

FORESTS AND COMMUNITY CONTROL:

OFFICIAL PROCESSES THAT PERMIT FORMAL RECOGNITION

OF COMMUNITY MANAGEMENT AND RIGHTS, AND THEIR

RELEVANCE TO THE DEMOCRATIC REPUBLIC OF CONGO.

Cath Long, IIED

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Foreword

The government of the Democratic Republic of Congo (DRC) has been working to place the country's forest sector on a more sustainable footing and to ensure that it helps to reduce rural poverty. As part of these efforts, the Ministry of Environment has expressed its interest in community forestry as a means to help achieve these objectives, and since 2009 it has been working with Forests Monitor to explore its potential.¹

A key part of this work has been to conduct a process of consultation: working in 3 of the country's provinces (Bas Congo, Equateur and Orientale) and Kinshasa, a series of discussion forums were held to find out the views of all those linked with forests, these included members of rural communities, local administrations and central government, timber companies and civil society. In total, over 200 forums were held at community level, involving over 8000 participants; 15 forums were held at the local and provincial levels, with some 600 participants; and a further 9 national forums were held in Kinshasa, involving 200 participants.

As part of this process to investigate the role of community forestry in DRC a number of research papers were commissioned, including this paper. The objective was to see what lessons could be learnt from other countries where local peoples have been implicated, to various degrees, in the formal management of forests.

From the extensive consultations outlined above, it became apparent that there is a very high level of interest in community forestry, particularly amongst Congo's rural population and also more broadly. Based on the discussions with stakeholders, and drawing on the findings outlined in this report and others, a series of recommendations were made as to how community forestry could be developed and implemented.

These recommendations take the form of proposed legal texts, a decree and an "*arrêté*" as well as a draft policy document, all of which are currently under consideration by the Congolese government. These texts represent a consensus position of the participants and are intended to support the process of defining the legal framework to enable formal community forestry to be realised in the DRC. It is hoped that as community forestry is put in place over the coming years it will live up to the expectations of the country's rural population and of the government – to help raise forest-based incomes in a sustainable way. This report highlights that, although there will be challenges to overcome, it should be possible.

Sincere thanks are due to Cath Long and IIED for bringing these case studies together and for the valuable analysis.

Forests Monitor

1. Information on the project is available on Forests Monitor's website: http://www.forestsmonitor.org/en/community_forestry_drc

Summary

Communities can and do manage forests effectively, and over the last twenty years states and other actors have been coming to accept this and to find means to afford formal recognition of communities' rights to control and manage forests. This paper presents a range of models adopted by states to formalise their recognition of community management and presents some key lessons learned. It is intended to provide background information to policy makers and other actors in the Democratic Republic of Congo (DRC), who are currently developing national policy and legislation on community management of forests.

The paper looks at examples from around the world that fall into three broad categories: those where communities own and control their land and forests, (with examples from Peru, Gambia, Uganda, Tanzania and Scotland); those where the state owns the land or resource, but cedes control and management to communities, (with examples from Brazil, Guatemala, Mozambique, Nepal and Cameroon); and those where the state owns the land or resource and develops formal co-management arrangements with communities, (with examples from Peru, England and India).

In examining this range of case studies, a few key features of the ways in which community management of forests can be recognised have become apparent.

Community involvement in forest management does give positive benefits, in environmental, economic, social and political terms.

The development of a system which recognises community management has followed very different routes, depending on the local context. Some systems, for example Indigenous Territories and Extractive Reserves in Brazil, have come from a process of lobbying and campaigning on the part of community organisations whilst others, such as the Community Forests in Cameroon, have come about through external as well as internal pressures and their form is different in consequence. Many systems have changed over time as the actors concerned explore what does and does not work:

Nepal, India and Guatemala, some of the countries testing these systems for the longest, have changed their systems considerably over time.

Whatever the route by which a system of recognition is arrived at, the system itself also depends heavily on local context. The definition of what a community consists of tends to be based on some degree of self-definition along with an obligation to demonstrate some justification for that self-definition. Size and structures of communities thus vary depending on local customary and administrative arrangements, (ranging from small numbers of people with strong historical and cultural links with one another and the land occupying large areas of forest, as is the case with Indigenous Territories in Brazil, to communities with no limit to the numbers of people but with an area restriction of 5000 ha, as is the case for Community Forests in Cameroon). However, in almost every single case there is an obligation for communities to register some form of legal entity so that they can sign formal agreements with the state. These formal agreements then have a range of forms: Brazilian Extractive Reserves and Guatemalan Community Concessions are time limited commercial extraction agreements, whereas Nepali or Gambian Community Forests are presumed to be permanent titles, subject to some government oversight, and Scottish Community Forests are exclusive private property of a community once it has bought the land.

As communities start to become more directly involved in formal management, the role of the state is also having to change, from being owner and manager of the forest to a facilitator and regulator. This changing role demands a wide variety of new skills for government staff and has sometimes proved challenging. Likewise, within communities themselves, formal engagement in forest management entails a close look at community organisation. In some countries, such as Nepal and Uganda, specific provision is made within the law to include women in the community management structures and throughout the world, there are real challenges to how marginalised groups such as women or indigenous peoples can ensure that their voices are heard in such processes.

Once a community body is established and an area of forest identified, all communities are then expected to follow a procedure in order to arrive at the final formal agreement. This varies a great deal in the examples examined, with very different

quantities of paperwork and bureaucratic processes. Cameroon is an example of a fairly heavy bureaucratic process, whilst in Mozambique and Tanzania the recognition of basic land rights is based on customary law and involves very little paperwork. Gambia offers an interesting example of a two-step process.

Once a community management agreement is in place, some countries have instituted tax and charging regimes that result in some government income from community forestry. Despite these examples, this is an area which has not received much consideration to date and which could play an important role in the future trajectory of community management of forests.

There are also major challenges: political will on the part of the state being the most significant, with India providing a very interesting example of how political will has been challenged and developed over the years by community activism.

In addition to political will, another hurdle to the successful recognition of community management is often the complexity of the procedures involved. In several countries, only those communities that receive external support manage to navigate the complex and expensive processes that they are obliged to follow.

The challenge of complex procedures and the frequent unwillingness of state officials to let go of control can both also have an impact on or be heavily affected by the level of capacity of all actors involved. Formal involvement of communities requires a huge adaptation on all sides and the appropriate skills, training and support are frequently scarce or non-existent. This can often result in elite capture, where those who do have the skills to negotiate a system end up controlling it and thus excluding some of the poorer and more marginalised members of a community.

A final challenge is that of economic pressures: both in demonstrating the economic value of community forestry and the increasing pressure on forest lands from a range of other activities.

On examining these factors and challenges, some key lessons learned from the experiences of community management are as follows:

A. Community management of forests can deliver positive impacts: environmental, social, political and economic

- Community management can deliver real and quantifiable improvements in forest quality in the case of degraded forests, in, for example, Gambia, Nepal and Tanzania, and clear evidence of effective forest protection in more intact forest landscapes, as can be seen in Brazil.
- Community management can deliver economic and social benefits to communities themselves, as is visible in Tanzania and in the United Kingdom.
- Community management can serve as a powerful tool for enabling social and political organisation of groups that are often marginalised and an effective mechanism for resolving resource conflicts, as witnessed in the community concession process in Petén.

B. The structure of a community management regime needs to be clear, accessible and unambiguous, but it also needs to be flexible enough to reflect customary, traditional and local norms as well as changing needs and contexts

- The recognition of customary tenure on forest lands is crucial in any system of forest management.
- The recognition of customary tenure in formal law need not be overly complex or bureaucratic: countries such as Uganda and Mozambique have been able to implement systems which are accessible to communities.
- Customary tenure is complex and varied and any system of recognition of rights, from use to ownership, needs to take this into account. There will not be a single format for community forests that applies over the whole of the DRC, but rather there should be institutions at a relatively local level – possibly territorial – which can take into account the local nuances of tenure and use rules.
- Systems in which communities themselves define their forest areas, such as Mozambique, Tanzania, Gambia, Brazil and Nepal, tend to be

more successful than those which limit areas, such as Cameroon and, in some instances, Peru. In many examples, the process of defining an area of community forest is a relatively simple step and can be done without overly complex procedures.

- There is not necessarily an immediate need to register all community land and forest rights: formal registration is probably necessary, however, when there are third parties also interested in making use of the same area of forest, as can occur in Mozambique. In such circumstances, adequate time has to be made available for communities to define and delimit their lands – short time limits can lead to future conflicts.
- Every successful community management regime has changed over time and it is important in any system to remain open to learning and to change as communities and other actors try things out on the ground.

C. Some useful innovations that have been tested in other countries

- Pre-emption rights in which local communities must be given first refusal to apply for commercial use rights (in the case of Cameroon) or outright ownership (in the case of Scotland) in an area of forest in which external actors have declared an interest.
- In moving from domestic and community to commercial use of the forest, several countries have a multiple step approach. First, the recognition of community rights and ensuring that communities are secure in the knowledge that they can make domestic use of their forest resources and have the right to give or withhold their consent on other uses of their forest. Then, negotiation of commercial use, should a community decide it wishes to engage in commerce. This second stage usually requires an instrument such as a management plan and may be more complex than the first.

D. Without sufficient political will, it is unlikely that community management of forests will be a success.

1. Introduction

Forest tenure and ownership around the world is changing, and there is a considerable amount of information available about how and why this is happening. Sunderlin *et al*², for example, provide a very good summary of how formally recognised forest tenure and ownership has changed over the last few years and how there is a trend towards more ownership and control by communities and indigenous peoples. According to them, official figures suggest that of the 30 most forested countries in the world, only DRC, Central African Republic (CAR), Gabon, Angola and Venezuela have no land formally owned or managed by communities or indigenous peoples. Of these, Venezuela has recently established legislation and structures that will enable indigenous communities to demarcate and obtain titles to land, the CAR has just ratified ILO Convention 169 on the rights of indigenous and tribal peoples which involves the recognition of land tenure rights, in Angola community titling of San lands is ongoing, and in the Democratic Republic of Congo there are processes underway to facilitate community management of forests. All other high forest cover countries already have some form of community and indigenous control of some of their forests, whether in the form of formal recognition of indigenous or community management of state land, as in the case of indigenous territories in Brazil or community concessions in Petén in Guatemala, or in the transfer of actual ownership of forest lands to communities or indigenous peoples, as is the case in Tanzania or Australia.

