

Policy pointers

Policymakers in the Republic of Congo (RoC) have a unique opportunity to design laws giving communities simple and effective access to community forests — with clear and coherent rules on how to create and manage forests, share benefits and resolve disputes.

The new legal framework should address ten key areas, including the first five as priorities: recognising land and forest tenure rights, accessible forest-allocation processes, principles for community governance, community forest-management rules and equitable benefit-sharing mechanisms.

Good laws are born out of good process. A broad range of stakeholders — including local communities and indigenous populations — should take part in determining the legal framework for community forestry.

International development partners and donors should provide further technical and financial support for designing and implementing a legal framework in the RoC that promotes successful and community-driven forestry.

Republic of Congo: five priorities for developing community forestry laws

Clear and coherent laws are key to successful community forestry. The Republic of Congo is currently developing its first legal framework on community forestry — presenting policymakers with a unique opportunity to design an enabling and comprehensive legal framework that empowers communities. This briefing outlines key areas the framework should be built on, including five that should be addressed as a priority. These are: establish clear land and forest tenure rights and simple and inexpensive community forest-allocation procedures; support strong internal community governance and ensure community participation and representation of vulnerable groups; assist communities to design simple community forest-management plans and decide on equitable benefit-sharing mechanisms; finally, international donors should support strategies that fully respect local communities' and indigenous people's rights and help communities build their capacity to take the lead in community forestry.

The Republic of Congo (RoC) is currently revising its forest legislation. The draft Forest Code includes provisions for community forestry for the first time. Community forestry can help secure environmental, social and economic benefits by improving how forests are managed, stimulating local development and employment, and boosting the livelihoods of local communities and indigenous peoples (LCIPs).¹ But for community forestry to live up to its potential, the right laws are essential. Legal frameworks (see Box 1) are a key driver of successful community forestry.

A growing number of forested countries now recognise the rights of LCIPs and have formalised their role in forest management within national policies and regulatory frameworks. In

the RoC, designing a new legal framework should ensure that community rights are recognised, making them less vulnerable to external pressures. It also offers legal certainty, determining where community forests can be created, by whom, how and for how long. It also promotes accountability when it provides for efficient dispute-resolution mechanisms, whether they rely on judicial and/or customary processes.

Research to support the framework: key legal building blocks

This briefing focuses on recent research by ClientEarth. ClientEarth is an environmental law organisation and as such we recognise the

Creating a truly enabling community forestry legal framework requires an inclusive and participatory legal drafting process

importance of creating robust community forestry laws. As part of the DFID-funded NGOs collaborating for equitable and sustainable community livelihoods in Congo Basin forests (CoNGOs) project, we examined the legal aspects

of community forestry in the RoC and Gabon. In the RoC, we collaborated with partner organisation Comptoir Juridique Junior, focusing on legal and policy reform issues. Our aim was to build the legal capacity of civil society organisations to participate

in the revision of forest laws, which includes suggesting improvements to the proposed legal frameworks around community forestry.²

We used community-level consultations, including with women and indigenous populations, to gather their views and learn from their experiences with community forestry. In the RoC, communities generally welcome the idea of community forestry and its potential to improve their livelihoods. But they also expressed concerns. How will it be implemented? And how can they successfully manage forest resources without adequate technical and financial support? These are all very valid concerns.

On the international level, our research explored what an enabling legal framework on community forestry might look like.³ We analysed community forestry laws in Nepal, Tanzania and the Philippines: each has long-standing and diverse experiences in community forestry. Each also has different legal, political, environmental and cultural contexts and specific community forestry models.

From their experiences, we identified ten key areas — or legal building blocks — central to developing a methodological framework and guidance (Box 2). Of these, the first five should be tackled as priorities.

Gaps in community forest law

In the RoC, existing forest legislation does not currently cover establishing community forests. Communities can be granted forest use rights, for example in community development areas (CDAs). These are areas logging companies must put aside for local communities within their forest concessions (although some activities such as

small-scale logging are prohibited). CDAs allow some community involvement in forest management. But current rules do not provide an adequate legal framework for community forestry. The creation of CDAs also depends entirely on the logging company and CDAs end when the concession does.

The current forest law reform process aims to change this. The latest drafts of the Forest Code⁴ and its implementing decrees include provisions on community forestry. However, the proposals do not include and/or lack clarity and precision on several key areas (links with forest and land tenure, community forest allocation procedures, and rules for community management and benefit sharing). If unaddressed, these omissions will cause significant implementation challenges. Multistakeholder inputs can help fill these gaps and shape a stronger, more effective and enabling legal framework for community forestry — taking into account community needs and lessons learnt elsewhere.

