



Advancing Women's Land and Resource Rights

# Possibilities for Gender Equity in Land and Forest Tenure in REDD+ Programming

## Democratic Republic of the Congo

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## Introduction

The distinctive feature of the Mai Ndombe Province is its location at the intersection of various human and resource flows between the megalopolis of Kinshasa (over 10 million inhabitants) and the provinces of Bandundu and the Equator, where most of the dense humid forests of the DRC are located. The Mai-Ndombe Province is located in the Kinshasa supply basin for agricultural and wood products, fuelwood in particular. Agriculture is the main income source for 90% of the households in the province, and cassava and maize are the main cash crops sold primarily to Kinshasa (EPRD, 2016).

According to the ERPD (2016) the main causes of deforestation and forest degradation in the ER-P accounting area are:

- Slash-and-burn agriculture used by local people who rely on land for income and consumption.
- Fuelwood production for sale mostly to Kinshasa.
- Uncontrolled bush fire to support tending livestock, farming, hunting (sometimes accidentally).
- Uncontrolled small-scale logging for extra-legal sale of timber.
- Industrial logging, though in 2015, only seven of 20 issued concessions were exploited.
- Mining and oil exploitation, to a limited extent.

Underlying causes include poverty, absence of economic and technical alternatives for livelihoods and income, poor management of resources, unregulated land tenure, population growth, and increased demand for agricultural product, charcoal, and land. Increased demand for agriculture products, charcoal and land has the most significant impact on degradation (EPRD, 2016).

The demand for slash-and-burn farmland constitutes the most important driver of deforestation in Mai-Ndombe. It also has the potential to affect 46% of the Mai Ndombe Province if it continues unchecked (EPRD, 2016).

A number of initial recommendations for gender equity arise from this case study. These are: 1) the possibility of community forestry is new in DRC and, as it is piloted in different areas, presents immediate opportunities for testing approaches that address the significant customary exclusion of women from land and forest rights, governance, and decision making (at

community and household levels). 2) In addition, there is significant investment as part of the ERPD as well as other projects to invest in the enabling environment, including land tenure reforms. These investments present an immediate opportunity to address the considerable discrimination that women face in all matters that relate to land rights in both formal law (including family law) and in customary law. 3) Finally, invest in civil society in ways that can support both women and meaningful engagement in the newly introduced participatory/community level process for forest tenure.

## National Legal Framework for Women's Rights



Photo by [Johnnathan Tshibangu](#)

Congolese constitutional law guarantees the right to individual and collective property in conformity with law and custom;<sup>1</sup> elimination of discrimination against women and gender parity in institutional representation;<sup>2</sup> the right to information, including information related to land ownership and rights;<sup>3</sup> and adherence to regional and international norms establishing women's human rights.<sup>4</sup> In 2016, a national policy on gender was introduced. The five-year gender strategy was the product of reflecting on the status of women in Congo, acknowledging and naming the ways in which women are discriminated against and discredited in the Congolese society (Republique du Congo, May 2019). The current constitutional guarantee of

<sup>1</sup> Constitution of the Democratic Republic of the Congo, as modified by Law N° 11/002 of 20 January 2011, revising certain articles of the Constitution of 18 February 2006, art. 34.

<sup>2</sup> *Id.*, art. 14.

<sup>3</sup> *Id.*, art. 24.

<sup>4</sup> *Id.*, Preamble.

gender equality is worded to include only those rights acquired in accordance with law or custom. But customary law, including the power to decide land issues, is enacted primarily through local chiefs, a role exclusively reserved for men (Landesa, CFLEDD & RRI, 2019).

DRC created a gender statistics database in 2008 through the Ministry of Gender, Family, and Children's Affairs. In addition, the Programme National pour la Promotion de la Femme Congolaise (PNPFC, National Program for the Promotion of the Congolese Woman), was also set up to work with the Ministry and civil society in 10 distinct thematic areas to promote women's rights nationally (Landesa, CFLEDD & RRI, 2019).

