

# Conditions for successful sustainable land use in the Congo Basin: securing forests and vital areas (focus on forest-mining interactions)

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## 1. Introduction

Spatial planning (SP) is a technique for organising human activities in a defined geographical area, based on a long-term objective. It is a political vision aimed at strengthening the social cohesion of this space at different scales. This territorial organisation defines zones and sub-territories on a smaller scale and sets objectives for each of them in accordance with the overall TA long-term objective (Guizol et al., 2022).

Over the last few years, however, due to the awareness of the climate crisis and the limitation of resources (natural resources, arable land, etc.), the practice of spatial planning is increasingly characterised by the inclusion of environmental sustainability objectives in traditional strategic planning (Stürck et al., 2018).

Besides traditional themes such as resource exploitation, economic development and the reduction of planning imbalances, modern TA objectives thus often include 'environmental conservation, limiting urban expansion, reducing transport costs, preventing current and future land use conflicts, and reducing exposure to pollutants (including greenhouse gases)' (Acworth and Douard, 2021).

Nevertheless, it is important to stress that, globally, "TA is not just about rural planning or environmental protection, but prioritises the distribution of people, activities, facilities and communications across the country. Although environmental protection may be an element of this planning, it is only one objective among others" (Acworth and Douard, 2021). In short, TA is a process of regulating land use by a central authority (though at various levels of territorial governance), usually with the aim of promoting better social and environmental outcomes and more efficient use of resources.

Today, Central Africa, a region with forests that have long been spared, is increasingly affected by deforestation (FAO, 2020). In fact, in Central Africa, the drivers of deforestation are getting out of control: the population is growing very rapidly, cities are spreading out, leading to a growing demand for agricultural or forest products (wood energy, timber) on domestic markets, and new road networks are facilitating the exploitation of forest resources for wood, but especially to access land and develop agriculture (Marien et al., 2013). A new organisation of spaces would be necessary to produce food, wood, energy and fibres at the same time as preserving the ecosystems that provide the water and regulation services essential to the resilience of productive spaces and the well-being of populations (Nyström et al., 2019). Spatial planning is one of the key instruments to achieve this.

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The authors of the paper propose a number of conditions for success in meeting these challenges. They also present recommendations targeted at members and partners of the Congo Basin Forest Partnership (CBFP), highlighting concrete steps to facilitate the acceleration of implementation of both the COMIFAC ([Yaoundé Declaration, 1999](#)) and Glasgow ([Glasgow Leaders' Declaration on Forests and Land Use, 2021](#)) declarations.

## 2. The challenges

### Challenge 1: Lack of consensus on the purpose, processes and tools of spatial planning

The scope and objectives of spatial planning processes are hotly debated, with differing opinions on the articulation between the different planning tools (schemes, zoning and plans).

Spatial planning is about planning the distribution of infrastructure, providing public services, building interconnectivity between supply areas and markets, and correcting socio-economic imbalances between regions. However, TA also goes beyond the historical and rather reductive sectoral zoning exercises that have predominated until fairly recently in Central Africa, whether it be forestry, mining, agricultural or conservation (protected areas) zoning. It is basically a multi-sectoral and spatialised planning of development (or sustainable development if environmental concerns are adequately integrated).

The difficulty in reaching consensus on the appropriate balance between (i) strategic planning at the central level and (ii) decentralised decision-making on land use is not surprising: government staff in charge of spatial planning issues as well as their possible international technical advisors have been trained in different countries, often European or Western, each with divergent and evolving policies on spatial planning systems, more or less decentralised (OECD, 2017; Broaddus, 2020). TA actors at central and decentralised levels also have very different conceptions of the scope of the TA exercise at the central level, having to focus a priori on the main strategic priorities and resisting the temptation to redefine land use too precisely at the local level, at the risk of neglecting local realities and creating conflicts.

This note is limited to issues concerning the use of rural space and ways of allocating and securing land for multiple uses, including the impact of land-use planning processes on forest areas. However, it is essential to address these substantive issues in order to move forward in an integrated way in the field of spatial planning.

### Challenge 2: Lack of clarity in the articulation between spatial and operational planning linked to weak inter-sectoral coordination

when it comes to the subject of planning, at whatever geographical level, there is a lack of understanding among stakeholders of the relationship between (i) short-term operational planning and (ii) spatial planning as a projection of land and investment needs in the medium term.

Operational planning has rightly been widely prioritised by public policies in recent decades. There are thus National Development Plans in several countries of the sub-region, and development plans for the various levels of decentralised territorial authorities (DTAs) in those that have started decentralisation. However, there is a clear imbalance with regard to land use planning and the corresponding spatial planning documents, often to the detriment of the sustainable management of natural resources.

Although some countries have started to prepare spatial planning schemes at national and regional (Cameroon) / provincial (DRC) level, they are not concluded, and often give insufficiently clear or detailed policy guidance for the sustainable development of specific lands or sectors. They need to be clearer in terms of policies and principles to guide local planning, but avoid being too spatially specific - i.e., avoid defining land allocation centrally. All land allocations should only be made on the basis of local land use plans, ESAs and FPICs obtained from local stakeholders. In addition, they have not effectively resolved current or foreseeable conflicts between sectoral policies and the level of ambition proposed by different ministries in the limited national space through a process of arbitration between state agencies and with other stakeholders. This is linked, among other things, to the historical weakness of cross-sectoral coordination in some countries: ministerial responsibilities for these issues are often separated and there are few suitable or functional

opportunities for dialogue, or when they do exist, they lack the necessary functional arbitration mechanisms (i.e., well-defined in terms of process and level of responsibility) for reconciling or definitively deciding between competing interests.

