



Securing Forest Peoples' Rights and Tackling Deforestation in the Democratic Republic of Congo

DEFORESTATION DRIVERS, LOCAL IMPACTS AND RIGHTS-BASED SOLUTIONS

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CONTENTS

Acknowledgements	4
Acronyms and abbreviations	5
Maps and photographs	6
Executive summary	7
Introduction	10
Land and forest tenure in the DRC	12
Box 1: The DRC's peoples and ethnic groups*	13
Box 2: DRC landownership system since 1973	14
Box 3: Decree on community forests	16
Deforestation in the DRC and impacts on forest peoples: Direct and indirect drivers	18
Box 4: The draft law on indigenous peoples	33
Box 5: Conservation policy threatens forest peoples' rights	34
National and international initiatives to combat deforestation in the DRC	36
Box 6: Forest Investment Programme pilot projects	38
Conclusions and recommendations	41
Sources and further reading	44

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ACRONYMS AND ABBREVIATIONS

ACHPR: African Commission on Human and Peoples' Rights	OPJ: Judicial Police Officer (Officier de Police Judiciaire)
CAADP: Comprehensive African Agricultural Development Program	REDD: Reducing Emissions from Deforestation and Forest Degradation
CERD: Committee on the Elimination of Racial Discrimination	REDD+: REDD-Plus – initiative combining the UN REDD programme with conservation, sustainable management of forests and enhancement of forest carbon stock
CESCR: Committee on Economic, Social and Cultural Rights	RRN: Réseau Ressources Naturelles
CFS: Congo Free State	SNEL: Société Nationale d'Electricité (national electricity company)
CIFOR: Center for International Forestry Research	SODEFOR: Société de Développement Forestier (logging company)
CN-REDD: National REDD Coordination	UN: United Nations
CNPZ: Comité National de Pilotage du Zonage Forestier	UN CESCR: UN Committee on Economic, Social and Cultural Rights
COD: Congo Oils & Derivatives (oil palm company)	UNDP: UN Development Programme
COP: Conference of the Parties (UNFCCC)	UNDRIP: UN Declaration on the Rights of Indigenous Peoples
CPZ: Comité Local de Pilotage du Zonage Forestier	UNEP: UN Environment Programme
DGPA: Dynamique des Groupes des Peuples Autochtones	UNESCO: UN Educational, Scientific and Cultural Organisation
DRC: Democratic Republic of Congo	UNFCCC: UN Framework Convention on Climate Change
EITI: Extractive Industries Transparency Initiative	UN-REDD: UN Reducing Emissions from Deforestation and Forest Degradation programme
ER-PIN: Emissions Reduction Program Idea Note	VPA: Voluntary Partnership Agreement (of the FLEGT)
EU: European Union	
FAO: UN Food and Agriculture Organisation	
FCPF: Forest Carbon Partnership Facility	
FIP: Forest Investment Program	
FLEGT: Forest Law Enforcement, Governance and Trade (EU action plan)	
FPIC: Free, prior and informed consent	
FPP: Forest Peoples Programme	
FSC: Forest Stewardship Council	
IACHR: Inter-American Court of Human Rights	
IO-FLEG: Independent Observer of Forest Law Enforcement and Governance	
ITB: Industrie de Transformation du Bois (logging company)	
MECNT: Ministry of Environment, Nature Conservation and Tourism	
NEPAD: New Partnership for Africa's Development	
NGO: Non-governmental organisation	
OECD: Organisation for Economic Co-operation and Development	
OKIMO: Office des Mines de Kilo Moto	

MAPS

A map showing DRC's forest loss between 2001 and 2012.	18
Lands of indigenous communities overlapped by logging concessions in DRC.	20
Mining concessions, indigenous lands and forests in the DRC.	23
Kisangani's wood supply is sourced 50km from the city.	26
Roads, infrastructure projects, forests and indigenous lands in DRC.	27
Overlap between forest, mining and agricultural concessions, protected areas and indigenous peoples' lands in DRC.	30

EXECUTIVE SUMMARY

Deforestation and forest degradation have increased in the Democratic Republic of Congo (DRC) despite the government's commitment to safeguard its forests. Commercial and industrial-scale activities represent major direct long-term threats to the forests. By contrast, the traditional livelihood strategies of indigenous and local communities show a capacity to coexist with forests sustainably.

Land tenure has evolved in the DRC without formal recognition of communities' customary ownership rights over forest lands they have occupied and used for generations, although traditional practices remain widespread. Reforms have left governance gaps, inconsistencies and ambiguities in the regulation of commercial and artisanal forest activities, and in safeguarding community rights, that urgently need resolution.

This report draws on existing literature on deforestation and forest degradation, and on discussions with forest peoples' organisations and with other stakeholders, including field consultations in three of the DRC's most densely forested provinces. The report highlights the many socio-environmental impacts and human rights violations that communities experience in association with forest loss.

The main direct causes of deforestation and forest degradation in the DRC are illegal industrial and so-called 'artisanal' logging, unsustainable mining, commercial agriculture, and urban demand for fuelwood. Roadbuilding, hydroelectricity infrastructure development and anticipated expansion of oil palm cultivation and 'agro-industrial parks' are emerging threats. Underlying causes include insecure community land rights, deficiencies and contradictions in the legal framework, obstacles to forest communities' securing legal remedy for rights violations, weak forest governance and law enforcement, non-compliance, corruption, and the role of international markets and unsustainable trade flows.

Forest destruction impacts negatively on forest peoples via a range of rights violations, starting with a failure to consult communities on decisions that affect them. Harms experienced include loss of natural resources relied on for food, medicine and building materials; water pollution; denial of access to traditional and sacred sites; forced expulsion; harassment and arbitrary arrest of those who protest against or resist deforestation; physical attacks, rape, torture and death in police custody.

Official studies and analyses of deforestation in the DRC tend to blame forest peoples – including those engaged in shifting cultivation and in gatherer-hunting – for forest loss without adequate attention to industrial and economic causes linked to road building, illegal logging, mining, commercial agriculture and urban expansion. As a result, the national REDD strategy and the design of forest and climate schemes and REDD+ pilots are unjustly skewed towards limiting local livelihood activities, without adequate protections for sustainable customary livelihood practices. Communities and civil society organisations criticise the narrow focus on subsistence activities in REDD pilot projects. Local organisations call for a more balanced approach that addresses the industrial and underlying drivers of forest loss and that applies rights-based solutions to curbing deforestation.

With appropriate forest tenure reforms and effective rights protections, the European Union's Forest Law Enforcement, Governance and Trade (FLEGT) action plan and the United Nations/World Bank REDD+ initiatives could offer potentially important mechanisms to tackle forest destruction and the abuse of rights. At present, however, these initiatives lack effective safeguards and compliance

mechanisms to protect community rights. At the same time, the overall national framework for land allocation and forest concession zoning in the DRC is still driving deforestation and failing to protect customary land and livelihood rights. Agro-industrial concessions and mining developments continue to be imposed on forest communities without their knowledge or consent.

Effective resolution of the forest-related challenges facing the DRC requires full legal recognition of the customary rights of forest peoples and the inclusion of such communities as equal partners in efforts to stem the destructive tide. The 2014 decree on community forests, albeit with limitations, will potentially enable communities to secure some rights over some customarily held forests.¹ And the draft organic law on indigenous peoples,² if adopted and well-implemented, could help strengthen the protection and promotion of community rights and forested land. While there has been some welcome progress on tenure reform, much deeper forest sector and land reforms are needed to fully uphold community land rights and tackle the drivers of deforestation in the DRC.

Principal summary recommendations

The DRC government, with support from international donors and other international actors, should:

1. Clarify and secure customary collective systems of forest tenure in the DRC by:

- a. completing the land reform process – recognising and effectively securing the customary rights of indigenous and local communities over their traditionally owned forest;
- b. reforming and clarifying rules and procedures relating to concessions, land allocation, landownership and access;
- c. safeguarding communities' right to free, prior and informed consent (FPIC) over decisions that affect them, ensuring adequate compensation and guaranteeing access to justice;
- d. adopting the draft organic law for promoting and securing the fundamental rights of indigenous communities;
- e. establishing a national forest policy framework and developing provincial land management plans that fully respect the customary tenure systems and traditional livelihoods of forest peoples.

2. Support and safeguard community-based forest management, traditional livelihoods and the decentralisation process by:

- a. expediting adoption of measures to implement the decree on community forests, including the ministerial *arrêté* (decree) establishing procedures for the management and exploitation of local communities' forest concessions;³
- b. testing the decree on community forests – establishing pilot community concessions and adopting a gradual and sequential approach to awarding concessions to communities, thus preventing external actors such as foreign logging companies from taking advantage of communities' inexperience or lack of capacity, enabling all stakeholders to learn from the challenges and loopholes and building the capacity of communities and local and provincial administrations;
- c. providing supplementary mechanisms to prevent appropriation of community forest concessions by provincial officials or allocations based on political favours or personal interests;
- d. completing national forest zoning by integrating indigenous and local communities in the process;
- e. building capacity of provincial administrations to ensure effective implementation of the decree on community forests;
- f. preventing allocation of community forest concessions that fail to respect the decree's procedural requirements;
- g. completing negotiation of the DRC's FLEGT partnership agreement with full community and civil society participation, incorporating FPIC and international law and communities' customary law as bases of legality;

1 DRC (2014a), Decree No. 14/018, 2 August; Décret no. 14/018 du 02 août.

2 DRC (2014b), Draft organic law on the fundamental principles of the rights of the indigenous Pygmy peoples; Proposition de loi organique portant principes fondamentaux relatifs aux droits des peuples autochtones pygmées.

3 The Ministerial Arrêté was finally passed on 09 February 2016 by the Minister of Environment, Nature Conservation and Sustainable Development. (Arrêté Ministériel No.025/CAB/MINECN-DD/CJ/00RBM/2016 du 09 Février 2016 portant dispositions spécifiques relatives à la gestion et l'exploitation de la concession forestière des communautés locales).

- h. ensuring that pilot projects undertaken under the FIP respect community customary land rights and livelihood practices;
- i. conducting a comprehensive needs assessment of communities' capacities to manage their forest concessions during the pilot phase, as well as the capacity of local and international NGOs supporting them.

3. Ensure forest and climate schemes and policies protect local livelihoods and food security by:

- a. fostering rights-based dialogue in forest and climate policy making and pilot schemes;
- b. including protections for customary tenure systems and traditional use of forest resources, including measures to protect rotational farming systems of forest-dependent communities and the traditional hunting, fishing and other livelihood practices of gatherer-hunter groups;
- c. applying rights-based and participatory approaches to micro-zoning of forest lands for forest and climate programmes and land use zoning initiatives.

For more extensive and detailed recommendations, see Section 5.

INTRODUCTION

The Democratic Republic of Congo (DRC) contains the world's second largest continuous expanse of tropical forest; only Brazil has more. Following the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 13, UNFCCC) in Bali, Indonesia, in December 2007, the DRC committed to reduce the destruction and degradation of its forests.⁴ Pressure on the country's forests and forest peoples has, however, continued to increase. Deforestation, largely caused by the extractive industries and major infrastructure projects, is accompanied by land seizure, forced evictions of indigenous and local communities, food insecurity and growing levels of violence against forest peoples.

Studies analysing the drivers of deforestation and forest degradation in the DRC have often been limited to correlating spatial deforestation data without reconciling this with field data or cross-checking with forest communities. Many also implicate subsistence farming as a major driver of deforestation, without providing satisfactory evidence or clear disaggregation of farming types and without distinguishing between diffuse, small-scale traditional subsistence farming, which tends to have few lasting impacts, and increasing patterns of peri-urban roadside 'corridor' land use driven by population growth.⁵ These points are further discussed below.

This report draws on existing literature on deforestation and forest degradation and also takes into account field data and indigenous and forest peoples' experience and opinions to highlight socio-environmental impacts and human rights violations linked to deforestation. Research for the report combined a literature review, consultations with communities, telephone interviews with a range of stakeholders, and focus group discussions with forest peoples' organisations. Field consultations were undertaken in 2012 by Organisation d'Accompagnement et d'Appui aux Pygmées (OSAPY) in three territories in the DRC's most densely forested provinces where forest communities have experienced numerous impacts of deforestation: Mambasa in Orientale province; Bikoro in Equateur province; and Oshwe, now in Mai-Ndombe and formerly in Bandundu province.

Mambasa territory, approximately half of whose population comprise indigenous gatherer-hunter peoples, is rich in timber, gold and other minerals and home to the UNESCO World Heritage Okapi Wildlife Reserve. The territory is experiencing an influx of artisanal loggers from neighbouring North Kivu province and bordering countries such as Uganda and Kenya, as well as industrial mining (gold and diamonds) and rising deforestation.

Bikoro is a low-altitude territory with a hot, humid climate and a dense network of wetlands,

4 See e.g. J. Stoltenberg (n.d.), 'Stepping up climate and forest action: countries are already acting to save the world's remaining tropical forests', UNEP, Sustainable Forest Management and Agriculture, <http://www.unep.org/climatechange/Portals/5/documents/ClimateActionNorwayPM.pdf>

5 For an example of studies that implicate subsistence farming, see G. Kissinger, M. Herold and V. de Sy (2011), *Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66151/Drivers_of_deforestation_and_forest_degradation.pdf; for more disaggregated and nuanced assessments, see P. Mayaux et al. (2013), 'State and evolution of the African rainforests between 1990 and 2010', *Philosophical Transactions of the Royal Society B Biological Sciences* vol. 368, no. 1625, <http://rstb.royalsocietypublishing.org/content/368/1625/20120300>; and A. Ickowitz, D. Slayback, P. Asanzi and R. Nasi (2015), 'Agriculture and deforestation in the Democratic Republic of the Congo: a synthesis of the current state of knowledge', Bogor: CIFOR, http://www.cifor.org/publications/pdf_files/OccPapers/OP-119.pdf

dominated by Lake Tumba and its tributaries. One of the most densely populated areas in Equateur province, Bikoro's population comprises Bantu ethnic groups, broadly known as Mongo, as well as indigenous forest communities.

Oshwe in newly formed Mai-Ndombe province is located in the lowest-altitude part of the central Congo Basin and three-quarters covered by equatorial forest. Average population densities are low. The Nkundo ethnic group, part of the Bantu Mongo peoples, are the dominant majority, with indigenous gatherer-hunters being a minority.

Forest peoples' organisations and other stakeholders consulted for the report include Association des Peuples Autochtones Eleveurs du Congo (APAEC), Centre pour le Développement Communautaire et la Protection de l'Environnement (CDPE), Collectif des Autochtones de Mai-Ndombe (CAMAID), Fédération des Industriels du Bois (FIB), Observatoire pour la Gouvernance Forestière (OGF), Œuvres Socioculturelles pour la Promotion et le Développement Durable des Peuples Autochtones (OSCAPROD), Organisation Congolaise des Ecologistes et Amis de la Nature (OCEAN), Réseau des Populations Autochtones et Locales pour la Gestion Durable des Ecosystèmes Forestiers (REPALEF), Réseau des Pygmées de l'Equateur (REPEC), the World Bank and WWF-World Wide Fund for Nature.

The report covers the historical and legal background to land and forest tenure in the DRC, the principal direct and indirect causes of deforestation and their impacts on forest communities, and national and international initiatives to combat deforestation, before reaching conclusions and offering recommendations. Findings from consultations with forest communities in Mambasa, Bikoro and Oshwe about their rights, livelihoods and cultures, and with other stakeholders, inform the discussion, and the recommendations incorporate communities' own proposed solutions.

LAND AND FOREST TENURE IN THE DRC

The first inhabitants of what is now the DRC were the indigenous Bacwa, Bambuti and Batwa peoples who lived by hunting and gathering.⁶ From 2000 BC other groups such as the Bantu, Nilotes and Sudanese also migrated to this territory, where they set up the Kongo, Luba and Lunda kingdoms (Box 1). The indigenous peoples, now a minority, sought refuge in the equatorial forests. Leaders of these tribal kingdoms first entered into agreements with Europeans in the 15th century. European missionaries and traders started to settle in the 19th century, and in 1885 King Leopold II of Belgium annexed the territory under the name Congo Free State (CFS) as his personal possession.

Evolution of land tenure

From 1885 and throughout the colonial period, a new land tenure system was established that denied forest peoples formal legal title to their traditional lands. *De facto* customary possession by indigenous and local communities continued largely undisturbed, however, including extensive rotational farming, low intensity grazing and habitation. The State legally recognised all land acquired by missionaries and European traders. Remaining land, including forests under customary ownership and use, and land occupied semi-nomadically by indigenous peoples, was considered 'vacant and without masters' and transferred to the State's private domain.

King Leopold sought to take control of the majority of the country's natural resources to cover the colony's running costs and for his personal economic gain. Rubber extraction was developed to meet growing demand in Europe. An objective of the tenure system was to expand the amount of land

classified as 'vacant' to allow the State to take control. Many forest peoples were dispossessed during this period.⁷

In 1908 the CFS became the Belgian Congo, which in 1912 adopted a decree stating that 'all ownerless things belong to the Colony, except for respect for customary indigenous rights and what may be said on the subject of the right of occupation'. First World War demand for minerals intensified exploitation of the forests. Much of the State domain, including large portions of customarily held territories, was granted to companies. Subordination of indigenous peoples' customary land rights was assured by a 1920 law providing that private landownership could be established only with a certificate of registration from the registrar of land titles; indigenous peoples' customary rights could not be registered in this way.⁸ From 1930 onwards large forestry companies started to establish themselves.


When Congo achieved independence in 1960, under the Fundamental Law of 1960 all regulations in place were to remain in force unless repealed. This included the inherited colonial land tenure system, which went unchanged until 1973. Companies with logging licences continued to operate unabated. However, in 1966 the so-called Bakajika law, named after the MP who drafted it, annulled all land concessions and transfers made prior to independence, enabling the State to repossess previously granted logging, mining and land rights, and specifying that the soil and subsoil belonged to the State.

In 1973 the DRC reformed landownership by adopting Law No. 73-021 on 'property, land tenure,

6 This account of the pre-colonial and colonial period draws on P.N. Musafiri (2008), *The dispossession of indigenous land rights in the DRC: a history and future prospects*, Moreton-in-Marsh: FPP, cited in FPP (2009), *Land Rights and the Forest Peoples of Africa*, Moreton-in-Marsh, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/05/overviewlandrightsstudy09eng.pdf>

7 G. Sakata (2009), 'La réforme du secteur des ressources naturelles: historique, enjeux et bilans', in S. Marysse et al., *L'Afrique des Grands Lacs. Annuaire 2008-2009*, Paris: L'Harmattan.

8 U. Ona (2008), 'La gestion domaniale des terres rurales et des aires protégées au Sud-Kivu: aspects juridiques et pratiques d'acteurs', in F. Reyntjens, *L'Afrique des Grands Lacs. Annuaire 2007-2008*, Paris: L'Harmattan.

A photograph of four children standing on a dirt path in a lush, green forest. The children are carrying various items on their heads and backs. One child in the foreground wears a bright pink dress. Another child behind them carries a large woven basket on their back. The forest is dense with green foliage and trees.

The forests of DRC provide livelihoods and are of cultural importance to up to 40 million people, including an estimated 2 million indigenous forest people. Forests yield a diverse set of livelihood and cultural resources, including bush food, medicines, fuel wood and craft materials.

Photo: John Nelson

Box 1: The DRC's peoples and ethnic groups*

It is widely accepted that the DRC's indigenous peoples were the country's original inhabitants, who were later joined by farmers and breeders.** The different groups usually recognised as indigenous peoples in the present-day DRC are the Bambuti or Mbuti (Basua, Efe and Asua), who inhabit the east of the country, especially in the Ituri region; the Batwa or Twa, who live along the border with Rwanda and around Lake Tumba in Equateur province; and the Bacwa or Kwa who live in the forests and savannas around Kasai lakes. Other groups spread throughout the DRC's forest region include the Aka along the north-west border with the Republic of Congo and the Bambega in Ubangi in Equateur.

