of the company is informed of which sites should not be affected by logging operations. The maps are geo-referenced, and use simple visual legend and symbols to indicate different sites. CIB has subsequently mapped and demarcated land assigned to communities' for farming and hunting. Within the boundaries of its logging concessions CIB has thus produced a division of the forest available for hunting by different categories of hunters.

CIB's Kabo Forest Management Unit (FMU) was granted an FSC certificate in May 2006; recently the Pokola FMU has also received an FSC certificate. More recently, CIB has worked on providing 'Pygmy' inhabitants of their logging concession with training and GPS units. According to CIB's partner, the Tropical Forest Trust: "For instance, at a large Sapelli tree prized for its edible caterpillars, or an important collecting area for medicinal plants, they simply select the appropriate icon and the GPS records the location. This data forms the basis for resource maps, which bridge the communication gap between the people in the forest and the forest company and enable a fair negotiation."[6]

The most extensive work on mapping community tenure would appear to have taken place in the Kabo and Pokola FMU's. Kabo FMU is of 267, 048 ha and Pokola FMU of 377, 550 ha; mapping of community resource use involved all those communities in or near the FMU and the subsequent zoning covers the entire surface of these concessions. Kabo FMU has around 4,000 inhabitants most of which reside in Kabo town, the centre of CIB's operations in the Kabo concession. In Kabo FMU CIB notes the presence of 20 villages or settlements with a total of 4,000 inhabitants. The majority of these reside in the town of Kabo. Around 600 'Pygmy' people are believed to live within the concession.

Pokola FMU has 32 villages and settlements and a total population of 14,850, most of which reside in CIB sites (primarily the town of Pokola and the camp at Ndoki 1). The concession is reported to include 1,524 Mbenzélé and Ngombé 'Pygmies'. Outside of the main towns, communities generally consist of less than 50 members.

2.1 Industrie Forestière d'Ouesso

Industrie Forestière d'Ouesso (IFO) is a logging company belonging to the German Danzer group. IFO operates the Forest Management Unit Ngombé with a total surface of : 1,159,643 ha of which 801,716 ha are for production (logging) (see Figures 3 and 4).

[5] Whether the actions undertaken by CIB or other logging firms constitute Free, Prior and Informed Consent is being questioned. The issue of FPIC, or rather what constitutes Free, Prior and Informed Consent, is not without controversy. For a critique consult www.fsc-watch.org/

[6] http://news.mongabay.com/2008/0529-congo.html

The management plan for the Ngombé FMU was approved in November 2007. In the management plan IFO presents a number of measures to "*reduce to a maximum or compensate the direct negative effects of the forestry work*". One of the measures specifically referred to concerns the protection of sacred sites and the sites of abandoned villages by IFO by identifying them through social mapping.

