



Zoning and land use allocation in the Democratic Republic of Congo:

a practical proposal for the integration of zoning, participatory mapping and community consent processes

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In the Democratic Republic of Congo, (DRC), colonial and post-colonial policy and legislation on land and forest tenure and use have been overlaid on existing traditional systems of land ownership and control.

It is widely acknowledged that a failure to address issues of customary tenure and control in land use planning and allocation in a manner appropriate to local circumstances always results in negative impacts: increases in poverty, greater risk of conflict and insecurity, a reduction in external investment, destruction of the environment and the violation of human and peoples' rights.

While the Congolese authorities and their international partners, mainly the World Bank, GIZ and the US Forest Service, are currently finalising terms of reference and details of implementation of the macro zoning process, as well as developing a guide on micro zoning, it is imperative that the processes of forest zoning and national land use planning include consideration of the many customary uses and traditional systems of access, ownership and control which are in use in Congo's forests to this day.

*In order to anticipate, take into account and respond to these challenges, **this document presents a practical proposal for a process of consultation and community consent as an integral part of forest zoning and land use planning and allocation in DRC.***

This proposal is intended to establish a solid basis for land use planning¹ and forest management policies in DRC, such that carbon emissions from forest degradation and deforestation are reduced, some of the world's richest and most ancient forests are preserved, poverty is reduced and sustainable development is assured.

This proposal will also enable the DRC to put its national and international legal obligations and policy commitments into practice as well as ensuring that the safeguard policies of the World Bank, which is the main funder of the zoning process, are respected, as well as the recommendations of the World Bank Inspection Panel report of 2007.

The proposal has been prepared by Congolese and international non-government organisations that have contributed to the forest reform process since 2002.

Forest zoning

In the Congo Basin, forest zoning has tended to be the allocation of forest areas as priority for production, conservation or for community use. In DRC, under the 2002 Forest Code, this is being understood as dividing the forest into three categories:

- “forêts classées”, (which include protected areas, mainly set aside for conservation),
- “forêts de production permanente”, (which are the areas of forest that can be allocated as concessions), and
- “forêts protégées”, (which are multiple use areas of forest where a range of forest uses can apply).

However, this division raises a series of challenges and concerns, mainly because of the confusion it implies between the concepts of zoning and allocation of forest lands, but also about the results expected from the process at each stage leading to land use planning decisions.

It is clear that it is useful and even necessary for a state to make decisions about management priorities for key areas of forest such that the preservation of that forest and its sustainable use is assured for present and future citizens. A **macro-zoning** process responds to this need by identifying zones in which different management objectives should be prioritised as well as restrictions to land and forest use options in certain areas. This should be preliminary and indicative only.

The **consequent** decision about what legal status that forest area will have and who will manage it should not be part of a zoning process, but rather one of later **land use allocation**, based on guidance from an objective zoning process.

It should therefore be clear that the zoning plan is not a gazetting plan and will not lead to immediate allocation of forest areas to “forêts classées” or “forêts de production permanente”. Whilst it is entirely acceptable that the zoning

plan highlights areas that are essential for broad management objectives (such as biodiversity conservation, timber harvesting or provision of environmental services such as carbon sequestration), the decision to gazette a protected area or to allocate a logging concession *cannot*, according to Congolese law², take place before an appropriate consultation has taken place.

If the zoning plan leads to concession and protected area allocation before an appropriate consultation and consent process takes place, forest zoning becomes, de facto, forest land allocation, and ignores the key question of pre-existing forest community rights and public consent.³

If forest zoning in the DRC develops in this manner, we are seriously concerned that it will be setting the scene for long term conflict and it will not lay a sound basis either for future forest planning or for sustainable development.⁴

Consultation and consent

There is probably not a square metre of Congolese forest that is not considered by one or more clan, or community, or village, as being their customary property or theirs to take decisions over.⁵

Any consultation and consent process about forest gazetting therefore has to **identify the communities who hold these rights and those who make use of the forest**⁶ in order that they can express themselves in relation to proposed changes of status of their forest and its management priorities. This can be done through a process of participatory rights mapping.⁷