Five priority areas to address

The ten key legal building blocks listed in Box 2 provide policymakers with a methodological guide to building the framework. For the RoC, and in the light of currently proposed provisions around community forestry, we consider the first five to be the priorities:

1. Clear land and forest tenure rights.

A robust community forestry framework is rooted in clear land and forest tenure rights. Policymakers should distinguish between different tenure rights and their implications in the RoC. Different countries in the sub-region (and in the world) present several options. For example, community forests can be tied to land or use rights, whether customary or not.⁵

Laws must clearly recognise the rights of LCIPs in the community forest allocation process, including the need to obtain free prior and informed consent (FPIC). This should include detailed steps for obtaining FPIC from LCIPs that exercise customary rights over the relevant forest area prior to its allocation. However, making access to community forests conditional on prior formal recognition of customary land rights may be problematic. In the RoC, for land to be recognised as ‘customary’ it must be cultivated and the land-titling process is complex and costly.⁶ Regulations must specify that community forests are forests in which local communities and/or indigenous peoples can exercise their customary tenure rights, whether they are formally recognised or not.

Current proposals provide for three types of community forest areas: natural forests in CDAs,

Box 1. Jargon buster box

We use the terms ‘legal framework’, ‘law’ and ‘legislation’ in a broad sense to mean laws adopted by the legislator as well as implementing decrees and various technical guidelines.

natural forests or forest plantations on LCIP lands, and forests created or sustainably managed by community initiatives. These areas have very different characteristics. Yet current proposals treat them the same. For example, there are differences between natural forests in CDAs (that are created by logging companies) and other types of community forests, including natural forests on community lands. This should be reflected in different types of legal provisions for allocation, management and monitoring of community forests.

2. Develop accessible forest allocation processes. For community forestry to be accessible to LCIPs, the law should provide a clear, simple and inexpensive allocation procedure, so LCIPs can follow the process themselves and seek support if needed. However, current proposals are unclear about what types of legal entity a community can establish in order to apply for and manage a community forest (eg cooperative, association or community economic interest group).⁷ Legislation should give communities a clear choice. The process for creating an entity should be technically and financially accessible to them.

Similarly, the conditions and steps to allocate and demarcate community forests are incomplete. Only a few initial steps are mentioned. There is no indication of the relevant local authority applications should be submitted to, what the criteria are or the timescales for processing each stage of a community forest application. Nor is it clear at what point a community forest would actually be created. Such legal uncertainties could result in arbitrary decision making. Improved legal clarity and precision would help communities apply for and formalise their community forests.

3. Set out clear principles for community governance. The proposed legal texts in the RoC do not yet provide sufficient guidance on how communities should create their community forest management body, who can be part of it, what responsibilities it has, how it will be funded, how often it will meet or how it will be accountable to all forest users within a community. The law should set out basic principles and requirements for community governance but allow local actors to develop the specific details required for implementation themselves.

The legislation should require communities to put in place measures for transparency, accountability and dispute resolution. This will ensure good internal community governance of community forests. Policymakers should also include principles for the participation of women, youth, migrants and/or other interest groups.

Box 2. Building a legal framework: ten key areas

These ten legal building blocks are key elements that the RoC policymakers should consider when designing community forestry laws:

1. Land and forest tenure rights
2. Community forest allocation procedures
3. Internal community governance
4. Community forest management
5. Benefit sharing
6. Community participation and representation of vulnerable groups
7. Access to markets
8. Conflict resolution
9. Enforcement
10. External support

4. Develop simple management rules. The proposed legislation in the RoC is incoherent with respect to who should design community forest management plans. For community forestry to be truly community driven, the legal framework must support community members to design simple forest management plans.

However, communities have limited technical and financial resources. Provisions should be made to allow communities to seek support from NGOs or other public or private bodies if necessary.

Technical requirements (such as detailed resource inventories) should be adapted to the community forest context and only be necessary if the community plans to sell forest products or receive payments for environmental services.

The legislation should also clarify that approved management plans should be sufficient to allow exploitation of the community forest to begin. Additional administrative requirements (for example, additional permits) could be an unnecessary burden for the communities and a barrier to income generation.

Third-party involvement in managing community forests (to ensure communities have access to expert technical support and to markets, for example) should also be explicitly provided for. This may pose the risk of communities entering into potentially harmful agreements. But contracting third parties may improve how communities manage and develop economic benefits from their forests. Any external support should be sufficiently regulated, and include necessary safeguards, to ensure a balance of contractual rights and obligations between communities and third parties.