The Ministry of Gender, Family and Children's Affairs is the focal point for national and international actors (e.g., donors, non-governmental organisations (NGOs), international organisations, and agencies) working on gender issues. The Thematic Group on Gender and its sub-groups provide the opportunity for donor coordination. An organisational and institutional analysis of the Ministry in 2013 found that it lacked the capacity to implement its mandate and that platforms for coordination were instead used for information exchange or planning events such as International Women's Day. Gender focal points exist at each ministry, but these resources are under-utilised and lack capacity on gender issues. At the provincial level, focal points for gender have been established to support implementation of the National Gender Policy. They represent the division of gender at all levels of the administration (Davis, 2014).

Few women hold positions of authority in formal decision-making institutions at the local and provincial levels, despite guarantee of parity. The legally set quotas for women representation in government are yet to yield actual results. Article 17 guarantees parity and assures the promotion as well as the representativeness of women in all political, elective, and administrative functions (Landesa, CFLEDD & RRI, 2019, p. 2).<sup>5</sup> In 2017, only 11.5% of the seats in the National Assembly of the Parliament and 21% of municipal and departmental council seats were held by women. In 2018, 26% of management positions were held by women (Republique du Congo, 2019). While there are quotas for the percentage of seats to be held by women, one of the challenges in terms of promoting gender equality is the disregard for these quotas in general and especially in local candidate lists (Republique du Congo, May 2019).

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<sup>5</sup> Article 56 guarantees that every citizen elected or appointed to a public function has the duty to exercise it without discrimination. Article 232 provides that a Women's Advisory Council is created to advise on the status of women and to make suggestions to the government to promote the integration of women into development.



# National Legal Framework for Women's Land Tenure and Forest Management Rights



Photo by [Madeleine MBuyu](#)

Land tenure reforms are part of the government agenda, in relation to REDD readiness (via a large project called Central African Forest Initiative, or CAFI, explained further below). By 2019, a Commission for National Land Tenure Reform was established and operational at the national level. Progress has been made defining the provincial strategies for tenure management (CAFI, 2019). Consultation throughout the country refer to an early draft National Land Policy;<sup>6</sup> however a copy of that document could not be located for this case study. *A deep-dive review could look into these reform processes more closely to see whether and how commitments to gender equity are being incorporated, especially as it relates to women's rights to customary land and membership in groups to which benefits are paid on the basis of land rights.*

## Individualized Land

The General Property Law (1973) as amended,<sup>7</sup> provides for state ownership of all land, subject to rights of use granted under concessions.<sup>8</sup> State assets are considered public domain or

<sup>6</sup> See <http://www.conaref-rdc.org/> for more details.

<sup>7</sup> Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980.

<sup>8</sup> General Property Law (1973), art. 53.



private domain: public domain is land that is put to public service or use<sup>9</sup> and private domain are all other lands.<sup>10</sup> Private domain lands are allocated by perpetual concession, ordinary concession, or easement,<sup>11</sup> and concessions can be transferred, but only for the duration remaining.

Under the General Property Law, concessions are a type of contract where the State grants right of use to a community, or natural or legal persons.<sup>12</sup> All concessions, except perpetual ones, are granted for a maximum of 25 years, which is renewable.<sup>13</sup>

A perpetual concession is a use right to a natural person and is transferable and transmissible only to other natural persons who are citizens.<sup>14</sup> A perpetual concession has full use of the land and is the owner of all that the land produces; the right can be transmitted, lease, mortgaged, and alienated in part or in whole.<sup>15</sup> It can also be transferred via inheritance.<sup>16</sup>

An ordinary concession is divided into four types: emphyteusis, area, usufruct, and rental.<sup>17</sup> Emphyteusis is for 25 years and renewable.<sup>18</sup> It is the right to full use of the land, full ownership of the products of the land, the right to exploit woods and trees, and can take steps to increase the land value.<sup>19</sup> The land can be rented out and allocated to others for their use.<sup>20</sup> If the right holder dies, then the emphyteusis descends to heirs and it may be given as an *inter vivos* gift, but for each, only the remainder of the duration of the right is transferred.<sup>21</sup> The other concessions are similar to emphyteusis, though limited in either duration, scope, or rights of transfer.<sup>22</sup> Only citizens may apply for concessions.

Under the General Property Law, land occupied by local communities and used individually or collectively and in accordance with local customs practice<sup>23</sup> is recognized but is still considered

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<sup>9</sup> *Id.*, art. 55.

<sup>10</sup> *Id.*, art. 56.