Decision-makers frequently argue that such a process is too time consuming and too expensive.⁸ However, forest communities have a very clear understanding of where their rights apply⁹, where the limits to these rights are and how they overlap and it is not prohibitively complex or

expensive to analyse this. Calculations made by Réseau des Ressources Naturelles (RRN) suggest that mapping of the whole forest estate could be carried out for as little as \$0.85 per hectare. It is possible to work with communities to produce detailed maps of and, by ensuring the involvement of neighbouring communities, to obtain agreement and consensus on individual clan limits and on the land that is held collectively by local communities, as well as the broader overlapping zones of responsibility of indigenous communities. Congolese Civil Society, together with the communities themselves, has produced many such maps and is ready and willing to train state agents and other actors in the process.

Such a participatory mapping process thus lays the basis for consultation and consent of communities.¹⁰ It would identify clearly who is there and would provide a forum for a discussion of forest management priorities and who would make a legitimate forest manager. If such a process could become an integral step in the consent process for forest gazettement, for protected areas, for forest concessions and for community forest concessions, DRC would have contributed to establishing a sound basis for its future forest management.¹¹ This has to take place **before** an area of forest is gazetted or allocated to a concessionaire, or it does not qualify as consultation or consent by any international standards.¹²

A practical proposal for integrating consent into the zoning and gazettement process

We therefore propose the following outline:

1. Macro-zoning

This is the preliminary, indicative stage, which includes a consideration of the potential of the forest for a range of management objectives. It includes consideration of how appropriate a pro-

posed land use is for the macro area concerned. This decision may take into account a range of factors¹³ such as cultural and social importance, biodiversity significance, topography, isolation, etc.

There is a process already underway for “macro zoning”. Critical in this stage of the process is that any macro zoning plan produced is one which is indicative only and is limited to setting management objectives for macro areas of the forest, but is **not** one which gazettes the forest into the three categories or allocates control.

The management objectives should include, among others:

- ensuring that indigenous peoples and forest communities have appropriate space in which to live and gain a satisfactory livelihood¹⁴;
- conservation of ancient/intact/natural forest;
- conservation of biodiversity;
- protection of key watersheds and other important environmental services;
- commercial use of forest products, including but not limited to timber;
- development of the use of non-timber forest products;
- promotion of alternative sustainable forest uses, and rehabilitation of areas already significantly disturbed or historically converted to large-scale non-natural forest use;
- conservation of the forest for cultural and social values and its importance to the many cultures that the DRC is home to, including those of indigenous peoples¹⁵;
- accommodation, though not necessarily prioritisation, of other land uses in the forest estate - such as mining, oil and gas, and agriculture - through transparent processes.

After macro-zoning, any zone which would then involve a change in the current management or land use regime should then be subject to a detailed consultation process and mapping of existing rights in order to establish the appropriateness of such a management regime, which should be

undertaken **before**¹⁶ any decision on gazettement or concession allocation is taken.

2. Consultation and rights mapping

All existing rights, including customary rights need to be identified. This would involve rights mapping of the whole area and identification of all affected communities, including both rights holders and those who currently use the forests. As outlined above, this process is affordable and manageable. It does not need to take place over the whole forest region immediately, but should rather take place progressively in priority areas.

If, for example, after macro-zoning, an area is identified as a priority for conservation, then this should be targeted with an extensive participatory mapping exercise so that all of the communities with rights to or making use of that area can give their consent as to the model of management that will ensure that the forest is protected.

3. Consent

All community rights holders or forest users should be consulted about any decision involving a change in forest or land use and should give their Free, Prior and Informed Consent, (FPIC),

to any changes.¹⁷ It should be noted that an FPIC process can result in those concerned **refusing** their consent as well as granting it.