For example, in the Republic of Congo, the National Spatial Planning and Development Council (CNADT) as well as the Departmental Spatial Planning Commissions (CDAT) were created (Decrees No. 2017-226 and 228 of 7 July 2017). However, since its establishment, the CNADT has never met annually as provided for in its article 8, while only the CDATs of Brazzaville, Kouilou and Likouala organised the inaugural meeting of their respective commissions between 2018 and 2019.

In Cameroon, the Land Use Planning Law (2011) proposes a National Council for Land Planning, which has yet to be established. The law is often silent on national or decentralised mechanisms for arbitration between different land use sectors.

This lack of inter-sectoral coordination at the national level, but especially at the local level, is particularly acute when it comes to developing or updating (i) legislative and regulatory texts and (ii) methodological guides dedicated to the development of various sub-national planning documents (spatial or operational).

### Challenge 3: Decentralised Territorial Authorities (DTAs) with weak capacities, linked to a lack of effective decentralisation

In theory, decentralisation processes have been initiated in the majority of countries in the sub-region, sometimes for more than 20 years. In practice, these processes are still far from living up to their stated ambitions. This shows that there is still a strong tension between the principle of subsidiarity<sup>1</sup> and a technocratic tradition that is predominantly centralised. In practice, most of the subregion's local authorities have little or no decision-making power over the management of their areas, and/or the financial and human resources needed to exercise the competences that have been officially transferred to them, starting with the drafting of spatial planning documents that concern them.

Similarly, access to forward-looking planning tools (modelling, spatial projections, etc.) and the skills needed to make them operational are limited. Finally, in the majority of Congo Basin countries, since local level documents must be in conformity with higher level documents, the question arises of (i) the room for manoeuvre that can effectively be exercised at the smallest geographical level, and (ii) the enforceability of these documents against third parties. Decentralisation is thus at the heart of the debate on the implementation approach to spatial planning, and of the capacity-building efforts needed to establish a real culture and practice of TA at local level.

### Challenge 4: Local stakeholders not well informed and involved in the actual planning choices

Stakeholder participation in territorial planning processes, when it exists, is rarely effective and often late, at a stage of the process when the real strategic choices have already been made, as most legal frameworks for spatial planning define a top-down process where National and Regional Plans at the higher-level orient and inform the content of lower-level plans.

Furthermore, there are often significant information asymmetries between stakeholders, between institutional actors or organised company representatives, on the one hand, and various local actors on the other. In addition to maps of land use, land suitability, mineral deposits and other natural resources, another type of information tends to be lacking: (i) realistic projections of land needs over the next 30+ years (ii) socio-economic data on the real costs and benefits of different land use.

Options, by type of stakeholder. The impacts of planning choices in terms of employment or territorial food autonomy remain little considered compared to other economic or financial

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<sup>1</sup> Principle whereby a central authority can only perform those tasks that cannot be performed at the lower level.

considerations. Information asymmetries and the lack of effective participation of local actors, especially the most marginalised groups (women, young people, indigenous peoples), then become the breeding ground for future conflicts and the lack of local support for the decisions taken, which are perceived at best as technocratic and at worst as opaque and unfair.

### Challenge 5: Inadequate legal categories and procedures for implementing permanent forest heritage and securing rural space for indigenous peoples and local communities (PACL)

The objectives of land-use planning, and in particular the process of macro-/meso-/ micro-zoning, vary considerably between stakeholders, especially in highly forested countries. For LACs living in rural areas, often very close to forests, securing communal land (as distinct from private property) for their own present and future use remains almost impossible in most countries of the Congo Basin, apart from those - including the DRC - that have made the courageous decision to give the right to manage these areas to customary owners through Forest Concessions for Local Communities (CFCL)<sup>2</sup>.

For states and their technical and financial partners (TFPs) wishing to support the zoning and securing of forests for sustainable use, the establishment of a permanent forest estate or patrimony (PFP)<sup>3</sup> is a central point in land-use planning processes. Because of the absence - in some countries of the Congo Basin, such as the DRC - of a PFP category under land allocation in the forest law, the legislation does not allow for the allocation of land to a dominant forest use (as opposed to the allocation of rights to *legal or physical persons*) over a significant area of the territory, and thus to meet an ecological purpose (Karsenty, 2018).

Second, the enforcement of a PFP land use category, where it exists, is often hampered by a lack of adequate legal and administrative procedures to ensure the rule of law and the legitimate enforcement of statutes, including classification, registration, recording and registration of properties in the land registry.

### Challenge 6: Impact of extractive industries (mining and hydrocarbons) on deforestation and biodiversity

Although its current footprint as a direct driver of deforestation and degradation still seems minimal compared to others<sup>4</sup>, extractive industries continue to present a major social and environmental risk in the Congo Basin, despite their central role in terms of GDP and foreign exchange earnings. In addressing this challenge, it is fundamental to distinguish between industrial/semi-mechanised mining, on the one hand, and artisanal mining on the other.