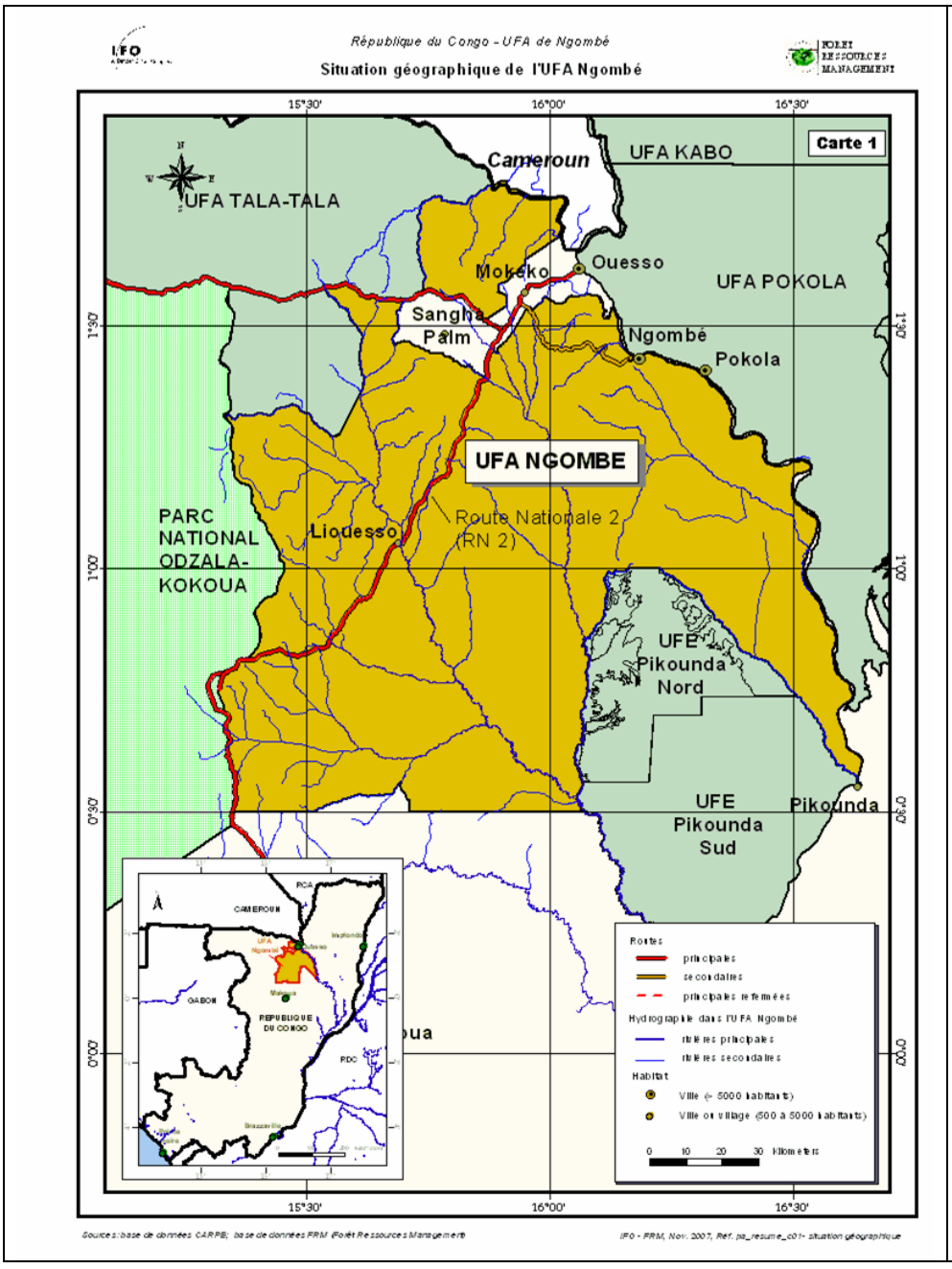


Figure 3: the Ngombé FMU (courtesy IFO-Danzer)

The management plan that IFO has proceeded with a zoning exercise inside the concession. The zoning has produced areas dedicated to community development, hunting zones, and conservation zones (where human activities are not allowed, with exception of PFNL extraction by local communities).

These areas have been delimited by IFO on their management maps. The management plan indicates that this delimitation will be 'refined' in consulting local communities. IFO also proposes to create a platform for consultation in the management plan, though it is unclear whether the platform is now effective. The decisions on the areas available to community development, hunting zones and conservation zones were all taken by IFO before such a platform was created.

The management plan contains special provisions for 'Pygmy' groups, and stresses the importance of integrating vulnerable groups such as 'Pygmies' and women in the consultative platform. 'Pygmy' groups will be allowed to hunt (for subsistence use) inside the Djoubou zone, a zone where all further hunting is outlawed.

The complex use of the forest by local communities is actually very evident in the Ngombé FMU management plan, describing the extensive use of Non-Timber Forest Products, the importance of hunting and the extensive use of forest products for medicinal uses. The same document also describes the extreme dependence by these communities on their natural environment.

In April 2008 IFO-Danzer released a press statement committing to the principles of FSC. With regards to Principles 2 & 3 (see above) the declaration pronounced that: '*The long-term property and user rights of land and forest resources will be clearly defined and enshrined in legal documents. The local communities will exercise their user rights and have access to the resource according to their legal and customary rights. Adequate mechanisms will be employed to resolve conflicts on property or use*' and '*the legal and customary rights of indigenous peoples regarding the possession; use and management of their lands, territories and resources are recognized and respected. The indigenous peoples' free, prior and informed consent will be required for any management activities that could affect their rights. Sites of cultural, economic, ecologic, or religious significance for the indigenous peoples will be identified and protected and the traditional knowledge of the indigenous peoples compensated*'.[7] The IFO-Danzer Ngombé concession was FSC certified on the 26th of March 2009.