The process of consultation and that of consent should precede, prepare and direct the decision on land use allocation or gazettement. It clarifies and orients decision making by providing precise information from the field: on land use and ownership, the different pre-existing rights over that land and forest, the potential for biodiversity, etc. It also enables indigenous peoples and local communities to make informed decisions about the different management options for forest resources. It is a necessary preliminary step that is of fundamental importance in reducing future conflicts over forest management as they ensure the legitimacy and sustainability of land use decisions.¹⁸

The moratorium on the allocation of new forest concessions should be maintained and strictly respected during this process and no decision on land use allocation should be made before consultation has been carried out and consent granted.

4. Allocation

This is the decision-making stage. If, and only if, consent has been granted by the communities



concerned, then an area could be gazetted or otherwise allocated following official procedures. This area would then be subject to “micro zoning”.

5. Micro zoning

This is the stage at which management of the forest (which will have been gazetted or allocated after the appropriate analysis, consultation and assent processes), for its identified objective starts to be put into practice. The macro-zone would be further ‘micro-zoned’ into specific ‘management parcels’ subject to different sustainable uses

and management regimes depending on local conditions and priorities.

Micro-zoning should be carried out in any area newly gazetted or otherwise allocated as well as in the existing protected areas and forest concessions that have already been zoned *de facto*.¹⁹ In the zones already allocated, particular attention should be paid to the identification of “rural development zones”: those areas which are to be allocated to communities in order to meet current and future livelihood and development needs.

A provisional but realistic timeline for the integration of rights mapping

The process of participatory mapping would establish a database, which would build up progressively over time and could be of use for zoning and land use planning as soon as data is entered, with data lodged with the Ministry in charge of forests and fully publicly accessible. Already there are some existing maps that could be integrated, starting already in 2012, and could serve to identify immediately which communities need to be involved in any land use decision in their area.

The timeline could look as follows:

Timing	Activity
During the first year of implementation	Full participatory rights mapping of one key pilot forest territory, to be chosen by the Consultant and the Forest Management and Inventory Directorate (DIAF) in consultation with the thematic missions of the CNPZ, carried out by technical teams made up of MECNT, (and other Ministries if necessary), local administration and civil society.
By the end of the second year	An additional area the size of the forested territories of Bandundu province would be mapped.
By the end of the third year	An additional area the size of the forested territories of Orientale would be mapped.
By the end of the sixth year	An additional area the size of the forested territories of Equateur would be mapped.

The result would be one that laid the basis for forest management that had the consent of forest communities, an essential ingredient for long term sustainability. Such a process would put DRC in the forefront of progressive forest management. It would also serve as a solid basis for any future REDD+ strategy in DRC²⁰, as well as the Voluntary Partnership Agreement on Forest Law Enforcement Governance and Trade, currently being negotiated by DRC with the European Union.

The authors of this document are very willing to share further details of the full proposal with anyone who may be interested.

Notes:

1) See also: African Union, African Development Bank, Economic Commission for Africa, Framework and Guidelines on Land Policy in Africa, Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, September 2010, 4. The Process of Land Policy Development, p.23-29

2) Présidence de la République, Constitution de la République Démocratique du Congo, 18 février 2006 : Articles 34 et 215 ; Loi n° 011/2002, Code forestier, 29 août 2002 : Article 10, al. 4, article 15 al.2, article 84.

3) United Nations, Committee on the Elimination of Racial Discrimination, Concluding Observations to DRC, August 17, 2007, “18. The rights of Pygmies to own, exploit, control and use their lands, resources and communal territories are not guaranteed and concessions are granted on their lands without prior consultation. **The committee recommends the State party to: a) make provision for the forest rights of indigenous peoples in domestic legislation; b) register the ancestral lands of the Pygmies in the land registry; c) proclaim a new moratorium on forest lands; d) take the interests of the Pygmies and environmental conservation needs into account in matters of land use; e) provide domestic remedies in the event that the rights of indigenous peoples are violated [...].**” (our emphasis)