<sup>11</sup> *Id.*, art. 57.

<sup>12</sup> *Id.*, art. 61.

<sup>13</sup> *Id.*, art. 70.

<sup>14</sup> *Id.*, art. 80.

<sup>15</sup> *Id.*, art. 100.

<sup>16</sup> *Id.*, art. 101.

<sup>17</sup> *Id.*, art. 109.

<sup>18</sup> *Id.*, art. 111.

<sup>19</sup> *Id.*, art. 112.

<sup>20</sup> *Id.*, art. 113.

<sup>21</sup> *Id.*, art. 117.

<sup>22</sup> *Id.*, arts. 123-144.

<sup>23</sup> *Id.*, art. 388.

state land or *terre des domaniales*;<sup>24</sup> the scope and nature of the rights of communities is not explained in the law and remains a significant gap in the legal framework.

In general, under customary tenure, village chiefs (multiple clans who share a common ancestor) are the custodians of land. They allocate to notables, who are heads of clans who then allocate to clan members. (Samdong & Vatn, 2018). See below for collective rights within this system. Individualized customary rights usually cover land that is allocated to individual clan members for exclusive use and control for cultivation. Land that is not used for cultivation may be used collectively for hunting and harvesting timber and non-timber forest products (NTFPs) (Samdong & Vatn, 2018).

Rural land used for agricultural and residential purposes has become highly individualized in some areas over the years. Community members have the authority to loan, lease for cash, or sharecrop their individualized plots, but in most areas, they cannot sell or permanently alienate the communal land to people outside the community (USAID, 2010).

## Rights to Land in Marriage

Under the Family Code (1998),<sup>25</sup> only registered marriages—not those in church or by custom—are recognized.<sup>26</sup> However, the law provides for dowry that is paid by the future husband and his family to the parents of the future wife for the benefits of her parents.<sup>27</sup> Any marriage without a dowry is considered null.<sup>28</sup> However, most marriages in DRC are not registered for a variety of reasons, one of the most important being the costs (official and unofficial) associated with registration (Davis, 2014).

The Family Code provides that the husband is the head of household who protects his wife, who in turn owes obedience to the husband.<sup>29</sup> It recognizes three marital property regimes: separation of property, limited community, and universal community,<sup>30</sup> with limited community being the default. No matter the regime chosen by the spouses, the management of property held in common is entrusted to the husband.<sup>31</sup> The law allows women to manage property that they have earned as part of their profession, provided that it does not undermine the harmony

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<sup>24</sup> *Id.*, art. 387.

<sup>25</sup> Civil Code, Book 3.

<sup>26</sup> Family Code, art. 332.

<sup>27</sup> *Id.*, art. 361.

<sup>28</sup> *Id.*, art. 426.

<sup>29</sup> *Id.*, art. 444.

<sup>30</sup> *Id.*, art. 487.

<sup>31</sup> *Id.*, art. 490.

of the household, in which case the husband can assume management.<sup>32</sup> No matter the regime or the right to manage, spouses must agree on the transfer or alienation of land rights.<sup>33</sup>

With regard to inheritance, children of the deceased are in the first order of succession and the surviving spouse is in the second order of succession.<sup>34</sup> Heirs of the first order receive 75% of the estate, and the heirs of the second order receive the remainder.<sup>35</sup> The surviving spouse has usufruct of the residence and half the adjoining land until she either remarries or engages in misconduct.<sup>36</sup> The local norms and customs allow women to inherit farmland from their father if they are unmarried. In practice, however, early and forced marriage makes this difficult. Women are expected to gain access to land via their husbands, and unmarried women's rights to inherit from their fathers are often contested by their male siblings (Samdong & Kjosavik, 2017).

There is very little literature on the gender dynamics of individualized customary land in DRC. In general, under customary rules, women rarely inherit land from their husbands, and in some cases, widows are chased from the land that their husband allocated them. Furthermore, if the marriage is polygamous, which is common, second or subsequent wives can be excluded from inheritance as well; wife inheritance is also practiced in some locations as a way to keep land within the lineage (OMCT & SNVS, 2013).