It would thus appear that states and other actors are realising that communities and indigenous peoples can be effective managers of forests. This change in perception and the resulting change in policy are coming about as the result of many years of advocacy work by communities, indigenous peoples and forest smallholders and groups working with them. Evidence

and arguments have built up that show the effectiveness of community management of forests, with very striking success stories from such diverse countries as China³, Nepal⁴, Albania^{5,6}, and Brazil⁷. In all these countries, land controlled and managed by indigenous peoples or local communities has shown an increase in forest cover on previously degraded lands, as in the case of China, Nepal and Albania, or a maintenance of rich and diverse natural forest whilst land all around it is being degraded and deforested, as in the case of Brazil.

However, what is not so widely available is information about the mechanisms that states around the world have brought into being in order to formalise the rights of communities and indigenous peoples. For the peoples and administrators of the DRC, an understanding of what mechanisms have been used and some lessons learned about their practicability would be of great use as they develop their own legislation and policies to enable community management of forest resources. This paper thus presents a few examples from a range of countries and contexts, each of which might have some useful learning points for the DRC to consider on its own journey to the formal recognition of community management.

2. Models of community control of forests

There are a range of ways in which states have recognised the rights of communities to manage, benefit from and in some cases, own, forest lands and resources. I have considered these under three main categories: one in which the state is owner of the land but communities manage and benefit from the forest; one in which ownership of the land is transferred to communities themselves, but with varying degrees of state control of management of the forest, and one in which there is co-management of the resources between communities

- 2 Sunderlin, W. D., J. Hatcher & M. Liddle (2009) From Exclusion to Ownership? Challenges and Opportunities in Advancing Forest Tenure Reform. *Rights and Resources Initiative, Washington D.C.*
- 3 Xu, J., A. White & U. Lele (2010) China's Forest Tenure Reforms Impacts and implications for choice, conservation, and climate change. *Rights and Resources Initiative, Washington D.C.*
- 4 Ojha, H., L. Persha, & A. Chhatre (2009) Community Forestry in Nepal: A Policy Innovation for Local Livelihoods. *IFPRI Discussion Paper 00913*
- 5 Kola, H. (2007) The needs and rights of local communities for forest product & services and sustainable forest management in Albania. Available online at: http://www.landcoalition.org/pdf/07_ev_alb_en_istanbul_presentation_on_Albanian_forestry_NACFP.pdf
- 6 Maryudi, A., R.R. Devkota, C. Schusser, M. Salla, W. Uthaiwan & M. Krott (2009) Rights and Practices in Community Forestry-Comparative Analysis of Albania, Indonesia, Namibia, Nepal and Thailand. Available at: http://www.cfm2009.org/es/programapost/resumenes/uploads/rights_and_practices_in_community_forestry_FD.pdf
- 7 See the graphic on p 52 of UNEP, FAO, UNFF (2009) Vital Forest Graphics. Available at http://www.grida.no/_res/site/file/publications/vital_forest_graphics.pdf

and the state, with the state remaining owner of the forest. I have also presented, at the end, a fourth category: states which have legislation that makes some kind of commitment to community forestry but which, for a range of reasons, have not yet put it into practice.

With all three types of forest ownership and management there are a range of names and classifications given and it is important to point out that a “Community Forest” in one country will not have the same structure, ownership, management, legal status or impact as an entity by the same name in another.

For example, even in a single state, the United Kingdom, the form and structure of “Community Forests” in its constituent countries are different⁸: in England they are joint initiatives of local authorities, community organisations and the private sector; in Scotland they are forests owned and managed by communities themselves. In Cameroon a Community Forest has a very particular form, exists on land conceded by the state for a limited period of time and is limited in size and scope by national legislation. In Kenya, a Community Forest Association enters into a joint management agreement with the state and does not receive a transfer of resource or land rights. In Gambia, a Community Forest involves a permanent transfer of both forest ownership and management from state to community.

Likewise, terms such as “Territory” and “Commune” or “Communal” – and, indeed, “Community” – have very specific meanings in each country in which they are used. In this paper, I have tried to outline and explain each term in the way in which it is used in each particular context.

3. Examples of the State as landowner and communities as managers of the forest

3.1. Brazil: Indigenous Territories and Extractive Reserves

In Brazil, there are a number of different mechanisms by which communities gain access to forests, depending on the nature of those communities. Depending on the type of community concerned, the forest land has a different legal status. However, the ownership of all land rests with the state and each of the categories of forest land take that as a starting point, transferring some level of control, management and access to benefits to peoples, communities or families.

Indigenous peoples have their rights formally recognised in the national constitution and the Brazilian government has committed itself to demarcating and formally recognising indigenous territories⁹. The technical delimitation is the responsibility of FUNAI, (*Fundação Nacional do Índio* – National Foundation for Indians), the government department dealing with indigenous issues, but the process is initiated by the indigenous people or peoples submitting a claim. The group concerned is expected to work with FUNAI to develop a claim that includes maps and descriptions of the territory, anthropological and historical evidence of their presence and agreement by community members. The formal recognition of an Indigenous Territory is then declared through presidential decree, and the people concerned are granted perpetual control over use rights in their territory. These rights are inalienable and imprescriptible. Other people may only live in the territory or use its resources with permission from the indigenous traditional authorities. There is no limit on size. Certain activities, such as logging, are subject to restrictions. Some 12% of Brazil’s national territory is currently designated as indigenous land. These Indigenous Territories show significant positive impacts

8 Lawrence, A, B. Anglezarke, B. Frost, P. Nolan & R. Owen (2009) What does community forestry mean in a devolved Great Britain? *International Forestry Review* 11 (2), 281

9 Article 231 of the Brazilian Constitution recognises the State’s obligation to demarcate indigenous lands and Law 6.001 of December 1973 lays out further details and obligations.

in reducing deforestation and forest fires¹⁰ and on the lives of the indigenous peoples concerned¹¹.

Other local communities, many of whom have depended on rubber tapping for a livelihood, have worked together with indigenous peoples in alliance, as they are both interested in protecting their rights against more destructive forest uses such as industrial logging, ranching or conversion to industrial scale agriculture. The long struggle of the rubber tappers' association (CNS) in particular, has resulted in the recognition of local communities' rights to obtain a thirty year concession for an Extractive Reserve, in which communities live and work and can harvest forest products for a living. The Extractive Reserve model is interesting in that it comes from the community movement itself, rather than having been proposed by the state, and its form is quite complicated. The rights that are allocated in an Extractive Reserve are commercial use rights, the land remaining the property of the state. For most Extractive Reserves, although the Reserve is negotiated collectively and the community as a whole has the concession, individual families harvest products within individual plots, sometimes organising with other families to put their plots together and add value. So the reserve rights are collectively held but managed from day to day on an individual household basis¹².

In order to obtain an Extractive Reserve, the process differs depending on whether the federal or the state government formalises the Reserve, and state processes vary from state to state. However, all processes involve demarcation of lands, using geo-referenced maps, and identification of the traditional users. Nationally, the National Centre for the Sustainable Development of Traditional Populations (CNPT) of the Brazilian Institute for the Environment

(IBAMA) is responsible for protection of Extractive Reserves. Once an Extractive Reserve area is approved, the community next has to develop a utilisation plan which also has to be approved by IBAMA and is then published in the Federal Register. Once that has been done, the community is free to implement its plan. Certain restrictions still apply: conversion of forest land within an Extractive Reserve is not allowed, and harvesting of forest products is supposed to be controlled. Today, Extractive Reserves make up over 100 million hectares of forest land in Brazil.

As far as the impacts of Extractive Reserves are concerned, many observers consider that they are extremely successful¹³. There is evidence that the environmental impacts are positive, as are the social and political impacts¹⁴, as they enable communities to reinforce their organisations and build contacts with others. However, the economic impacts are more questionable: many communities are still in a state of considerable poverty¹⁵. Nonetheless, the argument could be made that those communities with rights to Extractive Reserves are no poorer than those outside and the security of tenure ensures that they have a dependable safety net¹⁶.

3.2. Petén, Guatemala: Community Concessions

The northern province of Guatemala, Petén, is home to the Maya Biosphere Reserve, declared as such by the Guatemalan state in 1990 and covering some 19% of the country's surface area. In its early years, with ongoing violence and repression in the region and harsh conservation measures put in place that tended to target small scale forest users, the Reserve was yet another source of conflict. Following the 1996 Peace Agreements, the approach to managing the

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- 10 Nepstad, D., S. Schwartzmann, B. Bamberger, M. Santilli, D. Ray, P. Schlesinger, P. Lefebvre, A. Alencar, E. Prinz, G. Fiske & A. Rolla (2006) Inhibition of Amazon deforestation and fire by parks and indigenous lands. *Conservation Biology*, 20 (1), 65-73.
- 11 Schwartzman, S. & B. Zimmerman (2005) Conservation Alliances with Indigenous Peoples of the Amazon. *Conservation Biology* 19 (3), 721 - 727
- 12 Goeschl, T. & D. C. Iglori (2006) Property Rights for Biodiversity Conservation and Development: Extractive Reserves in the Brazilian Amazon. *Development and Change* 37(2), 427-451
- 13 See, for example, a World Bank review: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/01/10/000012009_20050110153254/Rendered/INDEX/312260ENGLISH010extractive0reserves.txt
- 14 Brown, K. & S. Rosendo (1998) The Institutional Architecture of Extractive Reserves in Rondônia, Brazil. *CSEERGE Working Paper GEC*, 98-15
- 15 Brown, K. & S. Rosendo (2000) Environmentalists, Rubber Tappers and Empowerment: The Politics and Economics of Extractive Reserves. *Development and Change* 31, 201-227
- 16 Ruiz-Pérez, M., M. Almeida, S. Dewi, E.M.L. Costa, M.C. Pantoja, A. Puntodewo, A. de Arruda Postigo, & A.Goulart de Andrade (2005) Conservation and Development in Amazonian Extractive Reserves: The Case of Alto Juruá. *Ambio* 34 (3), 218-223

Reserve changed somewhat, and the National Parks authority, (CONAP), developed a regulation allowing communities to apply for sustainable use concessions within the areas of the reserve classified as Multiple Use (which cover about 40% of the total area). A community can hold a concession for 25 years and this is renewable, but the state remains as landowner.

