

Policy pointers

Rising private sector demand for long-term REDD+ projects in DRC makes defining carbon rights — their ownership and how they might be transferred and taxed — an urgent need.

Rights to provisioning services (for food, fuel etc) are well established, as are rights to supporting ecosystem services (for example, soil fertility for agriculture). But rights to regulatory ecosystem services (such as carbon storage) need clarification.

New categories of carbon rights could build logically from DRC's existing forest classification system and could help provide the incentive for long term sustainability.

Government, with private sector and community support, must design more inclusive models for REDD+ that address the underlying causes of forest loss and recognise wider rights to carbon — and hence to REDD+ benefits.

REDD+ and rights: extending carbon rights in the DRC to climate-regulating services

In the Democratic Republic of Congo (DRC) the state has ultimate ownership rights to all resources, adjudicating land use rights and revoking them if public interest demands. Community rights, although weak, are acknowledged in a dual system of tenure and resource rights. This is the legal environment within which REDD+ projects are exploring climate change mitigation through more sustainable land use practices. But REDD+ requires long-term commitment from land users, and commitment needs secure rights. DRC has introduced carbon rights agreements and a fiscal system into contracts for private sector investment in REDD+ but clarity on how (or whether) carbon rights can be transferred, and careful assessments of existing local interests will be needed to scale up REDD+ projects to a successful national approach.

Resource rich but poverty rates are high

The Democratic Republic of Congo (DRC) has the world's second largest tropical forest and plays a key role in global efforts to mitigate climate change. Sixty three per cent of DRC's surface area — 2.3 million km² — is covered with highly biodiverse forests. With some 80 million hectares of arable land, the country also has very high agricultural potential, as well as extensive water and mineral resources.

Despite these natural capital riches, DRC is still a very poor country, with most of its almost 70 million people living in poverty and a per capita GDP of US\$220 a year. Both its urban and rural populations depend on forest products for food, medicine, building materials, employment and income: 85 per cent of the population uses biomass energy and there are over 8,000 artisanal logging operators in the country.

Although at 0.27 per cent the estimated deforestation is still relatively low, the new-found peace in the country, together with rampant small-scale logging activities, a growing portfolio of investments in extractive industries and increasing infrastructure, could see this situation change rapidly in coming years. With land being sold at US\$300 per hectare for investment in large-scale agriculture, the risks will be very real, if they are not urgently addressed.

Drivers, causes and strategic actions for REDD+ in DRC

With support from bilateral and multilateral agencies — including the United Nations REDD programme, the Forest Carbon Partnership Facility, the Forest Investment Program and the Congo Basin Forest Fund — the DRC government has been developing a 'readiness process and strategy' to address the factors

driving deforestation and forest degradation while also setting up a pathway to low-carbon sustainable development.

The government has approved its REDD+ framework strategy, which identifies slash and burn agriculture, artisanal logging, bush fires and reliance on biomass energy as directly driving deforestation and forest degradation. The underlying causes include

the increasing population, rural-urban migration (creating higher demand for forest consumables), institutions weakened by political instability, other governance issues, ill-planned infrastructure development, high unemployment and poverty.

In order to address these the REDD+ framework strategy identifies seven pillars: land use planning, addressing sectorial drivers in agriculture, forest and energy, and dealing with demographics, land tenure and governance. REDD+ is seen as an opportunity to avoid increased deforestation and forest degradation while also delivering co-benefits such as reducing poverty.

Resources rights in DRC's legal system

Like many countries, DRC's constitution confers ownership of all natural resources above and below ground on the state. Furthermore, Land Law No. 73-021 of 20 July 1973 stresses that all property of the state is exclusive, inalienable and imprescriptible. As such, the government holds the power to adjudicate on the use of land and other natural resources on all levels – individual, collective, commercial and non-commercial. It has the power to grant user rights in 'perpetual' or 'ordinary' concessions. All Congolese nationals can acquire either type of concession; perpetual rights are transferrable and can be inherited by nationals. Non-nationals can hold ordinary or standard concessions, which grant use rights for up to 25 years and are renewable, provided that agreed use plans have been carried out.

The DRC government, like other national governments, licenses land use rights for investment with the aim of maximising crop and livestock production, basing decisions on land potential, soil fertility and water availability. Royalties charged to land uses — part of the tax system — are generally area based. Licences for forest harvesting activities require royalties paid per cubic metre of timber or per area harvested. The extent of access to forest resources in DRC is determined by whether the forest in question is a protected forest (note that these have no specific conservation role), a forest in permanent

production, or a 'classified or gazetted' forest reserve. The latter are generally managed for biodiversity conservation, but with rural communities also using and managing the resources, while the former two allow extraction according to previously agreed management plans.

Through the licensing process, the government grants users access and rights to provisioning and supporting services (see Figure 2). But although the DRC legal system has clear sustainability requirements — for example, development of plans for land and forest management — in reality these are rarely met. Weak governance and law enforcement capacity mean there is little incentive to meet obligations.