Although artisanal mining in the Congo Basin is rarely practised in a sustainable manner, its impact on deforestation remains limited, given its small scale and the limited amount of infrastructure built. Negative impacts are generally related to working conditions (including child labour), unfair remuneration practices (sometimes by mine owners, other times by value chain actors such as

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<sup>2</sup> Legal basis for community forests is established by Article 22 of the 2002 Forestry Code, and by Decree No. 14/018 of 2 August 2014 and Order No. 025 of 9 February 2016 establishing the process for the allocation and management of CFCLs, respectively. <https://rdc.geocfcl.org/>

<sup>3</sup> The PFP concept "should not be confused with an integral conservation area, since its objective is not to prevent human activities, only to restrict activities resulting in a loss of forest cover. It is therefore possible to achieve sustainable use of the forests, whether through conservation (including ecotourism activities and REDD+ projects) or through sustainable exploitation of timber and non-timber products. [...] Nor should we fall into the illusion of 'actualisation'. It is neither possible nor desirable to prevent the encroachment of small-scale agriculture or charcoal mining into the PFP, which should instead be accompanied by sustainable practices. Similarly, it is unrealistic to imagine preventing mining and oil exploration [...], which is a source of very high short-term profits. On the other hand, the PFP could make it possible to require in-depth impact studies that take full account of the short-, medium- and long-term impact on the forest, and not only mitigation of impacts but also ecological compensation (restoration of ecosystems that have been degraded elsewhere) and substantial financial compensation. These financial compensations would be used to feed the national REDD+ Fund to finance REDD+ activities throughout the country." (DRC National REDD+ Strategy. MEDD, 2013)

<sup>4</sup> Tyukavina, A., Hansen, M. C., Potapov, P. Parker, D., Okpa, C., Stehman, S. V., Kommareddy, I., Turubanova, S. (2018). Congo Basin forest loss dominated by increasing smallholder clearing. *Sci. Adv.* 4, eaat2993 (2018). <https://www.science.org/doi/10.1126/sciadv.aat2993>

aggregators, traders and refiners), the use of toxic chemicals which pose problems for both human health and the environment (including waterways), gender-based violence and (sometimes violent) government repression of artisanal miners. Illegal mining and the large profits made by the ringleaders also lead to local conflicts between rival factions and make large areas too dangerous for state representatives such as protected area managers and their international partners to operate in safety.

On the other hand, 'semi-mechanised' and large-scale mining, oil extraction and related infrastructure (factories/refineries, railways, ports, etc.) and the impacts induced by the installation of major projects present greater risks for the forests of the Congo Basin. This is despite the greater resources and organisational capacities of the entities involved, and the significant risks in terms of the image (at least for the most exposed actors).

Without effective control, mining activities at any scale impact on wildlife through hunting - a means of providing meat to miners' camps in remote forest areas. The integration of the mining sector into overall development plans, the pooling of infrastructure related to mining projects, and the creation of no-go zones for mining are avenues for policy makers to pursue.

Currently, the major problem with most mining laws is that they allow mining exploration almost anywhere in a country and that exploration takes place before or without an environmental impact assessment and stakeholder consultation process (which may or may not include a Free, Prior and Informed Consent - FPIC - procedure), as well as without taking into account pre-existing land uses and outside the bounds of any land-use plan. Semi-mechanised' mining often creates impacts as significant as industrial mining, but without the imposition of equivalent socio-environmental safeguards.

No country in the Congo Basin currently requires FPIC in its mining legislation, although CAR has ratified ILO 169, which requires FPIC for mining in indigenous territories, and the ECOWAS regional mining code requires all member states to implement FPIC in their national mining legislation. The lack of meaningful consultation with communities surrounding mining projects is often the source of social tensions.

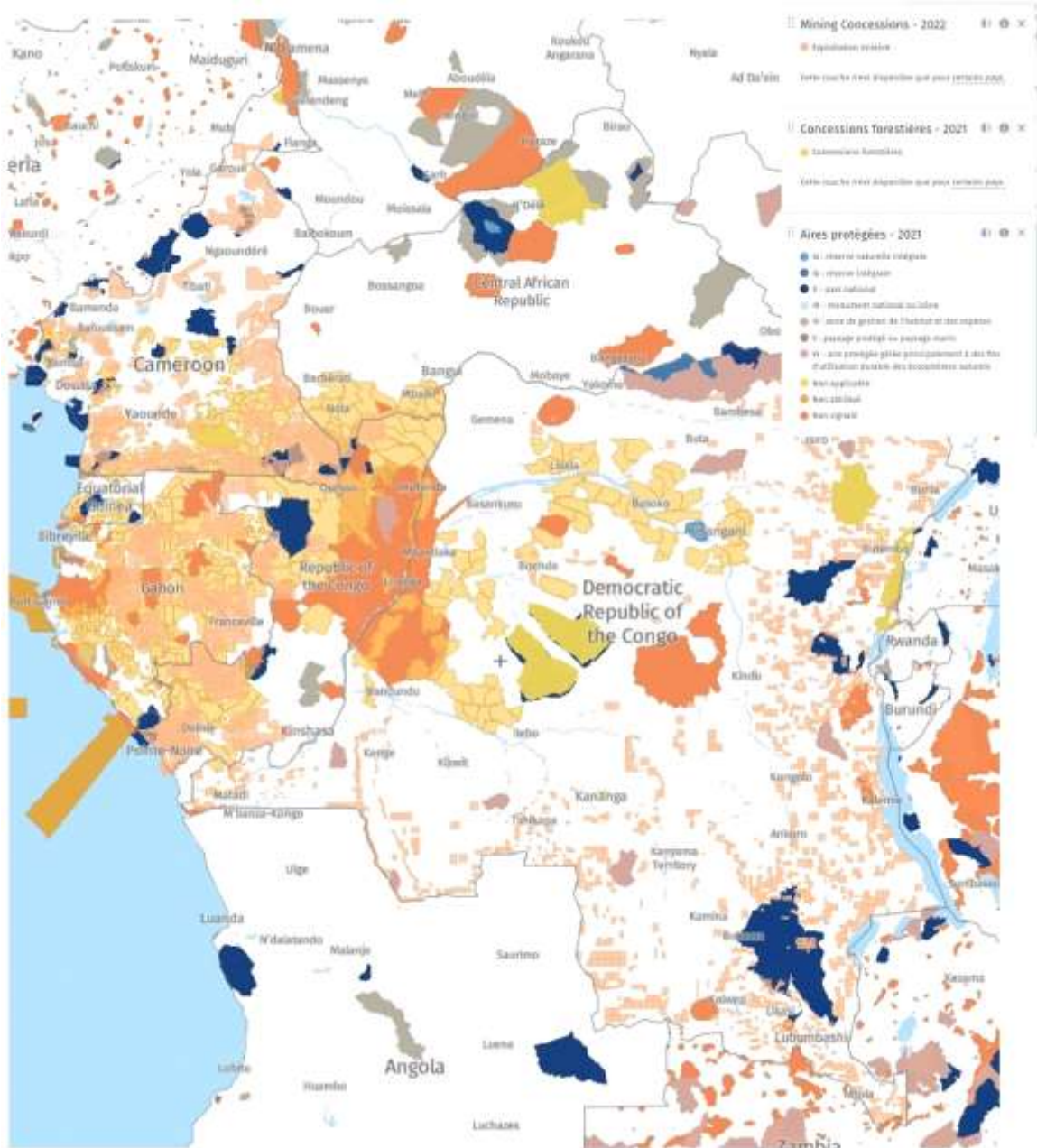
This is in stark contrast to the licensing of other large-scale investments in commodities at risk of deforestation, such as industrial palms, rubber and soy plantations, large infrastructure, logging, etc. (procedures applied to varying degrees). The laws of the Congo Basin countries only allow logging activities to be carried out within a published auctioned permit area, and a large plantation to be developed only after a concession or long lease and preliminary environmental studies have been completed. In contrast, in the mining sector, an operator can, in many cases, simply apply for a permit within a given area and then start exploration activities.