In about 1500 BC the country underwent a vast migration of Bantu-speaking peoples from present-day Nigeria, Chad and Cameroon, leading the indigenous peoples to seek refuge in the primary forest. Today nearly 80% of the DRC's population descend from these and other Bantu peoples, comprising some 250 ethnic groups such as the Luba, Mongo, Kongo, Lunda, Tchokwe, Tetela, Bangala, Shi, Nande, Hunde, Nyanga, Tembo and Bembe, as well as Hutu and Tutsi Rwandans.

Non-Bantu ethnic groups in the DRC include Sudanese (Ngbandi, Ngbaka, Mbanja, Moru-Mangbetu and Zande) and Nilotic (Alur, Lugbara and Logo) and Hamite (Hima) peoples, who originated from the Nile valley before the Bantu migrations, as well as the indigenous peoples cited above.

* Source: L'aménagement linguistique dans le monde (2014), Congo-Kinshasa (République démocratique du Congo, Québec, CEFAN, Université Laval, <http://www.axl.cefan.ulaval.ca/afrique/czaire.htm>

** African Commission on Human and Peoples' Rights (ACHPR) (2005), *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, ACHPR and International Work Group for Indigenous Affairs, 2005, http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf

real estate and securities.⁹ The current land law, based on this law, makes the State sole owner of soil and subsoil, retaining ownership of all indigenous and local community lands expropriated during the colonial era, and provides that individuals may obtain enjoyment rights over land within the State domain under certain conditions (Box 2).

Box 2: DRC landownership system since 1973

Law No. 73-021 of 1973 relating to property, land, real estate and securities is the basis of the DRC's current land tenure system. Under this law, the soil is the exclusive, inalienable and imprescriptible property of the State. All land is vested in the State in its public and private domains. The public State domain constitutes all land designated for use or for public service, the private State domain all other land. Both domains contain land where communities exercise customary ownership and use rights that are not legally recognised.

The right to enjoyment over land belonging to the private State domain may be established by obtaining a concession via certificate of registration of title, subject to the condition that the concessionaire develop the land. The purpose of the concession is thus to establish activities with an impact on the land, such as agriculture or construction. A *concession in perpetuity* (the right to enjoy allocated land indefinitely as long as the legal conditions are met) can only be accorded to or transferred between Congolese natural persons. A *standard concession* (a long-term lease on a specified area, including right of use and right to rent for a predetermined period, usually 25 years, and renewable) can be granted to a natural person or a legal entity of any foreign nationality.

Land occupied by local communities is State land. The law does not permit registration of collective title but recognises that communities have an implicit right to enjoyment of land they occupy in accordance with customary law. Such rights to enjoyment were intended to be defined by a

subsequent presidential ordinance, but no such ordinance has been enacted.

The DRC has ratified key international and regional agreements that assert indigenous and forest peoples' rights to their lands and natural resources: the International Covenant on Civil and Political Rights (Article 27); the International Covenant on Economic, Social and Cultural Rights (Article 1(2)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5); the African Charter on Human and Peoples' Rights (Article 14); and the African Convention on the Conservation of Nature and Natural Resources (Article 17).¹⁰ The DRC also voted in favour when the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

Forest tenure reform

In 2001 the World Bank initiated cooperation with the DRC government as part of its strategy to encourage timber-producing and -exporting countries to reform the commercial exploitation of their resources.¹¹ A new Forest Code issued by ministerial decree in 2002 instituted a moratorium on the issue of new logging permits, with the intention of selectively converting former logging permits into forestry concessions.¹² In practice, concessions continued to be granted. In 2005 a presidential decree reaffirmed the moratorium and imposed conditions on the conversion of former permits into concessions, but this has never been properly enforced.¹³

Of the 156 permits covering 22 million hectares, only 80 were selected for conversion, representing an area of 12.2 million hectares. Holders of permits selected for conversion were required to draw up a 25-year management plan, including

9 DRC (1973), Law No. 73-021 on the General Regime of Property, Land Tenure, Real Estate and Securities as amended and supplemented by Law No. 80-008 of 18 July 1980, <http://www.wipo.int/wipolex/en/details.jsp?id=7500>; Loi no. 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés.

10 The DRC ratified the first three and the fifth of these agreements in 1976, and the fourth in 1987: University of Minnesota (n.d.), 'Ratification of International Human Rights Treaties – Democratic Republic of Congo', <https://www1.umn.edu/humanrts/research/ratification-congo.html>

11 Sakata (2009), op. cit.

12 FERN (2006), *Forest Governance in the Democratic Republic of Congo. An NGO perspective*, Brussels.

13 Greenpeace (2015), *Trading in Chaos: The impact at home and abroad of illegal logging in the DRC*, Johannesburg: Greenpeace Africa, <http://www.greenpeace.org/africa/en/Press-Centre-Hub/Publications/Trading-in-Chaos/>; Greenpeace (2013a), *Cut it Out: Illegal Logging in the Democratic Republic of Congo (DRC)*, Kinshasa: Greenpeace Africa, <http://www.greenpeace.org/africa/Global/africa/publications/forests/CutItOut.pdf>; Greenpeace (2012a), *Artisanal logging = industrial logging in disguise*, <http://www.illegallogging.info/sites/files/chlogging/uploads/LoggingIllegalEnglishA4.pdf>; Global Witness (2012), *The art of logging industrially in the Congo*, https://www.globalwitness.org/sites/default/files/art_of_logging_lr.pdf

environmental measures, and to enter into social investment agreements with communities in the areas where they would be operating, itemising the social infrastructure (schools, hospitals, roads) the company has undertaken to build.¹⁴ This process has been subject to delay and limited oversight, and to date no forestry concessions operate in what could be considered a sustainable manner.

The Forest Code provides under Article 7 that forests are State property. Under Law No. 011/2002 of 2002 regarding the Code, forests are 'areas of land with vegetation cover consisting of trees or shrubs capable of providing forest products, shelter for wildlife and having a direct or indirect effect on the soil, the climate or the watersheds' (unofficial translation). The Code designates three categories of forest: classified forests, which form part of the public State domain and whose function broadly relates to environmental protection, with highly restricted usage rights; *protected forests*, where local people have the right to use forest products to meet their needs in accordance with local custom; and *permanent production forests*, designated for exploitation through the granting of concession contracts.¹⁵

The Forest Code was limited to defining the principles and subject areas to be translated into regulations, allowing the government flexibility to respond to changing conditions. In practice, however, implementing decrees and legislation have yet to be adopted. Law No. 73-021 of 1973 and the Code therefore continue the dispossession of communities whose customary lands are forested, despite providing for granting of concessions to communities to use forest products. The Code and Law No. 73-021 do not directly address the issue of local peoples' rights in production forests, but communities have some limited customary usage rights in such forests; their activities can be proscribed by the governor of a province or the minister and are restricted if deemed incompatible with commercial forestry.

Holders of permits referred to as 'guarantees of supply' (*garanties d'approvisionnement*) and 'letters of intent' (*lettres d'intention*) were granted a period of one year, with effect from the Code's entry into force, for their conversion into forest concessions. Thus all permits should have been converted or abandoned within a year of the Code's adoption, but no legislative measures were enacted to implement this

provision until 2005, three years after the deadline.¹⁶ Decree No. 05/116 of 2005, moreover, provides no guidance on whether the continuation of logging activities is permitted during conversion. The status of logging under former forestry titles therefore remains uncertain and largely unchecked.

The Code provides for a mechanism for granting forest concessions to local communities, as determined by presidential decree, and in August 2014 the DRC government finally signed the implementing decree relating to community forests.¹⁷ Although imperfect, this decree is a step towards recognising customary ownership and represents an improvement with regard to communities' ability to obtain recognition and use of their customary forests. Civil society and international organisations have welcomed the decree, despite challenges remaining regarding implementation and the securing of customary ownership rights (Box 3).

Challenges in implementing the 2014 decree were experienced when a new type of artisanal logging concession established by Arrêté 050 was passed in September 2015 without due public consultation.¹⁸ Civil society organisations and international NGOs working in the DRC forest sector have reiterated their concerns that this new legislation was aimed at bypassing the moratorium on the allocation of new industrial logging concessions.

The Mining Code

The DRC has important mineral wealth, including diamonds, copper, gold, cobalt, coltan, zinc, tantalum, tin and other base metals. Law No. 007/2002 of 2002 governing the 2002 Mining Code provides that all minerals in the soil and subsoil are property of the State, and that rights over mineral deposits are separate and distinct from land rights. Holders of land rights may make no claim to ownership rights over minerals in the subsoil.¹⁹

Access to the DRC's mineral resources is subject to the consent of the 'owner' or occupant of the land.²⁰ Under the Mining Code, all activity on or modification of the land by mining rights holders

14 N. Bayol et al. (2012), 'Forest management and the timber sector in Central Africa', in C. Wasseige et al. (eds), *The Forests of the Congo Basin – State of the Forest 2010*, Luxembourg: Publications Office of the European Union.

15 Resource Extraction Monitoring (REM) (2011), *Mise en application de la loi forestière et de la gouvernance. Analyse de la législation forestière de la RDC*, Kinshasa.

16 REM (2012a), *Note de briefing, délai de conversion des anciens titres forestiers en contrat de concession forestière: impact sur le contrôle forestier*, Kinshasa.

17 DRC (2014a), op. cit.

18 DRC (2015), Arrêté Ministériel No. 050 relatif à l'exploitation forestière du bois d'œuvre.

19 DRC (2002a), Law No. 007/2002 regulating the Mining Code, Preamble, Part One, Chapter One Code; Loi no. 007/2002 du 11 juillet 2002 portant Code Minier, Exposé des motifs, Titre Premier, Chapitre Premier.

20 E. Pèlerin (2010), *Etude sur la problématique foncière au Nord Kivu, RDC*, Nogent sur Marne: GRET.

Box 3: Decree on community forests

Under Decree No. 14/018 of 2014, a local community's forest concession is a forest granted to a community by the State, based on customary ownership, for the purpose of every form of use necessary to meet its vital needs, subject to the obligation to apply the rules and practices of sustainable management (Article 2(2)). Community forest concessions are allocated upon the request of the community, free of charge and in perpetuity.

Once communities have been granted their customary forests, they may exploit all or part of the forests they hold according to custom, and manage them according to their chosen model and customary laws and traditions, provided these are not contrary to existing laws and regulations (Article 19). Once a community has obtained recognised property rights, it is likely to be less vulnerable to land grabbing and to have a larger and better recognised role in the management of its forested areas.

The decree nevertheless contains flaws and weaknesses. It does not automatically recognise underlying customary title to forested areas; rather, it relies on a community making a request for its protected areas. For this to be effective, communities need to be aware of and empowered to make such a request, which frequently they are not. Indigenous peoples, many of whom are illiterate, may be particularly ill-equipped to request a community forest concession. In the absence of such a request, communities remain unprotected and their customary rights unrecognised, allowing projects to proceed on their lands without their free, prior and informed consent (FPIC).

In addition, a community forest can only be granted to a community where it has been classified nationally as protected forest. This implies, in effect, the alienation of the community's customary rights over other categories of forest. Thus, even where they make a request, communities may not be entitled to the full extent of their customary lands, in contravention of international law.

Moreover, the mechanism for requesting a community forest requires the community to designate an individual representative (Article 4). A person designated as having customary ownership in order to submit the request for a forest concession may abuse the powers of representation conferred on them. Some customary chiefs have claimed exclusive ownership rights for the management of their territory or natural resources, to the detriment of the community as a whole.

A related flaw relates to provisions for management and exploitation of forest concessions by communities. To exploit a forest concession, a community has to form a cooperative society or a local development committee (Article 20). The decree thus refers only to conventional systems of forest resource management and makes no mention of communities' traditional governance practices. This may limit communities' customary practices when exploiting their concessions. There is also an expectation that, in meeting the need to exploit its forest concession, a community is likely to choose to sign agreements with private artisanal operators or promoters of conservation or ecotourism projects, through its authorised representative (Article 20). This again gives an over-powerful role to the community's designated representative and may open the door to corrupt dealing with potential project providers without community involvement or consent.

Uncertainties are also involved in the process of granting a community forest concession. After an application is submitted, the provincial governor must accept or reject the request within 30 days of the request's publication (Article 15). It appears the community has a *prime facie* right to obtain a community forest concession provided it can demonstrate that the land is customarily held and within the *protected forest* category. However, there is no clear guidance on the factors that the governor should take into account, so this provision could lead to arbitrary and unjustified decision-making. Further, in the event of the governor's rejection of a request, there is no special appeal mechanism in place of the usual administrative judicial procedures. A specialist institution should

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have been created to resolve disputes relating to forest concessions, managed by the Ministry for the Environment, Nature Conservation and Tourism (MECNT).

A decision by the governor not to grant a community a forest concession can be challenged through means of redress available in Congolese law (Article 17). Communities have the right to file a complaint against any decision made by a governor that would hinder their right to enjoyment of their forests. However, legal procedures in the DRC are generally not accessible to indigenous and local communities.

There are also constraints on the use of community forest concessions, which are required to be managed in accordance with the principles of 'sustainable forest management'. While many communities wish to adopt such an approach, and environmental considerations need to be taken into account, this potentially constrains communities' self-determination in terms of their use of natural resources and their development, and risks limiting community landownership to continuing artisanal forest usage. Other landowners are permitted to pursue potentially more lucrative development activities, while obligations and potential burdens of conservation and sustainable development are placed disproportionately on communities.

In short, while the decree on community forests offers opportunities to communities to gain ownership and control of customarily held forests, it does not fully meet the requirements of international law, and implementation will remain problematic. The long-term challenge will be to continue dialogue with government authorities and other stakeholders in the landownership reform process to achieve full recognition of communities' customary rights to their ancestral lands.

that prevents the occupants from cultivation gives the latter the right to claim compensation from the operators. Holders of mining rights must also repair any damage caused by their mining activities.

development, has not fulfilled expectations. Now the government is discussing a revised Mining Code, mainly to increase mine royalties and to raise its stake in future projects.

Not only does this law fail to recognise local communities' potential interests in and rights to subsoil resources, such as based on customary use, but the procedures for protecting local communities' rights envisaged by the law have been largely ignored.²¹ Provisions have been introduced into the Code to make investment in mining more attractive to private (often foreign) investors, with fast-track procedures for granting mining or quarrying rights increasing the risk that community consent requirements will be ignored.²²

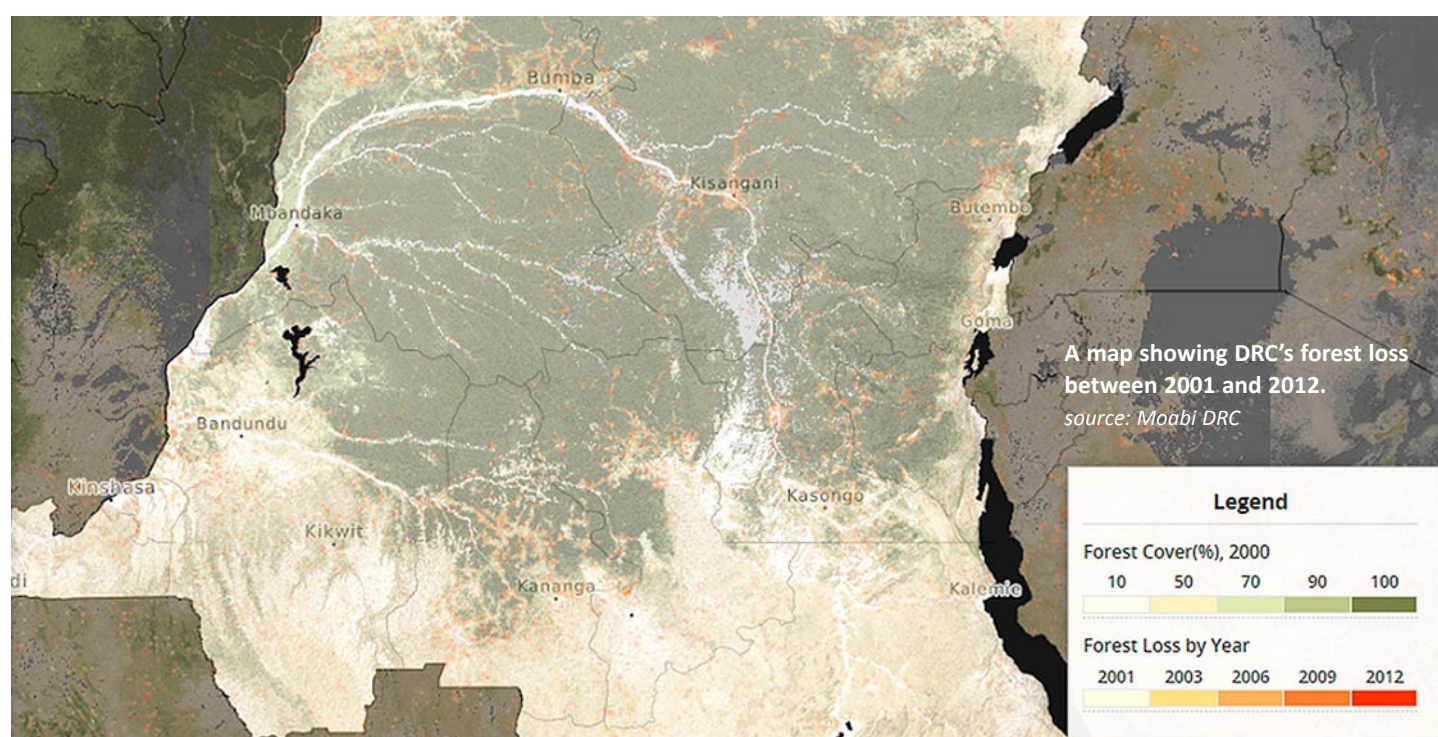
The country's mining industry has seen record growth since the 2002 Mining Code came into effect. For example, annual copper production reached more than 460,000 metric tonnes in 2010, while cobalt output rose almost sevenfold to 90,000 tonnes.²³ But growth in both the industrial and the artisanal sectors, which it was hoped would generate substantial revenue for economic and social

21 Ibid.

22 Musafiri (2008), op. cit.

23 DRC (2011b), Document de la Stratégie de Croissance et de Réduction de la Pauvreté de Seconde Génération (DSCR 2), vol. 1.

DEFORESTATION IN THE DRC AND IMPACTS ON FOREST PEOPLES: DIRECT AND INDIRECT DRIVERS



The DRC has 155.5 million hectares of forest (of which 99 million hectares are dense rainforest), representing 67% of the national territory, or an area of 2,329,374 square kilometres. The densest forests are in Equateur, Bandundu and Orientale provinces, covering 89 million hectares.²⁴ The DRC's forests represent half of Africa's tropical forests²⁵ and form part of the Congo Basin, which has 300 million hectares of forest.²⁶

According to the FAO, forests in the Congo Basin are disappearing at a rate of 700,000 hectares per year,

a loss of 0.23% annually.²⁷ However, FAO statistics usually fail to distinguish between long-term permanent forest loss and temporary forest clearance for traditional rotational farming. Standard satellite-image-based assessments using a 10-year time lapse misperceive the longer fallow periods used by subsistence farmers in the tropics. Improved forest monitoring is urgently needed to distinguish between permanent large-scale land use change and temporary localised forest clearance occurring as part of traditional community agroforestry.

Standard accounts estimate that the DRC is losing 311,000 hectares of forest each year,²⁸ the largest annual loss of the Congo Basin countries and equal

24 CIFOR (2013), *The Context of REDD+ in the Democratic Republic of Congo*, Bogor, pp. 4, 5.

25 N. Bayol and R. Eba'a Ayti (2009), 'The forests of Congo in 2008', in C. Wasseige et al. (eds), *The Forests of the Congo Basin – State of the Forest 2008*, Luxembourg: Publications Office of the European Union.

