

Land rights and nature conservation in Democratic Republic of the Congo



The Democratic Republic of the Congo (DRC) is an incredibly significant country for the conservation of Africa's Congo Basin forests, the second-largest area of tropical forest in the world, after the Amazon. DRC includes 60% of the Congo Basin forests and has a rich biodiversity and a great diversity of cultures and peoples. Indigenous and local communities have lived interdependently with this rich ecological diversity for many centuries. However, both peoples and biodiversity are in a precarious situation. Species and habitat are being lost. The human population has also faced huge perturbations: customary systems of land and resource rights were overturned by a colonial system, resulting in large scale displacement. The postcolonial regimes replicated these models and, for the last 20 years, armed conflict has added to the dislocation. Nonetheless, many Congolese people feel a strong attachment to their traditional lands; at a local level, when it is possible, the customary land tenure rules still apply.

In terms of land rights and conservation, there are huge challenges. Throughout the country, there are competing demands for access to and control of land: customary land rights of indigenous and local communities compete with infrastructure projects, commercial and industrial scale agriculture, nature conservation and resource exploitation: mining, oil and forestry.

In almost all cases, commercial interests trump the rights of indigenous and local communities when it comes to land use allocation. For conservation, the Congolese state has an objective of formally protecting 17% of its land. At present, 11% is designated as protected areas. Many of these forbid even access and use rights to local communities. In the context of pressure on land, community land rights and the protection of biodiversity are often presented as being in contradiction with one another, even when it may not be the case.

There are, however, opportunities for DRC to develop a much more nuanced approach, where land rights and nature conservation could complement and reinforce one another. Some sector-specific legislation developed over the last 2-3 years, such as the recent community forestry legislation and the 2014 law on nature conservation, show a positive change in language, recognising that community land rights exist and that communities could play a positive role in nature conservation. There are other interesting initiatives in progress: discussions on land reform are underway, a draft law recognising the rights of indigenous peoples is before parliament. Communities are developing their own conservation initiatives. If the Congolese state and its citizens could seize these opportunities, DRC has the potential to become an exemplar of rights-based conservation.

Challenges and Opportunities for Advancing Land Rights

The history of land rights in DRC

Before the colonial era, indigenous peoples and local communities living in the area that would become the DRC had customary land rights systems that probably covered the entire territory. These customary systems included bundles of rights to land and resources as well as processes and procedures for dealing with conflicts and disagreements. The arrival of the colonial state and its postcolonial successor suppressed customary rights. Successive land laws declared all land to be the property of the state, which in turn could lease certain rights over certain areas to third parties. Indigenous and local communities effectively became squatters on land that had traditionally been theirs. However, changes are now occurring. The 2006 Constitution refers to the state's "sovereignty" over land as opposed to "ownership". The 2002 Forest Code also mentions customary possession of forests by communities. On the ground, however, there remains a duality and major contradictions between customary and formal law.

Conservation policy

DRC is home to Africa's first National Park – the Virunga National Park, created in 1925. However, this established a problematic precedent that has persisted for a long time: both in formal legislation and in the implementation of conservation projects, human presence and the protection of biodiversity are often presented as being in contradiction with one another. As a result, conservation policy and legislation has tended to exclude and criminalise indigenous peoples and local communities, with effects that are still seen today. At the same time, the protected areas model has not itself proved to be particularly effective as a means of conservation.

Challenges

Large areas of land in DRC have been leased out as concessions for forestry, mining, oil exploration and industrial agriculture. This focus on industrial-scale use, presented as being mitigated by the protection of biodiversity in protected areas, represents the key paradigm of development espoused by successive governments in DRC. International hunger for land risks further encouraging this model of growth. The government is currently keenly supporting the creation of 22 "agro-industrial parks" which will also compete for space. DRC's development ambitions are important and legitimate: questions remain, however, as to whether the model being pursued at present will deliver sustainable results and what its impacts might be on rural populations and Congo's rich biodiversity.

REDD+ has been proposed as a solution to some of these problems: payments for reduction of deforestation or forest degradation could contribute to protecting resources and benefiting communities so long as clarity of land tenure rests at its heart. However, to date, it has not yet had these hoped-for effects in DRC.



Opportunities

DRC has the largest continuous area of tropical forest in Africa and its human population is not, for a large amount of that forest, very dense. There is potentially space to build a constructive synergy between conservation and the recognition of land rights. IUCN's own definitions of protected areas and the principles that should be applied offer great opportunities for the DRC, in particular that "the definition and categories of protected areas should not be used as an excuse for dispossessing people of their land". Categories II to VI of IUCN's categories of protected areas all offer models that could incorporate continued use, control and habitation by indigenous peoples and local communities.