The communities concerned here are mostly migrant communities, who moved to the region in the 50s and 60s in search of an improved income via rubber tapping and chicle harvesting. When the concessions were first conceptualised, they were not necessarily accessible to these migrant communities and there was a gradual changing and refining of the system as the state, the NGOs and the communities learnt what would work.

These days, in order to claim a concession, there are several stages:

1. The community has to do the following:
 - Form a community organisation with legal status, recognised by the municipality – the local authority – and with a committee with elected representatives.
 - Have a link with an NGO to provide technical support
 - Produce a map of the concession area
2. This proposal for a concession is then subject to consultation for 30 days, and then CONAP has to approve or reject, (with reasons for rejection), the application within 15 days.
3. The community then develops a forest inventory and a management plan which also have to be approved. These, although they are called simple, are in fact rather complicated technical documents.
4. CONAP proposes an annual cost per hectare for the lease, based on the management plan and this is negotiated with the community.

5. A formal concession contract is signed by the community and CONAP in front of a lawyer.

There is also now a sixth stage: within 3 years of signing a concession contract, the concession has to be certified.

CONAP thus still has a certain amount of control over the concessions, even though the exploitation rights are exclusive to the community during the 25 year lease. They can examine the books, impose restrictions in relation to conservation or preservation of archaeological heritage, (although if restrictions are imposed, CONAP is obliged to pay compensation to the communities), and they can cancel a contract if the community has not respected its terms. There are also collaborative monitoring committees, made up of community, municipality and CONAP representatives, which have a role in non-judicial conflict resolution, as well as monitoring and reviewing the management of the concessions.

Some 450,000 hectares are now under community control in Petén, and in terms of impact it would appear that the model is showing positive benefits, environmental, economic and social¹⁷.

In terms of forest protection, it appears that community concessions are just as effective at preventing deforestation as protected areas¹⁸ – they may even be more effective, although time alone will tell. They do appear to be more effective in preventing forest fires¹⁹.

Communities have perceived significant economic benefits from the concessions, but perhaps even more significantly, the impact of the concession system on mobilisation and community organisation has been a noticeable one²⁰. However, there is a challenge of elite capture: certain families tend to dominate the

17 Taylor, P. L. (2009) Conservation, community, and culture? New organizational challenges of community forest concessions in the Maya Biosphere Reserve of Guatemala. Available at: <http://www.unesco.org/mab/doc/newsletter/Maya.pdf>

18 Bray *et al* (2008) analysed the deforestation rates of a range of types of forest and found that in Petén, deforestation rates were higher in protected areas than in community concessions, (nearly twice as high), but that the differences were not significant, because of small sample size. (Bray, D. B., E. Duran, V. H. Ramos, J.-F. Mas, A. Velazquez, R. B. McNab, D. Barry, and J. Radachowsky (2008) Tropical deforestation, community forests, and protected areas in the Maya Forest. *Ecology and Society* 13(2), 56. Available at: <http://www.ecologyandsociety.org/vol13/iss2/art56/>)

19 See, for example, Gómez, I. & V. Ernesto Méndez (2007) Association of Forest Communities of Petén, Guatemala: Context, Accomplishments and Challenges. *Center for International Forestry Research, Bogor and Stoian, D. & A. Rodas* (2006) Community Forest Enterprise Development in Guatemala: A Case Study of Cooperativa Carmelita. *CATIE-CeCoEco*. Available online at: <http://orton.catie.ac.cr/repdoc/A24391/A24391.PDF>

20 Gomez and Mendez (2007) (see above)

community associations and women are seriously under-represented. NGOs also play possibly too pivotal a role: although in theory they are supposed to withdraw from engagement in community concession management, it does not look likely to be soon and there are not many incentives for NGOs to genuinely pass on their skills and so become redundant.

3.3. Mozambique: Permanent use and benefit rights

In Mozambique, under the 1997 Land Law, there is a system that is somewhat similar to that which Brazil has adopted, which came out of a long campaign on land rights by a range of community organisations, NGOs and allies within the government.

Under the 1997 Land Law, the State remains owner of the land, but it transfers permanent use and benefit rights to communities: DUAT (*Direitos de Uso e Aproveitamento da Terra*). These rights allow the holders to exclude third parties from using the land and they are inheritable. However, in a vital difference from Brazil, the rights can be transferred if a community consents. They can be, in effect, sold or mortgaged.

Also in contrast to Brazil, in order to assert their rights to land, communities do not, in principle, need to take any action. In current Mozambican legislation, customary occupation and use has equal status in the eyes of the law as occupation and use requested under formal law, (modern land titles). Communities do not have to register their land – good faith occupation and custom suffices. They can demonstrate their traditional occupation by oral testimony and do not need written documentation. A DUAT is held collectively by a community, which obtains legal status by its ownership of the DUAT, and all members of that community are assumed to have equal voice in decision making concerning its DUAT.

The definition of a community is quite general in the legislation: local institutions vary depending on the region. A local community is defined as; “a grouping of families and individuals, living in a territorial area

that is at the level of a locality or smaller, which seeks to safeguard their common interests through the protection of areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion.”²¹ (A locality, in Mozambican terms, is the smallest administrative unit and could be considered as equivalent to a “groupement” in DRC). Communities are thus able to define themselves, if they can demonstrate some kind of link between the members of that community, a common interest and an area of land.

In everyday life, the land rights system works well enough – all local people are well aware of the customary systems and of the control of the land and resources concerned. However, if a third party wishes to use the land or the resources on it, this is where difficulties can arise. Because community DUATs are often not formally registered, they can be invisible. In principle, if a third party wishes to obtain a DUAT from the state for some other purpose, they can apply for and be granted a 50 year DUAT, subject to community consultation and state approval. Legally, this should suffice. In reality, the community consultations can be superficial or non-existent and third party DUATs are then allocated on top of an existing community DUAT.

If a community wishes to register its DUAT in order to avoid this challenge, the process involves a number of stages, including identification of the community itself, mapping and agreeing on its customary lands, including those in use and those customarily owned or controlled by the community, and declaring and signing off on the maps and a written description of the community at a public meeting including the members of the community, representatives of neighbouring communities and district administrative officials. The claim is then reviewed by the provincial cadastral service: SPGC (*Serviço Provincial de Geografia e Cadastro*) and if it meets all the legal criteria, it is registered in the national cadastre and a formal certificate is issued to the community.

²¹ Land Law No. 19/97 of 1 October, Article 1, paragraph 1.

When it comes to the management of forest resources in particular, Mozambique has for some time been very involved in Community Based Natural Resource Management and under its forest legislation, communities have a right to manage and benefit from forest products. However, even though there are legal rights for communities to engage in management themselves, the emphasis has tended to be towards the allocation of industrial concessions on community land and to promote benefit sharing from these concessions, rather than supporting communities themselves to manage their resources for their own benefits.

3.4. Nepal: Community Forests

Before the 1950s, land in Nepal was controlled mainly within a feudal model, with divisions along caste and ethnic lines of landowners, tillers and tenants. A very small proportion of land and forest was recognised as having communal tenure. Following on from a major land reform in 1951, Nepal's forests were nationalised in 1957, under the Private Forest Nationalisation act. All forests, whether owned by landlords or indigenous communities, were transferred to state ownership and management.

Under state management, a lot of forest land became degraded and Nepal lost a large percentage of its forest lands, particularly in the 1960s and 70s. In the face of strong evidence of the weakness of state management and the demand from community groups to manage forests, a series of legislative measures were passed that give communities control of forest resources – and that give communities priority over other potential users of forest lands²². (Although it is worth noting that in the plains area of the Terai region, this model has not been followed and in fact the Forest Sector Policy of 2005 provides for even greater state control over the region's forests). The land remains officially property of the state, but all management and benefits are passed over to communities. Today, about 25% of Nepal's forest land is managed by over 14,000 Community Forest User Groups (CFUGs) – an estimated 1/3 of Nepal's population.

The official process in Nepal tends to be as follows:

- A community wishing to establish a Community Forest sends a letter of interest to a District Forest Officer (DFO);
- The DFO then provides a technician to support the community in identifying all the different uses of the forest and the interests of different forest users in their community;
- Formation of the CFUG, which can be defined by the community itself, but is expected to be democratically structured with representation of women, lower castes and other marginalised groups;
- Application to the DFO for registration of the CFUG presented in a standard format. The constitution has to include such elements as the objective of management of the forest, the rights and responsibilities of the forest users, forest protection measures, fund management, etc.;
- Once the constitution is approved, the DFO issues a certificate of registration;
- The CFUG then needs to develop a management plan, called an Operational Plan, based on their management objective. This has to include information about the forest and a map along with inventories and outlines of management procedures. A forest technician, supplied by the DFO, is supposed to help communities with this. There are some restrictions on what can be done in a community forest area – it is supposed to be for forest management and protection only;
- The DFO then issues a certificate handing management of the forest to the CFUG.

In terms of income from the community forest, 25% of the CFUG's income has to be spent on protection and management of the forests and the rest can be spent on other activities in the community.