Numerous industrial mining permits granted in recent decades overlay existing rights and allocations in forest areas and several countries in the Congo Basin provide for oil exploitation within protected areas.

This makes exploration and mining the default land-use sector by law. Although limited in practice in some countries such as Cameroon, there is nothing to prevent its rapid expansion into forest areas. While governments can in theory reject mining licences on environmental grounds, this remains very difficult to do in practice, not least because of the threat of international arbitration.



Figure 2: Map of Mining Permits overlaid on Protected Areas and Forest Concessions in the Congo Basin



Source: Global Forest Watch: <https://gfw.global/3nx8EXS>

### 3. Conditions for Success

An adequate and efficient response to the challenges presented will depend on a number of important conditions for success being in place.

#### Condition for Success 1: Create formalised spaces for dialogue and coordination to standardise spatial planning concepts and principles.

These dialogue frameworks can help to clarify terminology as well as the objectives, scope, horizontal (between sectors) and vertical (between central and decentralised levels of government) articulation and enforceability of land use planning instruments. They can also provide an opportunity to share experiences on the development and effective implementation of land-use plans, to learn from successes and failures.

According to the most progressive conceptions of decentralisation, national and regional plans should have a strategic scope and provide guidelines for the future development of the area, but should avoid leading to spatially too precise allocations, thus leaving it to local authorities to carry out fine spatial planning.

### Condition for Success 2: Break out of sectoral logic

Land use planning and sectoral zoning cannot be carried out in isolation. The various sectoral land-using ministries need to spatially project their strategic planning while ensuring coherence with other sectors: Ministries of Agriculture and Livestock must plan to ensure national food security in the context of a rapidly growing national population, as well as to satisfy a growing demand for agricultural products for international markets, all reinforced by a strong evolution of national and international food habits; Ministries of Mines are promoting mining as a key sector to stimulate economic growth; Ministries of Forestry are seeking to meet national and international demand for forest products; and more recently, Ministries of Environment are seeking to protect biodiversity and maintain or increase forest carbon stocks to meet global climate change mitigation ambitions.

Land-use planning in this complex environment necessarily requires trade-offs where optimisation of the costs and net benefits of different land-use scenarios must be achieved through careful and continuous arbitration between competing interests.

As a cross-cutting theme by excellence, spatial planning cannot remain the prerogative of a single ministry or central authority without sharing responsibilities in this area and arbitration between them. In order to overcome the sectoral approaches that are still very prevalent in the sub-region (approaches that are often maintained by a lack of coordination between technical and financial partners), it would be wise to rely on particularly structuring activities, starting with (i) modelling of medium- and long-term land demand to meet local and national socio-economic needs, in order to guide trade-offs between sectoral, national and international objectives, which are often in competition with each other; (ii) modelling of the positive and negative impacts of various development scenarios of the structuring communication axes, in terms of enhancing the country's productive potential, developing the population and preserving natural resources (which in turn enable the preservation of the country's productive capital); (iii) recognition by the international community that a process of optimising land and resource use in favour of the preservation of global public goods will only be translated into action if the real opportunity costs of restricting the uses of the most valuable forests (based on a simplification of the emerging concepts of High Conservation Value<sup>5</sup> and the High Carbon Stock Approach<sup>6</sup> are adequately compensated. The notion of subsidies as an incentive policy tool is very well understood in other countries, but not yet realised in Central Africa - an issue that needs to be addressed urgently.