It is not exactly known how much of the 810,716 hectares of the Ngombé concessions has undergone mapping.
The entire population inside the Ngombé FMU is 7,263 inhabitants (according to the management plan), though the plan indicates these figures are being reexamined. Most of the FMU's residents live near the public roads crossing the concession, with a substantial number living in IFO's base camp in the town of Ngombé. Beyond these larger centres some 75 smaller villages and camps exist. The majority of the people in the concession are of the Bakwélé ethnic group, but considerable populations of 'Pygmies' are also present.

[7] IFO- Danzer, Engagement de IFO pour une bonne gestion de la forêt, April 23 2008

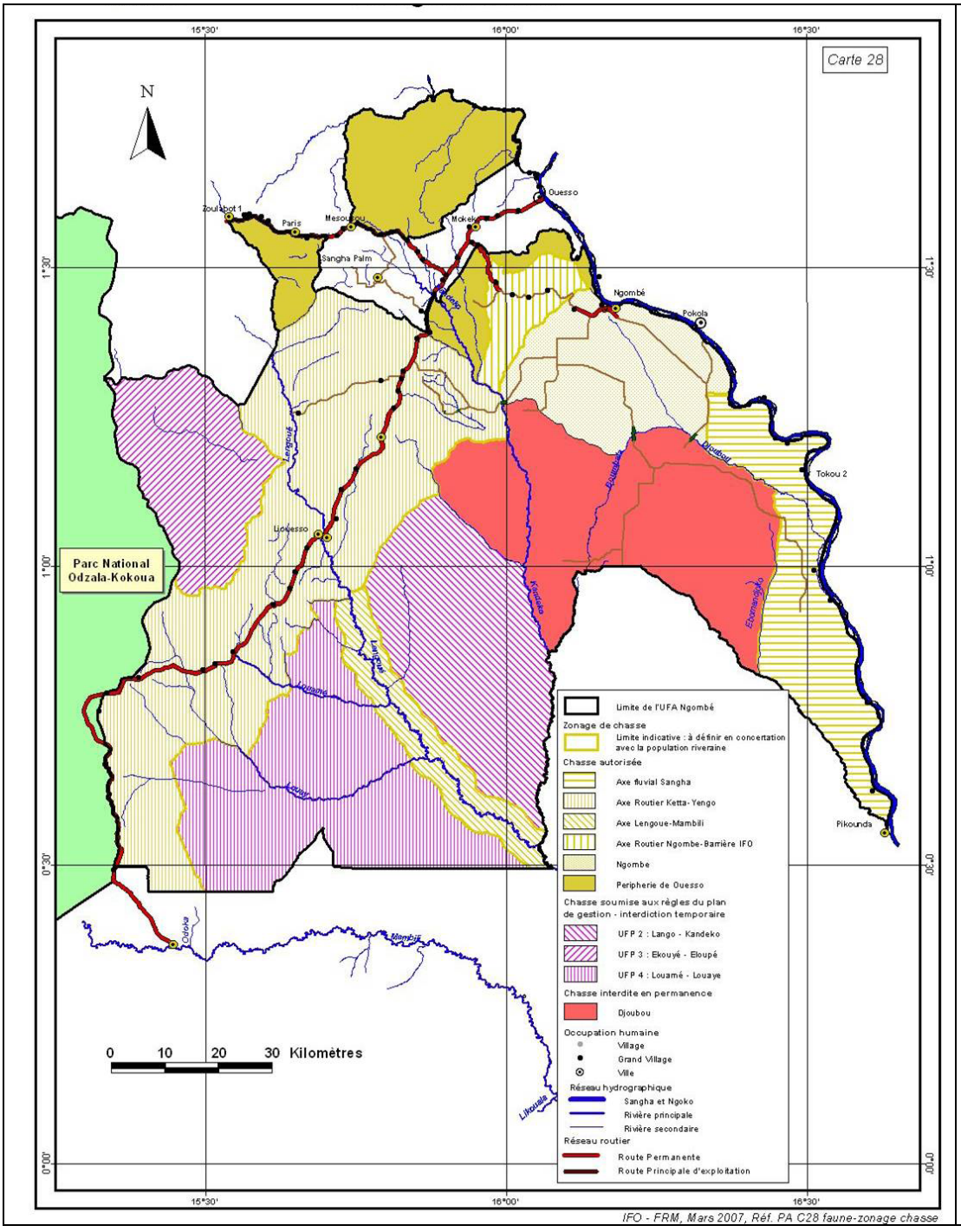


Figure 4: The zoning of Ngombé FMU (map courtsey of IFO-Danzer)

2.3 The ECOFAC Lossi Sanctuary

In Northern Congo the *Ecosystèmes Forestiers d'Afrique Centrale* (ECOFAC) programme, financed by the European Union, has supported the creation of the Lossi sanctuary to protect the present great ape population. The project started around 1992-1993 with some local studies (notably of the great apes in

the area) and was supported at least until 2002. The Lossi Sanctuary (see Figure 5) extends over 350 square kilometres., and is situated in the Cuvette-Ouest region in the Mbomo sub-division, close to Odzala National Park.