The CFUG is expected to stick to its agreed Operational Plan and if it does not, its control of the forest can be removed. However, the government then has to hand the forest over to another CFUG – it cannot take back control of the forest once it has been declared a community forest. It will remain a community forest in perpetuity.

²² This started with the Panchayat Forest Rule and Panchayat Protected Forest Rule of 1978 and culminated in the Forest Act of 1993 and the Forest Rules of 1995.

3.5. Cameroon: Community Forests

Much has been written about the Cameroonian system of Community Forests and there is a strong tendency in the Congo Basin region to look to Cameroon as a model. However, the Cameroonian model has a lot of particular features that might merit examination before being adopted by others.

In Cameroon, all forest land is deemed property of the state and is classified as “permanent” or “non-permanent” forest estate. The permanent forest estate is allocated solely to industrial logging or protected areas and communities are only allowed access to land in the non-permanent estate. (In principle, communities do have user rights in logging concessions).

Community Forests in Cameroon are limited to the “non-permanent” forest estate and to a maximum size of 5000 hectares. They are thus sited in already degraded forests. They compete, in these areas, with “Sales of Standing Volume” (SSVs), which are small scale logging licenses for up to 2,500 hectares. Communities have the right to refuse permission for an SSV to be issued – they can exercise their “droit de préemption”. The refusal of that permission is time bound – they have to send a letter within three months of an SSV being allocated and then have to put in their complete Community Forest dossier within 2 years.

In order to complete their dossier and receive official title to their forest, communities have to create a formal association and to develop a “Simple Management Plan” (SMP). If they want to carry out any commercial exploitation they also have to apply for an annual “Certificate of Exploitation” before they can start to make use of their forests. The details of this whole process are outlined in a detailed Manual of Procedures, revised in 2008, and the steps are as follows:

- Formation of a legal entity that will have responsibility for the forest, (a Forest Management Institution) – this usually takes the form of a Common Interest Group.
- Development and submission of a request for a community forest, which includes an authorized application letter and accompanying documentation, including: objectives of the community forest, a map and description of the forest, minutes of community meetings showing agreement, the statutes of the FMI and a membership list.
- Formal reservation of the community forest area by the Ministry of Forests and Wildlife (MINFOF), which in theory gives the community two years in which to prepare a Simple Management Plan and have their forest formally allocated.
- Development of the SMP, including detailed technical inventories, maps, zoning plans for the area, socio-economic studies of the communities and overall activity planning.
- Submission of the SMP for approval and formal allocation of the Community Forest by MINFOF.
- Implementation of the SMP including, if the community chooses to exploit timber as part of its SMP, making an application for a Certificate of Exploitation, for every year of implementation of the SMP. The latter includes a detailed annual operations plan that has to be submitted each year.

A Community Forest is allocated for 25 years. So far, it has taken communities an average of 4-5 years to get as far as having their forest allocated. The process is fairly widely acknowledged to be cumbersome and overly focussed on timber exploitation, rather than the wider multi-use benefits such forests could offer. The Forest Law in Cameroon is currently being revised.

4. Examples of communities as landowners and managers of the forest

4.1. Peru: Native Communities

In Peru, the rights of indigenous and peasant communities to land is recognised in the Constitution and the state has signed ILO Convention 169 on the rights of indigenous and tribal peoples. It has had specific legislation in place that recognises indigenous communities' rights to land since 1974. This recognition is somewhat conditioned, covering only land and forest that is actively used by a community at the time of titling rather than all of their traditional lands, and it imposes a particular type of structure on an indigenous community. The model of community land title recognition tends to derive from the traditional organisation of mountain communities and so does not necessarily reflect how forest peoples organise themselves, but the system has been in place for a considerable length of time now and many forest peoples have adopted and adapted the system of “*Comunidades Nativas*” to suit their own needs. However, some indigenous lands are also included in Communal Reserves, a category of co-managed forest land that is explained below (p16).

The process that communities have to follow to obtain title to their lands and forests is fairly laborious and can be prohibitively expensive, involving two stages, with formal legal registration of the “community” in the first place and then the land title claim. However, considerable support has been provided over the years, from NGOs and occasionally from the state, and there is now a strong cadre of indigenous people who are capable of supporting communities to go through the process. The title claim involves producing a detailed dossier of information, including historical and anthropological evidence that a community has been there for a long time, census data, geo-referenced maps and records of meetings and community agreements to register the title along with evidence that communities have agreed the boundaries with their neighbours.

The titling process in Peru is not without its problems, administrative complications being one of these: the Ministry responsible for dealing with the details of titling and registration was the Ministry of Agriculture, under its Special Land Titling Project (PETT), but much of the titling work now lies with the Ministry of Housing's *Organismo de Formalización de la Propiedad Informal*, COFOPRI, as part of a broader scheme to formalise land tenure, and the final titles are all recorded by SUNARP, the National Public Registry Office.

Once a community has registered its land, it can manage its forests for itself. Domestic, non-commercial use of forest resources needs no further permission. When it comes to commercial use, on Community land, the community itself has the right to exploit its resources and only the community can apply for the relevant permits. In order to carry out commercial exploitation of resources, particularly timber, a community has to zone its forest. For the areas from which it wishes to harvest products, it must then develop a forest management plan which needs to be approved by the Ministry of Agriculture or the regional government, depending on local circumstances. The plan has to include an overall, long term management plan, including inventories, maps, technical specifications, total allowable cuts, etc, along with more specific Annual Operation Plans that outline harvesting plans for that year.

4.2. Gambia: Community Forests

In Gambia, the shift from state to community management of forests started in the early 1990s, with, as in Nepal, the realisation that state management of forests was not preventing their degradation and loss.

In Gambia, the process of allocation has evolved into a three-stage one, with a preparatory phase in which a community requests a community forest and the state extension services and/or civil society extension agents then support it in developing the necessary prerequisites for a Preliminary Community Forest Management Agreement, (PCFMA), which

operates for three years. The key prerequisite is the establishment of a Forest Committee at village level, which can be based on existing structures, but has to include the participation of both men and women. The community has also to delimit its forest and draw up a very simple management plan. It then applies for a PCFMA and at this stage there is a six-month probation period in which the community is expected to show that it will be capable of managing its forest by maintaining interest and commitment during that time. At this preliminary stage, community use rights do not change.

The community has to submit the following in order to obtain its PCFMA:

- a) two copies of the location and survey maps bearing the signature and seal of the district chief;
- b) two originals of the village resolution;
- c) two originals of the statement of the neighbouring village heads;
- d) one copy of the preliminary management plan bearing the signature of the forest committee president;
- e) two originals of completed PCFMA forms signed by the executive forest committee members; and
- f) two copies of the statement of the district chief.

The attestations from the chief are crucial because in Gambia, customary ownership is recognised by national law: ownership of the land is vested in customary institutions rather than the state. Thus in order to have a PCFMA, the community is required to present an attestation from the traditional chief that it has customary ownership rights to the land or that permission has been given by the customary owners to annex the land for community use.

The signature of a PCFMA allows the community to start making commercial use of its forest. From the date of signature of the PCFMA, the community has a three year period in which it refines its simple management plan and addresses and resolves any

conflicts over land ownership or resource control. During that time, the community is expected to show that it is capable of managing its forest. At the end of three years, subject to an evaluation, the PCFMA automatically becomes a permanent Community Forest Management Agreement (CFMA). These agreements can cover one village alone or can involve the participation of two or more villages, depending on the forest concerned.

The CFMA confers permanent ownership rights to the forest resource to the community, including the rights to commercial exploitation of forest resources, and lays out the co-operation between the community and the state's Department of Forestry. It includes a simple management plan and a commitment on the part of the community to respect its own plan. The transfer is permanent, although the Department of Forestry can implement a legal process to revoke allocation of the forest if there is serious mismanagement on the part of the Forest Committee.

The Forest Committee is expected to open a bank account and all forest revenues pass through this account. During the PCFMA, the community has to pay no taxes or charges. With the institution of the CFMA, the community then starts to pay a tax of 15% to the Department of Forestry. In addition, a proportion of the remaining income, usually 40%, is reinvested in the community forest itself, and the remaining income can be spent as the community chooses.

Today, some 450 communities in Gambia are managing their own community forests and there has been a measurable decrease in forest fires and an increase in natural regeneration of forests.

4.3. Uganda : District Land Boards

In Uganda, the constitution states that ownership of land is vested in citizens, rather than the state, and the 1998 Land Act formally recognised customary land tenure throughout the country as equal to other forms of tenure. A central Land Commission and a series of District Land Boards and local Land Committees

were instituted by this Act to administer all types of tenure, including customary tenure. The State still has ownership of land within the network of National Parks and National and District Forest Reserves, and the management of these is the responsibility of the Uganda Wildlife Authority and the National Forest Authority.

Claims for land in Uganda can be made by individuals, families or groups. Groups can have recognition of collective rights, but they have to register themselves as Communal Land Associations in order to do so. Within a communal area, the CLA can assign collective, family and individual rights according to its internal rules. To make a claim, the individual, family or group applies to their local, sub-district, Land Committee and pays a statutory fee. The decision on whether the application will be granted, altered or denied depends on the District Land Board, which is made up of representatives from each sub-district and one representative each of municipal and urban councils and of which at least 1/3 of the members have to be women. The Land Boards are expected to follow the customary rules of their area, except when those rules discriminate against the rights of women, children or the disabled to own, occupy or use land.

Customary rights thus granted are equal to other forms of tenure and can be leased, sold and mortgaged. There is also a system of Land Tribunals to deal with grievances, made up of three members chosen by the Chief Justice, and the role of traditional authorities to deal with disputes on customary tenure is formally recognised.

However, actual implementation of this legislation has been very weak. In some areas, there was strong resistance to the idea that customary land could be sold, a practice that did not reflect customary practice. There were also serious problems with the local Land Committees and establishment of the Tribunals and Land Boards has been slow.

Nonetheless, when it comes to forest resources, 70% of Uganda's forests are in private or community hands.