Once these prerequisites have been achieved, the legislative and regulatory texts dedicated to spatial planning, development (sectoral and multisectoral) and decentralisation need to be made coherent in order to translate these basic principles into action and to achieve an optimisation of the allocation of space in response to global issues, accompanied by appropriate incentives in this respect. Ideally carried out under the aegis of the primatures or high-level (decision-making) bodies with a multi-sectoral mandate to facilitate any necessary arbitration, it is then necessary to complete and/or update the panoply of methodological guides dedicated to the elaboration of the various national framework documents.

In order to facilitate this substantive multi-sectoral work, it would also be necessary to create adequate spaces for dialogue and coordination at national level, but especially at decentralised level, and/or to make functional the possible spaces for dialogue that are already foreseen but that currently only exist in theory.

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<sup>5</sup> HCV Network. <https://www.hcvnetwork.org/who-we-are>

<sup>6</sup> "High Carbon Stock Approach - <https://highcarbonstock.org/>



### Condition for Success 3: Visibility and enforceability against third parties of spatial planning documents drawn up at the level of decentralised territorial authorities

spatial planning efforts at decentralised levels could be further encouraged in two complementary ways: (1) by guaranteeing the enforceability against third parties of completed local development plans (i.e. duly validated according to the laws of the country) and (2) by offering national visibility on a national information platform listing all the territories with genuine spatial planning (information that is increasingly valued by certain economic actors wishing to locate their supply chains in territories benefiting from good governance). The opposability to third parties would allow, for example, a local authority to enforce the local development plan of its territory in the face of possible projects contrary to local priorities (including possible land grabbing phenomena) by external investors. In order to inform the various stakeholders in a transparent manner, it would therefore be necessary to rely on institutional and public mapping platforms, such as the Common Mapping Platform developed in Cameroon by the Ministry of Economy, Planning and Land Management (MINEPAT) to include layers dedicated to land use planning and the corresponding land allocations.

In fact, the recent experience of developing a methodological guide for the elaboration of local land use and sustainable development plans (PLADDT) in Cameroon has shown that the State is not necessarily yet ready to make these plans enforceable against third parties. The Ministries concerned insist that the allocations proposed in the PLADDT are not binding and will only become enforceable after (i) a classification process as defined in the sectoral legal texts; and then (ii) their registration in the land register. This represents a major obstacle to local, multi-sectoral and multi-stakeholder land-use planning serving as a mechanism for negotiating and securing forests and other lands for specific uses in the short to medium term. In Cameroon, DRC and other countries, national and international civil society has called on the government to create a single cadastre for the conservation of all titles, regardless of sector. This would oblige the entity in charge of the cadastre to identify conflicts and overlaps of use and to resolve them before granting a title.

### Condition for Success 4: Build Capacity for Participatory Spatial Planning

In a context of demographic and economic growth, on the one hand, and scarcity of natural and land resources, on the other hand, the needs in spatial planning are immense and growing. In this context, it is important to strengthen the capacities of specialised administrations, particularly at the level of decentralised and deconcentrated administrations. It is essential and possible to make spatial planning less technocratic and more accessible by mobilising local capacities, particularly in terms of facilitating multi-sectoral and multi-actor dialogues and analysing local socio-economic data prior to planning choices.

A new profession of "Local Facilitator in Land Use Planning" needs to be designed, developed, supported and deployed in territories where land conflicts and tensions over resources are most acute. These local facilitators can now be rapidly equipped with accessible and free tools that promote the sharing and analysis of useful information and the participation of stakeholders - such as, for example, the [Land-use Planner](#) tool made available free of charge by the European Forest Institute and used in various participatory planning processes in Cameroon and the Republic of Congo.

### Condition for Success 5: Clarification of the dualism between customary and written land tenure

Effective land use planning requires clarification of the dualism between the different customary and written land tenure systems. Such a clarification can be made in several ways: (i) either by choosing one right-holder and excluding the other, following the logic of the land title/individual property (ii) or by recognising superimposed, potentially non-competing rights, and organising the inclusive

management of these rights through the lens of the landscape and not sectoral governance (iii) or by recognising that each village owns its traditional land, without any prior formality being necessary. The collective land title would attest to the recognition of collective ownership of the community over inalienable land. The acquisition of rights, licences or permits (for land, resource extraction, and the creation of protected areas) would require the prior consultation and consent of the communities as provided for by good practice and international law.

The latter approach requires legal reforms to enable recognition of customary land in cadastral systems, once adequate cadastral systems are in place. Once this condition is met, in a context of significant social change and development, a consensual land tenure system is essential to curb legal constraints on customary land. Participatory mapping of customary use areas and management based on support and mediation platforms (customary land commissions, which should be developed and consolidated) appear to be key instruments in this respect.

This delimitation and recognition of customary lands must also take into account the specificities of indigenous peoples in their way of life and needs and the commitments made by States at the regional/international level. At present, several legal systems in Central Africa currently only recognise property, concessions or use rights regimes, and indigenous peoples are unlikely to be granted property rights to protect their traditional lands. It will therefore be important to establish procedures in these national legal systems to recognise indigenous peoples' rights to resource use and land ownership. In some cases, community forest concessions will be the most appropriate solution; in others, it will be expanded use rights (see the concept of resource use rights) superimposed on other compatible rights (in concessions and protected areas).

#### Condition for Success 6: Implementation of legal procedures for the enforcement of a permanent forest heritage (PFP) for land use planning and introduction of mechanisms for securing vital areas for indigenous peoples and local communities (PACL)

The existence of a land-use planning category of PFP in the relevant national legislation is crucial for the sustainable use of forest land. Similarly, a legal category for allocating land for the exclusive collective use of local communities is also needed. Karsenty and Vermeulen (2016) propose an approach for forest concessions, which can be used for some Category 5 (protected landscapes) and 6 (protected areas with sustainable use of natural resources) protected areas.