4) World Bank Inspection Panel, Investigation Report, Report No. 40746-ZR, DEMOCRATIC REPUBLIC OF CONGO: Transitional Support for Economic Recovery Grant (TSERO) and Emergency Economic and Social Reunification Support Project (EESRSP), August 31, 2007, p.126-127, §518: “[...] the Panel notes that the eventual impact of zoning activities will depend very much on how they are carried out and with what results. In Cameroon, for example, extensive forest areas of southeastern Cameroon were allocated to logging companies within several years after they had been divided into forest management units and zones with different purposes. The areas allocated to local people were mainly confined to the narrow strips along the major roads, whereas vast stretches of forest were designated either for industrial logging or for wildlife conservation. As a result of restricted access to forests that they had been using, the local people, in particular the Baka Pygmies, are suffering from a shortage of forest land from which they obtain subsistence and cash income. **This highlights the importance of carrying out any such land use planning activities in full consultation with locally-affected people.**”

5) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.66, §274: “Few, if any, unoccupied lands exist in central Africa. For the purposes of planning the development or protection of any area of land, it should be assumed a priori that any forest is occupied or claimed by some person, or some clan, lineage or group.” [Bailey, Bahuchet and Hewlett, 1992, p.207-8]

6) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.xi, Response from Bank Management: “Management indicates that it plans to undertake the following: [...] ensure that future Bank lending in the forest sector and other **initiatives such as the zoning plan include measures that strengthen the legal and customary rights and preserve the cultural heritage of indigenous communities, including the Pygmies.**” (our emphasis)

7) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.61-62, §249: “The Panel considers that **these mapping exercises are of great value as a step toward recognition of the rights and interests of Pygmy people in the forests.** They also illustrate the scale of potential impacts upon Pygmy people and the forests posed by industrial logging concessions.” (our emphasis)

8) World Bank Inspection Panel, Investigation Report, August 31, 2007,

p.62, §250: “During its investigation, the Panel asked Management if funding under the EESRSP or other Projects was being used to support this type of participatory mapping. **Management indicated, however, that this was not the case.**” (our emphasis)

9) United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, Resolution 61/295, September 13, 2007, Article 26: “1. **Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.** 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. **States shall give legal recognition and protection to these lands, territories and resources.** Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” (our emphasis)

10) United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, Resolution 61/295, September 13, 2007, Article 27: “States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”

11) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.126, §516: “The Panel notes that granting or approving concessions without long-term perspectives on land uses and tenure is likely to lead to mismanagement and potentially irreversible damages to the forests and the life of the people who depend on them. **It is noteworthy in this context that the Panel found during its investigation, as described above, that participatory mapping of their customary forest uses had already been attempted in some areas of Oriental and Equateur Provinces with support of NGOs.** The Panel notes the recommendation in the Forests in Post-Conflict DRC report that local communities’ uses be mapped and their rights secured. [Forests in Post-Conflict Democratic Republic of Congo: Analysis of a Priority Agenda CIFOR, The World Bank and CIRAD, 2007, p.33] The Panel also notes that if areas for new parks, logging, or other forest uses were identified, they would be in “non-disputed zones.”

12) United Nations Development Group (UNDG), UNDG Guidelines on Indigenous Peoples’ Issues, February 2008: Free, Prior and Informed Consent: • **Free** implies no coercion, intimidation or manipulation • **Prior** implies consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/consensus processes • **Informed** implies that information is provided that covers (at least) the following aspects: a. The nature, size, pace, reversibility and scope of any proposed project or activity. b. The reason/s or purpose of the project and/or activity. c. The duration of the above. d. The locality of the areas that will be affected. e. A preliminary assessment of the likely economic, social, cultural, and environment impact, including potential risks and fair and equitable benefit sharing. f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others). g. Procedures that the project may entail. • **Consent:** 1. Consultation and participation are crucial components of a consent process. 2. Consultation requires time and an effective system for communicating among interest holders. 3. Indigenous people should be able to participate through their own freely chosen representatives. 4. Participation of women is essential, as well as participation of children and youth as appropriate. 5. **The process may include the option to withholding consent.**

13) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.58-59, §239-243, Failure to Develop Indigenous Peoples Development Plan (IPDP), §241: “The contents of an IPDP include, inter alia: (a) **an assessment of the legal framework** in the country relevant to the groups covered by the policy, including the ability of such group to obtain access to and effectively use the legal system to defend their rights; (b) **baseline data** on the area of project influence and the areas inhabited by the people, an analysis of social structures and income sources; (c) **land tenure** - - when local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing **legal recognition of the customary or traditional land tenure systems of indigenous peoples**; (d) **a strategy for local participation by indigenous people** in decision-making throughout project planning, implementation and evaluation.”, p.59-68, §244-282, Importance of an IPDP for the Pygmy People.

14) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.74, §307: “In fact, if access to these non-timber resources were considerably restricted by the timber operations, there would be no way of compensating for the loss. The Panel’s expert notes that for the forest-living people who find difficulties in satisfying their subsistence needs, the promotion of logging industry, or commercialization for export products, is by no means the only way, nor the best way, to solve the problem of poverty. Instead, it is of vital importance in the first place to secure ample subsistence-oriented life. *They need by all means healthy life with nutritionally adequate food supply, which is obtained in culturally appropriate ways.* What they want first is an ample subsistence base that can also afford means of fulfilling their social and cultural needs, rather than short-term economic benefits from industrial logging and related activities, which may risk their subsistence base in the longer term.”

15) United Nations, Human Rights Committee, General Comment No 23: The rights of minorities (article 27), 08/04/1994: “6.2. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. [...]”, “3.2. [...] one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.”

United Nations, Committee on Economic, Social and Cultural Rights, General Comment No 21: Right of everyone to take part in cultural life (article 15-1.a), 21/12/2009: “36. [...] The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources [...]”

African Commission on Human and Peoples’ Rights, Report of the African Commission’s Working Group on Indigenous Peoples/Communities, DOC/OS(XXXIV)/345, May 14, 2003: “The protection of rights to land and natural resources is fundamental for the survival of indigenous communities in Africa and such protection relates to Articles 20, 21, 22 and 24 of the African Charter.”

16) United Nations, Committee on the Elimination of Racial Discrimination, General Recommendation No 23: Indigenous Peoples, 18/08/1997:

“4. The Committee calls in particular upon States parties to: (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that **no decisions directly relating to their rights and interests are taken without their informed consent**” (our emphasis)

United Nations, Committee on Economic, Social and Cultural Rights, General Comment No 21: Right of everyone to take part in cultural life (article 15-1.a), 21/12/2009: “37. [...] **States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.**” (our emphasis)

United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, Resolution 61/295, September 13, 2007, Article 19: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.**” (our emphasis), Article 32: “1. **Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.** 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.** 3. States shall provide effective mechanisms for just and fair redress for any such activities, and **appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.**” (our emphasis)

17) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.68, §281: ““The DRC should consider a system that allows local communities a right of refusal before any logging permit is allocated in their neighbourhood.” [Forests in Post-Conflict DRC, 2007] **If a local community could have such a right of refusal, their customary right could be better respected. There has, however, been no actual development along this line yet.**” (our emphasis)

18) Rainforest Foundation Norway, Itombwe Massif policy brief: An alternative approach to conservation, October 2011

19) This includes current logging concessions: those logging titles judged « convertible » and receiving a concession contract after having a social responsibility contract approved that respects FPIC as well as a management plan – and existing protected areas with recognised legal status.

20) World Bank Inspection Panel, Investigation Report, August 31, 2007, p.130, §534: “The forests are an enormously important and valuable resource for the Congolese people. The Panel notes that there is a real danger that the highest quality forests will be depleted and valuable fauna exhausted with little benefit to local populations, or even to the general population in the country. People may lose access to forests and their products, on which they depend. This issue affects not only those living today, but the welfare of future generations. In this connection, **the Panel notes the potential importance of developing a more balanced approach by emphasizing appropriate models of community forests as well as other actions to support community participation, land tenure and use rights in the forests and by linking to the recently proposed Bank administered fund to pilot instruments for reducing carbon emissions from deforestation and forest degradation.**”



Community members of Ikala, Bandundu Province, sketching a map over their traditional rights to their community lands. Photos: Rainforest Foundation Norway

This concept-note has been developed by the following organisations: (for further information please contact any of the organisations below).



Réseau Ressources Naturelles



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