The other 30% are to be found in Forest Reserves and National Parks. Oversight on forestry activities is provided by the National Forest Authority. Private or community landowners can manage forests how they wish on their own land, although transport permits and felling permits are needed for timber species. In state Forest Reserves, timber extraction has been licensed to private enterprises and there is some degree of joint management of certain forest initiatives, such as ecotourism. Benefit sharing is still somewhat limited, but in some places communities are able to make a reasonable income for themselves.

4.4. Tanzania: Village Lands, Village Forest Reserves

In Tanzania, according to its land legislation, some 70% of land is considered as Village Land – land owned by communities.

Communities go through a number of steps in order to have community forest reserves recognised and operational. Key in this context is that villages are already recognised as landowners and decisions about land and forest management are taken at village council level. Village forests may either be managed by one village – or in some cases, where the forest is jointly owned by many villages – it may be jointly managed by a committee made up of all village representatives. The process for the recognition of a village forest reserve involves:

- a) Formation of Village Natural Resource Management Committee (VNRC);
- b) Identification and demarcation of the area of forest / woodland on village land;
- c) Participatory Forest Resource Assessment (PFRA) undertaken to assess volumes and species of harvestable trees in the areas set aside for harvesting;
- d) Development and approval of a management plan which includes a harvesting plan;
- e) Development of bylaws that support the management plan and its forwarding to the District Council for approval;
- f) Declaration by the Village Assembly of the Village Land Forest Reserve (VLFR);

- g) Registration of the VLFR by the District in the Registry of Village Land Forest Reserves;
- h) Gazettement of the forest by the government's forestry division – but this is not essential, and village governments may continue to manage and harvest forests without this additional step.

However, it must be noted that this system is entirely based on the recognition in the first place that communities are the owners of the land.

4.5. Scotland: Community Forests

In the United Kingdom, where many years of industrialisation have meant that very few native forests are left, the emphasis of modern national forest policy is to increase forest cover and to promote forests as a source of income for rural and urban communities. This has taken different forms in Scotland and in England. England will be examined in Section 5.

In Scotland, Community Forests, which are often based in rural areas, are usually owned and managed directly by communities themselves. In Scottish legislation, rural communities of 10,000 or fewer people have the right to buy or lease land when it becomes available on the market. They also have the right to buy rights that are, under Scottish law, separate from land rights, such as fishing rights, (with the exception of mineral rights to oil, coal, gas, gold or silver which always remain with the state). This means that landowners, including the state, can't sell their land or their resource rights to anyone else once the community has registered its interest in purchasing that land. It also means that the landowner has to sell at a fair price and no more than the market value.

In order to exercise this right, communities have to set up and register a Community Body (CB) and they

have to define what geographical area they occupy. The CB has to be registered as a limited company with appropriate documentation and the members of the CB have to be members of the community who can prove that they are living there. Once the CB is registered, it has to show that it has the support of at least 10% of the people in the community for registering a "Right to Buy" claim.

This depends on there being a publicly accessible land register, which identifies the ownership and extent of land holdings, so that the community can identify which land it wishes to buy and how many owners hold it. To make a claim, a community has to fill in a standard form and has to provide evidence of community support and any other documentation it considers will help its application. The form asks for details about the community, information about the current owner, (which is available on the land register), maps of the land and details about what the community wants to do with it. Then, when the current owner puts the land up for sale, the community gets first chance to buy that land at the current market price. This right remains for 5 years, after which the community has to re-register. (You get contacted by the Community Assets Branch, which manages this, a year before your right to buy runs out so that you can reapply in time).

This scheme has meant that a large number of rural communities in Scotland have bought or leased land and are managing forests in the interests of their communities. Some forests are for recreational purposes only and others are managed commercially for timber and for other forest products. Communities have advice and support from government extension services and can apply for grants from the state and from other bodies such as the European Commission.

5. Examples of co-management

5.1. Peru: Communal Reserves

In addition to the classification of Native Communities in Peru as explained above, another category of land use involves co-management between communities and the state. This is the Communal Reserve, a type of protected area. Communal Reserves tend to be established in areas which are of importance for biodiversity or water catchment, on lands to which indigenous peoples or peasant communities lay traditional claims but which they may not be using on a day to day basis. Their management is supposed to be carried out by a Contract Administration Executor (ECA) which is a body made up of representatives of all the Communities bordering the Reserve and is advised by SERNANP, the State body responsible for protected areas. The land and resources are thus still officially owned by the state, but the control and the decision making is supposed to be shared.

Until an ECA is legally constituted and until there is a Management Plan for a Communal Reserve agreed to by communities, neither the state nor the communities has a right to manage or benefit from Communal Reserve resources. (This is with the exception of mineral or hydrocarbon resources, which are reserved to the State.)

The ECAs, chosen by election from local communities, have responsibility for developing a Management Plan for the Reserve, which has to be agreed by all neighbouring communities and by SERNANP, and for selecting and overseeing a Reserve Manager who is responsible for ensuring that the Management Plan is implemented. The ECAs are bound by the restrictions of protected area policy, meaning that commercial timber extraction, for example, is not permitted, but within those bounds, they have, in principle, considerable freedom to decide what to do.

In practice, to date, the ECAs tend to play a somewhat nominal role and SERNANP dominates the co-management relationship, but in some areas, the ECAs and the Communities are asserting themselves somewhat more. The jury is still out on whether Communal Reserves will be a success.

5.2. England: Community Forests

In England, “Community Forests” are based in urban and peri-urban areas and represent collaborations between local authorities, communities, businesses and various government agencies. There are twelve of them nationally and although each has a strong regional identity, they came out of a national government initiative aiming to regenerate cities affected by a decline in industry and rising unemployment. Their focus is thus somewhat different to the other community forests we are examining in this paper – but they do represent an interesting model in contexts where cities are growing and national economies are changing.

Community Forests are informal partnerships that are based on a mosaic of land owned by the state, private landowners, community associations and businesses and they tend to have a small team of professionals, usually hosted by the local authority and funded collectively by a combination of government and private grants and some private sector investment. As well as supporting the planting and management of trees and woodlands, the Community Forest team provides support in terms of business advice and training for small forest enterprises and supports the development of social and community initiatives such as education and training for young people or the unemployed. The Forests tend to be managed by boards made up of community activists, business representatives, local authority staff and elected members and forestry professionals.

These Community Forests are very different in nature to the other examples explored here, and indeed their emphasis on partnerships between state, private sector, NGOs and community organisations makes

them unique. They don't question patterns of resource ownership, but they do explore the ways in which resources are controlled and benefits are shared.

An evaluation of Community Forests carried out in 2005²³ suggested that they have had a positive impact on the environment and on communities and that they have created a better investment climate for the areas in which they are operating. However, they haven't promoted quite the increase in private sector investment and job creation that had been hoped for when they were set up.

5.3. India: Joint Forest Management

India has had "JFM" in place for more than 30 years now, with initial test models being developed in some states such as West Bengal in the early 1970s. It was institutionalised at a federal level in the 1998 National Forest Policy and one of the most recent estimates is that there are around 100,000 Joint Forest Management Committees in India²⁴.

Joint Forest Management in India involves local communities making a commitment to carry out forest protection and management activities in return for obtaining some benefits from those forests: in principle, according to a recent study commissioned by the Indian Forest Department, the "user (local communities) and the owner (Government) manage the resource and share the cost equally"²⁵. The forests remain state property and communities have a right to a proportion of the benefits from those forests.

As in Nepal, the development of Joint Forest Management came from both popular movements claiming rights to forests and from increasing recognition that forests were being degraded under existing management regimes. JFM has thus usually focussed on degraded forest lands and has frequently been focussed on forest restoration. The

way it has evolved in India has been based on many years of experimentation, campaigning and negotiation and it is still in flux. In addition, because India is a federal state, the exact model and the proportion of benefits shared varies considerably from state to state.

Nonetheless, until recently, there were some common features of JFM throughout India:

- JFM has tended to apply only to degraded forest lands: large areas of forest in India remain within state Forest Reserves which have remained exclusive to the state. Indeed, until recently, user rights were rarely recognised in state forest reserves at all²⁶.
- If a community which is not living in state forests wished to gain access to the benefits in its forests, it had to form some kind of management committee, usually in the form of a Forest Protection Committee. (Communities living in state forests were not able to set up such committees, not having any management rights.)
- These Committees were then responsible for forest protection and would sign agreements with the Forest Department (FD) that covered the roles, responsibilities and benefits of each party: community and FD.
- No ownership or control rights are transferred and the proportion of benefits to be shared and the benefit sharing mechanism is determined within each state.
- Forest Protection Committees and other community bodies that enter into agreements with the FD had almost no legal status.

The outcomes of such a system, although offering some opportunities to communities to benefit from forests, were seen as very unsatisfactory by many²⁷. Communities felt that they did not play an equal role in decision making and frequently the state ended up benefiting from community effort, in terms of a considerable

23 Available at: http://www.communityforest.org.uk/resources/evaluation_report.pdf

24 Bhattacharya, P., L. Pradhan & G. Yadav (2009) Joint forest management in India: Experiences of two decades. *Resources, Conservation and Recycling*, 54 (8), 469-480

25 Available at: <http://envfor.nic.in/divisions/forprt/terijfm.html>

26 Sarin, M. (2005) Laws, lore and logjams: Critical issues in Indian forest conservation. *Gatekeeper 116*. IIED, London. Available at: <http://www.iied.org/pubs/pdfs/9543IIED.pdf>

27 The information in this section comes from a paper on the Indian Forests Rights Act, in which a number of long term forest actors in India recount recent developments. Springate-Baginski et al. (2008) The Indian Forests Rights Act of 2006: Commoning Enclosures? Available at: http://iasc2008.glos.ac.uk/conference%20papers/papers/S/Springate-Baginski_233001.pdf

share of the profits from the harvesting of NTFPs, whilst communities felt that they were only getting to share in the responsibility and not the reward. Large areas of forest to which tribal peoples had customary rights were still left within state hands which treated those peoples as “encroachers” – more than 200 million people in India are estimated to fall in this category.