Women and men use individualized land differently; men are responsible for opening up forestland for farming. Men do little work once the clearing is done, and the rest of the work in the field (planting, weeding, harvesting) is the women's responsibility. Gender differences exist in crop choices; men focus on the cultivation of food crops with high market value such as plantains and palm trees, while women's main concern is subsistence food crops. However, men are also increasingly involved in the production of groundnut, maize, and other crops that are associated with high market value (Samdong & Kjosavik, 2017).

## Common/Collective Land (Including Indigenous Community/Collective Land/Resources)

During colonial times, only Europeans were permitted to own land on a private basis; all other land was governed by traditional rulers as communal land subject to customary law. The vast

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<sup>32</sup> *Id.*, art. 497.

<sup>33</sup> *Id.*, art. 499.

<sup>34</sup> *Id.*, art. 758.

<sup>35</sup> *Id.*, art. 760.

<sup>36</sup> *Id.*, art. 785.

majority of Congolese lived in rural areas and received land allocations from traditional authorities. Under President Mobutu (1965–1997), all land in the DRC was officially nationalized, but the system of customary land tenure continued to operate parallel to the formal system (USAID, 2010). As mentioned above, the General Property Law tacitly recognizes collective (and individual) customary tenure even while it provides that all land is state land. The framework for collective rights is most defined on forestland.

Under the Forest Code (2002),<sup>37</sup> forestland is owned by the State<sup>38</sup> where a forest is land covered with trees or previously covered with trees that has been clear cut or burnt.<sup>39</sup> Article 10 establishes three forest types: classified, protected, and permanent production.

Classified forests include those in the public domain, reserves, etc.;<sup>40</sup> Article 38 permits communities surrounding classified forests to collect deadwood and straw; pick fruit, food, or medicine; harvest resin, gum, or honey; collect insects and bugs; and collect firewood for construction.<sup>41</sup>

Permanent production forests can be exploited by forestry administration, a public body created for that purpose, or by private loggers with authorizations for payment.<sup>42</sup>

Protected forests are designated forestland held in the private domain of the State for which concessions may be granted.<sup>43</sup> Any Congolese can use protected forests and cultivate crops, provided that they comply with the law.<sup>44</sup> Harvesting forest products is also permissible. All uses of the local community are permissible even if there is a concession, provided that the use is compatible with the concession.<sup>45</sup>

The Forest Code defines local community as a population that is traditionally organized on the basis of custom, united by clan affiliation, and attached to a certain area of land.<sup>46</sup>

The Forest Code allows local communities, by request, to obtain a forest concession for all or some of the forests that they would otherwise own by custom.<sup>47</sup> It also permits them to use

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<sup>37</sup> Loi n°011/2002 du 29 août 2002 portant Code Forestier.

<sup>38</sup> *Id.*, art. 7.

<sup>39</sup> *Id.*, art. 1.1.

<sup>40</sup> *Id.*, art. 12.

<sup>41</sup> *Id.*, art. 39.

<sup>42</sup> *Id.*, art. 97.

<sup>43</sup> *Id.*, art. 20.

<sup>44</sup> *Id.*, art. 41-42.

<sup>45</sup> *Id.*, art. 44.

<sup>46</sup> *Id.*, art. 1.17.

<sup>47</sup> *Id.*, art. 22.

forests according to local customs and traditions, including harvesting forest products, provided that it follows the law.<sup>48</sup> Also, local communities have the right to use and to exploit forests—under supervision of the government—but at artisanal or small-scale levels.<sup>49</sup> Proceeds from exploitation must return to the local community after any deduction for payment to forestry administration.<sup>50</sup>

Decree 14/018 (August 2, 2014)<sup>51</sup> allows for allocation of forest concessions to communities as community forests up to 50,000 ha in perpetuity and to be held by local communities according to their customs. That Decree also allows for multiple uses of forests, such as for timber, NTFPs, and game hunting, as well as for nature conservation, provision of environmental services, and many other types of uses (including cultural and spiritual) (Rainforest Network, 2019). However, the process for gaining rights as a community under the current legal framework are cumbersome: communities seeking a community forest must complete a number of forms that are not available in local languages; they also must create an accurate map of the area for their proposed community forest and identify the individuals who have a customary claim over the land in question (Rainforest Network, 2019). The communities must also prepare a participatory map, and then once the communities are legally established, they must create a management plan for the area (Rainforest Network, 2019).