26 FAO (2011), *The State of Forests in the Amazon Basin, Congo Basin and Southeast Asia*, Rome.

27 Ibid.

28 Forest Legality Alliance (n.d.), 'Overview of Democratic Republic of Congo', 2014, <http://risk.forestlegality.org/countries/democratic-republic-congo> [restricted access]



Industrial logging is a major driver of forest loss and forest degradation in DRC. This picture shows logging of sapelli timber by Laforestiere lumber company in Baliangoma, Tshopo Province.

Photo: Raoul Monsembula (Greenpeace)

to 0.2% of its forests per annum.²⁹ Spatial distribution of deforestation is uneven, with parts of the DRC more heavily affected than others, including forest corridors along roads and rivers, peri-urban areas and provinces such as Bas-Congo.³⁰ Direct drivers of deforestation and forest degradation may similarly vary between different parts of the country. As with FAO statistics, most estimates of forest loss for the DRC do not distinguish permanent land use conversion from temporary forest loss linked to traditional agroforestry systems.

Direct drivers, impacts on forest peoples and future threats

Illegal industrial and 'artisanal' logging, mining, commercial agriculture, and urban demand for fuelwood are major direct causes of deforestation in the DRC. Roadbuilding and hydroelectricity infrastructure development, the anticipated expansion of oil palm cultivation and plans for 'agro-industrial parks' are emerging threats.

Illegal industrial and 'artisanal' logging

Much industrial-scale logging using heavy machinery takes place under cancelled permits, in violation of the 2002 Forest Code, and very few companies with current forestry concessions have produced the required 25-year management plan. The DRC's Independent Observer of Forest Law Enforcement and Governance (IO-FLEG) has reported that commercial logging companies contravene the law by failing to mark logs, exceeding permitted volumes of timber, harvesting unauthorised species and under-diameter trees, failing to respect social investment agreements with communities, and non-payment of area tax.³¹

Logging company SIFORCO, for example, exceeded permitted volumes of timber in two concessions in a 'quasi-systematic and massive' manner in 2011, despite holding a certificate for one of its concessions that in theory guaranteed the legality of the wood.³²

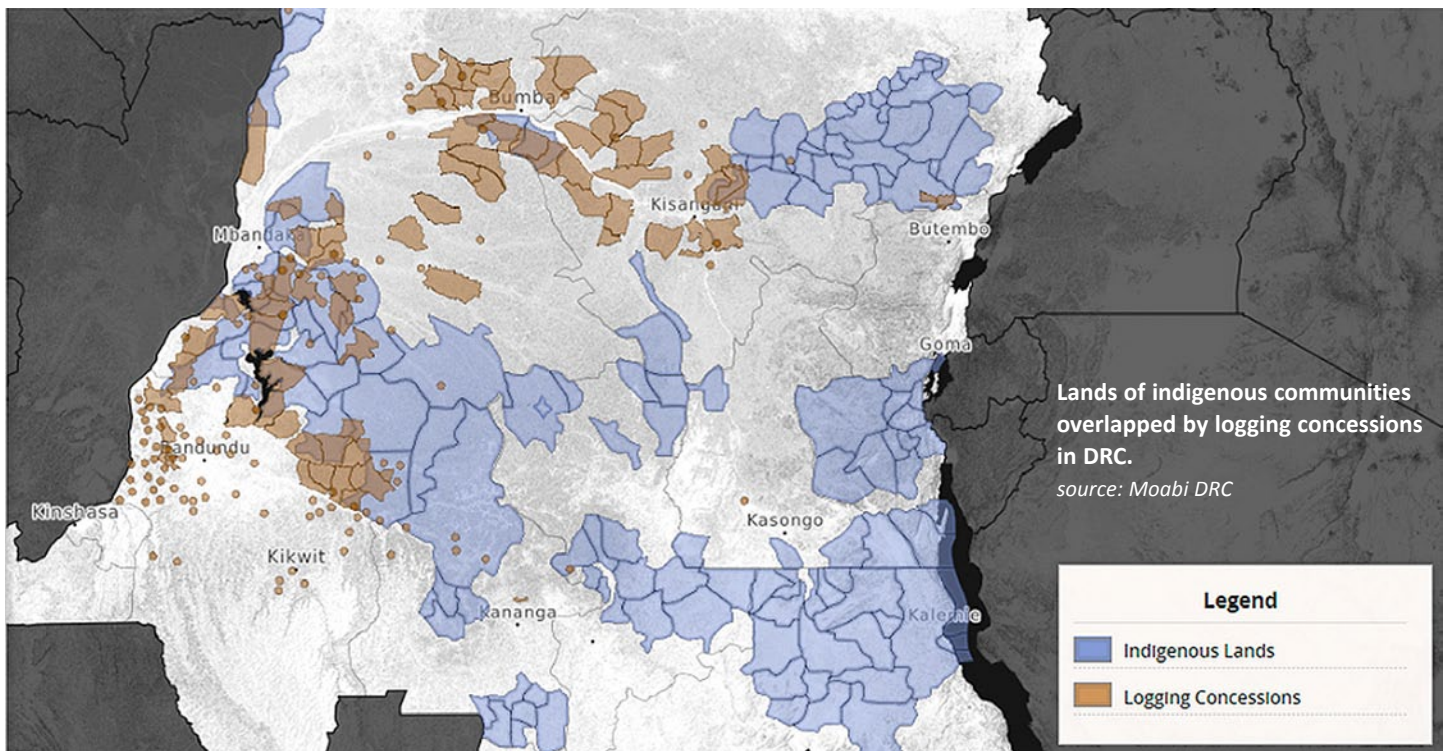
Another company, CAB, has continued logging in Bikoro territory despite cancellation of its permit in

29 UNEP (2012), *Evaluation Environnementale Post-Conflic de la République Démocratique du Congo*, Nairobi.

30 Ibid.; Mayaux et al. (2013), op. cit.; Ickowitz et al. (2015), op. cit.

31 Chatham House (2014), *Illegal logging in the Democratic Republic of the Congo*, London.

32 Ibid.



2012 by ministerial order. CAB's operations and use of heavy machinery to open up roads have affected the Motaka and Botwali forests where indigenous and local communities live. Greenpeace has reported CAB offloading timber from cancelled permits at Lebanese company Cotrefor's private port in Kinkole.³³

Illegal 'artisanal' logging is a major form of law breaking. Artisanal permits are intended for Congolese citizens for small-scale domestic logging but are increasingly misused by local and foreign companies for logging on an industrial scale, circumventing the 2002 moratorium on new commercial concessions and enabling operators to avoid monitoring and taxes. Artisanal permits require only that loggers consult affected communities, yet companies illegally using such permits rarely comply even with this.

The DRC IO-FLEG reports that most artisanal logging is illegal. Trunks of felled trees are unmarked, taxes are unpaid, authorised volumes are exceeded. A reported 25,000 cubic metres of wood per year are illegally harvested under artisanal permits, mainly in Bandundu province, close to Kinshasa and export channels.³⁴

In 2013 Greenpeace identified three logging companies using a single artisanal permit issued to one Congolese citizen to log 50 hectares and 350 cubic metres, and subsequently cancelled. The permit number was found on logs cut by all three companies. All had exceeded authorised volumes,

and one had used the permit to sign an agreement with a local community to log its forest.³⁵ Bikoro communities report that a forest area of close to half a million hectares belonging to operators ITB (Industrie de Transformation du Bois) are being subjected to semi-industrial 'artisanal' logging without their being consulted.

Illegal logging is often undertaken by local operators in collaboration with Chinese, Korean and Lebanese companies. A 2015 study by Greenpeace, describing the DRC's forestry sector as in 'a state of organised chaos ... to a large extent engineered by officials and companies for their own benefit', finds that Lebanese operators Cotrefor are one of the leading 'companies wreaking this havoc'.³⁶ Following two years of research, the report highlights a 'shocking record of employee mistreatment, unpaid taxes, rampant irregularities in operational procedure with regards to felling trees and exceeding allocated quotas of endangered species', destruction by the company of 'vital habitat of the endangered bonobo' (a great ape species unique to the DRC), 'shipments of [illegal] timber heading to countries as diverse as the UK, Spain, Portugal, the US and China', and Cotrefor consistently failing, with impunity, to fulfil the social agreements associated with its logging concessions.³⁷

Impacts of illegal logging on forest peoples

Forest resources and habitats disappear and degrade rapidly in the wake of large-scale logging, as access roads are opened up and work camps are

³³ Greenpeace (2013a), op. cit.

³⁴ REM (2012b), *IO-FLEG DRC, Rapport Annuel 2012*, Kinshasa; Chatham House (2014), op. cit.

³⁵ Greenpeace (2013a), op. cit.

³⁶ Greenpeace (2015), op. cit., p. 3.

³⁷ Ibid., p. 3.

constructed. Companies generally operate without the management plan or community-approved social investment agreements legally required for commercial logging.

‘The forest is disappearing very fast. Twenty-four years after logging began in Nkwaté forest, SODEFOR [a logging subsidiary of Liechtenstein-based Norsudtimber] has left, and only bushes remain. Now Loile forest is disappearing. Trees are often cut down regardless of the diameter required.’ – Community representative, Bikoro territory

Communities usually hear about the existence of a logging concession on their land only when their access to the forest is restricted or prohibited. Concessions issued to two companies, BBC and ITB, for example, were established on indigenous peoples’ lands in Ingende and Bikoro territories, Equateur province, without prior consultation or consent.³⁸

Once logging has depleted or destroyed local biodiversity, or forest peoples have been prevented by loggers from entering their customary lands, it becomes extremely difficult for communities to meet their livelihood needs or maintain their cultural and spiritual practices. Villagers interviewed for this report reported the loss not just of the trees but of a range of non-timber forest products such as game, fish, honey, fruit, medicinal plants, mushrooms and caterpillars, along with contamination of watercourses and disruption of water cycles.

Communities have been both denied access to traditional lands and forcibly relocated as a result of forest concessions, reducing them to extreme poverty and hunger, as has occurred at Béni (North Kivu province), Ituri (Orientale province)³⁹ and in Mambasa territory.⁴⁰

‘Since we were expelled from our lands, death is following us ... The village is becoming empty. We

are heading towards extinction ... Our culture is dying.’ – Batwa villager, South Kivu province⁴¹

‘We have had fields, small plots of land which have little effect on the forests, since the time of our ancestors. SODEFOR is felling more timber than the local communities and has driven away the animals. There has been a fall in the population, and we have had outbreaks of water-borne disease due to contamination of watercourses by machinery.’ – Indigenous representative, Bandundu province

Forest communities in Mambasa territory report that the authorities, politicians and military chiefs have seized their traditionally owned forests to carry out ‘artisanal’ logging without local people seeing any of the profits.

Violent conflicts have arisen, and many cases are reported of forest peoples being arrested and tortured for opposing uncontrolled tree felling on their lands. In 2011, for example, when a forest community accused SIFORCO of failing to fulfil its development obligations, in particular construction of village infrastructure, the authorities resorted to force to halt community protests; some villagers suffered physical and sexual violence, and one was killed.⁴² Complaints about SIFORCO’s human rights record include allegations of atrocities committed by local police and military working in association with the company.⁴³

In another incident, several indigenous people’s camps were enclosed by a large concession operated by the Belgian logging company ENRA. Some community lands were ceded to third parties and exploited on the authority of community chiefs. There were reports of rebellion, in particular in the Walese-Karo community, and of severe repression.⁴⁴

Villagers interviewed in Mambasa were united in their condemnation of the effects of logging on their lives, some alleging grave human rights abuses:

‘We no longer have enough resources. The honey, mushrooms and game have almost disappeared, and there are fewer large trees. We have problems getting water during the dry season.’

38 Foyer de Développement pour l’Autopromotion des Pygmées et Indigènes Défavorisés (FDAPIID—Hope for Indigenous Peoples) et al. (2013), *Examen périodique universelle de la République Démocratique du Congo (2014) Les peuples autochtones en RDC: L’injustice des multiples formes de discrimination*, Goma.

39 Centre d’Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV) and FPP (2008), *Supplementary Report on the Democratic Republic of Congo’s Periodic Report to the African Commission on Human and Peoples’ Rights: The Rights of Indigenous ‘Pygmy’ Peoples in the Democratic Republic of Congo*, Moreton-in-Marsh.

40 D. Nkoy and J. van Puijenbroek (2012), ‘La pratique de l’exploitation artisanale du bois et ses conséquences conflictuelles en territoire de Mambasa, RD Congo’, in C. Bennecker (ed.) et al., *Le bois à l’ordre du jour. Exploitation artisanale de bois d’œuvre en RD CONGO: secteur porteur d’espoir pour le développement des petites et moyennes entreprises*, Wageningen: Tropenbos International.

41 Quoted in Integrated Regional Information Networks (IRIN -- Project of the UN Office for the Coordination of Humanitarian Affairs) (2006), *In-Depth: Minorities under Siege: Pygmies Today in Africa*, Nairobi: OCHA-IRIN.

42 Chatham House (2014), *op. cit.*

43 Greenpeace (2012b), ‘Forest Certification Scheme ignores human rights violations in the Congo Basin’, March, <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/forest-certification-scheme-ignores-human-rig/blog/39708/>

44 Ibid.

‘We won’t have any forest left in the near future, and our authorities are collaborating with the loggers in plundering our forests. The Okapi Wildlife Reserve covers half of our territory, and the concessions are spreading and already cover over half of what remains.’

‘If the State does not take urgent steps to stop the logging in our area, there will be no trees left for our children.’

‘We don’t have honey or mushrooms any more. Loggers are cutting down our medicinal plants. Our diet has been disrupted, and we have to work hard for the Bantus to get food, clothing and salt. When we protest against the invasion of our forests, the police come and arrest and threaten us. In January 2012 four families from our village were tortured for having refused to carry on their backs hundreds of logs sawn in the forest by strangers.’

In the lake sector of Bikoro territory, communities report, approximately two-thirds of the natural forest has been lost following intensive logging, and loggers with artisanal permits buy standing timber from community chiefs. Indigenous camps in Bikoro were destroyed by ITB in 2012 following community opposition to the company exceeding concession boundaries. ITB had undertaken to build 60 houses for members of the Mpombo 1 community; but, citing its partnership agreements with other companies operating with artisanal permits within the concession, the company claimed it had no such obligation because it was not doing the logging itself. Forest loss is forcing people to abandon their lands in search of better conditions and the possibility of work in the city of Mbandaka.

A community representative in Ingende territory, bordering with Bikoro, described how illegal logging in concessions held by logging company SIFORCO had contributed to scarcity of food, with a week’s walk now required to reach previously abundant forest game. Prices of meat and fish had become prohibitive at times, and SIFORCO had failed to deliver its social commitments.

‘SIFORCO did not honour agreements it made with us, nor the social responsibility clauses, in particular the construction of schools and health centres and road rebuilding. Only one school was built, at Boende-Bongange, over the entire logging period (approximately 10 years).’ – Community representative, Ingende territory

Community members in Ingende and elsewhere are not passive victims, however. Several reported

conducting participatory mapping in an effort to secure their lands and customary rights, and said they inform civil society organisations of cases of illegal tree felling. Nevertheless they fear that large-scale artisanal logging will decimate their forests.

In Oshwe, according to Batito-Sud community members, 23 years of logging by SODEFOR in their area have yielded no local benefits and numerous disadvantages. Roads constructed years before by the Belgians are now impassable as a result of heavy traffic. SODEFOR has not committed to social investment agreements, and the community has demanded US\$1.5 million in compensation for destructive logging.

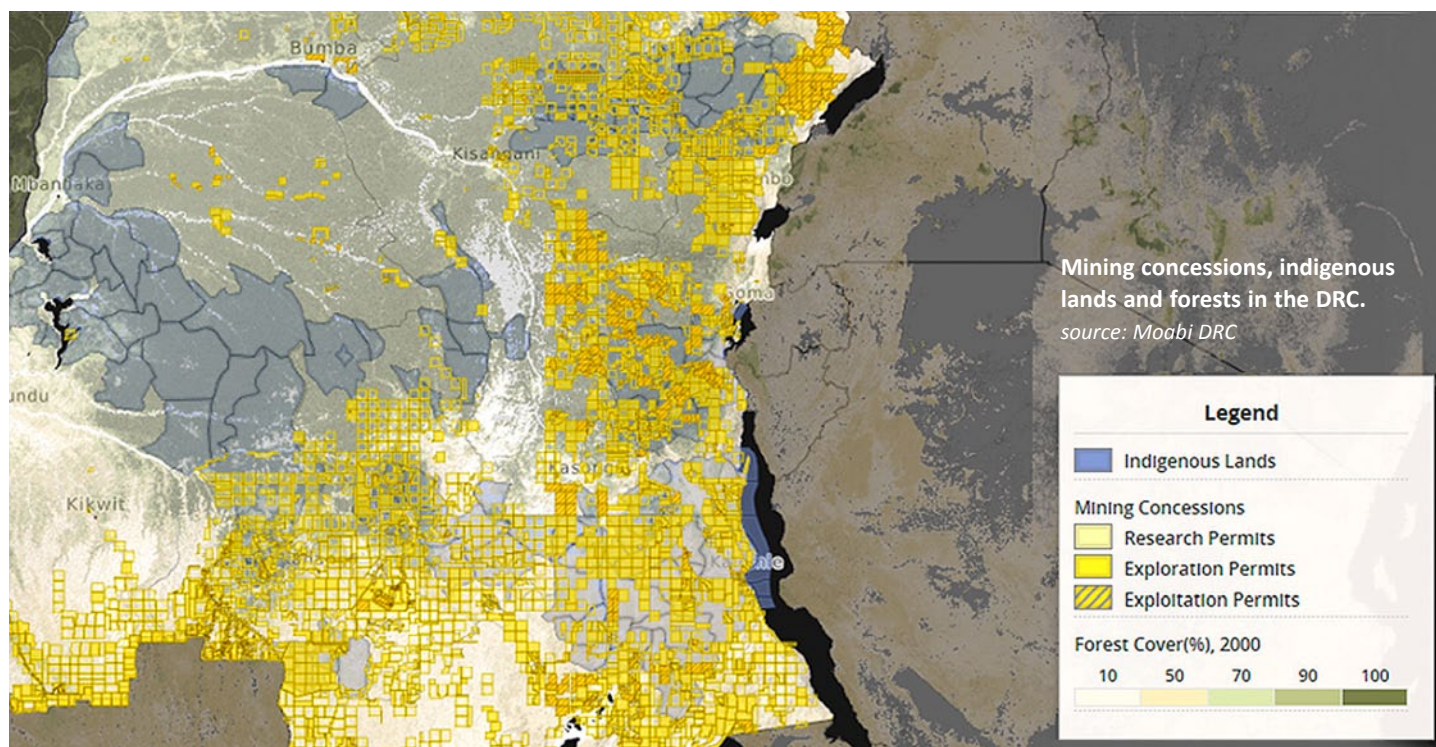
Forest communities have witnessed recurrent rights violations, including police use of arrest as a form of reprisal against local people who oppose logging, inhuman and degrading treatment, killings, rape, torture and forced labour. Arising from a long-running land dispute between SODEFOR and members of the indigenous Bokongo community in Oshwe over concession boundaries, for example, clashes have occurred and in one instance led to the death of community member Georges Nkaka, allegedly as a result of torture and cruel, inhuman and degrading treatment. This followed the arrest of 28 local people who were calling on SODEFOR to depart from their land. Despite the community filing a complaint, the authorities have failed to investigate.⁴⁵

Another local man, Charles Bopelo, died in January 2011 as a result of injuries following arrest by the police after SODEFOR had complained about his protests against company human rights violations. A month later the newspaper *L’Avenir* relayed a Greenpeace press release about violations committed by SODEFOR in the Batito-Sud community.⁴⁶ In a memorandum addressed to the Ministry of Environment, Nature Conservation and Tourism (MECNT) via the NGO Développement Paysan et Famille, community members accused SODEFOR of failing to contribute to local development and called on the authorities to investigate and report on the company’s performance and to enforce its respect of the Forest Code.