Customary and community rights

As explained, the state holds formal resource ownership and has the power to allocate resources and the prerogative to revoke rights in the public interest. But in reality, there is a dual system of rights: *de jure* rights as issued by the state and *de facto* rights as based on customary norms. The Land Law and the 2002 Forest Code both acknowledge the role of customary law in land allocation, particularly in rural areas. In practice, claimed but undocumented rights, attributed to customary institutions such as the traditional authority represented by the chief, are often prevalent. Although this provides people with access and use rights over their local resources, customary norms in DRC (as in many countries) do not always deliver equity: women and internal migrants are particularly disadvantaged. Local administrations and customary chiefs may also take contradictory stances on management and benefit sharing at the local level.

And while there are clear legal provisions for private sector access and resource use rights, this is not the case when it comes to community rights, particularly for the regulatory ecosystem services that carbon provides (for example climate change mitigation). In DRC a legal instrument regulating community rights is still awaited.

Rights can help ensure regulatory services

In some countries, participatory forest management has paved the way to stronger devolved resource rights for local communities that in turn encourage sustainable practices. Community gains were derived from income-generating activities based on exploration of provisioning services. But it was paying for other ecosystem services (for instance, watersheds

The government must design more inclusive models for REDD+

and biodiversity) that brought with it the notion of accounting and compensating for ecosystem services with regulatory functions.

REDD+, as a mechanism for compensating countries for reducing emissions from land use and land use change, builds on payments for ecosystem services. Carbon becomes an important metric for measuring performance. Yet while the markets for resources from provisioning and supporting ecosystem services are well developed — timber and food prices are clear, buyers and sellers know where the market place is — the same cannot be said of the intangible benefits associated with regulating services.

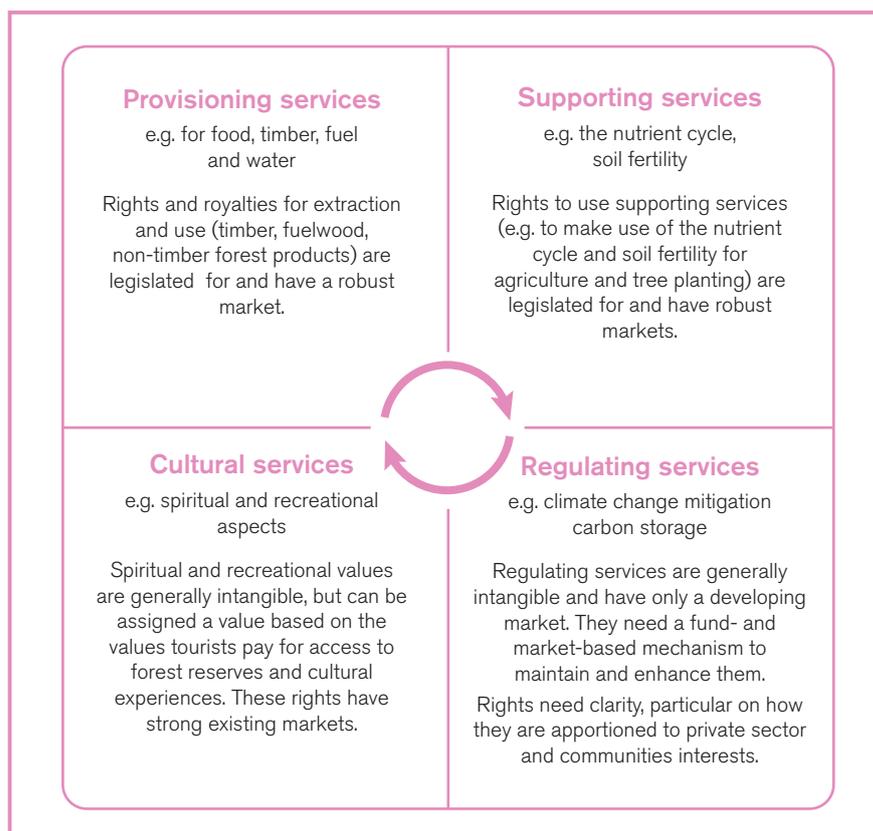
Global and national discussions about regulating services revolve around how to measure, report, verify and safeguard against impacts on people and resources, and around whether a fund and/or a market-based mechanism can compensate countries and land users for forgoing emissions. In several countries (including DRC) national 'readiness processes' are grappling with issues such as defining how existing legislation on land and forest rights can encompass carbon rights, or whether legislation needs reforming to make rights and obligations explicitly include carbon and climate change mitigation.

Risks and opportunities of assigning carbon rights

The DRC government currently adjudicates carbon rights using similar legal provisions to those used for managing forest concessions. This has resulted in the explicit and implicit conversion of logging concessions into conservation concessions (where carbon stocks are maintained). This has enabled REDD+ implementation, and carbon rights agreements have been signed with the private sector. These agreements also include obligations such as taxation (based on net revenue from selling carbon credits) and social agreements for establishing benefits with local communities. But challenges remain.