Karsenty (forthcoming) presents the following classic steps used in the top-down macro/meso/micro forest zoning process, applied in several Congo Basin countries in the past for the establishment of a PFP. At each level the proposals made should be subject to consultation and refinement. At the local level, in accordance with international and national human rights law, free, prior and informed consent (FPIC) must be obtained before the official publication. Once the zoning is done, registration, legally establishing the PFP, is carried out through acts based on legal procedures and international standards (such as FPIC), in order to establish a forestry cadastre. However, the principle of FPIC is often not respected as few but the boldest Indigenous Peoples and Local Communities (IPLCs) can in practice reject such a proposal from higher levels of government. Finally, the allocation of management/conservation units to individuals or corporate bodies through competitive bidding or by mutual agreement, depending on the statutes, thus producing concession titles, etc., is often not respected.

In this context, in order to establish the PFP-in-law, it is essential to ensure the respect of the rule of law and the implementation of legal and administrative procedures to establish the categories of land use planning adapted to the country, in particular for the classification, registration, recording of properties in the land registry. Although the overall spatial planning process is not limited to its legal dimension, spatial plans need to be legally translated and established in law according to established procedures. Therefore, the systematisation of procedures should be a priority (e.g., the classification of forest management units, not completed in Cameroon and not undertaken in other countries of

the sub-region). These procedures imply, inter alia, consultation with resource users and the possibility of opposition, etc. A cadastre without procedures does not allow the rule of law.

As part of the steps described above, it is important to conduct participatory and multi-sectoral processes, tailored to national and local contexts, to define, identify and integrate the concept of *high-value forests (an important basis for defining the PFP)* into the legal regimes of the forest, land, agricultural and land-use sectors, as stipulated in the Letter of Intent signed between DRC and the Central African Forest Initiative in November 2021.

Finally, in order to successfully implement the steps described above, the needs and preferences of local communities as well as investors with regard to securing land for non-forest uses, including agricultural development, must be taken into account.

Below is an example of the process of anchoring Gabon's national land use plans in the national definitions of high conservation value (HCV) and high carbon stock (HCS) forests. In this context, it should be recalled that although there may be an emerging international consensus encouraging Congo Basin countries to identify and preserve their high-value forests (notably HCV/HSC forests), it is up to national governments and local people to decide which forests to protect, use for sustainable production, or convert to other uses, taking into account available international incentives. Gabon has chosen this approach, including with the support of CAFI and a performance-based payment mechanism for forest conservation; however, other countries in the sub-region may not be able to adopt such an approach without substantial economic incentives, technical support and capacity transfer.

#### **The experience of Gabon: A National Land Use Plan anchored in the national definitions of HCV and HSC forests**

With 88% forest cover, Gabon has a special status as a high forest density, low deforestation country, second in the world with regard to forest cover relative to national territory. The Gabonese government has played a leading role and has taken strong measures to protect its forests, such as the revision of its forestry code promulgated in 2001, which obliges forestry companies to subject their concessions to sustainable management.

Secondly, through its Letter of Intent signed with the Central African Forest Initiative (CAFI), Gabon committed to "develop and adopt national guidelines and definitions to ensure that High Conservation Value (HCV) and High Carbon Stock (HCS) forests are not converted to other uses, in line with emerging international consensus and best practice". To meet these commitments, the National Land Use Plan (currently being developed, supported through a CAFI-funded programme) "will be based on the principles of non-conversion of HSC and HVC forests, limited and carbon-neutral conversions of non-HSC/HVC forests, reduction of areas under forest concessions, reduction of emissions from logging and rural activities, and respect for customary land rights". Thus, the National Land Use Plan should 'allow the land to be allocated to different uses in an optimal manner, excluding as much as possible primary, HCV and HSC forests' (AFD and CNC/Gabon, 2018).

Finally, adopted by the Council of Ministers in November 2020, Gabon's National Directive on oil palm cultivation should serve as a guide for other crops in determining HCV/HSC areas. Thus, the country aims to ensure that agricultural expansion and mining developments avoid conversions of HCV and HSC areas as much as possible.

#### **Condition for success 7: Establishment of no-go zones and other measures to limit the impact of mining on forests**

As long as it remains difficult for states to refuse to grant mining licences on the basis of environmental risks, it is recommended that - in the short term - the creation of 'no-go' zones for mining is ensured where there are intact forest landscapes and areas essential for rural livelihoods. In

Cameroon, Articles 126-128 of the Mining Code<sup>7</sup> allow the government to do this, but implementation remains limited. In Gabon, Articles 124-126 of the Mining Code<sup>8</sup> give the government broad authority to prohibit mining, and the same is true of Article 6 of the Mining Code in the DRC<sup>9</sup>. Based on the results of land-use planning, some areas could be (re)opened for mining exploration/extraction and/or related infrastructure.

Actually, no country in the Congo Basin requires the payment of a carbon tax on deforestation in the mining sector, although most mining companies are willing to pay it. In this regulatory vacuum, some mining companies offer environmental offsets to compensate for the deforestation caused by their projects by preserving other forest areas. It should be noted that the compensation offered by companies, while not able to replace what has been destroyed on a scale large enough to meet the ambitions of forest countries, can serve as an incentive to minimise the damage caused by mining companies. Furthermore, according to recent studies (Bidaud et al., 2017), environmental offsets in forest areas may negatively affect the land rights of rural communities and the effectiveness of environmental offsets is questioned by academic studies (Kujala et al., 2022; Zu Ermgassen 2019; May et al. 2017).