At the initiative of Réseau Ressources Naturelles

45 Greenpeace (2010b), *Les laissés-pour-compte de la réforme forestière en République Démocratique du Congo: L’exploitation forestière industrielle, source de conflits sociaux et de violence*, November, <http://www.greenpeace.org/africa/Global/africa/publications/ExploitationForestiereFR.pdf>

46 Greenpeace (2010a), *Forest Reform in the Democratic Republic of Congo: Leaving People Out*, July, http://www.greenpeace.org/africa/Global/africa/publications/forests/2010/Congo_Forest_%20Reform.pdf



(RRN), environmental NGOs denounced the arrest in October 2013 of villagers in Oshwe by police stationed at Maheu. The arrest was allegedly accompanied by rape and torture.⁴⁷

Mining

The DRC's mining sector is a second major direct driver of deforestation, as well as of destruction of communities' livelihoods and human rights violations on forest peoples' ancestral lands. The country's subsoil, particularly in Katanga province, is rich in minerals, including cobalt and coltan (most of the world's coltan reserves are in the DRC), which are traded internationally and widely used in the manufacture of mobile phones, laptop computers and other electronic devices.⁴⁸

Mining is not new to the DRC but it is expanding, and exploration and exploitation permits now cover more than 39% of the country.⁴⁹ In 2008 the Chinese government invested US\$6 billion in the SICOMINES concession, which formerly belonged to the State-owned company GECAMINES. Two Chinese companies and a national Congolese copper miner have signed a US\$6 billion 'resources for infrastructure' agreement, committing the Chinese to construct roads and dams in exchange for the right to mine.⁵⁰

Mining is often carried out illegally, with companies and the authorities equally failing to respect provisions of the 2002 Mining Code, including the right of mining-affected communities to compensation,⁵¹ and the Forest Code. In 2006, for example, the government granted mining concessions in the Basse Kando Reserve, an annexe of the Upemba National Park in Katanga and defined as *classified forest* where commercial mining is prohibited. Once companies including Bazano, Tenke Fungurume, Semex and SOMIKA began mining operations and deforestation in the reserve, NGOs denounced the government's breach of the Code. In response, the government removed the reserve from the list of classified forests without prior consultation (also in violation of the Code).⁵²

The development of artisanal and small-scale mining poses problems in terms of the authorities' capacity to monitor. More than 60 small- and medium-sized Chinese companies are reportedly operating in Katanga province, chiefly near Lubumbashi and Likasi (Upper Katanga district) and at Kolwezi (Kolwezi district), employing around 700,000 people.⁵³

Impacts of mining on forests and forest peoples

Mining and associated infrastructure, such as

47 Congo Planète (2014), 'Bandundu et Equateur: l'abattage du bois n'apporte pas le développement', February, <http://www.congoplanete.com/news/3630/bandundu-equateur-abattage-du-bois-apporte-pas-de-developpement.jsp>

48 See Global Witness (n.d.), Conflict minerals, <https://www.globalwitness.org/campaigns/conflict-minerals/>

49 DRC (2011b), op. cit.

50 A.M. Mpoyi et al. (2013), *The Context of REDD+ in the Democratic Republic of Congo: Drivers, Agents and Institutions*, Bogor: CIFOR.

51 Pèlerin (2010), op. cit.

52 M. Kaye (2012), 'Deforestation from mining in the Congo more than "a hole in the canopy"', CIFOR Forest News, July, <http://blog.cifor.org/10221/deforestation-from-mining-in-the-congo-more-than-a-hole-in-the-canopy#.U4XzIM5OX4i>

53 CIFOR (2011), *Chinese Trade and Investment and the Forests of the Congo Basin*, Bogor; L. Putzel and N. Kabuyaya (2011), *Chinese Aid, Trade and Investment and the Forests of the Democratic Republic of Congo*, Bogor: CIFOR.

construction of access roads, energy infrastructure and work camps, and inflows of mineworkers, play a major role in forest degradation. Roads fragment the forest and enable encroachment. Pressures on land use, including demand for arable land to feed mineworkers, intensifies competition for land and for areas of high conservation value forests. Ore processing contaminates water and damages other natural resources.⁵⁴

By contributing to forest degradation, the mining sector, like logging, undermines forest peoples' sources of food, medicine and other key resources, and impairs their social, cultural and spiritual practices. As with logging, forest communities are rarely consulted, and even more rarely asked for consent, when a mine is established close to where they live.

Field research in Mambasa for this report found that forest peoples consider the spread of mining responsible for negative impacts on their lives, including barring them from their customary lands. In 2009 the UN Committee on Economic, Social and Cultural Rights (UN CESCR) expressed concern about mining operations in the DRC resulting in the expulsion of communities from customary lands in violation of international law.⁵⁵ Restrictions on access to the forests appear more acute in mining concession areas than where logging occurs.

Communities allege that hunting and gathering have been prohibited in forests seized by Congolese and Chinese mining companies around Niania, where they are now denied access. Gold mining operations conducted by the parastatal company OKIMO (Office des Mines de Kilo Moto) in partnership with Asian mining companies in this area have allegedly also involved the forced unpaid labour of forest peoples.⁵⁶

Community members report that it has become impossible to collect honey to sell to generate an income, that children are employed by the mines and have ceased to attend school, that sexual violence is committed by mineworkers against women and girls, and that appeals to the authorities have proved fruitless 'because they are part of it all'.

'Kilo Goldmines [an exploration and resource development company] and the Chinese have forbidden us access to our forests. We have

disputes with them. All the areas on the outskirts of Niania are affected. Helicopters land in the forest to take away the minerals. Communication devices are forbidden. There are Chinese camps everywhere. We are unable to go into our forests to hunt. Our fish ponds, left by our ancestors, are completely spoilt. We no longer have access to our sacred sites to communicate with our ancestors. The game has fled, and the game-rich areas are now occupied by mining companies. We get no benefit from this mining and the companies do not even want to negotiate with us. The local authorities are complicit. Our culture is being lost, and we are at risk of being driven out permanently.' – Indigenous family, Mambasa territory

Commercial agriculture and fuelwood production

The DRC's agricultural population is estimated at 39 million,⁵⁷ growing a diverse range of crops including rice, maize, manioc and plantain. The capital, Kinshasa, is chiefly supplied with agricultural produce from Bandundu and Bas-Congo provinces.

Rules governing access to land for agricultural purposes vary according to region and community. Despite formal legislation, access to agricultural land is generally regulated by custom. Traditional authorities such as village chiefs usually allocate land by family descent within the village. Non-descendants may rent land for food production and for fuelwood; when such cultivation ceases, the fields have to be returned to the landowner or chief. Around urban centres, producers from outside a village may rent land to farm commercially in response to demand from urban dwellers.⁵⁸ Land may also be purchased.

Forest communities' traditional rotational agriculture and fuelwood gathering for subsistence needs have often been wrongly characterised as a major cause of deforestation, and many official sources fail to distinguish between permanent deforestation and temporary clearance for customary land use practices that allow the forest to regenerate.⁵⁹ A recent CIFOR report on the DRC concluded that there is insufficient evidence that agriculture contributes significantly to deforestation and that any such impacts tend to be concentrated in peri-urban areas

54 Kaye (2012), op. cit.

55 UN CESCR (2009), *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of Congo*, November, UN Document E/C.12/COD/CO/4, para 15.

56 OSAPY (n.d.), *Rapport général sur la situation des Pygmées en République Démocratique du Congo de 2005 à 2010*, Kinshasa.

57 C. Ragasa (2013), *Assessment of the Capacity, Incentives, and Performance of Agricultural Extension Agents in Western Democratic Republic of Congo*, Washington, DC: International Food Policy Research Institute.

58 C. Vermeulen et al. (2011), 'Enjeux fonciers, exploitation des ressources naturelles et forêts des communautés locales en périphérie de Kinshasa, RDC', *Base*, vol. 15, no. 4, pp. 535-44, <http://popups.ulg.ac.be/1780-4507/index.php?id=7911>

59 See e.g. Kissinger, Herold and de Sy (2011), op. cit.



Production of charcoal in a mixed field (maize and cassava) at Mpenda, Bikoro territory in Equateur. Charcoal produced in this area supplies the market of Mbandaka. A portion of charcoal also provides fuel for markets in Kinshasa.

Photo: Raoul Monsembula (Greenpeace)

rather than among rural shifting cultivators.⁶⁰ Locally practised subsistence forest farming can in fact enrich ecosystem diversity and increase forest cover.⁶¹ Moreover, by respecting traditional land and resource rights of neighbouring communities, customary systems of forest tenure and forest farming create fewer social conflicts.

‘People practise the fallow system and protect certain species, such as the caterpillar trees, whereas loggers cut down tall trees, which bring down the smaller ones.’ -- Indigenous peoples’ representative, Inongo-Kiri, Bandundu province

By contrast, commercial food and fuelwood production is an increasing cause of deforestation and forest degradation, especially on the outskirts of Kinshasa and other urban centres.⁶² On the Batéké plateau, Bas-Congo province, for example, land degradation is intensifying due to the pressures of farming and fuelwood production to supply the capital; between 2000 and 2010 the plateau’s gallery

forests lost 65% of their dense forest cover.⁶³ In Bas-Congo as a whole, between 1960 and 2003, 41.5% of secondary forests were degraded and transformed into savanna, fallow land or fields through over-cultivation driven principally by commercial agricultural production.⁶⁴

Fuelwood – both firewood and charcoal – accounts for more than 90% of the DRC’s energy consumption. Land for fuelwood production may be inherited, granted by a village chief, rented from the owner or bought, or trees themselves may be purchased. Following tree felling and wood harvesting, cleared land is often used for agriculture.⁶⁵ Some large-scale operators specialise in fuelwood production, and many young people work in charcoal production because of the lack of alternative work.

The sustainability of fuelwood production depends on how it is harvested and produced. Commercial production for urban and peri-urban supply,

⁶⁰ Ickowitz et al. (2015), op. cit.

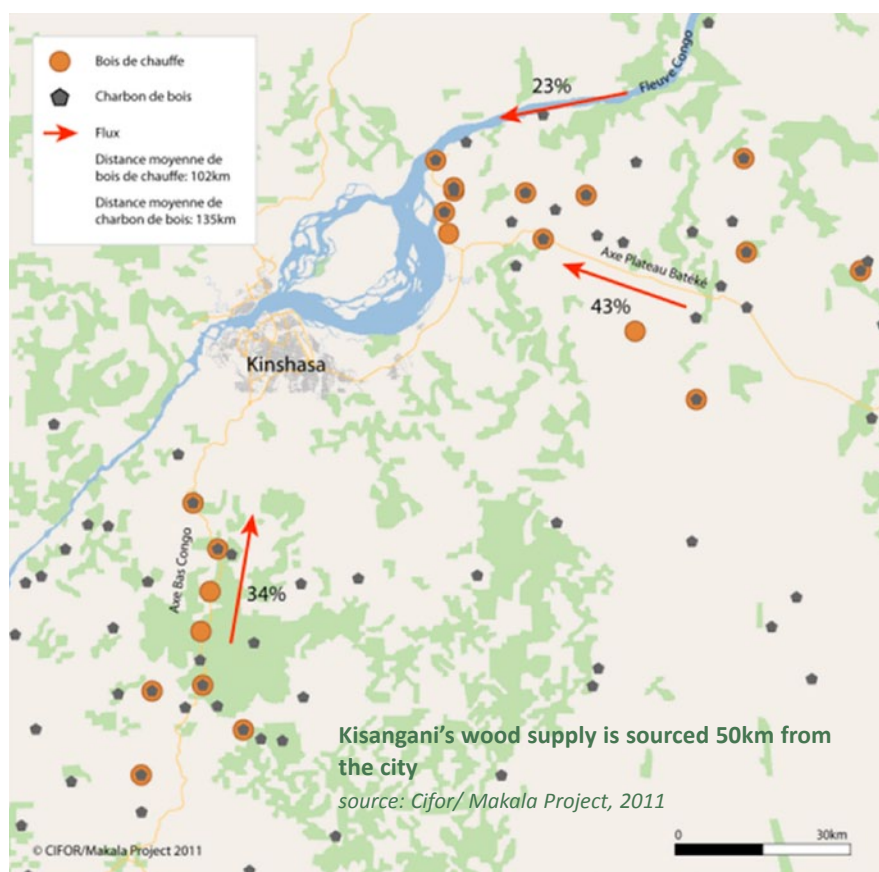
⁶¹ J. Fairhead and M. Leach (1996), *Misreading the African Landscape: Society and Ecology in a Forest-Savanna Mosaic*, Cambridge University Press.

⁶² Ickowitz et al. (2015), op. cit.

⁶³ J.-N. Marien et al. (2012), *Foresterie périurbaine, filières bois énergie et approvisionnement durable des villes d’Afrique centrale: le cas de Kinshasa (RDC)*, présentation 4ème réunion plénière du PFBC, septembre, N’Djamena: CIRAD.

⁶⁴ I. Bamba et al. (2008), ‘Influence des actions anthropiques sur la dynamique spatio-temporelle de l’occupation du sol dans la province du Bas-Congo’, *Sciences et Nature*, vol. 5.1.

⁶⁵ J. Schure et al. (2011), *Bois énergie en RDC: analyse de la filière de Kinshasa et de Kisangani*, Yaoundé: CIFOR.



Kisangani's wood supply is sourced 50km from the city

source: Cifor/ Makala Project, 2011

particularly around Kinshasa and Kisangani, including for small- and medium-sized industries such as textiles and brick-making, tends to be large scale and have significant environmental impacts. CIFOR-estimated annual volumes of charcoal sold and firewood burnt in Kinshasa and Kisangani represent 12 times the official figure for national fuelwood production. As fuelwood consumption increases with urban population growth and migration from rural areas, distances between supply zones and urban centres increase; Kinshasa's supply zones are now between 50 and 300 kilometres from the city, mainly in the south-east Batéké plateau and in Lukaya district, Bas-Congo province.⁶⁶

Impacts of commercial agriculture and large-scale fuelwood production parallel those of logging and mining: loss of wildlife and medicinal plants; scarcity of food resources; shrinking community living spaces; arrest of community members who oppose commercial agricultural expansion; conflict between companies and communities over land expropriation. In and around Bikoro, for example, forest peoples identify both cash crop agriculture and urban fuelwood demand as responsible for the seizure of community lands and forest destruction.

'Conversion of natural forests into rubber and coffee plantations by SICOMA [an Italian company]

66 Schure, J., Ingram, V., Akalakou-Mayimba, C. Décembre 2011. *Bois énergie en RDC : Analyse de la filière des villes de Kinshasa et de Kisangani*. Projet Makala/CIFOR

leads to deforestation. Some clans no longer have any forests because they have been entirely converted into plantations.' – Community representative, Bolomba territory, Equateur province

'The Bikoro area is suffering from a high demand for fuelwood for Mbandaka and Kinshasa.' – Community representative, Bikoro territory, Equateur province

Road building and energy infrastructure

As a result of many years of neglect and mismanagement and recent civil wars, most of the DRC's physical infrastructure is in a very poor state. This vast country possesses less than 3,000 kilometres of paved roads (just 1.8% of its total road network), and only three of the 26 provincial capitals connect by road

to the national capital Kinshasa.⁶⁷ Most roads are impassable even during the dry season. For most of the rural population, access to markets and to social and administrative services is severely curtailed, and rural transport services are non-existent.

The DRC government has decided to refurbish more than 25,000 kilometres of the country's roads and tracks.⁶⁸ The World Bank's Pro-Routes Project is financing rehabilitation of 3,645 kilometres of high priority roads,⁶⁹ and other international donors and investors, including the Chinese, are also providing funding for road building. Transport-related projects were agreed in 2006-7 with Chinese construction companies,⁷⁰ and in 2009 the DRC arranged a further US\$6 billion resources-for-infrastructure deal, involving roadworks, with China.⁷¹

Four routes targeted by the Pro-Routes Project connect the DRC provinces of Equateur, Oriental, Maniema, Nord and South-Kivu, and Katanga. Approved in 2008, the project has experienced delays and been extended to 2016. The routes to be developed are sensitive from environmental and

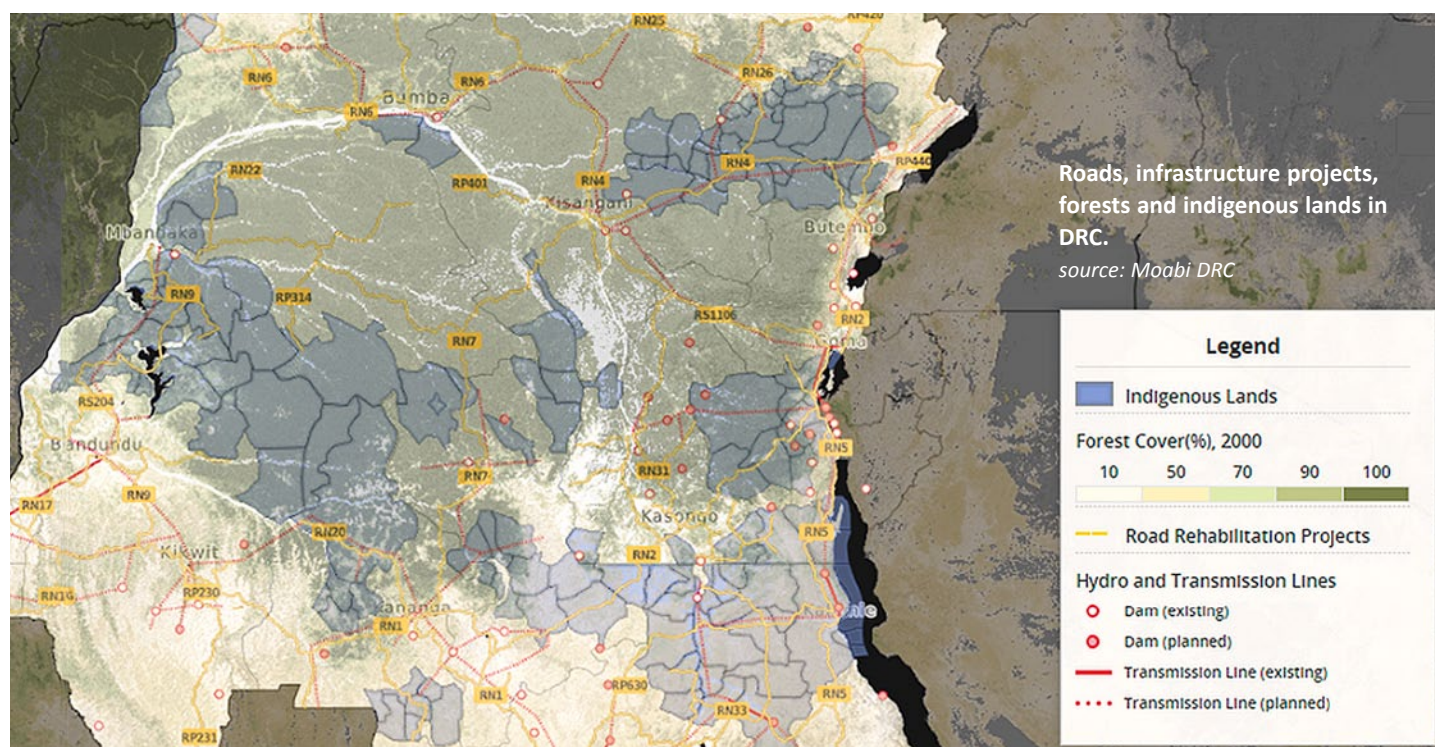
67 World Bank (2008), *Report No. 40028-ZR: Project Evaluation Document. Pro-Routes Project. Democratic Republic of Congo*.

68 DRC (2011b), *op. cit.*

69 World Bank (2008), *op. cit.*

70 Ibid.; T. Vircoulon (2008), 'La Chine, nouvel acteur de la reconstruction congolaise', *Afrique contemporaine*, vol. 3, no. 227, pp. 107-18.