The areas suffering deforestation and forest degradation are often under pressure to meet varying land users' needs. Although local communities tend to be treated as homogenous entities, in reality they represent a collection of people with diverse interests, some of whom are involved in medium- and small-scale businesses that affect forest cover. Therefore, although it is important for REDD+ proposals to consult with communities and establish agreements for social infrastructure it is equally important to understand and differentiate the clusters of interests within the landscape.

Figure 2. Forest resources and rights.



To some extent, income-generating activities — such as improved agricultural production systems, more efficient biomass energy production and sustainable fishing techniques — offer direct income benefits to communities that can then sell tangible products to replace carbon-emitting activities they forgo. But these benefits do not necessarily offer all local people sufficient additional incentives to ensure sustainability. So it is important to capitalise on land use planning, which is part of REDD+ piloting, to map competing and complementary rights to land and forests in order to determine the optimum sharing of rights and resultant benefits.

Negotiated rights and commitments to sustainable practices should form the basis for establishing a shareholders' structure in REDD+ projects, and thus mobilise collective performance monitoring to ensure carbon credits are generated. Of course, such negotiation should also be informed by the costs of changing land use, and of assessing and monitoring carbon stocks (including verification of performance based on reduced emissions reduction and generated co-benefits). Consultation, participatory planning and agreements can yield this understanding and help build partnerships for REDD+ implementation, which in turn can secure greater commitment from all land users and those involved in trading carbon.

Exclusion and access

Such an approach would also address the issue of who can be excluded from a REDD+ project area, particularly where for-profit companies are involved. There is risk that high value timber production forests, where private interests can easily acquire rights, become 'conservation' forests that are used only to maintain carbon stocks and are no longer managed primarily by the state. The right of exclusion needs careful consideration when converting logging concessions into REDD+ or when private sector (voluntary and for profit) and other players acquire REDD+ concessions. Although conservation forest concessions are an interesting development, they can also marginalise local populations and Indigenous People. In a vast country like DRC, limiting access and resource use within REDD+ projects may only displace undesirable activities elsewhere.

Clarity on carbon rights

Security of land, forests and carbon rights is important for any long-term investment (especially in climate change mitigation) and for sustainable resource use and management. Government agencies, NGOs and private sector companies are testing REDD+ across the DRC's various forest landscapes, and in this context, it is important to address the insecurity of rights that can further drive deforestation and forest degradation.

A legal instrument (policy, law/regulation/decreed) is needed to specify whether and how carbon rights can be acquired or indeed transferred. Potential categories of carbon rights might include:

- **Carbon rights in sustainably managed logging areas (such as in permanent production forests).** These could provide an added incentive for small, medium and large logging companies to harvest sustainably where they hold long-term rights. Certification schemes that include verifiable contribution to reducing emissions can ensure an added premium through non-fiscal incentives offered by governments (access to niche markets with demand-side measure to reducing deforestation).
- **Carbon rights in areas of high biodiversity and high carbon stocks (such as gazetted forest reserves).** Maintaining carbon stocks depends on government and local

communities, with the voluntary sector playing a key facilitation role. But how should rights and benefits be shared between government and communities? An incentive would be to apportion a large percentage of performance based payments to local communities.

- **Carbon rights in landscapes where the forests compete with several other land uses and users (multiple use forests, termed 'protected' in DRC legislation).** In these areas, customary norms are the main way to secure access to resources. In this context it is important to define rights to carbon maintained in forests through deliberate conservation efforts. Carbon rights in such landscapes should include rights in natural forests or plantations where there is restoration or rehabilitation, or where efforts are being made to make agriculture more productive (and so use less forest land) or to make biomass energy extraction more efficient. Players in these cases include communities, and the private sector (large and small).

Such a categorisation of carbon rights uses and users builds easily from DRC's current classification of forests. Monitoring, reporting and verification, and forest carbon information systems can further refine the carbon stocks categories. Clarifying carbon rights in this way is likely to be a key incentive for land users to keep carbon in the landscape.

REDD+ projects in DRC are already exploring these issues of rights and access through existing forest legislation, conservation concessions and social agreements, and this exploration is part of essential learning about how REDD+ works on the ground. For this learning to be scaled up to sub-national and national levels, the government, with support from the private sector (voluntary and for-profit) and communities, must design more inclusive models for REDD+ initiatives that include local communities in addressing the rivers and underlying causes of forest degradation, and in establishing the rights to REDD+ benefits.

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Further reading

Ministère de l'Environnement, de la Conservation de la Nature et du Tourisme. 2009. *Potentiel REDD+ de la RDC*. Kinshasa, DRC. / Ministère de l'Environnement, de la Conservation de la Nature et du Tourisme. 2012. *Synthèse des études sur les causes de la déforestation et de la dégradation des forêts en République Démocratique du Congo, Version finale, Août 2012*. Kinshasa, DRC