There are further perceptible changes in conservation policy in DRC itself, even if they are not yet very visible in terms of implementation. The Nature Conservation Law of 2014 could help ensure that conservation and community rights can complement one another. In the first place, the language shows a change in approach to conservation, including elements such as the valuing of traditional knowledge; just and equitable benefit sharing; the need to include traditional communities in the creation of protected areas, prior consultation (although not, it must be noted, prior consent), and provision for conservation concessions to be managed by communities themselves. In addition, the national Conservation Strategy, were it put into action, could offer opportunities to re-gazette certain problematic protected areas which are not delivering on conservation goals and could thus increase community access to land.

Community forestry decrees could also establish a legal basis for community conserved areas. Under this legislation, a community can request and obtain some or all of the forests that are customarily their own as a multiple use concession of up to 50,000 hectares, in perpetuity. These concessions can be partly or entirely used for conservation if the community so decides.

The Land Code is under revision at present, with active participation from civil society organisations, who have proposed an extensive series of concrete actions for the recognition and security of indigenous and community land rights. (It should be noted, however, that the process is taking an extremely long time, so it is possible that other legislative and policy opportunities will overtake it).

The draft national REDD+ strategy has as one of its objectives to clarify land tenure. It offers an opportunity to test and explore benefit sharing mechanisms and DRC's approach to implementing free, prior and informed consent (FPIC) and proposes the development of a territorial land use planning procedure. If this were genuinely participatory, it could be an excellent forum for testing approaches to reconcile the recognition of community land rights with other land uses and to build models of participatory conservation. It could also serve as a catalyst for coordination between different departments and other stakeholders, via REDD+ financing and such initiatives as the register of projects and programmes and the safeguard information system.

An Indigenous Peoples Law has already been submitted to parliament. It includes elements on customary rights and traditional knowledge that could contribute to community conservation.



Recommendations

- In any process concerning land use planning, ensure that an agreed process to obtain FPIC as defined under international law is applied. In particular, the definition of FPIC in the Nature Conservation Law should be altered to “consent” instead of “consultation”.
- Land reform – Secure and restore community land rights of indigenous people and local communities, via accessible and affordable procedures, in order to establish a solid basis for community conservation.
- Participatory land use planning – Develop test procedures in a limited number of administrative sectors, ensuring good documentation of the process and a transparent evaluation of its strengths and weaknesses. The procedures must ensure that there is real and effective multi-stakeholder engagement at local, provincial and national level, which will require:
 - Allocation of sufficient resources, information and time for all actors to genuinely participate.
 - Consensus decision making in the multi-stakeholder body. VPA processes offer a useful model for multi-stakeholder deliberation.
- Community forest concessions (CFCL) – Engage in the development of equitable, sustainable and multiple use community forests. Formally recognise and harness their role in conservation efforts, including contributing to DRC’s target of protecting 17% of its land area.
- Nature conservation – Finalise through participatory means application decrees for community conservancies; strengthen research and analysis on conservation outcomes, including collecting data outside protected areas as well as inside; finalise and publish the national conservation strategy.
- Management of existing protected areas – Review the existing protected areas and evaluate their real conservation impact; identify how the management of existing protected areas could be adapted to include indigenous and local communities.
- Development of new protected areas – Ensure that FPIC as defined in international law is applied and that alternative management structures for new areas are explored to include local and indigenous communities in decision making.
- Develop Congolese jurisprudence on land rights and protected areas. At the moment, the Kahuzi Biega National Park case is before the Supreme Court; this and other examples will generate useful data and information on how land rights and conservation priorities can be reconciled.
- REDD – Ensure that commitments made in REDD project proposals to address land tenure insecurity and enable equitable benefit distribution should be rigorously pursued, especially by the international donor community.
- Coordination and collaboration – Ministries, government departments and other actors should be encouraged to share information and develop common tools such as a land use cadastre, regular round tables on land and conservation issues and mechanisms for identifying and dealing with conflicting interests and land use requirements.

This paper was developed in DRC with the involvement of the Natural Resources Network (RRN), members of the Groupe De Travail Climat REDD Renove (GTCRR), and Consultation Group (CACO) on land tenure in DRC. Discussions have also been held with members of the administration and local communities. Support from the Rainforest Foundation UK for preparation of this brief is gratefully acknowledged.

The IUCN CEESP Theme on Governance, Equity and Rights (TGER) has coordinated preparation of this global series of Land Rights and Conservation issue briefs. IUCN and CEESP are grateful to the Moore Foundation for its support to produce the issue brief series.