71 B. Rubbers (2013), *Le paternalisme en question: les anciens ouvriers de la Gécamines face à la libéralisation du secteur minier katangais (RD Congo)*, Paris: L'Harmattan.



social standpoints, involving risks such as potential facilitation of access to forest resources for illegal loggers and poachers, including in protected areas, facilitation of illegal regional trade in forest products and impacts on forest-dependent communities.

As of 2014, almost 70% of the Pro-Routes Project roads have reportedly been rehabilitated. However, none of the participatory environmental management plans set as a project target have been carried out, and the World Bank has cancelled plans to establish a new protected area following a negative response to the idea from civil society.⁷²

Expansion of the DRC's road network is thought likely to increase access to hitherto remote forests and to increase the rate of deforestation.⁷³ Chinese companies undertake transport infrastructure projects largely in return for rights to extract and export minerals near the Atlantic coast. China's long-term strategy is to open up a new road between the DRC and Angola to enable its companies to export minerals extracted in Katanga province.⁷⁴ The latter will almost certainly involve roadbuilding through tropical forest, afford logging companies easier access, contribute to forest fragmentation and potentially encourage the influx of commercial food and fuelwood producers.

Several major road projects extend over forests and indigenous communities' lands, and more than 1,000 kilometres of planned roads directly overlap REDD+

(Reducing Emissions from Deforestation and Forest Degradation) pilot projects intended to enhance forest carbon stocks.⁷⁵

The DRC government also plans to invest US\$50 billion in electricity generation, principally hydroelectricity. In 2014 the World Bank approved a grant of US\$73 million towards the construction of the Inga 3 dam on the Congo River in Bas-Congo province, part of a programme to create the largest and most powerful hydroelectric network in the world, comprising six power stations. Construction is planned to start in 2016 and will involve the laying of new power lines to carry electricity to Kinshasa and South Africa, but there are no plans to distribute electricity to the majority of Congolese.⁷⁶

This vast project poses a threat to between 12,000 and 20,000 people living in and around the Bundi valley, many of whom will have to resettle. Communities include indigenous Basangela people and other groups whose forebears arrived from the 1960s onwards to work on the construction of Inga dams 1 and 2. No official or written notices have been provided to local people, but communities recall how they were forced to give up ancestral lands when Inga 1 and 2 were constructed. One clan lost almost all its lands, and other communities relocated their villages sites, all without compensation. The cycle appears set to repeat with Inga 3, and

⁷² Ibid.

⁷³ Mayaux et al. (2013), op. cit.

⁷⁴ Vircoulon (2008), op. cit.

⁷⁵ L. Bottrill and H. Kashongwe (2014), 'Competition for resources threatens REDD+ in DRC', Moabi DRC, April, http://rdc.moabi.org/redd_risk/en/#5/-2.877/22.830&layers=moabi_redd_projects

⁷⁶ FPP (2015b), 'Inga Dam in the DRC to result in the resettlement of up to 20,000 people', June, <http://www.forestpeoples.org/topics/world-bank/news/2015/05/inga-dam-drc-result-resettlement-20000-people>



Studies of forest loss in DRC show that deforestation is closely associated with the penetration of roads in forest areas.

Photo: John Nelson

communities are sceptical that World Bank safeguards will be applied.

‘Inga 1 and 2 took our lands and we received nothing, and now we are being told that we will have to leave our ancestral lands completely, and for ever. What will happen to us? Where will we go?’ –Villager, Bundi valley⁷⁷

‘If we have to move, we must be able to stay within the same area, on the lands of our ancestors, to keep our livelihoods, and our cultural identity.’ – Villager, Bundi valley

Many villages will be forced to relocate from the Inga 3 area and will lose fields and plantations to the dam reservoir, without being offered employment in a project that will require thousands of workers. Camp Kinshasa’s estimated population of 9,000 will be pushed out to make space for an estimated 7,000 incoming workers. Traditional and recognised local land tenure rights are likely to disappear.

‘We raised our families here, and educated our children, but they were never employed by SNEL [Société Nationale d’Electricité]. They used to talk about jobs at Inga 3; now they say we must leave, but I am not going anywhere.’ – Village woman, Bundi valley

⁷⁷ Bundi valley villagers quoted *ibid*.

‘If we are moved out and onto other peoples’ lands, we will have to pay tribute to their leaders for ever – and we do not want that.’ – Clan leader, Bundi valley

Oil palm expansion

Despite the involvement of food giant Unilever for much of the 20th century, the DRC’s oil palm sector is still relatively small, with palm oil exports mainly confined to Central Africa. However, this could change with growing demand for palm oil, because the DRC’s rich forest soils, hot, moist conditions and plentiful rainfall are highly suitable for oil palm cultivation, alongside cheap and apparently available land and low-cost labour.⁷⁸ The presence of logging companies may encourage conversion to oil palm, with profits derived from the sale of lumber used to pay for the cost of converting forest into plantations. Between 1.6 million and 3 million hectares of the DRC’s forests could be converted to industrial oil palm in the near future.⁷⁹

⁷⁸ Rainforest Foundation UK (2013), *Seeds of Destruction*, London, <http://www.rainforestfoundationuk.org/rainforest-foundation-uk-publications/palm-oil-publications/>; J. Pirker and A. Mosnier (IIASA) (2014), ‘Palm oil boom?’, Moabi DRC, October, http://rdc.moabi.org/palm-oil-boom/en/#5/-2.833/22.852&layers=moabi_forest_cover

⁷⁹ Rainforest Foundation UK (2013), *op. cit*.

Experience in Indonesia and Malaysia has shown that palm oil production that is not managed in a sustainable and controlled manner almost always results in deforestation, with an additional risk of contaminating rivers with pesticides. The likelihood of the DRC authorities allocating oil palm concessions without seeking the FPIC of affected communities, and of companies failing to consult communities or to draw up social investment agreements (contravening the 2002 Forest Code), indicates that palm expansion will exacerbate the DRC's forest loss and indigenous and local communities' forfeiture of the right to own, control and use customary lands.⁸⁰

Along with the anticipated loss of food, medicine, building materials and the locus for their cultural and spiritual practices, conflicts between communities and oil palm companies, and associated abuses, are likely to increase. After the governor of Bas-Congo province allocated a 10,000 hectare commercial concession to Congo Oils & Derivatives for oil palm and soya in the Muba and Kiemi reserves – both classified forests and legally out-of-bounds to large-scale agriculture – in Muanda territory in 2009, community members reported harassment by the local authorities. No community consultation took place; no management plan was developed; and no socioeconomic infrastructure development agreement was negotiated – despite all these being requirements under the Forest Code.⁸¹

Problems already exist in connection with oil palm plantations in Equateur province that Canadian-listed agribusiness company Feronia bought from Unilever in 2009. Communities denounce Feronia – and Unilever before it – for illegally occupying their land and causing malnutrition by destroying local forest resources.⁸² Said to be channelling investment from European and US multilateral banks and development finance institutions, including the UK's CDC,⁸³ and reportedly with major expansion plans, Feronia stands accused of destroying local people's crops, forced expulsions, violent intimidation and subjecting workers on sub-minimum wages to

highly exploitative conditions. One of the plantations reportedly overlaps with a Lebanese company's logging concession.⁸⁴

'Agro-industrial parks'

Small farmers and communities in the DRC are concerned about government plans to grant 16 or 20 very large concessions in the form of 'agro-industrial parks' under the country's US\$6 billion National Agricultural Investment Plan for 2013-20. Intended 'to tap the country's huge agricultural potential and to address the challenge of food security', the parks are planned to have Special Economic Zone status supported by tax incentives and to be managed as public-private partnerships. The DRC government is reported to consider that 80 million hectares of 'untapped' arable land and pasture for 40 million cattle are available, along with commercial fish farming opportunities.⁸⁵

Plans for the parks include government investment in roads and electricity, support for the securing of land, irrigation systems, processing factories, distribution and logistics networks, use of GMO seeds, and credit for farmers. Pilot farms are set to produce maize, soya and cassava. Potential partner companies include Caterpillar, Massey Ferguson and South African fertiliser producer Triomf. Small-scale producers and local communities are ostensibly provided for in the plans, but there are fears that the initiative will undermine local self-reliance and accelerate land grabbing by the country's political and military elites.⁸⁶

The first of these 'agro-industrial parks', at Bukanga Lonzo in Bandundu province, was inaugurated in 2014 at an estimated cost to the government of about US\$83 million.⁸⁷ Despite the stated development goals for such parks, the formation of the Bukanga Lonzo park has given rise to concerns about the pre-existing customary rights of an estimated 180 households and the lack of social and environmental safeguards. The project started without prior environmental and social impact assessments, in contravention of national legal

80 Ibid.; S. Vig and J.-M. Muanda (2013), 'Democratic Republic of Congo: Congo Oil and Derivatives, SARL', in FPP, Sawit Watch and TUK Indonesia, *Conflict or Consent? The Oil Palm Sector at a Crossroads*, Moreton-in-Marsh.

81 Vig and Muanda (2013), op. cit.

82 GRAIN and RIAO-RDC (2015), *Agro-Colonialism in the Congo: European and US Development Finance Bankrolls a New Round of Agro-Colonialism in the DRC*, Barcelona, <https://www.grain.org/article/entries/5220-agro-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc.pdf>

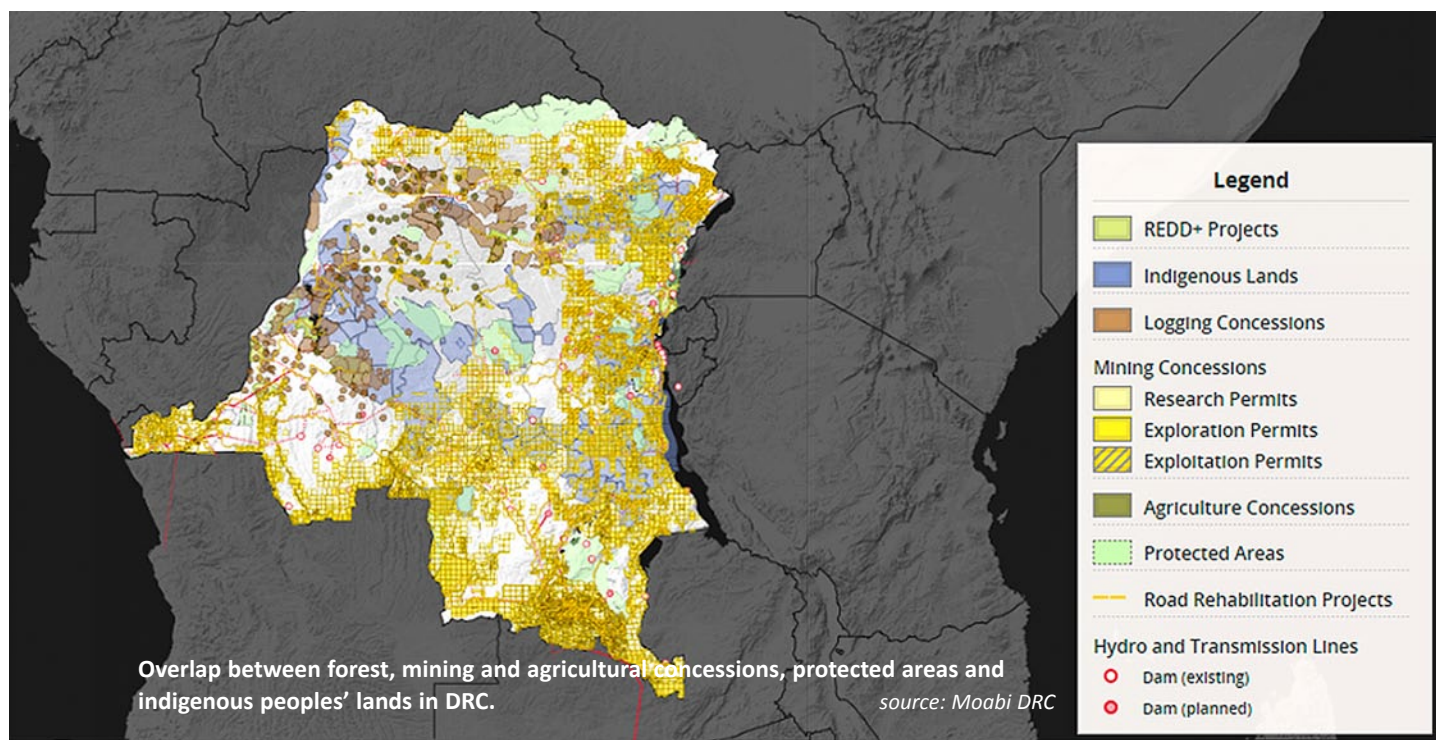
83 CDC (2013), 'CDC invests US\$18.1m in agribusiness in the Democratic Republic of Congo', November, <http://www.cdccgroup.com/Media/News/CDC-invests-US181m-in-agribusiness-in-the-Democratic-Republic-of-Congo/>

84 GRAIN and RIAO-RDC (2015), op. cit.

85 SouthWorld (2014), 'DRC – Agro-industrial parks to address the food security challenge', July, <http://www.southworld.net/drc-agro-industrial-parks-to-address-the-food-security-challenge/>

86 Ibid.; UN Development Programme (UNDP) (2013), *Comprehensive African Agricultural Development Program (CAADP) and New Partnership for Africa's Development (NEPAD), Democratic Republic of Congo Agriculture Investment Opportunities Brief: CAADP Investment Facilitation Programme*, www.abghq.com/downloads/DRC.pdf

87 *Eastern Congo Tribune* (2014), 'Aubin Minaku: Brazilian defender whose benchmarks are King Leopold II & President Mobutu', July, <https://edrcrdf.wordpress.com/tag/agro-industrial-park/>



provisions, justified on grounds that these would cause delay.⁸⁸

Indirect drivers of deforestation and forest degradation

Major indirect causes of deforestation and of associated rights violations against forest communities in the DRC include insecure community land rights and related deficiencies and contradictions in the legal framework; flawed land allocation and concession systems; practical obstacles preventing forest communities from securing legal remedy; shortcomings in domestic law vis-à-vis international obligations; institutional weakness, corruption and non-compliance with legislation; urban and peri-urban population growth with increasing demand for agricultural produce, timber and fuelwood; and the role of international markets.

Insecure tenure and deficiencies and contradictions in the legal framework

The DRC's Constitution guarantees rights to 'individual or collective property acquired in accordance with law or custom' (Article 34), proscribes acts that have 'the consequence of depriving the nation, individuals or corporations of all or part of their means of subsistence drawn from their natural resources or wealth' (Article 56), guarantees the right of all Congolese to enjoy

national wealth and stipulates the State's duty to redistribute wealth equitably and to safeguard the right to development (Article 58).⁸⁹

Despite constitutional guarantees (see also discussion of the DRC's international commitments below), and the draft law on indigenous peoples currently pending before the Office of the National Assembly,⁹⁰ no applicable law in the DRC recognises the status of indigenous peoples or their distinctive rights to lands they customarily own and occupy. Indigenous land tenure systems are not recognised formally or by non-indigenous Bantu customary law, and indigenous peoples' lands are usually considered 'vacant'.⁹¹ Thus – despite a general obligation to consult affected communities and to conduct an investigation of 'vacant land' or public enquiry regarding concessions⁹² – the legal framework does not require communities' FPIC prior to allocation of concessions or classification of forests on their customary lands.

This lack of legal provisions to protect collective customary land rights encourages land seizure and eviction of indigenous and customary communities without compensation. Indigenous peoples are usually only alerted to a decision relating to their lands when their access is prohibited, or they are evicted, as happened to the Bambuti-Batwa following

⁸⁸ Legal provisions: DRC (2011c), Law No. 011/022 regarding basic principles for agriculture; Loi no. 011/022 du 24 décembre 2011 portant principes fondamentaux relatifs à l'agriculture, Article 66; DRC (2011d), Law No. 011/009 regarding basic principles for environmental protection, Article 21.

⁸⁹ DRC (2011a), Constitution of the Democratic Republic of the Congo as amended by Law No. 11/002 of 20 January 2011, Amending Some Articles of the Constitution of the Democratic Republic of Congo of February 18, 2006.

⁹⁰ DRC (2014b), op. cit.

⁹¹ Musafiri (2008), op. cit.

⁹² Provided for under DRC (1973), op. cit., Articles 193 and following (vacancy survey), and Article 10; and Forest Code, Articles 84 and 85 (public inquiry).

the creation in 1970 of the Kahuzi-Biega National Park in South Kivu.

‘The current regulatory framework opens the door to corruption and to violations of communities’ rights.’ – Essylot Lubala, Observatoire pour la Gouvernance Forestière (OGF) and Observateur Indépendant des Forêts en RDC

This situation persists despite the government’s undertaking to apply FPIC in all its REDD projects and to respect the right to FPIC in all sectors.⁹³ The new draft law on indigenous peoples potentially addresses the issue by including the obligation to seek indigenous communities’ FPIC, which it defines as a ‘collective right’ to ‘give or refuse’ consent relative to any project likely to have an impact on their traditional lands and resources.⁹⁴

As to registering land, under the 1973 law individual DRC nationals may obtain, via a registration certificate, legally recognised enjoyment rights on allotted land. This law does not permit registration of collective title, however, and therefore offers little benefit for indigenous communities, most of whose customary land rights are collective.⁹⁵ (This situation is partially addressed thorough the decree on community forests – see Box 3 above.) Further, registration procedures are long and complicated, would require members of indigenous communities to travel long distances to access administrative offices, and involve completion of written forms, presenting a barrier to the many illiterate indigenous people.

The 1973 law also requires allocated land to be ‘developed’ (*mise en valeur*), an obligation virtually impossible for indigenous communities to fulfil, because their way of life leaves few if any marks on the land. And in stating that land occupied by communities belongs to the State, the law removes customary authorities’ right to allocate land. The presidential ordinance to regulate the enjoyment rights of local communities has not yet been adopted.⁹⁶

The Forest Code similarly reiterates that forests are State property, denying communities the right to customary ownership. Usage rights in classified forests are severely restricted, with hunting and other traditional activities banned, and resource

usage rights prohibited in national parks and nature reserves.⁹⁷ Widespread failure to complete conversion and cancellation of old forest titles under the Code has left a legal vacuum in production forests whereby the status of logging remains uncertain and largely unchecked.

Indigenous communities are unrepresented and thus unable to express their views on national and provincial committees that take decisions on forest classification, conversion of land titles and concession management plans.⁹⁸ The reform process since 2002 relating to natural resources, and in particular forests, has not meaningfully consulted indigenous peoples, as the World Bank Inspection Panel found it should,⁹⁹ although most forest concessions are on their lands.¹⁰⁰ And implementing decrees have been issued without their prior consultation.¹⁰¹

‘The World Bank is supporting the government in the sectors where there is a very high risk of deforestation. It needs to be vigilant about ensuring that the government respects its social and environmental safeguards.’ – Essylot Lubala, Observatoire pour la Gouvernance Forestière (OGF) and Observateur Indépendant des Forêts en RDC

Legally required implementing decrees and regulatory measures in relation to forests and mining are, moreover, frequently missing or inadequate. Gaps in forest sector regulation include a lack of provisions defining and organising forest zones, setting logging and artisanal exploitation quotas, and detailing lumber export procedures, and non-application of felling taxes for industrial concessions. Inconsistencies include variations in authorised maximum surface areas within annual industrial timber cutting permits, in the calculation of reforestation taxes and regarding MECNT presence at points of export.¹⁰² Regulatory measures awaiting adoption in mining include provisions for community consultation, the issuing of mining rights and protection of the environment.¹⁰³

Lack of a national forest policy, required under the Forest Code, and forest plan results in incoherent decisions on forest zoning, community forests and participation in REDD+ and the EU Forest Law

93 FPP (2012), ‘DRC reaffirms its commitment to free, prior and informed consent (FPIC)’, July, <http://www.forestpeoples.org/topics/redd-and-related-initiatives/news/2012/07/drc-reaffirms-its-commitment-free-prior-and-informed>

94 DRC (2014b), op. cit.

95 DRC (1973), op. cit.

96 Musafiri (2008), op. cit.

97 FPP et al. (2006), *An NGO report submitted to the African Commission on Human and Peoples’ Rights Working Group on Indigenous Populations/Communities*, Moreton-in-Marsh, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/drcachrrreportoct06eng.pdf>

98 Ibid.

99 World Bank Inspection Panel (2007), op. cit.

100 UN CESCR (2009), op. cit.

101 Musafiri (2008), op. cit.

102 REM (2012b), op. cit.; Chatham House (2014), op. cit.

103 Sakata (2009), op. cit.

Enforcement, Governance and Trade (FLEGT) action plan. Crucially, while there is often an overlap between forest and mining concessions, pilot REDD+ projects and lands occupied by communities, land tenure legislation fails to clarify the status of customary law. While formal law is in principle applicable to all land and has precedence over forest customary law, in practice traditional authorities govern the land in accordance with customary law. Two parallel and often contradictory systems therefore govern land tenure and use, with different rights overlapping on the same land, increasing pressure on forests, conflict and violations of communities' rights.¹⁰⁴

Obstacles to legal remedy

Forest peoples face practical obstacles to obtaining justice before the law. Many live in poverty, particularly once deprived of their livelihoods following forced eviction or land seizure, and it is difficult for them to access legal services that are generally located far from where they live. The judicial process is often conducted in French and other national languages that forest communities do not understand, and many are prevented by their illiteracy from seeking remedy through the courts. Social discrimination against indigenous and local communities and their lack of awareness about judicial processes compound the difficulties.