Reportedly, some of the efforts towards establishing these community forests—mostly supported by large NGOs because of capacity needs at community level—have not placed sufficient emphasis on community participation and ownership of the mapping and planning process. Local NGOs have reported a low level of participation among some marginalized groups in map and plan preparation, resulting in maps that may not accurately represent the interests of all members of a community but rather those of local elites or the facilitating NGO agencies (Rainforest Network, 2019).

The decree governing community forestry does not mention gender equity in the definition of management bodies, nor a minimum threshold or quota for women participants or any related provision that would show a response to underlying gender dynamics in land and forest tenure in DRC that favor men over women. It describes exercising of individual user rights by community members, which, given the uncertainty surrounding women's membership in the

<sup>48</sup> *Id.*, art. 36.

<sup>49</sup> *Id.*, art. 112.

<sup>50</sup> *Id.*, art. 113.

<sup>51</sup> Article 4, Décret n° 14/018 du 02 août 2014 fixant les modalités d'attribution des concessions forestières aux communautés locales.

community based on the fact that they are not part of the lineage, could marginalize women. *A deep dive question might be to understand practice and experience of incorporating gender into the community forests that have so far been established to identify good and emerging practices or significant barriers to gender equity and how they can be addressed.*

The National Strategy for Community Forestry in the DRC was officially adopted in 2018. It endorses a progressive implementation of community forestry based on community rights and traditional management practices during a five-year pilot phase (2018-2023). Gender and equality principles have also been included in the National Strategy for Community Forestry. Gender is referred to as a “cross-cutting component” and “its strategic axes must also incorporate the perspectives of gender, youth and vulnerable groups in order to be inclusive.” In addition, the National Strategy refers to women, who “are important users of the forest ecosystem, and must be taken into account when setting up governance structures, making decisions and allocating concessions” (ERDP, 2016). *If the National Strategy on Community Forestry has a pilot phase, it provides an opportunity to test and learn from experiences in the field, which would eventually revise the regulatory framework, including procedures and tools. A deep dive line of inquiry might look into the gendered analysis for these pilot experiences, what has been learned, if anything, and whether any innovative approaches have seen any successes for ensuring that women participate in and benefit from the community forestry modality.*

Other issues with current governance of forest sector include weaknesses of the forest laws and local populations’ and other actors’ poor knowledge of them; lack of resources (human, material, and financial) for forest institutions, especially those in charge of enforcing and implementing the laws; and lack of connection between land and forest tenure in legal framework, which create gaps and ambiguity between customary ownership and state ownership (World Bank, 2015).

## Customary Forest Tenure

Traditional jurisdictions known as chiefdoms exist as a kind of super structure to formal political and administrative boundaries. These jurisdictions include villages and clans and are governed by a tribal chief. Customary authorities exercise control to manage forestland allocation based on customary rules (Samdong & Vatn, 2018). A tribal chiefdom is made up of many villages; the tribal chief is custodian to all forestlands in the chiefdom. The tribal chiefs are responsible for protecting the people and the land. Their succession is rotational among the dominant clans of the chiefdoms (Samdong & Vatn, 2018).

Each village that belongs to the tribal chiefdom is governed by a customary village chief. Each village is made up of more than one clan, and the village customary chief is selected from the clan that established the first rights on the village forestland. The customary chief position is based on inheritance among male members of the lineage. Each of the clans are headed by a notable, and the role is passed along among male members of their lineage (Samdong & Vatn, 2018).

The members of the clans are considered customary landowners or rightsholders (*ayant droits*). Tradition considers customary landowners to be descendants of the male founder of the clan. He established the territorial rights of first occupation through migration and the establishment of a lineage. Customary landowners perceive the forests to be a common physical and cultural inheritance from the ancestors. These user rights are passed from generation to generation through the genealogical line of the male descendants of the founder of the clan (Samdong & Vatn, 2018).

Under customary tenure, rightsholders are of three categories: collective (customary authorities), clans (group of families), and individuals. User rights belong to members of clans. Members of clans claim exclusive use rights to all forest resources in the territory of the village. Non-clan members living in the village may be granted user rights to forest resources upon request. Non-clan and complete outsiders may negotiate access and use rights with the customary chief and notables to harvest high-value forest resources such as poles/sticks, timber, and charcoal. Non-clan members negotiate use rights to farmland with customary landowners either by renting a parcel of land, sharecropping, or other forms of social exchange (Samdong & Vatn, 2018).