The Lossi Sanctuary was a pilot experience where the local communities, the Mboko Alengui, after some years of work with ECOFAC, asked for the creation of a sanctuary in 1996. The communities hoped to be involved in the management of the sanctuary and to benefit from revenue to be generated through eco-tourism. A further motivation for these communities was that the area required for the sanctuary involved lands that, though being customary owned, were at significant distance, and of limited use to them (Gami, Norbert. *Droit coutumier et création du sanctuaire Lossi «Congo»*, ECOFAC, 2002).

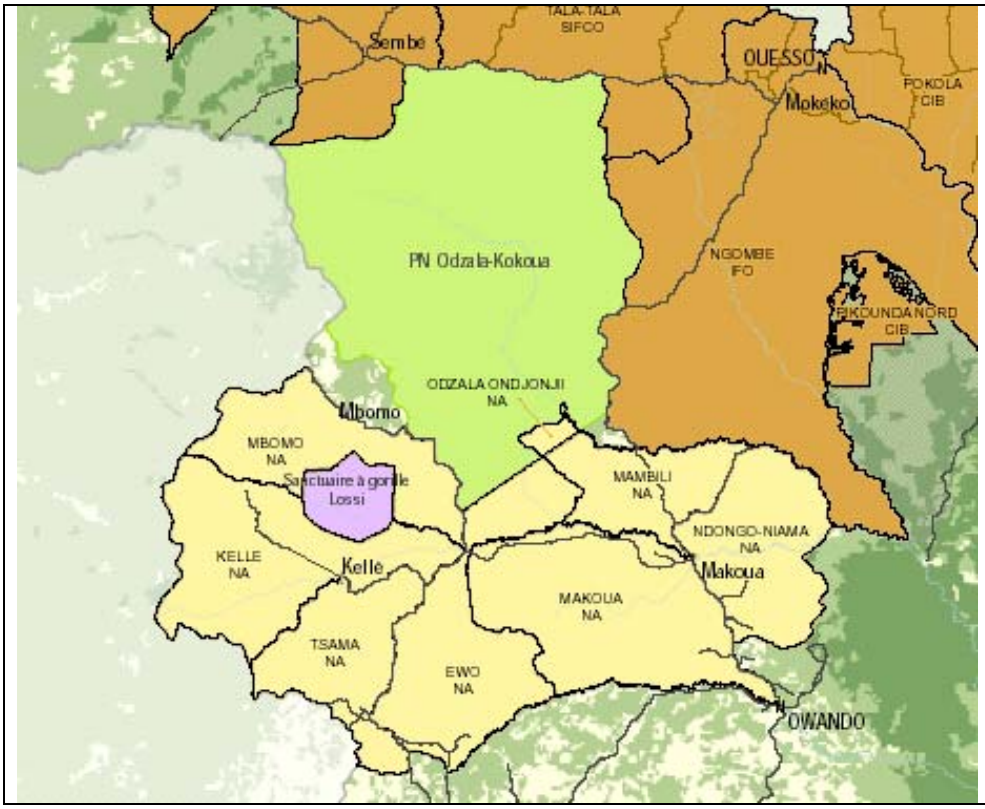


Figure 5: Lossi Sanctuary (*Sanctuaire à gorille*) in purple (map courtesy of Global Forest Watch)

The ECOFAC team supporting the effort studied the tenure rights and arrangement of the Mboko Alengui. With support from the communities, the team determined the families owning the lands, the numbers of lands and proceeded to delimit the area of land for the sanctuary taking into account community needs and the traditional arrangements for resource use. To determine the boundaries of the sanctuary, the ECOFAC team employed participatory mapping. The technique allowed those communities who had rights to the land to determine the boundaries of the new sanctuary while also determining zones for community subsistence use (fishing, hunting, farming and gathering). The ECOFAC team also engaged in a dialogue with those members of the community without land rights in the area.

The work initially involved a census exercise to identify those with rights to land in the area, for which a community resource person was used. The subsequent mapping exercise involved both those community members with customary rights to the area and the ECOFAC team.