Shortcomings vis-à-vis international obligations

As noted in Section 2, the DRC has legal obligations under international instruments it has ratified, including the two International Covenants of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination, the African Charter on Human and Peoples' Rights and the African Convention on the Conservation of Nature and Natural Resources. The DRC voted for the UN General Assembly's adoption of the UNDRIP in 2007, which constitutes minimum standards already established in international law under other human rights instruments. Under the country's Constitution, 'International treaties and agreements which have been duly concluded have, upon publication, precedence over [national] laws, subject to each treaty or agreement's application by the other party' (Article 215, unofficial translation).

Recent progressive jurisprudence has led to the creation of an international indigenous right to land. In February 2010, in a historic decision in the *Endorois* case of Kenya, the African Commission on Human and Peoples' Rights (ACHPR) accepted for

the first time an indigenous land rights claim.¹⁰⁵ In the view of the ACHPR, the following conclusions could be drawn in the *Endorois* case: (1) traditional possession of land by indigenous people has the equivalent effect to a State-granted full property title; (2) traditional possession entitles indigenous people to demand official recognition and registration of property title; (3) members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; (4) members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution or to obtain other lands of equal extension and quality. Thus, possession is not a requisite condition for the existence of indigenous land restitution rights.¹⁰⁶

The ACHPR also noted the observation of the Inter-American Court of Human Rights (IACHR) in the seminal case of the *Mayagna (Sumo) Awas Tingni v. Nicaragua* that the Inter-American Convention protected property rights in a sense including the rights of members of indigenous communities within the framework of communal property, and argued that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.¹⁰⁷ The IACHR had affirmed that the right to property as enshrined in international human rights instruments has autonomous meaning that cannot be limited by the meaning attributed by domestic law.¹⁰⁸

International monitoring bodies have noted in their rulings that these instruments protect the rights of indigenous peoples to own, develop and control their lands, territories and resources and their right to FPIC regarding decisions with potential impact on their lands and resources. In 2007 the Committee on the Elimination of Racial Discrimination (CERD) expressed concern regarding discrimination against, and marginalisation of, indigenous communities in the DRC and called on the government to 'take urgent and adequate measures to protect the rights of the Pygmies to land', including laws guaranteeing the

¹⁰⁵ African Commission on Human and Peoples' Rights (ACHPR) (2003), Communication 276/03, Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) / Kenya, http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf

¹⁰⁶ ACHPR, Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) / Kenya, Decision, para 209.

¹⁰⁷ IACHR (2001), *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August, paras 140(b) and 151.

¹⁰⁸ Ibid., para 146.

¹⁰⁴ Pèlerin (2010), op. cit.

Box 4: The draft law on indigenous peoples

The DRC's draft law on the 'fundamental principles of the rights of the indigenous Pygmy peoples'* is the product of several organisations' work, including the Collectif des Parlementaires, Espoir pour Tous and the DGPA. Indigenous and parliamentary organisations, members of government, international partners and civil society agreed the final version of the draft law in June 2014, and this is now with the Office of the National Assembly pending examination and a possible vote in the near future.**

Although the text refers to 'indigenous Pygmy' [sic] peoples, its scope appears to promote and protect the rights of all the DRC's indigenous peoples. Article 2(1) defines the 'indigenous Pygmy peoples' as peoples who identify as a specific people and distinguish themselves from other peoples by their cultural identity, lifestyle, attachment and close ties to nature, and indigenous knowledge.

In relation to FPIC, Articles 2(2), 18, 19 and 42 will permit the DRC's indigenous peoples to refuse a project that will affect their customary lands. The draft law will therefore provide an entry point for indigenous peoples to challenge government decisions regarding forest classification or allocation of forest concessions without their consent. The draft law also guarantees indigenous communities the right to participate in decision-making that affects them, and Article 42 recognises their right to the lands and natural resources they traditionally own, occupy or use. If they give their consent to being relocated, they are to receive just and equitable compensation. Other rights are also recognised, such as to justice, work, health, education, the environment and culture.

* DRC (2014b), op. cit.

** Espoir pour Tous (2014), 'La Loi organique portant principes fondamentaux sur les droits des peuples autochtones Pygmées en RDC: vers le dépôt à l'Assemblée Nationale en RDC', June, <http://espoirpourtous.midiblogs.com/archive/2014/06/15/vers-le-depot-de-la-loi-organique-portant-principes-fondamen-809389.html>

rights of indigenous peoples to their forests, taking into account their interests and needs with regard to conservation and providing adequate legal recourse when their rights are violated.¹⁰⁹

In 2009 the CESCR requested the DRC to 'enforce the moratorium on concessions until the mapping and zoning exercise is completed and to ensure that future forest concessions do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources'. The CESCR recommended that the government 'adopt legislation and measures to recognise the status of ... indigenous peoples' and to protect their ancestral lands and cultural identity.¹¹⁰

Following examination of the DRC's periodic report in 2010, the African Commission recommended that the DRC government intensify legislative measures providing recognition of the rights of indigenous peoples, strengthen its programmes on indigenous peoples, amend the Forest Code to take into account the specific needs of indigenous peoples and to guarantee the rights of forest-dwelling peoples,

restitute all confiscated indigenous community lands or alternatively provide compensation, and ensure that indigenous peoples are consulted about and participate in all decision-making affecting their quality of life.¹¹¹

The DRC government currently appears unwilling to address such recommendations, despite the clear potential benefits in terms of combating deforestation and halting the violation of indigenous peoples' rights. If the customary land rights of indigenous peoples and traditional forest communities, who derive their livelihoods from the forests, were legally protected, environmental damage linked to commercial activity would likely be considerably reduced. The new decree on community forests (Box 3 above) and the draft law on indigenous peoples (Box 4) currently pending could, it is hoped, improve the legislative framework for the protection and promotion of indigenous communities' rights, although further reforms are likely to be needed.

109 UN CERD (2007), Concluding Observations of the Committee on the Elimination of Racial Discrimination: Democratic Republic of the Congo, August, CERD/C/COD/CO/15, para 19.

110 UN CESCR (2009), op. cit., paras 14, 36.

111 African Commission on Human and Peoples' Rights (2010), Concluding Observations on the Report of the Democratic Republic of Congo, 48th ordinary session, November, Banjul [available in French only].

Box 5: Conservation policy threatens forest peoples' rights

The DRC's conservation policy is essentially based on the forest classification process and the creation of national parks and protected areas, a process implemented without addressing indigenous peoples' right to FPIC. The policy, which aims to protect biodiversity, threatens indigenous and local communities' rights to their customary forest lands and resources and is not based on the science that now clearly recognises the key role that ancestral communities can play in protecting and sustaining their ecosystems when they have security of tenure and agree to conservation conditions.

Following the creation of national parks and protected areas, numerous forest communities have been evicted from their customary lands and prohibited access to the forest without compensation. For example, in 2006 the then Ministry of Environment, Nature Conservation, Waters and Forests signed a ministerial arrêté establishing the 'reserve des primates de Kinsimba-Ikobo' in the area of Pinga, North Kivu; communities were not consulted, and potential impacts on their livelihoods were not properly explained. The policy as currently applied risks exacerbating the impoverishment of forest communities, ironically excluding from or restricting access to the very people who have traditionally inhabited forests sustainably.

Institutional weakness and non-compliance with legislation

Many of the DRC's laws and regulations have not been implemented in accordance with their terms. As we have seen, the conversion of old logging permits into forest concessions is much delayed, with only a third of selected permits so far converted, while deforestation continues.

Land allocation and zoning of concession areas in DRC are also defective. The system lacks transparency and usually fails to ensure the meaningful participation of communities. Forest zoning is intended to define the exact allocation of lands for classified forests, permanent production forests, community forests and mining concessions. A 2009 ministerial order established the Comité National de Pilotage du Zonage Forestier (CNPZ) to guide and monitor the zoning procedure. The CNPZ has met, adopted a methodological guide for macro-zones and approved terms of reference for recruiting a consultant to submit a zoning proposal for Bandundu, Equateur and Oriental provinces. Its guide to micro-zoning is still under discussion. In addition, a Comité Local de Pilotage du Zonage Forestier (CPZ) is supposed to be established in each territory, but this has not taken place.¹¹²

The macro-zoning process for classified and production forests contains no provision for

identifying the rights of forest communities,¹¹³ and macro-zoning is planned prior to micro-zoning. However, experience from Liberia and elsewhere has demonstrated that participatory micro-zoning before macro-zoning makes it possible to identify land rights of local communities and for communities to provide valuable information as part of the zoning process.

Overall, forest zoning in the DRC is top down, underfunded and not regarded as a priority, with only a few pilot projects established. Micro-zoning, financed by private actors such as concession holders and conservation organisations, is unlikely to promote transparency or a just and participatory process, because of potential conflicts of interest and the strained relations between such actors and communities. One welcome measure regarding zoning is the designation of an indigenous representative on the CNPZ, who can seek greater consideration of communities' rights as part of the process. For this inclusive approach to work, however, special measures are needed to ensure community and indigenous representatives are not marginalised by the authorities or by powerful vested interests.

Non-compliance with the law in the logging and mining sectors is rife. The DRC's authorities are inadequately resourced to monitor concessions and prosecute offences. Judicial Police Officers (OPJ) tasked with this function reportedly represent only 1% of MECNT personnel and are generally poorly

¹¹² RRN (2011), *Rapport de plaidoyer pour la prise en compte des droits de tenure des populations forestières dans le processus de zonage en RDC*, Kinshasa.

¹¹³ Ibid.

trained, absent from rural areas where concessions are located and unwilling to enforce the law, while central and provincial authorities fail to coordinate adequately.¹¹⁴ Among other factors enabling operators to flout their environmental and social obligations are a lack of dissuasive penalties (fines are generally low and outweighed by gains from breaking the law) and widespread corruption and complicity on the part of the authorities, against which the MECNT's internal control and audit inspectors are largely ineffective.¹¹⁵

Lack of transparency in the natural resources sector is an additional factor. Despite a 2011 decree requiring the publication of all natural resource contracts, not all have been published. Nor have five-year land management plans been published. No artisanal logging contracts or maps have been published, and despite the DRC's participation in the Extractive Industries Transparency Initiative (EITI) there is insufficient transparency regarding mining contracts and revenues.

The national authorities, recognising the necessity for governance reforms, have tended to create new institutions, exacerbating the plurality of actors and multiplicity of administrative procedures, rather than making existing mechanisms work effectively.

Urban and peri-urban population growth

According to demographic estimates, in the absence of a recent census, the DRC has a population of some 70 million inhabitants, of whom 70% are young. The urban and peri-urban population is growing rapidly through both natural reproduction and rural migration towards towns and cities.¹¹⁶ Demand for agricultural produce, timber and fuelwood is consequently increasing, with resulting forest loss concentrated around urban centres where population density is greater.¹¹⁷

The role of international markets

Growing international demand for natural resources is a significant indirect driver of deforestation in the DRC. Countries that import products derived from the degradation of the DRC's forests and from violations of indigenous and local communities' rights therefore share responsibility.

Recent research by Greenpeace has tracked illegally felled DRC timber to markets in Belgium, China,

France, Germany, Portugal, the UK and the USA.¹¹⁸ In 2012, 40% of the DRC's largely illegal wood exports were destined for the European Union (EU). The EU launched its FLEGT action plan in 2003 to reduce illegal logging, strengthen sustainable forest management, improve governance and promote trade in legally produced timber.¹¹⁹ Entry into force of the EU Timber Regulation in 2013 prohibited the placing of illegally harvested timber on the EU market and required operators to apply due diligence to exclude illegal timber from their supply chains.¹²⁰ This led to seizure in Germany of timber of the threatened wengé species, logged by a Lebanese company in the DRC.¹²¹ However, despite such isolated successes, much illegal timber continues to enter the EU.

An estimated 40% of the DRC's exported timber also went to China in 2012,¹²² including much of the timber logged under artisanal permits (some was also destined for the EU). Companies illegally using artisanal permits were reportedly often Chinese or in partnership with Chinese companies.¹²³

With years of high international demand for minerals, including to supply the global market for electronic devices, the DRC mining sector has attracted numerous new investors from Organisation for Economic Co-operation and Development (OECD) countries, South Asia and China. An estimated 40% of China's US\$7 billion share of Africa's minerals exports in 2009 came from the DRC.¹²⁴

Strong forecast demand for biofuels in the EU, which has undertaken to source 10% of its transport fuels from biofuels by 2020, is another instance of international market pressure on the DRC's forests and forest peoples.¹²⁵

¹¹⁸ Greenpeace (2015), op. cit.

¹¹⁹ EU FLEGT Facility (n.d.), 'What is FLEGT?', <http://www.euflegt.efi.int/about-flegt>

¹²⁰ Greenpeace (2014), 'Importing timber from the DRC: a high-risk business for Europe', <http://www.greenpeace.org/eu-unit/Global/international/briefings/forests/2014/Importing-timber-from-DRC-2014.pdf>

¹²¹ Greenpeace (2013b), 'Germany seizes Congolese wood in strongest EU action yet against illegal timber trade', November, <http://www.greenpeace.org/eu-unit/en/News/2013/Germany-seizes-Congolese-wood-in-strongest-EU-action-yet-against-illegal-timber-trade/>

¹²² Chatham House (2014), op. cit.

¹²³ Global Witness (2012), op. cit.

¹²⁴ Kaye (2012), op. cit.

¹²⁵ Rainforest Foundation UK (2013), op. cit.

¹¹⁴ REM (2012b), op. cit.

¹¹⁵ Chatham House (2014), op. cit.

¹¹⁶ UNDP (n.d.), 'About the Democratic Republic of Congo (DRC)', <http://www.cd.undp.org/content/rdc/en/home/countryinfo.html>

¹¹⁷ Mayaux et al. (2013), op. cit.; Ickowitz et al. (2015), op. cit.

NATIONAL AND INTERNATIONAL INITIATIVES TO COMBAT DEFORESTATION IN THE DRC

REDD+

REDD+ brings together the UN-REDD programme (Reducing Emissions from Deforestation and Forest Degradation) and other multilateral initiatives such as the Forest Carbon Partnership Facility (FCPF) and Forest Investment Program (FIP) under the aegis of the World Bank.¹²⁶ The DRC's framework strategy under REDD+, presented in November 2012, controversially and problematically identified the primary cause of deforestation in the country to be shifting subsistence agriculture practised by local communities.¹²⁷ Although the strategy also refers to illegal logging, mining and commercial agriculture, it does not consider these to be major drivers of deforestation to be tackled as a priority.

The REDD investment plan aims to implement the strategy over the medium term by addressing the drivers of deforestation and forest degradation and by delivering developmental and poverty-reduction benefits to all Congolese – women and men, adults and younger generations, urban and rural people, indigenous and non-indigenous – as well as enhancing the climate resilience of forest ecosystems.¹²⁸ However, the plan regrettably replicates the framework strategy in identifying local communities as major agents of deforestation and forest degradation, thereby threatening to increase communities' impoverishment while not addressing the primary drivers. The plan states that 'agriculture is already the main direct driver of deforestation. Currently the pressure on the forest is mainly due

to slash and burn subsistence farming' (unofficial translation).¹²⁹

As part of REDD+, the DRC's Emissions Reduction Program Idea Note (ER-PIN), presented to the FCPE, was approved in April 2014. This covers the new province of Mai-Ndombe, an area of 12.3 million hectares with a population of 1.9 million.¹³⁰ FPP and others have criticised the ER-PIN for attributing responsibility for deforestation mainly to indigenous and local communities, despite a lack of evidence. Earlier reports by FPP and FERN have similarly critiqued official analysis of the causes of deforestation in the DRC and other countries.¹³¹

Because they arise from unclear and disputable attributions of the causes of deforestation, and their preparation excluded information relating to forest communities' customary land and natural resource rights, the solutions offered by the ER-PIN are highly questionable. There is no provision to address the violation of community rights, despite the lack of such rights being one of the principal reasons why communities are unable to resist forest degradation. Instead, measures proposed threaten communities' cultures and livelihoods by restricting long-practised and largely sustainable rotational subsistence agriculture and livelihood-based hunting and fuelwood production, while offering unconvincing alternatives as replacements.¹³² Thus the ER-PIN risks leading to implementation of false solutions in response to false causes of deforestation, with negative consequences for all concerned.

126 UN-REDD Programme (n.d.), 'About REDD+', <http://www.un-redd.org/aboutredd>

127 DRC (n.d.), *Stratégie-Cadre Nationale REDD+ de la République Démocratique du Congo*, P.27-30

<https://forestcarbonpartnership.org/sites/fcp/files/2015/March/Strategie-cadre%20nationale%20REDD%20de%20la%20RDC.pdf>

128 DRC (2013), *Fonds National REDD+: Plan d'investissement (2013-2016)*,

September, https://forestcarbonpartnership.org/sites/fcp/files/2015/March/13-09-19%20Plan%20Investissement%20Fonds%20National%20REDD%20%20Aout%202013%20_clean.pdf

129 Ibid., p. 28.

130 FERN and FPP (2014), *Implement in haste, repent at leisure: A call for rethinking the World Bank's Carbon Fund, based on an analysis of the Democratic Republic of Congo Emissions Reduction - Project Idea Note (ER-PIN)*, Brussels and Moreton-in-Marsh.

131 FERN and FPP (2008), *Cutting Corners: World Bank's forest and carbon fund fails forests and peoples*, Brussels and Moreton-in-Marsh, <http://www.fern.org/sites/fern.org/files/document%20cutting%20corners.pdf>; FERN and FPP (2011), *Smoke and mirrors: A critical assessment of the Forest Carbon Partnership Facility*, Brussels and Moreton-in-Marsh, <http://www.fern.org/smokeandmirrors>

132 FERN and FPP (2014), op. cit.



Low intensity rotational farming in traditional land use systems away from urban centres enables forest regeneration. Communities and civil society organisations maintain that these sustainable farming systems must not be blamed for forest loss in national policies to combat deforestation.

Photo: John Nelson

Small and medium scale commercial farming is a cause of forest loss and land use change around some towns and cities, and along major highways in DRC.

Photo: Raoul Monsembula (Greenpeace)



‘The World Bank and some international bodies are funding programmes that impact on the forests and the rights of the communities but rarely enforce rigorous monitoring of the environmental and social management plans developed to mitigate adverse effects.’ – Civil society researcher, Kisangani

Civil society and communities were not adequately consulted during the planning stage of the DRC’s ER-PIN. The document was only translated into French once finalised, thus excluding many actors, especially at community level, from the process. And while the ER-PIN recognises the importance of participatory cartography and zoning undertaken by communities, which should help secure community land rights, this is regrettably apparently intended to limit their land use. The FCPF’s Carbon Fund’s operations are also flawed; World Bank monitoring of activities lacks careful analysis to ensure genuine improvements are made and appears disconnected from the need for ‘readiness’ for emissions reduction projects.¹³³

The DRC’s National REDD Coordination (CN-REDD), the government and civil society have, at least, agreed that a guide to implementing the right to FPIC should be drawn up and appended to the forthcoming new decree on the approval process for REDD+ projects, requiring project holders to observe FPIC before a project is registered under REDD+.