These perceived injustices resulted in a long campaign by many actors to change the system, and in 2006, the “Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act” was passed, coming into force in January 2008. This bill, often called the Forest Rights Act, lays the groundwork for recognising limited land rights for some people living in forest areas and some restitution of rights that were dispossessed under colonial and post-colonial legislation. The Act allows for the recognition of land and user rights of those people living in forest areas, both private and collective. The area is limited to a maximum of 4 hectares per claim for cultivation or habitation, but can be much more extensive in terms of use rights.

In order to obtain their rights, communities depend on a structure which starts at local level with traditional structures of governance. They are supposed to identify and document the individual claims and forward these to a hierarchy of sub-divisional, district and eventually state committees for approval. In practice, it ends up falling to the individuals or groups to submit their claim to the local committees by filling in a number of complex forms.

Once approved, the individual or group then receives paperwork documenting their rights. There is no clarity within the law, however, about how the rights, once allocated, will be exercised, so it is not yet clear what force such documentation might have.

6. Key features of formal recognition of community management

6.1 Impacts of community management

In almost every case examined, community management of forests has shown positive environmental benefits. In Brazil, both Extractive Reserves and Indigenous Territories have contributed to the protection of forest cover and reduction of forest fires, as have community concessions in Guatemala. In Nepal, high forest cover in community forests has increased²⁸, while in Uganda, forests on private and community land show somewhat less deterioration than those in state Forest Reserves.

In terms of economic benefits, in Petén in Guatemala, communities are demonstrably capable of managing timber and of investing the proceeds in local development. In Nepal, communities have seen improved incomes as a result of having access to community forests²⁹.

The greatest impacts of community forests have tended to be social and political: community forestry provides a space where communities, civil society, the state and, in some cases, the private sector have been actively engaged in negotiating and managing relationships³⁰. The management of forests by communities has enabled communities to develop and consolidate their own systems of organisation.

6.2 Development of community management regimes

It is noticeable from the cases examined that there are a huge variety of models of community management. These differences are usually due to the way in which each model developed as well as the existing formal and customary systems already in place.

28 Gautam, A.P., E.L. Webb & A. Eiumnoh (2002) GIS Assessment of Land Use/Land Cover Changes Associated With Community Forestry Implementation in the Middle Hills of Nepal. *Mountain Research and Development* 22 (1), 63–69

29 Malla, Y. (2008) Community-Based Forest (Natural) Resource Management: A Path to Sustainable Environment and Development In; RECOFTC 1987-2007: The First 20 Years

30 McDermott, M.H. & K. Schreckenber (2009) Equity in community forestry: Insights from North and South. *International Forestry Review* Vol.11(2), 157-170

In Brazil, for example, both Indigenous Territories and Extractive Reserves emerged from many years of campaigning by indigenous peoples and by forest users, rubber tappers in particular. The two types of community-managed forest are thus different in structure, reflecting the realities of the groups involved. Indigenous Territories, for example, are permanent in nature and are the collective property of a people. Extractive Reserves, on the other hand, are 30 year concessions that are owned collectively but managed on a family basis. The form of both emerged from negotiation between the state and community organisations, social movements and NGOs. Because of this, there is a high level of acceptance of both types of reserve in their current form.

In Guatemala, the system for the allocation and management of community concessions in Petén took some time to be consolidated. The original structures, which were much more focussed on conservation and severely restricted people from living in the forest area, were adapted and changed over time to better reflect local realities. A similar process has taken place in Nepal and India, which have both had a long history of exploring community management and strong movements on the part of communities and tribal peoples to assert their rights to forest resources.

Even though the cases above have all shown themselves to be somewhat adaptable, the case of Uganda provides a clear example of the need for appropriate planning and consultation before a system is put in place. It would appear that one key element of customary title in Uganda, the fact that land cannot be sold but always remains with the family or clan, was ignored in the development of the policy. This created problems when it came to implementation, with land being sold or transferred by elites against the will of the community as a whole.

Some community management regimes came about through external pressure rather than direct engagement of social movements themselves. The interaction between these external pressures, usually from donors, and the mechanisms and inclinations of

the state system has added its own nuances. In Gambia, the process was designed quite deliberately to take time and to adapt itself as it went along. In Cameroon, on the other hand, a fairly rigid and complex procedure was put in place at the start, which has been difficult to change and adapt.

6.3 Forms of community management regimes

6.3.1 Defining “community”

In almost all cases, the identification of a “community” that is eligible to own, control or use forests lands has depended on self-definition. In most cases, there are some criteria which the community has to satisfy to demonstrate that it can justify calling itself a community, but they tend to be relatively straightforward. A community then puts together a proposal to claim an area of forest, for ownership or for management, which includes an explanation of who is included in the community.

In countries such as Mozambique or Tanzania, customary rules and structures are recognised as having, in theory, equal weight to formal law, so communities are not under an obligation to generate further evidence than testimony of community members or leaders. However, in Brazil and Peru, there is an obligation to demonstrate that the people or community concerned has historical connections with the forest that they are claiming. In Guatemala, this was a point of contention in the early stages of community concessions: many of the communities applying for concessions were settlers, so they were not able to demonstrate “customary ownership”, although their claims were not contended. The definitions of local communities were therefore relaxed. In Gambia, however, there is strong involvement of the customary authorities, who have to approve community forest proposals before they are accepted by the state.

The scale of a community also differs. In Brazil, for example, an indigenous people as a whole can claim land and there is no limit to the population or area that they claim, so long as they are able to demonstrate

their historical and cultural links. In Mozambique, however, a “community” is defined as being no larger than the population or area of a locality and in Scotland a “community” can consist of no more than 10,000 people. In Cameroon, there is not a limit to the size of the community, but the forest area that any one community can claim is limited to 5,000 hectares. There is clearly a range of ways of approaching the question, but it would appear that the most effective is when a community is one which is of a size where history, internal links and common interests enable its members to collaborate. Peru serves as an interesting example here: Native Communities, based on family or clan units, tend to be relatively strong in terms of controlling their land. ECAs, on the other hand, have been far less successful – these are rather more artificial creations and can involve a huge number of communities that are expected to collaborate when they may not have a history of doing so. The most effective structures have thus tended to be based on pre-existing models, usually customary, which then adapt and change.

In many cases, once a community has defined itself it also has to become a legal entity in order to exercise its rights to manage the resources. The different models are considered in section 6.3.3 below that discusses governance structures.

6.3.2 Community – state relations

This paper has already defined three different arrangements between state and community: state ownership and community management, community ownership and management; state ownership and co-management. There are, however, many nuances of each of these.

Indigenous lands in Peru and Brazil are permanent, non-transferrable titles. The rights to use community land in Mozambique, on the other hand, can be sold or transferred. In Gambia and Nepal, community forest titles once allocated are assumed to be permanent, but the state still has a regulatory function and can, if it identifies an infraction, take a community forest away and allocate it to another community.

Community forests in Cameroon, concessions in Petén and extractive reserves in Brazil are all time limited concessions, granting commercial rights for a set number of years to communities to harvest certain products.

The role of the state differs in the different contexts and in most cases it also appears to be changing. Almost all the examples, other than that of the UK where much of the land was privately owned, are in countries where in fairly recent history the state has been owner of much of the land. And in all examples, including in the UK, the state was the manager of large parts of the national forest estate. With the advent of community forestry, the state has been gradually changing its role from sole owner and manager to, eventually, facilitator and regulator. In Nepal and Gambia, for example, state forest agents spend a large amount of time supporting communities in developing management plans rather than doing forest management themselves.

The recognition of community management of forests can improve relationships between community and state. In Guatemala, anecdotal evidence suggests that the shift of the state forest services from a policing and control function to extension agent has resulted in a much more positive relationship between communities and the authorities. Several non-state forest actors express a level of confidence in the forest services that they do not have at all in other state services.

This changing role demands a new set of skills and capacities on the part of government employees and is changing the relationship between state and community. At times, the state finds difficulty in letting go of its control, which poses challenges to community forestry.

6.3.3 Governance structures

Every system of community management of forests includes quite detailed consideration of how the community organises itself.

In most cases, a community needs to obtain some

form of legal personality in order to enter into formal agreements. This can be an association or user group, as in Guatemala or Nepal, or a community company, as in Scotland, or a form of legal recognition of existing traditional communities, as in Peru, Brazilian Indigenous Territories and Gambia.

In some cases, attention has been given to the inclusion of groups that tend to be marginalised: in Nepal, for instance, women have to be represented in User Groups; in Uganda, a third of the District Land Board members have to be women.

In almost all cases, evidence has to be provided that the community structure, whatever its mandate, has the approval of the community as a whole for obtaining its forest. In Peru and Cameroon, for example, evidence has to be provided that a community meeting has been held – and in Peru, this is accompanied by a census of the community so that it can be demonstrated that a sufficient number have approved. In Scotland, the application has to be accompanied by enough signatures to demonstrate community support.

6.3.4 Processes for community forest recognition

The process of obtaining community or indigenous title in Brazil is quite labour-intensive and bureaucratic. However because this was developed through negotiation and because the system has been in place for quite some time, there are many actors within Brazil, from community associations themselves, support NGOs and the administration, who have the skills and know-how to support communities through the process.

The case of Mozambique shows that the recognition of community rights does not have to involve a heavy bureaucratic process: it can be done through oral testimony and customary occupation. However, such informal recognition, whilst perfectly operable when no outside actors are involved, is not adequately defensible in circumstances where third parties wish to make use of the same land or forest resources.

Gambia offers an interesting model of a two-step process, in which communities have time to develop their skills as they work through the development of a management plan and the administration has time to build confidence in its staff in order to play a new advisory role.