Secondly, in the medium term, new legal reforms and tools (will be needed to): (i) introduce FPIC as standard practice in the mining sector prior to the granting of exploration licences in accordance with international law and state obligations; (ii) Ensure strong recognition of collective property rights in rural and forest areas (as in the Amazon, where the rate of deforestation has fallen as a result of communities' legal recognition of land and forests (Baragwanath and Bay, 2020)) so that communities can claim their land as their own in FPIC processes; (iii) deny companies conducting mineral exploration under a 'legitimate expectation' to develop mineral deposits, regardless of the social/environmental cost; (iv) explicitly prohibit mining in certain areas rather than the status quo of giving governments discretion to declare certain areas off limits; (v) better supervision of an investment in good practice in the artisanal sector and more repressive measures against destructive 'semi-mechanised' mining (vi) promotes the pooling of infrastructure related to mining projects (roads, paths, ports, power sources, etc.) to reduce the cumulative burden of the extractive sector on forests and community rights; and (vii) establish carbon taxes and other environmental compensation mechanisms as incentives for mining operators, recognising that these can be better framed in environmental than mining codes.

Finally, the introduction of the principles of green mining practices or *Forest Smart*<sup>10</sup> is essential. In Cameroon, the ACP-EU Minerals for Development Programme is developing a roadmap for the green development of the mining sector, for presentation to the Ministry of Mines, Industry and Technological Development (MINIMIDT).

## 4. Recommendations

The following recommendations are made on the basis of the challenges and requirements for success presented, with a view to enabling CBFP members and partners to take concrete steps to facilitate the acceleration of implementation of the COMIFAC ([Yaoundé Declaration, 1999](#)) and Glasgow ([Leaders' Declaration on Forests and Land Use, 2021](#)).

1. **Create spaces for formalised dialogue and coordination** to clarify the purpose, scope, horizontal (between sectors) and vertical (between levels of government - central and

<sup>7</sup> <https://www.droit-afrique.com/uploads/Cameroun-Code-minier-2016.pdf>

<sup>8</sup> <http://images.policy.mofcom.gov.cn/flaw/201007/d0c8da7a-194f-49ba-a012-b2411cbf8c8e.pdf>

<sup>9</sup>

<https://www.mines-rdc.cd/fr/wp-content/uploads/Code%20minier/1.O. n%C2%B0 spe%C3%ACcial du 28 mars 2018 CODE MINIER%20DE%20LA%20RDC.PDF>

<sup>10</sup> *Forest Smart Mining* is based on a development approach that recognises the importance of forests in supporting growth [...], and which] is sustainable and inclusive, [...] stresses that forests are part of a wider landscape and that changes in forest cover affect other land uses as well as the people living in that landscape. It transforms the way sectors operate by identifying opportunities for mutual benefit and creating practical solutions that can be implemented at scale" (IBRD/World Bank, 2019).

decentralised) articulation and enforceability of land use planning instruments, and to share experiences on the preparation and implementation of land-use plans, to learn from successes and failures.

2. **Integrate a category of *permanent forest heritage* under land-use planning into the national legislation of all countries in the Congo Basin**, and implement adequate legal procedures to constitute the permanent forest heritage-in-law and to achieve the constitution of cadastres constituting the rule of law, including classification.
3. **Develop a definition of high-value forests in the context of national participatory processes, followed by the systematic integration of these areas into land-use plans and policies.** The adoption of these definitions and their subsequent integration by TBCs require negotiation of incentives between international entities, the national government and TBCs.
4. **Carry out land reform, followed by the recognition of customary rights in official land-use planning processes where** adequate cadastral systems exist, or the recognition and inclusive management of overlapping rights.
5. **Adopt a decentralised approach to the development of local spatial plans**, guided by national policies and strategies, a national plan and regional plans with sufficiently clear priorities adapted to the conditions of each region; good technical tools and analysis; and expert facilitation, with a view to reaching a consensus on the sustainable development strategy at the level of each jurisdiction. In conclusion, spatial planning at the national level should be "strategic" in scope but avoid leading to spatially too precise allocations - final decisions on the delimitation of specific uses should be taken with the parties affected by the allocations.
6. **Launch a programme (nationally or regionally) to support local land-use facilitators** in regions where land tensions are greatest, together with the specialised decentralised administrations.
7. **Create 'no mining' zones where** there are intact forest landscapes and areas essential for rural livelihoods.
8. **Identify and harmonise sustainable sources of funding** that will facilitate the conservation of high value forests while facilitating sustainable economic development.