Some civil society organisations in the DRC consider that, with sufficient attention to equity, social justice and support for traditional land use systems and community forest management, REDD+ could be a useful platform for promoting indigenous and local communities’ rights as a means to safeguard the DRC’s forests. However, this will require genuine dialogue between forest communities, project holders, logging companies, development organisations and the authorities to ensure that communities’ right to FPIC and tenure security within REDD+ are secured.

¹³³ FERN and FPP (2014), op. cit.

Box 6: Forest Investment Programme pilot projects

The Forest Investment Program (FIP) pilot programme in DRC is a key element of the country's REDD+ strategy. The FIP country investment plan has been approved for US\$58.4 million funding implemented by the World Bank and the African Development Bank. The plan seeks to enhance national processes and to target specific areas of investment such as afforestation and reforestation, dissemination of improved cook stoves and charcoal production techniques, development of alternative energy sources and community-based capacity building in sustainable forest management.

The plan aims to reduce deforestation by channelling funding to key regions that act as supply areas for large urban centres, to create an enabling environment for sustainable forest management and sound forest governance, and to empower forest-dependent indigenous communities to have a greater role in the design and implementation of forest policies and programmes.

Although the FIP objectives appear positive, the FIP has the potential to cause serious harm if its approach assumes that 'sustainable agriculture' means stopping local communities' shifting agriculture systems by intensifying their agriculture at permanent sites. Similarly, if 'sustainable forest management' involves separating communities' productive areas off from forest areas instead of leaving them as part of the rotational system, and if 'afforestation and reforestation' projects are industrial scale and focused on putting exotic species in natural savanna, then the programme will be persisting in the assumption that forest peoples' poverty, and not agro-industrial expansion, is the underlying driver of deforestation. If so, the FIP is likely to neither reduce poverty nor secure forests. However, if instead the FIP helps forest peoples secure their rights to their lands, and so helps tackle the drivers of deforestation, then the process could deliver important benefits.

Two key projects are under way:

The integrated REDD+ project in the Mbuji-Mayi/Kananga and Kisangani basins. Funded with US\$21.5 million, and expected to be complete in 2019, this project's stated aim is to reduce greenhouse gas emissions from deforestation and forest degradation and reduce poverty. The stated focus is on sustainable forest management, sustainable agriculture and land tenure, and project management support, while enhancing forest carbon stocks. The project anticipates a 6.3% reduction in local poverty levels among forest-dependent indigenous communities, but this must be subject to the questions raised above concerning whether the approach the FIP is taking will achieve this or the opposite.

The Improved Forested Landscape Management Project. Launched in 2014, this six-year project's stated aim is to promote sustainable forest management around Kinshasa. The Climate Investment Fund contributed US\$36.9 million to the project. The CIF states that it hopes this will result in poverty reduction and sustainable development outcomes through four components: promotion of community-based natural resources management to improve rural peoples' livelihoods; promotion of private sector engagement to reduce forest degradation from woodfuel use through provision of improved cook stoves and promotion of agro-forestry in place of 'slash-and-burn' (sic) agriculture; small grants for promising initiatives including innovative local efforts to address deforestation and forest degradation; and dissemination of lessons learned to build regional capacity for future sustainable forest management. However, as highlighted above, the reference to 'slash-and-burn' agriculture, as if it were the underlying problem, misses the point that the real drivers of deforestation are far larger forces. Long-standing systems of crop rotation are sustainable as long as communities practising them are secure in terms of land rights so they can plan and act sustainably for the long term. Genuinely damaging and unsustainable 'slash-and-burn' approaches are those carried out by people who have no tenure security or who arrive from elsewhere seeking to exploit an area for short-term benefit. In both cases, establishing security of tenure for long-standing local communities is key. >

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The DRC government and its partners state that the Improved Forested Landscape Management Project will benefit 120,000 people in targeted forests and adjacent communities and help deliver new technical and financial approaches to sustainable forest management that could protect over 100,000 hectares of land. The project is also considered by its proponents likely to contribute to climate change mitigation by significantly reducing greenhouse gas emissions; however, the caveats mentioned above need to be considered in relation to this project.

Within the FIP, the Dedicated Grant Mechanism (DGM) is said to be an innovative programme to build capacity and empower indigenous and local forest communities, facilitating their participation in design and implementation of activities to reduce deforestation and forest degradation at local, national and global levels. The DGM in the DRC is funded with US\$6 million to support activities in four provinces covering 16 territories of indigenous peoples. The DRC project proposal was developed during meetings and consultations with indigenous communities. However, serious questions have been raised concerning how extensive and inclusive such consultations were and therefore how effective the resulting network is likely to be. The project proposal has been submitted, and the approval process is under way. Key proposed activities include securing the rights of indigenous peoples over their ancestral lands, promoting social and economic development based on communities' FPIC, and community capacity building to influence forest and climate initiatives affecting indigenous lands. In the hands of an effective network, if the programme were genuinely aligned to achieve these outcomes, and with good governance, accountability and an inclusive rights-based approach, the DGM components could deliver local benefits.

If, in this way, a credible rights-based approach can be ensured, then elements within the programme, such as the pilot Forest Investment Programme (FIP), may also provide opportunities to secure community rights. Between US\$40 million and US\$60 million has been designated for the FIP,¹³⁴ with the programme at Mai-Ndombe largely focused on modernising and promoting security of land tenure and land use planning, including possibly financing participatory micro-zoning. This may indeed help address the underlying conditions that permit deforestation to continue, if it helps enable reform of the land law, including measures to guarantee community land rights, to protect food security and traditional livelihood practices, to identify other customary rights and to implement a land use and zoning policy based on participatory mapping and respect for customary rights (Box 6).¹³⁵ If not, then there are major risks that these pilot projects in DRC may undermine local livelihoods and leave people less secure.

Where investments within the FIP framework are targeting areas of fuelwood supply – in Kisangani, Kinshasa and Mbuji-Mayi – the CN-REDD has stated that it will undertake micro-zoning to identify land rights of communities in the supply areas. This

could be a key step towards securing communities' rights in such areas of high deforestation.¹³⁶ If these land use zoning measures are to deliver genuine local benefits, it will be essential that FIP-funded activities on the ground in the DRC ensure rigorous protections for community tenure and livelihood rights.

Forest and climate programmes thus have the potential to allow for genuine recognition of forest communities' land rights in the DRC, provided there are effective and participatory implementation mechanisms that recognise and respect customary systems of tenure and ensure compliance with the FPIC standard.

FLEGT Voluntary Partnership Agreement (VPA)

A VPA is a legally binding trade agreement between the EU and a timber-producing country under the FLEGT, intended to ensure the legality of timber imported into the EU and to help exporting countries improve forest sector governance and regulation.¹³⁷ The DRC and EU began negotiations to establish a VPA in 2010. Negotiations were suspended in 2011-12, then restarted briefly with only limited civil society participation, before stopping again in 2013,

134 Climate Investment Funds (2011), 'FIP Investment Plan for Democratic Republic of Congo', <http://www.climateinvestmentfunds.org/cif/node/4167>

135 RRN (2011), op. cit.

136 Ibid.

137 EU FLEGT Facility (n.d.), 'What is a Voluntary Partnership Agreement?', <http://www.euflegt.efi.int/what-is-vpa>

although work on the VPA's legality framework is ongoing.¹³⁸

The VPA is an opportunity for the DRC to foster improved forest governance and legislative reform, help stop illegal logging and promote sustainable forest management. The current stalling of negotiations mainly results from the DRC government's lack of interest. Traceability of timber remains difficult to establish because the DRC has no effective system for controlling timber flows.¹³⁹

A potential shortcoming of the VPA approach is that legality is generally defined in relation to existing national laws, and as we have seen the DRC's current national legislative framework does not provide sufficient protection for forests or for the land rights of forest communities. The current draft legality matrix in the DRC VPA does contain some reference to customary usage rights, but does not apply the FPIC standard and lacks sufficient guarantees to secure the rights of communities to their customary lands.¹⁴⁰ As already noted, while the new decree on community forests adopted in August 2014 may afford some protections for community land rights in certain forest areas, the decree does not cover all types of forest, is based on a government 'grant' of rights rather than the recognition of existing, underlying customary law rights, and does not fundamentally alter the centralised land allocation and forest concession systems that may continue to violate community rights unless robust mechanisms for FPIC are put in place.¹⁴¹

In order for the VPA to respect community rights, the legality matrix and verification systems need to encompass international law standards and related State obligations. They should recognise the customary law of indigenous and local communities as additional bases of legality. And community and civil society participation needs to be enhanced in future negotiations to strengthen the fight against illegal logging.¹⁴²

138 Chatham House (2014), op. cit.; Global Witness et al. (2013), *Making the Forest Sector Transparent: Annual Transparency Report 2012*, London, <http://www.foresttransparency.info/cms/file/684>

139 REM (2012b), op. cit.

140 A. Perram (2016), *Legality in FLEGT Voluntary Partnership Agreements: the case of the missing human rights standards*, Moreton-in-Marsh: FPP, forthcoming

141 FPP (2015a), 'FPP comments and inputs to EU FLEGT Action Plan evaluation (2003-14)', Moreton-in-Marsh, August 2015.

142 T. Lomax (2014), 'Legality without justice? How to ensure that FLEGT Voluntary Partnership Agreements (VPAs) achieve both', Moreton-in-Marsh: FPP, <http://www.forestpeoples.org/topics/legal-human-rights/news/2014/02/legality-without-justice-how-ensure-flegt-voluntary-partner-0>

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

As this report documents, illegal logging (under both industrial concessions and ‘artisanal’ permits), unsustainable mining, and commercial farming and fuelwood production for urban/peri-urban markets are the chief direct causes of deforestation and of violations of forest peoples’ rights in the DRC. Infrastructure development, oil palm and agribusiness are emerging threats. Contributing underlying factors include insecure community tenure and related weaknesses in the DRC’s legal and policy frameworks and forest governance, poor State capacity, corruption, failure to meet international legal obligations, obstacles preventing communities from securing their land rights or legal remedy for violations, companies’ flouting of the law, and international demand for forest resources.

The traditional practices of the DRC’s indigenous and other forest-dependent communities, comprising hunting, gathering and sustainable agro-forestry, are not a cause of long-term forest decline. Where such communities lack legal protections for their land rights or lose rights over their customary lands, forest destruction almost inevitably follows, as outside interests are able to expropriate land and engage in the commercial exploitation of resources.

Effective legal recognition of the customary rights of the DRC’s indigenous forest peoples, not least their rights to land and FPIC and to participate in decisions affecting them, will strengthen communities’ ability to monitor forest land use and to act as a check on destructive forest exploitation, and will prevent many rights violations. Hence the potential importance of the draft organic law on indigenous peoples currently with the National Assembly, and the new decree on community forests (limitations aside).

Gaps and inconsistencies in the DRC’s forest governance system urgently need to be addressed, as does the growing and largely indiscriminate

global demand for wood, minerals and palm oil. International initiatives such as the FLEGT VPA and REDD+ could be opportunities to combat deforestation and to guarantee communities’ land rights, but at present these initiatives lack effective protections for community land and livelihood rights and hence could do more harm than good unless stronger safeguards and compliance mechanisms are put in place.

Blaming indigenous peoples and local communities for forest destruction is misplaced and short-sighted, and misses the larger-scale and more irreversible drivers. Policy responses built on inaccurate perceptions risk completely failing to reduce deforestation while impacting severely on forest peoples’ well-being.

Research for this report strongly indicates that forest communities’ traditional livelihood strategies generally have benign long-term impacts on forest ecosystems. Communities are also deploying constructive new strategies, such as participatory mapping of living spaces and heritage sites; documenting, challenging and submitting complaints against illegal logging; and adapting livelihood practices by, for example, extending the length of fallow periods, working to regenerate logged areas, and experimenting with alternatives such as livestock raising and fisheries.

Forest peoples’ perspectives have informed the following recommendations.

Recommendations

The DRC government

The DRC government, with support from international donors and other international actors, should:

Clarify and secure customary collective systems of forest tenure in the DRC

1. Complete the land reform process, recognising and effectively securing the customary rights of indigenous and local communities over their traditionally owned forest through a simplified recognition mechanism.
2. Reform and clarify rules and procedures relating to zoning of concessions, land allocation, landownership and access.
3. Safeguard communities' right to free, prior and informed consent (FPIC) over decisions that affect them, ensuring adequate compensation and guaranteeing access to justice, including by making FPIC a requirement under the Forest Code and others sectoral laws.
4. Adopt the draft organic law for promoting and securing the fundamental rights of indigenous communities.
5. Establish a national forest policy framework and develop provincial land management plans that fully respect the customary tenure systems and traditional livelihoods of forest peoples.

Support and safeguard community forestry and the decentralisation process

1. Expedite adoption of measures to implement the decree on community forests, including the ministerial arrêté (decree) establishing procedures for the management and exploitation of local communities' forest concessions.
2. Test the decree on community forests by establishing pilot community concessions and adopting a gradual and sequential approach to awarding concessions to communities, thus preventing external actors such as foreign logging companies from taking advantage of communities' inexperience or lack of capacity, enabling all stakeholders to learn from the challenges and loopholes and building the capacity of communities and local and provincial administrations.
3. Provide supplementary mechanisms to prevent appropriation of community forest concessions by provincial officials or allocations based on political favours or personal interests.
4. Complete national forest zoning by integrating indigenous and local communities in the process.
5. Build the capacity of provincial administrations

to ensure effective implementation of the decree on community forests.

6. Prevent allocation of community forest concessions that fail to respect the decree's procedural requirements.
7. Complete negotiation of the DRC's FLEGT partnership agreement with full community and civil society participation, incorporate the FPIC standard and include international law and communities' customary law as bases of legality.
8. Ensure that pilot projects undertaken under the FIP respect community customary land rights and livelihood practices, apply FPIC, and ensure community consultation and participation in the design and implementation of forest policies.
9. Conduct a comprehensive needs assessment of communities' capacities to manage their forest concessions during the pilot phase, as well as the capacity of local and international NGOs supporting them.

Stop illegal logging and exploitative resource extraction

1. Acknowledge that illegal logging, mining and commercial agriculture are major drivers of deforestation in the DRC.
2. Halt the allocation of artisanal logging permits to industrial operators.
3. Require environmental and social impact assessments for all commercial forest-based activities.
4. Repeal Ministerial Orders 049 and 050 relating to the exploitation of timber.
5. Publish industrial logging, mining and agro-industrial concession contracts and associated company payments and government revenues.
6. Suspend funding of the Inga 3 dam pending rights-respecting environmental and social assessments.
7. Make FPIC a requirement under the Forest Code and others sectoral laws.
8. Maintain the moratorium on issuing new logging concessions until proper forest governance reform processes are completed and well-implemented.
9. Introduce effective penalties for illegal logging and to prevent seized illegal timber from being brought on to the market, and increase resources for forest sector enforcement.

Ensure that forest and climate schemes and policies protect local livelihoods and food security

1. Foster rights-respecting dialogue in forest and climate policy-making.
2. Include protections for sustainable customary use of forest resources, including measures to protect

- rotational farming systems of forest-dependent communities and the traditional hunting, fishing and other livelihood practices of gatherer-hunter groups.
- 3. Apply rights-based and participatory approaches to micro-zoning of forest lands for forest and climate programmes and land use zoning initiatives.
- 2. Help build the capacity of communities to negotiate social agreements with logging companies

National and international companies and home State governments

National and international companies operating in the DRC's forests, and home State governments of such companies, should:

Stop illegal logging and exploitative resource extraction

1. Intensify efforts to implement the EU Timber Regulation.
2. Bring to an immediate halt illegal logging under artisanal permits.
3. Ensure that no illegal DRC timber is placed on the market, including via intermediate markets.
4. Ensure that minerals sourced from the DRC have been produced sustainably without contributing to forest degradation or the violation of forest peoples' rights.
5. Ensure that the establishment and development of agro-industrial parks respect the right of communities to FPIC and do not contribute to deforestation or forest degradation.
6. Ensure that no forests are cut down to establish oil palm concessions or plantations.
7. Stop the expropriation of forests and other land by limiting commercial agriculture to existing plantations and areas that have already been exploited.
8. Ensure that logging concessions are accompanied by adequate planning and related management plans to allow communities to exercise their use rights.
9. Ensure that logging operations are accompanied by full delivery of social obligations and sustainable development commitments, where appropriate through strengthened and effectively enforced national legislation.

Civil society organisations and NGOs

National and international civil society organisations and NGOs should:

1. Ensure that civil society voices are heard in the REDD+ debate by contributing to and supporting community and civil society participation at local level with a bottom-up approach, to end the current marginalisation of community and civil society voices.

SOURCES AND FURTHER READING

All online sources were accessed during October-December 2015.

African Commission on Human and Peoples' Rights (ACHPR) (2003), Communication 276/03, Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) / Kenya, http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf

ACHPR (2005), *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, ACHPR and International Work Group for Indigenous Affairs, http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf

ACHPR (2010), Concluding Observations on the Report of the Democratic Republic of Congo, 48th ordinary session, November, Banjul [available in French only].

African Development Bank Group (2013), *Rapport d'évaluation de projet: Appui au développement du site d'Inga et de l'accès à l'électricité (PASEL)*, Tunis.

L'aménagement linguistique dans le monde (2014), Congo-Kinshasa (République démocratique du Congo), Québec, CEFAN, Université Laval, <http://www.axl.cefan.ulaval.ca/afrique/czaire.htm>

Bamba, I., et al. (2008), 'Influence des actions anthropiques sur la dynamique spatio-temporelle de l'occupation du sol dans la province du Bas-Congo', *Sciences et Nature*, vol. 5.1.

Bayol, N., and R. Eba'a Ayti (2009), 'The forests of Congo in 2008', in C. Wasseige et al. (eds), *The Forests of the Congo Basin – State of the Forest 2008*, Luxembourg: Publications Office of the European Union.

Bayol, N., et al. (2012), 'Forest management and the timber sector in Central Africa', in C. Wasseige et al. (eds), *The Forests of the Congo Basin – State of the Forest 2010*, Luxembourg: Publications Office of the European Union.

Bottrill, L., and H. Kashongwe (2014), 'Competition for resources threatens REDD+ in DRC', Moabi DRC, April, http://rdc.moabi.org/redd_risk/en/#5-2.877/22.830&layers=moabi_redd_projects

CDC (2013), 'CDC invests US\$18.1m in agribusiness in the Democratic Republic of Congo', November, <http://www.cdccgroup.com/Media/News/CDC-invests-US181m-in-agribusiness-in-the-Democratic-Republic-of-Congo/>

Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV) and FPP (2008), *Supplementary Report on the Democratic Republic of Congo's Periodic Report to the African Commission on Human and Peoples' Rights. The rights of indigenous 'Pygmy' peoples in the Democratic Republic of Congo*, Moreton-in-Marsh.

Chatham House (2014), *Illegal logging in the Democratic Republic of the Congo*, London.

CIFOR (2011), *Chinese Trade and Investment and the Forests of the Congo Basin*, Bogor.

CIFOR (2013), *The Context of REDD+ in the Democratic Republic of Congo*, Bogor.