6.3.5 Taxes and charges

The question of taxes and charges is a significant one, as it has a major effect on the all-important question of political will, discussed in the next section. At present, it appears that for many of the states considered in this review, community forestry is not seen as an opportunity for the state to generate revenue, but rather a charge on the state. This need not necessarily be the case: in Oaxaca state, Mexico, for example, community managed forests generated an additional \$1 million per year for the state in tax income³¹. However, this aspect of community forestry has not, to date, been paid a great deal of attention in most countries. Indeed, in many countries, the tax and fee structure appears to be one of the barriers: in India, for example, under the JFM regime, in one state ten different permits were required for a community to be able to sell its timber³².

The challenges for income generation for the state from community forestry remain substantial: in Cameroon, for example, incomes from community forestry currently take the form of the fees charged during the registration process and the charges for the annual exploitation permits, which although burdensome for communities, do not represent a large state income. Nonetheless the tax income from industrial forest operations, which some use as justification for prioritising large-scale over community forestry, has conspicuously failed to provide community development or to result in poverty reduction³³. Thus the management of state income comes down to broader questions of governance and transparency, and the question of whether community forestry could generate an effective income or not is as yet unanswered.

31 DeWalt, B., F. Olivera & J. Betancourt Correa (2000) Mid-term evaluation of the Mexico community forestry projects. *World Bank, Washington, D.C.*

32 Scherr, S.J., A. White & D. Kaimowitz (2000) Making Markets work for Forest Communities. Policy Brief. *Forest Trends, Washington D.C.*

33 Oyono, P.R., P. O. Cerutti & K. Morrison (2009) Forest Taxation in post-1994 Cameroon: Distributional Mechanisms and Emerging Links with Poverty Alleviation and Equity. *WRI Working Paper Series: Forest Information and Governance in Central Africa. WRI, Washington D.C.*

Nonetheless, we can draw on some examples. In Gambia, community forests have to pay 15% of their income as tax to the state. This delivers the state an income, but there are challenges: forest outside community forests now shows a tendency towards overexploitation as people hope to avoid taxes on legal forest exploitation³⁴. There have been some demands for a review of the tax system. The same has been true in Nepal, where a certain proportion of community forest income is supposed to go to the government. The question is a heated one at present³⁵.

It would appear that community forestry can deliver tax revenue, but that frequently the tax and fee systems are not well adapted to the structures concerned.

an effective system of community management of forests is a very interesting one. There has been a long process in which the state has gradually been coming round to the idea of ceding some control to communities. The analyses of the JFM process in India suggest that at the beginning, the government was very unwilling to let go of much of the control or of the benefits of forest management. This is something which has changed over time and will probably continue to change significantly as communities make use of the new legislation. The creation of political will has been a long process and the role of communities and civil society in the process has been particularly important.

7. Challenges

7.1 Political will

In Mozambique, although land is not supposed to be allocated when customary rights apply, there has been a tendency from the Mozambican administration to allocate rights to resources to people other than those with customary rights. In addition, although the land registration procedure is quite clear, it takes a very long time for any community to be able to obtain a title.

In Guatemala, on the other hand, there was a strong political incentive for the government to explore community concessions, this a result of the links between the inappropriate management of conservation areas and conflict and violence. In addition, there was strong pressure exerted by international conservation organisations and USAID.

In India, one of the countries practicing “Joint Forest Management” for the longest time, the process of creating and mobilising political will in order to create

7.2 Legal complexity

In several cases, the processes that communities have to follow to obtain their forests are highly complex and technical, which means that they end up requiring outside support to do so. Cameroon is a good example of this kind of challenge, and there have been analyses of community forestry in Latin America which suggest the same thing³⁶. This tends to mean that only communities with outside support are able to obtain forests and all too frequently, the dependence on external support continues long after obtaining the title. In addition, it opens up the threat of elite capture, detailed below.

7.3 Capacity

Although extractive reserves in Brazil have demonstrated the effectiveness of community management in improving environmental outcomes and enabling communities to organise themselves, the major challenge of ensuring long term sustainability and positive economic impacts for the communities involved is more problematic: rights to the resource alone are not enough. Those rights need to be enforceable. Further, support structures are required to enable communities to benefit appropriately (Hall, 2004).

34 Thoma, W. & K. Camara (2005) Community forest enterprises: A Case study of The Gambia. FAO, Rome. Available at: <http://www.fao.org/forestry/10066-3-0.pdf>
 35 See for example: <http://www.thehimalayantimes.com/fullNews.php?headline=Forest+ministry+to+levy+50+pc+tax+on+community+forests&NewsID=247356>
 36 Pokorny, B. & J. Johnson (2008) Community forestry in the Amazon: The unsolved challenge of forests and the poor. *ODI Natural Resource Perspectives* 112

This is true in all cases and it is not only communities that have capacity challenges. A forest administration will also face huge challenges as it shifts its role from enforcement and direct implementation to facilitation and extension. India and Nepal have had many years of communities playing a role in forest management, but they too still face major challenges to their capacities in delivering appropriate services.

7.4 Elite capture

This specific challenge has been highlighted in many cases, even in those countries considered to be real success stories, such as Tanzania and Nepal. In countries where the system is less operational, such as Cameroon, the problem appears to be greater still. Although attention is given to governance systems in most community forestry legislation, it often does not tackle the problem. This is partly a result of some of the challenges highlighted above: if, in order to obtain a community forest, people require a considerable degree of literacy and familiarity with bureaucratic processes, the very structure sets up a context where only those who have that experience can participate, and that opens up the risk of some of those capturing the benefits for themselves. This could be addressed in part by developing systems which are more reflective of local structures rather than imposing externally developed systems, but the issue of inequality and elite capture at the community level still remain and will take a long time to address.

7.5 Economic pressures

Governments frequently see community forestry as an activity which does not generate revenue or improve incomes, and in all too many places it is seen as marginal to the real business of forestry – that of industrial harvesting of timber. In India and Nepal, community forests or JFM operate in areas of degraded forest only. In Cameroon, community forestry is only permitted in the “non-permanent forest estate”. High value forests are still ring-fenced.

In addition to this, there are increasing economic pressures on forest in the demand for land for the production of food, cash crops and biofuels. Given the complexity of developing community forestry and the apparent relative simplicity of large scale commercial operations, governments and other actors are often tempted to look to forest conversion for income generation. One possible counterweight to this pressure is the increasing interest in payments for environmental services and in particular reduced emissions from deforestation and forest degradation (REDD). Depending on how the architecture of REDD and other avoided deforestation schemes develops, there could be real opportunities for community forestry.

8. Conclusions: possible lessons for DRC

A. Community management of forests can deliver positive impacts: environmental, social, political and economic

- Community management can deliver real and quantifiable improvements in forest quality in the case of degraded forests, in, for example, Gambia, Nepal and Tanzania, and clear evidence of effective forest protection in more intact forest landscapes, as can be seen in Brazil.
- Community management can deliver economic and social benefits to communities themselves, as is visible in Tanzania and in the United Kingdom.
- Community management can serve as a powerful tool for enabling social and political organisation of groups that are often marginalised and an effective mechanism for resolving resource conflicts, as witnessed in the community concession process in Petén.

The DRC is to be congratulated that it is seriously examining the role of community forestry in its system of forest management. Given the enthusiasm expressed

about the idea at the regional and national forums held to develop the national policy and legislation, it would appear that there is an appetite for it at community level and a real willingness to support it from civil society organisations that work with communities.

In terms of current practices, it is notable that in Bas Congo, community members attending the local and district forums identified a number of ways in which local communities have been managing and maintaining forests for a long time, despite the external pressure that those forests are under. It is also notable that communities identified some current management practices, particularly in protected areas, as being actively deleterious to local community development. In parallel to the development of policy and legislation on community management of forests it would be well worth reviewing how protected areas and logging concessions are allocated and managed.

B. The structure of a community management regime needs to be clear, accessible and unambiguous, but it also needs to be flexible enough to reflect customary, traditional and local norms as well as changing needs and contexts

The DRC is a vast country and covers a huge range of forest types and a wide variety of cultures, customs and languages. Any system that is developed will have to take into account the local variations in customary structures and different priorities for forest use and management. However, as policy and legislation remain a responsibility at national level (even with the ongoing process of decentralisation), there is a need for some degree of commonality across the country in order for the administration to be able to fulfil its role.

- The recognition of customary tenure on forest lands is crucial in any system of forest management.

In all three pilot sites, there are customary tenure systems in operation for the day to day decisions about forests. These systems are well understood by

all community members. A key element of the policy on community management of forests is thus going to have to be a process in which communities can explain how they manage their forests: who takes decisions and how. Community mapping, tested both in the three pilot sites and in many other areas of DRC, will be an essential tool in identifying customary tenure and management.

- The recognition of customary tenure in formal law need not be overly complex or bureaucratic: countries such as Uganda and Mozambique have been able to implement systems which are accessible to communities.

As identified above, one point that came out clearly in all the forums is that local people have a very clear understanding about the rules of customary tenure: who, according to custom, owns, manages, uses and can take decisions about the forest. Although this is not formally documented, local people can explain it clearly in their local context. Thus a system which allows some form of oral testimony and community affirmation could be feasible in the DRC – depositions and video testimony could both be useful tools to accompany community maps.

- Customary tenure is complex and varied and any system of recognition of rights, from use to ownership, needs to take this into account. There will not be a single format for community forests that can apply over the whole of the DRC, but rather there should be institutions at a relatively local level – possibly territorial – which can take into account the local nuances of tenure and use rules.

In all three pilot sites, participants at workshops identified clan and family links as being the most important way to define a community, and suggested that the basic unit of a community forest should be the clan. How clans function and who takes decisions varies, however, from region to region. The clan leadership and the smallest administrative unit, the *groupement*, sometimes consist of some of the same people, but it should not be assumed that the

groupement and the clan are the same. Many villages have more than one clan making up the *groupement* and many have both Bantu and Indigenous people coexisting.

In addition, in all three pilot regions, the challenges of traditional authorities abusing power and imposing decisions on people were highlighted, and any system that is developed must pay attention to that challenge.