The project focused on three villages concerned by the sanctuary, Lengui-lengui (the largest village with 160 inhabitants in 2000), Ombo (64 inhabitants) and Mouangui (35 inhabitants). The project identified 39 lands and 21 land owners (representatives of families and clans) affected by the sanctuary, the total area covered by these lands is the entire 350 square kilometres composing the Lossi sanctuary.

The Lossi Sanctuary obtained official recognition by the authorities of the Sanctuary (10th of May 2001).

3. Comparison of the philosophy and methodology, and interaction between this mapping information with the official and statutory information on ownership, access and use rights, and land or resource use administration

3.1 CIB

The participatory mapping CIB has conducted is clearly linked to its work in obtaining and maintaining the FSC certificate – and has established a methodology which is now being used by other companies in the Congo Basin region similarly seeking certification. The participatory mapping was initiated by CIB and CIB remains the primary driver; it determines the work program and the types of maps produced. The communities are associated in highlighting the sites that are of significance to them. The initial choice of such sites, notably sacred or cultural sites, comes from meetings with community resource people. It should be noted that the types of sites chosen for mapping are very similar between different FSC certification attempts.

The actual taking of GPS point is done by CIB staff accompanied by village resource people. The final maps are restituted to the communities and then the subject of a convention on forest management norms. The whole process of mapping is directed within criteria set by CIB (as CIB has engaged in the FSC process voluntarily) and thus communities act only as participants in the process, unable to determine any other outcome than an agreement on the preservation of sites of significance to them.
CIB not legally required to conduct participatory mapping, and whilst the community's customary rights to forest resources in such logging concessions are maintained by the law, there is no legal obligation for the logger to preserve sites of importance to communities.

Despite the community mapping work, CIB have remained embroiled in a controversy around the actions of local 'eco-guards'. These guards, who were charged with reducing illegal trade and transport of bush-meat, were accused of human-rights violations of 'Pygmy' communities exercising their customary user rights[8].

3.2 IFO-DANZER

Though information on the processes applied by IFO-Danzer during the certification of the Ngombé FMU is not readily available in the public domain, the information available indicated broad similarity with the CIB case illustrated above.

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[8] Observatoire congolais des droits de l'Homme (OCDH). *Rapport de situation. Abus de pouvoir, tortures et mauvais traitements : Les Eco gardes terrorisent les communautés pygmées de Sangha*, Brazzaville, October 2005

3.2 The ECOFAC Lossi Sanctuary

Most protected areas in Central Africa are created in a top-down fashion and thus few tools for a more collaborative approach were available at the commencement of activities, though the project did use some of the experiences and tools from the CAMPFIRE (Communal Areas Management Program For Indigenous Resources) project in Zimbabwe. The project also reached out to administrative authorities as the approach was new and Congolese law does not include texts concerning community managed reserves. The local communities were also supported in meetings with the authorities and consensus was achieved.

The Lossi experience is so far unique in Congo as it involves communities initiating a Sanctuary and voluntarily relinquishing their land rights. The focus of the project was not on government designation of areas or ownership but rather on using community knowledge and customary rights to create a gorilla Sanctuary.

4. A rough estimation of the extent of customary tenure rights and/or the tenure contestation in areas of forest designated as part of the public domain

The maps and the studies from CIB and IFO-Danzer highlight how often communities have important livelihood activities at substantial distances from the village. It's fair to state that all the mapping exercises presented show some level of contestation. In all the cases presented, community lands extend inside logging concessions and national parks. The size of the village lands presented in the different case studies and the fact that in almost every case these lands overlap with other uses would strengthen the case of a participatory zoning exercise to review the current use of the forest domain.

Though the participatory mapping done by CIB would seem to advocate the possibility of a peaceful cohabitation between loggers and villagers, such a model raises questions. A primary question is the inequality evidenced by all cases, where communities are always obliged to 'adapt' to legislation constructed for others (logging concessions, national parks). Inequality also where legal protection for community use is either absent or not enacted. Clearly in practically all the cases presented communities where totally uniformed of their rights and obligations.

The mapping undertaken by logging firms for their FSC certificates is improving knowledge of the forest. However, it is clearly a process driven by the logging firm and the uniform timeframe and approach might not do justice to the complex use of the forest and forest resources by communities. Moreover, the government's focus on developing industrial logging and has yet to be matched by sufficient attention to community customary land rights though new efforts are under way.