CIRAD (International Cooperation Centre on Agrarian Research for Development) (2012), 'Urban and peri-urban forestry in Africa: the outlook for woodfuel', Rome: FAO, <http://www.fao.org/docrep/016/i1973e/i1973e00.pdf>

Climate Investment Funds (2011), 'FIP Investment Plan for Democratic Republic of Congo', <http://www.climateinvestmentfunds.org/cif/node/4167>

Congo Planète (2014), 'Bandundu et Equateur: l'abattage du bois n'apporte pas le développement', February, <http://www.congoplanete.com/news/3630/bandundu-equateur-abattage-du-bois-apporte-pas-de-developpement.jsp>

DRC (1973), Law No. 73-021 of 20 July 1973 on the General Regime of Property, Land Tenure, Real Estate and Securities as amended and supplemented by Law No. 80-008 of 18 July 1980, <http://www.wipo.int/wipolex/en/details.jsp?id=7500>; Loi no. 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés.

DRC (2002a), Law No. 007/2002 regulating the Mining Code; Loi no. 007/2002 du 11 juillet 2002 portant Code Minier.

- DRC (2002b), Law No. 011/2002 regarding the Forest Code; Loi no. 011/2002 du 29 août 2002 portant Code Forestier.
- DRC (2006), Constitution de la République Démocratique du Congo.
- DRC (2011a), Constitution of the Democratic Republic of the Congo as amended by Law No. 11/002 of 20 January 2011, Amending Some Articles of the Constitution of the Democratic Republic of Congo 2006.
- DRC (2011b), Document de la Stratégie de Croissance et de Réduction de la Pauvreté de Seconde Génération (DSCR 2), vol. 1.
- DRC (2011c), Law No. 011/022 regarding basic principles for agriculture; Loi no. 011/022 du 24 décembre 2011 portant principes fondamentaux relatifs à l'agriculture.
- DRC (2011d), Law No. 011/009 regarding basic principles for environmental protection; Loi no. 011/009 du 09 juillet 2011 portant principes fondamentaux relatifs à la protection de l'environnement.
- DRC (2012), *Propositions programmatiques pour l'élaboration d'une stratégie-cadre nationale REDD+*, MECNT, available at <http://www.forestpeoples.org/sites/fpp/files/publication/2013/05/strategie-cadre-reddactivitesv3rdcl.pdf>
- DRC (2013), *Fonds National REDD+: Plan d'investissement (2013-2016)*, September, https://forestcarbonpartnership.org/sites/fcp/files/2015/March/13-09-19%20Plan%20Investissement%20Fonds%20National%20REDD%20%20Aout%202013%20_clean.pdf
- DRC (2014a), Decree No. 14/018, 2 August; Décret no. 14/018 du 02 août.
- DRC (2014b), Draft organic law on the fundamental principles of the rights of the indigenous Pygmy peoples; Proposition de loi organique portant principes fondamentaux relatifs aux droits des peuples autochtones pygmées.
- DRC (2015), Arrêté Ministériel No. 050 relatif à l'exploitation forestière du bois d'œuvre.
- DRC (n.d.), *Stratégie-Cadre Nationale REDD+ de la République Démocratique du Congo*, <https://forestcarbonpartnership.org/sites/fcp/files/2015/March/Strategie-cadre%20nationale%20REDD%20de%20la%20RDC.pdf>
- Eastern Congo Tribune* (2014), 'Aubin Minaku: Brazilian defender whose benchmarks are King Leopold II & President Mobutu', July, <https://edrcrdf.wordpress.com/tag/agro-industrial-park/>
- Espoir pour Tous (2014), 'La Loi organique portant principes fondamentaux sur les droits des peuples autochtones Pygmées en RDC: vers le dépôt à l'Assemblée Nationale en RDC', June, <http://espoirpourtous.midiblogs.com/archive/2014/06/15/vers-le-depot-de-la-loi-organique-portant-principes-fondamen-809389.html>
- EU FLEGT Facility (n.d.), 'What is FLEGT?', <http://www.euflegt.efi.int/about-flegt>
- EU FLEGT Facility (n.d.), 'What is a Voluntary Partnership Agreement?', <http://www.euflegt.efi.int/what-is-vpa>
- Fairhead, J., and M. Leach (1996), *Misreading the African Landscape: Society and Ecology in a Forest-Savanna Mosaic*, Cambridge University Press.
- FAO (2011), *The State of Forests in the Amazon Basin, Congo Basin and Southeast Asia*, Rome.
- FERN (2006), *Forest Governance in the Democratic Republic of Congo. An NGO perspective*, Brussels.
- FERN and FPP (2008), *Cutting Corners: World Bank's forest and carbon fund fails forests and peoples*, Brussels and Moreton-in-Marsh, <http://www.fern.org/sites/fern.org/files/document%20cutting%20corners.pdf>
- FERN and FPP (2011), *Smoke and Mirrors: A critical assessment of the Forest Carbon Partnership Facility*, Brussels and Moreton-in-Marsh, <http://www.fern.org/smokeandmirrors>
- FERN and FPP (2014), *Implement in Haste, Repent at Leisure: A call for rethinking the World Bank's Carbon Fund, based on an analysis of the Democratic Republic of Congo Emissions Reduction - Project Idea Note (ER-PIN)*, Brussels and Moreton-in-Marsh.
- Forest Legality Alliance (n.d.), 'Overview of Democratic Republic of Congo', <http://risk.forestlegality.org/countries/democratic-republic-congo> [restricted access]
- Forests Monitor (n.d.), 'Country Profiles – Democratic Republic of Congo', <http://www.forestsmmonitor.org/fr/reports/540539/549940>
- Foyer de Développement pour l'Autopromotion des Pygmées et Indigènes Défavorisés (FDAPID–Hope for Indigenous Peoples) et al. (2013), *Examen périodique universelle de la République Démocratique du Congo (2014) – Les peuples autochtones en RDC: L'injustice des multiples formes de discrimination*, Goma.
- FPP (2009), *Land Rights and the Forest Peoples of Africa*, Moreton-in-Marsh, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/05/overviewlandrightsstudy09eng.pdf>
- FPP (2012), 'DRC reaffirms its commitment to Free, Prior and Informed Consent (FPIC)', July, <http://www.forestpeoples.org/topics/redd-and-related-initiatives/news/2012/07/drc-reaffirms-its-commitment-free-prior-and-informe>
- FPP (2015a), 'FPP comments and inputs to EU FLEGT Action Plan evaluation (2003-14)', Moreton-in-Marsh, August 2015.
- FPP (2015b), 'Inga Dam in the DRC to result in the resettlement of up to 20,000 people', June, <http://www.forestpeoples.org/topics/world-bank/news/2015/05/inga-dam-drc-result-resettlement-20000-people>
- FPP et al. (2006), *An NGO report submitted to the African Commission on Human and Peoples'*

- Rights Working Group on Indigenous Populations/Communities, Moreton-in-Marsh, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/drcachprreportoct06eng.pdf>
- FPP, Pusaka and Pokker SHK (2014), *Securing Forests, Securing Rights: Report of the International Workshop on Deforestation and the Rights of Forest Peoples*, Moreton-in-Marsh, <http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2014/securing-forests-securing-rights-report-intern>
- Global Witness (n.d.), 'Conflict minerals', <https://www.globalwitness.org/campaigns/conflict-minerals/>
- Global Witness (2012), *The art of logging industrially in the Congo*, London, https://www.globalwitness.org/sites/default/files/art_of_logging_lr.pdf
- Global Witness et al. (2013), *Making the Forest Sector Transparent: Annual Transparency Report 2012*, London, <http://www.foresttransparency.info/cms/file/684>
- GRAIN and RIAO-RDC (2015), *Agro-Colonialism in the Congo: European and US Development Finance Bankrolls a New Round of Agro-Colonialism in the DRC*, Barcelona, <https://www.grain.org/article/entries/5220-A-colonialism-in-the-congo-european-and-us-development-finance-bankrolls-a-new-round-of-agro-colonialism-in-the-drc.pdf>
- Greenpeace (2010a), *Forest Reform in the Democratic Republic of Congo: Leaving People Out*, July, http://www.greenpeace.org/africa/Global/africa/publications/forests/2010/Congo_Forest_%20Reform.pdf
- Greenpeace (2010b), *Les laissés-pour-compte de la réforme forestière en République*
- Démocratique du Congo: L'exploitation forestière industrielle, source de conflits sociaux et de violence*, November, <http://www.greenpeace.org/africa/Global/africa/publications/ExploitationForestiereFR.pdf>
- Greenpeace (2012a), *Artisanal logging = industrial logging in disguise*, <http://www.illegallogging.info/sites/files/chlogging/uploads/LoggingIllegalEnglishA4.pdf>
- Greenpeace (2012b), 'Forest Certification Scheme ignores human rights violations in the Congo Basin', March, <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/forest-certification-scheme-ignores-human-rig/blog/39708/>
- Greenpeace (2013a), *Cut it Out: Illegal Logging in the Democratic Republic of Congo (DRC)*, Kinshasa: Greenpeace Africa.
- Greenpeace (2013b), 'Germany seizes Congolese wood in strongest EU action yet against illegal timber trade', November, <http://www.greenpeace.org/eu-unit/en/News/2013/Germany-seizes-Congolese-wood-in-strongest-EU-action-yet-against-illegal-timber-trade/>
- Greenpeace (2014), 'Importing timber from the DRC: a high-risk business for Europe', <http://www.greenpeace.org/eu-unit/Global/international/briefings/forests/2014/Importing-timber-from-DRC-2014.pdf>
- Greenpeace (2015), *Trading in Chaos: The impact at home and abroad of illegal logging in the DRC*, Johannesburg: Greenpeace Africa, <http://www.greenpeace.org/africa/en/Press-Centre-Hub/Publications/Trading-in-Chaos/>
- Ickowitz, A., D. Slayback, P. Asanzi and R. Nasi (2015), *Agriculture and deforestation in the Democratic Republic of the Congo: a synthesis of the current state of knowledge*, Occasional Paper 119, Bogor: CIFOR, http://www.cifor.org/publications/pdf_files/OccPapers/OP-119.pdf
- Inter-American Court of Human Rights (IACHR) (2001), *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August, paras 140(b) and 151.
- Integrated Regional Information Networks (IRIN – Project of the UN Office for the Coordination of Humanitarian Affairs) (2006), *In-Depth Minorities under Siege: Pygmies Today in Africa*, Nairobi: OCHA-IRIN.
- International Rivers (2014), 'Grand Inga Dam, DR Congo', <http://www.internationalrivers.org/campaigns/grand-inga-dam-dr-congo>
- IWGIA (2012), 'Country Technical Notes on Indigenous Peoples' Issues, Democratic Republic of Congo', http://www.ifad.org/english/indigenous/pub/documents/tnotes/congo_dr.pdf
- Jeune Afrique (2013), 'RD Congo: la BAD investit 68 millions de dollars dans le projet Inga 3', November, <http://economie.jeuneafrique.com/regions/afrique-subsaharienne/20734-rd-congo-la-bad-investit-68-millions-de-dollars-dans-le-projet-inga-3.html>
- Jullien, M. (2013), 'Can DR Congo's Inga Dam project power Africa?', *BBC News Africa*, November, <http://www.bbc.co.uk/news/world-africa-24856000>
- Kaye, M. (2012), 'Deforestation from mining in the Congo more than "a hole in the canopy"', *CIFOR Forest News*, July, <http://blog.cifor.org/10221/deforestation-from-mining-in-the-congo-more-than-a-hole-in-the-canopy#.U4XzIM5OX4i>
- Kipalu, P., and J. Mukungu (2013), *The status of the REDD+ process in the Democratic Republic of Congo*, Moreton-in-Marsh: FPP, <http://www.forestpeoples.org/topics/redd-and-related-initiatives/publication/2013/status-redd-process-democratic-republic-congo>
- Kissinger, G., M. Herold and V. de Sy (2011), *Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66151/Drivers_of_deforestation_and_forest_degradation.pdf
- Lomax, T. (2014), 'Legality without justice? How to ensure that FLEGT Voluntary Partnership Agreements (VPAs) achieve both', Moreton-in-Marsh: FPP, <http://www.forestpeoples.org/topics/legal-human-rights/news/2014/02/legality-without-justice-how-ensure-flegt-voluntary-partner-0>
- Marien, J.-N., et al. (2012), 'Forestrie périrubaine,

- filiales bois énergie et approvisionnement durable des villes d'Afrique centrale: le cas de Kinshasa (RDC)', présentation 4ème réunion plénière du PFBC, septembre, N'Djamena: CIRAD.
- Mayaux, P., et al. (2013), 'State and evolution of the African rainforests between 1990 and 2010', *Philosophical Transactions of the Royal Society B Biological Sciences* vol. 368, no. 1625, <http://rstb.royalsocietypublishing.org/content/368/1625/20120300>
- Megevand, C., et al. (2013), *Deforestation Trends in the Congo Basin: Reconciling Economic Growth and Forest Protection*, Washington: World Bank Group.
- Cardinal Monsengwo (n.d.), 'Les principales cultures vivrières de la RDC', <http://www.monsengwo.darolite.be/-LES-PRINCIPALES-CULTURES-VIVRIERES-DE-LA-RDC-.htm>
- Mosnier, A., et al. (2013), *Le modèle Congo BIOM*, Laxenburg: International Institute for Applied Systems Analysis (IIASA), <http://www.profor.info/sites/profor.info/files/ModeleCongoBIOM.pdf>
- Mpoyi, A.M., et al. (2013), *The Context of REDD+ in the Democratic Republic of Congo: Drivers, Agents and Institutions*, Bogor: CIFOR.
- Musafiri, P.N. (2008), *The dispossession of indigenous land rights in the DRC: a history and future prospects*, Moreton-in-Marsh: FPP, cited in FPP (2009), *Land Rights and the Forest Peoples of Africa*, Moreton-in-Marsh, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/05/overviewlandrightsstudy09eng.pdf>
- Nkoy, D., and J. van Puijenbroek (2012), 'La pratique de l'exploitation artisanale du bois et ses conséquences conflictuelles en territoire de Mambasa, RD Congo', in C. Bennecker et al. (eds), *Le bois à l'ordre du jour. Exploitation artisanale de bois d'œuvre en RD CONGO: secteur porteur d'espoir pour le développement des petites et moyennes entreprises*, Wageningen: Tropenbos International.
- Ona, U. (2008), 'La gestion domaniale des terres rurales et des aires protégées au Sud-Kivu: aspects juridiques et pratiques d'acteurs', in F. Reyntjens, *L'Afrique des Grands Lacs. Annuaire 2007-2008*, Paris: L'Harmattan.
- OSAPY (n.d.), *Rapport général sur la situation des Pygmées en République Démocratique du Congo de 2005 à 2010*, Kinshasa.
- Pèlerin, E. (2010), *Etude sur la problématique foncière au Nord Kivu, RDC*, Nogent sur Marne: GRET.
- Perram, A. (2016), *Legality in FLEGT Voluntary Partnership Agreements: the case of the missing human rights standards*, Moreton-in-Marsh: FPP, forthcoming.
- Pirker, J., and A. Mosnier (IIASA) (2014), 'Palm oil boom?', Moabi DRC, October, http://rdc.moabi.org/palm-oil-boom/en/#5/-2.833/22.852&layers=moabi_forest_cover
- Putzel, L., and N. Kabuyaya (2011), *Chinese Aid, Trade and Investment and the Forests of the Democratic Republic of Congo*, Bogor: CIFOR.
- Ragasa, C. (2013), *Assessment of the Capacity, Incentives, and Performance of Agricultural Extension Agents in Western Democratic Republic of Congo*, Washington, DC: International Food Policy Research Institute.
- Rainforest Foundation UK (2013), *Seeds of Destruction*, London, <http://www.rainforestfoundationuk.org/rainforest-foundation-uk-publications/palm-oil-publications/>
- Rainforest Foundation UK (2014), *New Community Forest Decree in the Democratic Republic of Congo*, September, <http://www.mappingforrights.org/files/37742%20RFUK%20CF%20Briefing%20Statement.pdf>
- Resource Extraction Monitoring (REM) (2011), *Mise en application de la loi forestière et de la gouvernance. Analyse de la législation forestière de la RDC*, Kinshasa.
- REM (2012a), *Note de briefing, délai de conversion des anciens titres forestiers en contrat de concession forestière: impact sur le contrôle forestier*, Kinshasa.
- REM (2012b), *OI-FLEG DRC, Rapport Annuel 2012*, Kinshasa.
- RRN (2011), *Rapport de plaidoyer pour la prise en compte des droits de tenure des populations forestières dans le processus de zonage en RDC*, Kinshasa.
- Rubbers, B. (2013), *Le paternalisme en question: les anciens ouvriers de la Gécamines face à la libéralisation du secteur minier katangais (RD Congo)*, Paris: L'Harmattan.
- Sakata, G. (2009), 'La réforme du secteur des ressources naturelles: historique, enjeux et bilans', in S. Marysse et al., *L'Afrique des Grands Lacs. Annuaire 2008-2009*, Paris: L'Harmattan.
- Schure, J., et al. (2010), *L'état de l'art du bois énergie en RDC: analyse institutionnelle et socio-économique de la filière bois énergie*, Yaoundé: CIFOR.
- Schure, J., et al. (2011), *Bois énergie en RDC: analyse de la filière de Kinshasa et de Kisangani*, Yaoundé: CIFOR.
- SouthWorld (2014), 'DRC – Agro-industrial parks to address the food security challenge', July, <http://www.southworld.net/drc-agro-industrial-parks-to-address-the-food-security-challenge/>
- Stoltenberg, J. (n.d.), 'Stepping up climate and forest action: countries are already acting to save the world's remaining tropical forests', UNEP, Redd, Sustainable Forest Management and Agriculture, <http://www.unep.org/climatechange/Portals/5/documents/ClimateActionNorwayPM.pdf>
- UN CERD (2007), Concluding Observations of the Committee on the Elimination of Racial Discrimination: Democratic Republic of the Congo, August, CERD/C/COD/CO/15.
- UN CESCR (2009), Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of Congo, November, E/C.12/COD/CO/4.

UN Development Programme (UNDP) (2013), Comprehensive African Agricultural Development Program (CAADP) and New Partnership for Africa's Development (NEPAD), *Democratic Republic of Congo Agriculture Investment Opportunities Brief: CAADP Investment Facilitation Programme*, www.abghq.com/downloads/DRC.pdf

UNDP (n.d.), 'About The Democratic Republic of Congo (DRC)', <http://www.cd.undp.org/content/rdc/en/home/countryinfo.html>

UN Environment Programme (UNEP) (2012), *Evaluation Environnementale Post-Conflict de la République Démocratique du Congo*, Nairobi.

UN-REDD Programme (n.d.), 'About REDD+', <http://www.un-redd.org/aboutredd>

University of Minnesota (n.d.), 'Ratification of International Human Rights Treaties – Democratic Republic of Congo', <https://www1.umn.edu/humanrts/research/ratification-congo.html>

Vermeulen, C., et al. (2011), 'Enjeux fonciers, exploitation des ressources naturelles et forêts des communautés locales en périphérie de Kinshasa, RDC', *Base*, vol. 15, no. 4, pp. 535-44, <http://popups.ulg.ac.be/1780-4507/index.php?id=7911>

Vig, S., and J.-M. Muanda (2013), 'Democratic Republic of Congo: Congo Oil and Derivatives, SARI, in FPP, Sawit Watch and TUK Indonesia, *Conflict or Consent? The Oil Palm Sector at a Crossroads*, Moreton-in-Marsh.

Vircoulon, T. (2008), 'La Chine, nouvel acteur de la reconstruction congolaise', *Afrique contemporaine*, vol. 3, no. 227, pp. 107–18.

World Bank (2008), *Report No. 40028-ZR: Project Evaluation Document. Pro-Routes Project. Democratic Republic of Congo*.

World Bank (2014a), *Inga-3 Basse Chute and Mid-Size Hydropower Development Technical Assistance Project: chair summary*, Washington.

World Bank (2014b), *Congo, Democratic Republic of – Inga-3 Basse Chute and Mid-Size Hydropower Development Technical Assistance Project*, Washington.

World Rainforest Movement (2011), 'DRC: INGA dams for big business', <http://worm.org.uy/articles-from-the-wrm-bulletin/section1/drc-inga-dams-for-big-business/>