It is clear, therefore, that the decisions about structures for community management for particular areas of forest would be best agreed upon as locally as possible, by people who have a common understanding of the local context. One model that might be interesting to explore is that of using local facilitators who understand both customary law and the details of the new legislation and policy to help communities and decision makers arrive at local rules that work for all.

- Systems in which communities themselves define their forest areas, such as those of Mozambique, Tanzania, Gambia, Brazil and Nepal, tend to be more successful than those which limit areas, such as Cameroon and, in some instances, Peru. In many examples, the process of defining an area of community forest is a relatively simple step and can be done without overly complex procedures.

As stated above, communities have a very clear understanding of local tenure and this was reflected in the rich discussions about the options for community forestry in DRC that took place during the forums.

Participants in Mambasa recommended 50,000 hectares as being an appropriate mean size for community forests in their region. In Mbandaka, the proposal was that the size of the forest should be determined by the community itself, depending on its forest use. In all regions, participants agreed that the definition of customary tenure and the definition of forests of local communities and of community concessions should be developed in collaboration between communities and all their neighbours, to avoid future conflicts.

In all regions, there are a wide variety of types of forests and forest uses and these are well understood and categorised by local community members. (In Basankusu, for example, communities identified at least 6 types of forest that they make regular use of.)

It therefore appears clear that communities are ready and willing to define community areas, in collaboration with their neighbours.

The forums at all levels also highlighted the importance of obtaining the free, prior and informed consent, (FPIC), of communities before forest use allocations were decided upon.

- There is not necessarily an immediate need to register all community land and forest rights: formal registration is probably necessary, however, when there are third parties also interested in making use of the same area of forest, as evidenced in Mozambique. In such circumstances, adequate time has to be made available for communities to define and delimit their lands – short time limits can lead to future conflicts.

In the case of DRC, the 2002 Forest Code describes both “*forêts des communautés locales*” (forests of local communities or FCL), and community concessions. During the forums, these two categories were distinguished from one another.

Building on the recommendations above based on the experiences of a range of countries and the outputs of the community forums, a useful way forward would be to categorise all customary forest lands as FCL. They need not be registered formally, but they should be the areas to which the principle of FPIC then applies before any other decisions are taken about the use of that forest. Thus if any other forest use is envisaged, a process of identifying those customary forest areas should take place before other decisions are made, most likely through a participatory mapping process.

Within, or perhaps comprising the whole of, the FCLs, communities may then wish to delineate a community

concession, where they would be able to carry out commercial activities. A community concession might entail additional processes of approval and involve the development of formal management structures, unlike the FCL.

- Every successful community management regime has changed over time and it is important in any system to remain open to learning and to change as communities and other actors try things out on the ground.

In this particular context, it is hugely important that DRC does not become a prisoner of its own legislation and policy. A commitment to reviewing and revising policy and legislation after certain milestones are reached would be of huge value in keeping a flexible space open.

- Community management regimes that show particular success are those that pay particular attention to the inclusion of women and other groups that are frequently marginalised.

In DRC, in some areas, women have a key role to play in community decision making, (as was identified in Bas Congo in particular), and even in situations when they tend not to have so much say at community level, they are among the chief users of forest resources and have a good understanding of many forest issues. It is notable that in the survey of small forest enterprises undertaken during the project period, at least half of those enterprises were managed by women. Thus they have an important role to play and the system of community management that is developed should pay particular attention to how women can be included on an equal basis. This involves not just ensuring that women are members of committees or present at meetings, but enabling them to understand and participate fully.

- In the DRC, particular attention should be paid to the rights of indigenous peoples, (sometimes known as Pygmy peoples), as well as other members of local communities

when delimiting forest areas and agreeing management systems.

In Ituri, indigenous peoples identified that in many cases they are marginalised by their neighbours in community decision making. Thus any system of community management of forests developed in areas where indigenous peoples are living needs to pay strict attention to equitable systems of decision making, or that some forest areas be managed by indigenous peoples alone.

C. Some useful innovations that have been tested in other countries include

- Pre-emption rights in which local communities must be given first refusal to apply for commercial use rights (in the case of Cameroon) or outright ownership (in the case of Scotland) in an area of forest in which external actors have declared an interest.

As discussed above, the use of the FCL category as the area to which FPIC applies would allow for some form of pre-emption. One could imagine a situation where a forest has been identified as being appropriate for commercial exploitation. In such a situation, a community mapping exercise and the recording of testimony would identify the communities and clans that needed to give their consent and that needed to be given the option of applying for community concessions in advance of other land uses being allocated.

- In moving from domestic and community to commercial use of the forest, several countries have a multiple step approach: first, the recognition of community rights and ensuring that communities are secure in the knowledge that they can make domestic use of their forest resources and have the right to give or withhold their consent on other uses of their forest; then, negotiation of commercial use, should a community decide it wishes to engage in commerce. This second stage usually requires an instrument such as a management plan and may be more complex than the first.

In the case of DRC, several of the forums identified forest uses and considered how to reconcile individual and community use of the forest, as well as activities that they considered appropriate in a community forest. This analysis, along with the distinction between FCLs and community concessions, could form a useful starting point for a stepped approach that is accessible to communities and administration alike.

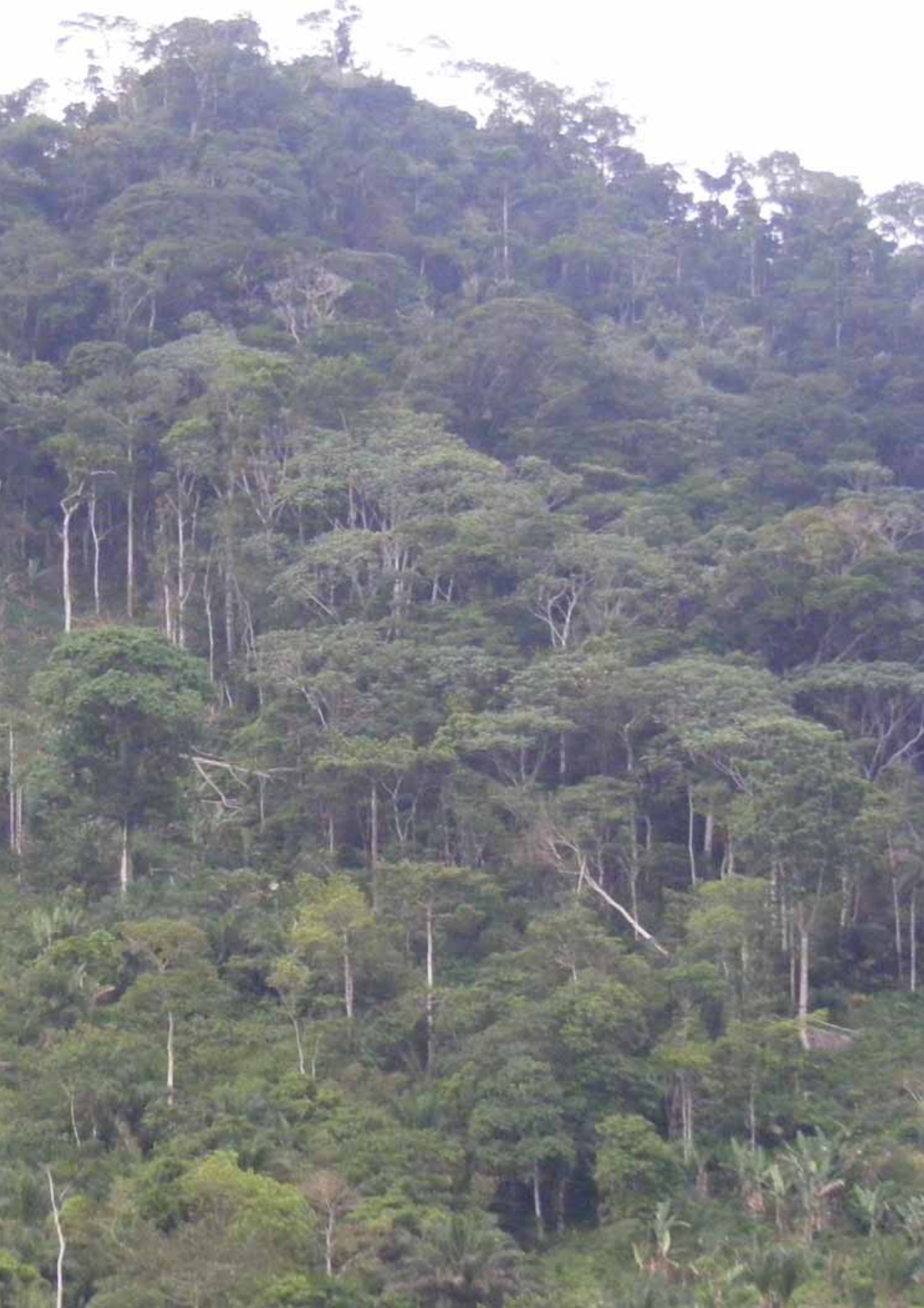
D. Without sufficient political will, it is unlikely that community management of forests will be a success

At present, the engagement of all parties in the process of developing policy and legislation on community management of forests in the DRC is visible and positive. The challenge will be the investment of time

and energy to develop a system that is sufficiently robust and flexible, whilst there are so many other pressing issues. It is important that the DRC gives itself the time and space to develop a strong policy supported by robust procedures.

In conclusion, it can be seen that community management of forests is feasible and it delivers real results. The DRC, if it were to develop policy and legislation that genuinely enables community management and control of forests and clarifies the regulatory and facilitatory role of the state, could become a global model of forest management that works for its forests and for its people – a model to which, in future years, other countries will be referring.





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Forests Monitor

69a Lensfield Road, Cambridge, CB2 1EN, UK

Tel: +44 (0)1223 360975

Fax: +44 (0)1223 359048

Email: mail@forestsmonitor.org

Web: www.forestsmonitor.org