The Lossi case is known to the authorities and offers ample evidence of the rewards of working with communities to identify common goals and respecting community tenure and social structure.

5. Conclusions and recommendations and way forward

5.1 Strengths of community mapping in the Republic of Congo:

The maps in the study show the extent of 'indigenous' knowledge available to the government and forest managers to be used to inform government policy and management plans. This knowledge needs to be documented and its intellectual property protected.

Community mapping in most of the cases presented in the study has been a collective exercise involving community members and offers a positive way to organize communities around an exercise of cultural significance.

5.2 Legal and policy issues

Currently Congo has no legislation on community forestry and favours industrial logging. The mapping exercises offer valuable information on community land tenure and use, but from geographically different areas. This information should be exploited to inform the Government on the possibilities of community forestry, as well as to provide the requisite evidence of occupation and use of a particular territory, particularly in cases where the community in question may not have access to official documentation.

One of the priorities of the Congolese Forest Law is to identify the norms for consultative and participatory management. To provide communities, who as the mapping shows, heavily rely on forest resources a place in forest management the government should engage in a participatory zoning of the entire forest domain. The expertise available in Congo through the different exercise offers important lessons and tools.

The community mapping and broader initiatives employed by ECOFAC in the Lossi Sanctuary shows the value of developing new categories of protected areas with a community focus. Where National Parks are already in place consultative platforms for community involvement in park management should be created.

5.3 Process issues

The mapping exercises in this study were all undertaken under the guidance of outside actors with specific agendas, the communities were asked to mark specific sites by others and the design of the mapping exercises was not participatory.

The mapping exercises in the study all highlight the need to improve community ownership of the maps. In some of the examples it is unclear whether maps were restituted to communities before and after finalization.

Bibliography

Bermejo, Magdalena. *Recensements de la Faune sur le Sanctuaire de Gorilles de Lossi, zone affectée par le Virus Ebola*, Union Européenne- Groupement AGRECO G.E.I.E- SECA- CIRAD Forêts, February 2003

Congolaise Industrielle des Bois et Ministère de l'Economie Forestière et de l'Environnement. *Plan d'Aménagement de l'Unité Forestière d'Aménagement de Kabo (2005-2034)*, Congo, March 2006

Congolaise Industrielle des Bois et Ministère de l'Economie Forestière et de l'Environnement. *Plan d'Aménagement de l'Unité Forestière d'Aménagement de Pokola* , Congo, 2005

Gami, Norbert. *Droit coutumier et création du sanctuaire Lossi «Congo»*, ECOFAC, 2002

IFO- Danzer. *Engagement de IFO pour une bonne gestion de la forêt*, April 23 2008

Journal Officiel de la République du Congo No 24-2006. *Décret No 2006-256 du 28 Juin 2006 portant institution, attributions, composition et fonctionnement d'un organe ad hoc de constatation des droits fonciers coutumiers*, Brazzaville, 2006

Ministère de l'Economie Forestière et de l'Environnement. *Loi n° 16-2000 du 20 novembre 2000 portant code forestier, Brazzaville*, 2000

Ministère de la Reforme Foncière et de la Préservation du Domaine Public. *La Loi no l0-2004 du 26 mars 2004 fixant les principes généraux applicables aux régimes domanial et foncier*, Brazzaville, 2004

Ministère de l'Economie Forestière et de l'Environnement**.** *Décret n° 2002-437 du 31 décembre 2002 fixant les conditions de gestion et d'utilisation des forêts*, Brazzaville, 2002

Observatoire congolais des droits de l'Homme (OCDH). *Rapport de situation. Abus de pouvoir, tortures et mauvais traitements : Les Eco gardes terrorisent les communautés pygmées de Sangha*, Brazzaville, October 2005

SGS Trade Assurance Services - Sustainable Forestry Programme. *Forest Law Assessment in Selected African Countries- Final Draft for the World Bank / WWF Alliance*, Geneva, Switzerland, 30th October 2002

ter Heegde, Martijn and Simon Rietbergen. *Northern Congo: the case of CIB- Applying the Ecosystem Approach in the context of a logging concession*. In: Gill Shepherd (Ed.), the *Ecosystem Approach – Learning from Experience*, IUCN, Gland, 2008

Web resources

http://www.state.gov/g/drl/rls/hrrpt/2008/af/118996.htm

http://news.mongabay.com/2008/0529-congo.html

http://www.illegal-logging.info/sub_approach.php?subApproach_id=69

http://www.observation-congo.info/documents/MEFE.pdf