## 5. References

- Acworth, J. et Douard, P. (2021), "The role of Land Use Planning in Central Africa", German Facilitation to the Congo Basin Forest Partnership. [https://pfbcbfp.org/news-partner/CBFP-Study-Package.html?file=files/docs/key\\_docs/Publications%20du%20PFBC/2021\\_CBFP\\_LUP%20in%20CongoBasin\\_Report.pdf](https://pfbcbfp.org/news-partner/CBFP-Study-Package.html?file=files/docs/key_docs/Publications%20du%20PFBC/2021_CBFP_LUP%20in%20CongoBasin_Report.pdf)
- Acworth J. et Douard, P. (2021), "Policy Brief: Land use planning in Central Africa - 30 years of progress and emerging lessons learned", [https://pfbcbfp.org/news-partner/CBFP-Study-Package.html?file=files/docs/key\\_docs/Publications%20du%20PFBC/2021\\_CBFP\\_Land%20use%20planning%20in%20the%20Congo%20Basin\\_Brief.pdf](https://pfbcbfp.org/news-partner/CBFP-Study-Package.html?file=files/docs/key_docs/Publications%20du%20PFBC/2021_CBFP_Land%20use%20planning%20in%20the%20Congo%20Basin_Brief.pdf)
- AFD et CNC/Gabon (2018), "*Planification nationale de l'affectation des terres et surveillance forestière pour promouvoir des stratégies de développement durable pour le Gabon*", Document de programme CAFI, [http://www.cafi.org/sites/default/files/2021-02/Gabon\\_pRODOC\\_AFD\\_CAFI\\_FINAL.pdf](http://www.cafi.org/sites/default/files/2021-02/Gabon_pRODOC_AFD_CAFI_FINAL.pdf).
- Baragwanath, K. and Bay, E. (2020). Collective property rights reduce deforestation in the Brazilian Amazon. Proceedings of the National Academy of Sciences. 117 (34) 20495-20502. <https://doi.org/10.1073/pnas.19178741>
- Bidaud, Cécile, Kate Schreckenber, Manolotsoa Rabeharison, Patrick Ranjatson, James Gibbons, and Julia P.G. Jones. "The Sweet and the Bitter: Intertwined Positive and Negative



- Social Impacts of Biodiversity Offset." *Conservation & Society* 15, no. 1 (2017): 1-13. <https://doi.org/10.4103/0972-4923.196315>
- Broaddus, A. (2020), "Integrated transport and land use planning aiming to reduce GHG emissions: International comparisons", in : *Transportation, Land Use, and Environmental Planning*, p. 399-418, <https://doi.org/10.1016/B978-0-12-815167-9.00018-9>.
  - Buxton, A. (2022), "People and nature first: safeguards needed in mining exploration", IIED, London, <https://pubs.iied.org/20736iied>.
  - CAFI et RDC, "Lettre d'Intention portant sur le renouvellement et l'élargissement d'un Partenariat pour un Développement vert dans le cadre de l'Initiative pour la forêt d'Afrique centrale (CAFI) sur la période 2021-2031", <https://www.cafi.org/sites/default/files/2021-11/EB.2021.18%20-%20Letter%20of%20Intent%20with%20the%20DRC%202021-2030%20with%20annexes.pdf>.
  - FAO (2020), "The State of the World's Forests", *forests, biodiversity and people*, Rome.
  - Guizol et al. (2022), "Aménagement du territoire et impacts sur la gestion durable des écosystèmes forestiers en Afrique centrale", dans : Richard Eba'a Atyi et al. (eds), *Les Forêts du bassin du Congo – État des Forêts 2021*, OFAC, COMIFAC.
  - Hund, K. et al., "Minerals for climate action: the mineral intensity of the clean energy transition.", Washington D.C., World-Bank, <https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>.
  - Hund, K., La Porta, D. et van Laarhoven, M. (2020), "Changing mining practices and greening value chains for a low carbon-world", <https://www.worldbank.org/en/news/feature/2019/10/07/changing-mining-practices-and-greening-value-chains-for-a-low-carbon-world>.
  - The International Bank for Reconstruction and Development (IBRD) / the World Bank (2019), "Making Mining Forest-Smart: Executive Summary Report" <https://www.profor.info/content/making-mining-forest-smart-executive-summary-report>.
  - Karsenty (2018), "Commentaire pour CAFI sur la « Note au COPIL - Restitution des travaux de la Commission Technique ad hoc » du Comité Technique de suivi et d'évaluation des Réformes, du Ministère des Finances de la RDC".
  - Karsenty, A. et Vermeulen, C. (2016), "Toward Concessions 2.0: Articulating inclusive and exclusive management in production forests in Central Africa", *International Forestry Review*, Vol. 18.
  - Kujala, H., Maron, M., Kennedy, C., Evans, M., Bull, J., Wintle, B., Iftekhhar, S., Selwood, K., Beissner, K., Osborn, D., Gordon, A. (2022). Credible biodiversity offsetting needs public national registers to confirm no net loss. *One Earth*, Volume 5, Issue 6, 2022, Pages 650-662. <https://doi.org/10.1016/j.oneear.2022.05.011>
  - Marien, J.N., et al. (2013), "Quand la ville mange la forêt. Les défis du bois énergie en Afrique centrale", Editions Quaea, p. 238.
  - May, J., Hobbs, R., Valentine, L., (2017). Are offsets effective? An evaluation of recent environmental offsets in Western Australia. *Biological Conservation*, Volume 206, Pages 249-257. <https://doi.org/10.1016/j.biocon.2016.11.038>.
  - Nyström et al. (2019). "Anatomy and resilience of the global production ecosystem", *Nature*, Vol. 575, p. 98-108.
  - OECD (2017). The Governance of Land Use – Policy Highlights. <https://www.oecd.org/cfe/regionaldevelopment/governance-of-land-use-policy-highlights.pdf>
  - Romeo, L. 2015. What is territorial development? GREAT insights Magazine, Volume 4, Issue 4. June/July 2015. <https://ecdpm.org/great-insights/territorial-development-2/what-is-territorial-development/>

- Stürck et al. (2018), "Simulating and delineating future land change trajectories across Europe", *Regional Environmental Change*, Vol. 18, p. 733–749, <https://doi.org/10.1007/s10113-015-0876-0>.
- Zu Ermgassen SOSE, Baker, J, Griffiths, RA, Strange, N, Struebig, MJ, Bull, JW. The ecological outcomes of biodiversity off-sets under 'no net loss' policies: A global review. *Conservation Letters*. 2019; 12: e12664. <https://doi.org/10.1111/conl.12664>