5. Ensure equitable benefit sharing. Benefit sharing is key to successful community forestry. But current legislative proposals in the RoC lack key components on how community members share monetary and non-monetary benefits from community forestry, which may

pose the risk of elite capture. The law should provide a general framework to enable benefit sharing, while empowering communities to design specific mechanisms tailored to their practices. It should take into account different notions of equity among communities. Equitable benefit sharing requires transparency of information and a system of monitoring so that community members know how funds are used and shared.

In the latest proposals, revenues from community forestry products belong to 'concerned' LCIPs. However, it must be clarified that both the revenues and the products themselves belong to the LCIPs that manage the forests. Safeguards are needed to avoid unjust practices discriminating against vulnerable community groups, particularly indigenous peoples and women, and elite capture.

Designing an appropriate legal framework for community forestry

Good laws require good processes. Creating a truly enabling community forestry legal framework requires an inclusive and participatory legal drafting process. Broad stakeholder participation in these reforms will ensure that the laws are fit for purpose and adapted to the local context. It is key to ensuring the buy-in of those who will apply the laws in practice, as well as those who will benefit from or be bound by them.

Once adopted, the new Forest Code will set out general community forestry rules. However, important technical details (how to apply community forestry law in practice) will be regulated by implementing decrees. The drafts of these texts need further work. That requires the participation of multistakeholders and the work needs to be inclusive and transparent. The RoC government and international development partners should support a well-coordinated and timely effort that involves all relevant stakeholders. This will develop regulations that follow clear objectives and contain clear steps to create, manage, monitor and commercially develop community forests.

Finally, international donors should take a strategic approach to financing community forestry in the RoC. Funding must support strategies and projects that fully respect the rights of local and indigenous communities and their members. If communities are to take the lead in creating and managing community forests, they must be allocated sufficient funds to build the capacity they need to make this ambition a reality.

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About the project

This briefing is one of five on the 'NGOs collaborating for equitable and sustainable community livelihoods in the Congo Basin forests' (CoNGOs) project. Launched in 2016 in the Congo Basin — where the second-largest tropical rainforest provides the livelihoods of 40 million people — the project aimed to improve the livelihoods of forest-dependent communities through better governance and practice. The project partners believe that strengthening the organisation and capacities of CSOs and local communities to secure and develop community forestry rights and enterprises have been central to achieving this. CoNGOs was led by IIED with a consortium of NGO partners in five countries. UK: ClientEarth, Fern, Forest Peoples Program, Rainforest Foundation UK, Well Grounded. Cameroon: Association OKANI, Centre for Environment and Development, INADES-Formation. CAR: Réseau des Populations Autochtones et Locales pour la gestion durable des écosystèmes forestiers de Centrafrique, Centre pour l'Information Environnementale et le Développement Durable. ROC: Organisation pour le Développement et les Droits Humains au Congo (ODDHC), Forum pour la Gouvernance et les Droits de l'Homme, Comptoir Juridique Junior. DRC: Tropenbos International.

Notes

¹ See for example: Gilmour, D (2016) Forty years of community-based forestry: a review of its extent and effectiveness. FAO, Rome. <http://bit.ly/31wt0EJ> / ² ClientEarth (2018) Analyse du cadre juridique relatif à la gestion communautaire des forêts en République du Congo. <http://bit.ly/2wTV2vL>; similar analysis was done for Gabon: ClientEarth (2018) Analyse du cadre juridique relatif aux forêts communautaires au Gabon. <http://bit.ly/2xaeZ11> / ³ ClientEarth (2019) Communities at the heart of forest management: how can the law make a difference? Sharing Lessons from Nepal, the Philippines and Tanzania. <http://bit.ly/2Xuv541> / ⁴ We refer to the version adopted by the Council of Ministers in February 2019 and submitted to the Congolese Parliament in March 2019. / ⁵ ClientEarth (2017) Community-based forest management: legal frameworks in five Congo Basin countries. <http://bit.ly/2Xuv9Bu> / ⁶ Law 21-2018 of 13 June 2018 on the occupation and acquisition of lands. / ⁷ There is no specific legal text governing the creation of cooperatives and community economic interest groups. They are governed by the Law of 1901 on associations and their creation follows the same approach as the creation of an association.



Knowledge Products

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ClientEarth is a non-profit environmental law organisation. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues

Comptoir Juridique Junior (CJJ) is an NGO based in the Republic of Congo that seeks to contribute to the appropriation of the law by the population, so that it is able to defend its rights, to ensure the good governance of natural resources and the definition of public policies that respond to its wellbeing.

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