Control rights belong to the customary chief, notables, and clan members. The village customary chief manages and controls access to the villages' communal land and makes decisions about its allocation (Samdong & Vatn, 2018).

The notables (head of the clan) manage and control access to the clans' forestland and allocate land to the family members of the clans for different uses. However, even where customary land has been allocated to individual clan members, other clan members can still use resources over which the families have not established permanent use rights through cultivation for harvesting firewood, gathering NTFPs and medicinal plants, and hunting (Samdong & Vatn, 2018).

According to customary law, it is forbidden for clan members to sell forestland because it is considered the collective property of the clan. Today, with the increased presence of state



agents and local administrative authorities, the authority of the customary chiefs and notables has weakened (Samdong & Vatn, 2018).

Women view their forest as a place with fertile soil for farming and with many NTFPs for consumption and cash income, and as a place to collect firewood for the household. Women attach more importance to the collection of NTFPs, which make a significant contribution to household consumption and cash income (Samdong & Kjosavik, 2017). Men use the forest for large trees to harvest timber, sticks/poles and material for construction, trees to produce charcoal, wild animals for bush meat, and different NTFPs and medicinal plants for subsistence use and cash income (Samdong & Kjosavik, 2017). Men also see the forest as having cultural significance and a place of their ancestors (Samdong & Kjosavik, 2017).

Also, women have very limited access to and control over forest resources. Women do not control access to forestland but maintain their access through relationships of patronage, marital status, or family support from husbands, fathers, uncles, or sons. Women are involved in forest-related decisions only at the household level, such as the organization of household and farm activities, where and when to cultivate, and what crops to plant in the different fields (Samdong & Kjosavik, 2017).

## Governance of Common Resources

Village councils are headed by a village customary chief with the notables (the head of the main clans in the village) and some elderly members of the village as representatives. Although women are represented in the village traditional council, they are not included in decisions related to land allocation and forest management and tend to be called on only for things considered by the male members as women's concerns when there is a conflict (Samdong & Kjosavik, 2017).

When there is a conflict related to land allocation and management in the village, only the men with customary claim to land (*ayant droit*), the notables, customary chiefs, and tribal chiefs are invited to mediate (Samdong & Kjosavik, 2017). Women's domestic responsibilities and farm activities hinder their participation in meetings. This is due the time that the meeting is set, which conflicts with their other household obligations or farming activities, and because meeting announcements are announced in places and at times where women are not present, and the message is not shared by the men. Also, men may prevent their wives from participating in meetings if they believe that it will result in the women challenging their household authority (Samdong & Kjosavik, 2017). As well, social norms at times prevent married women from

speaking publicly when there are men present because it is considered disrespectful and culturally unacceptable (Samdong & Kjosavik, 2017).

Compared to men, women exhibit nominal participation in governance. Women are not involved in decision making regarding forestland allocation and management in both pilot sites. The elderly and virtuous women often represent women in the village traditional council, but their voice over decision making is limited (Samdong & Kjosavik, 2017).

Table 1. Typology of participation (Agarwal, 2010).

Form/level of participation	Characteristic Features
Nominal participation	Members of the governing group
Passive participation	Informed of decisions <i>ex post facto</i> ; or attend meetings and listen to decision making, without contributing to discussion.
Consultative participation	Opinions are solicited in specific matters without guarantee of influencing decisions
Activity-specific participation	Asked to (or volunteer to) undertake specific governance tasks (treasurer or secretary, or provide facilities and refreshments)
Active participation	Express opinions, whether or not solicited, or other initiatives
Empowering Participation	Have voice and influence in agenda and in decisions; position as officer

## Laws or Regulations Relating to Land Resources (Forests, Trees, NTFPs) and Women's Rights



Photo by [Johnny Africa](#)

The types of land that are covered in the ER-P accounting area of Mai-Ndombe Province are 1) converted logging titles (e.g., production series, protection and conservation series, and rural development zones); 2) classified forests; 3) conservation concession; 4) zones under customary regime non-concession and non-classified (afforested, non-afforested); 5) emphyteutic concessions and form leases; 6) mining sites and infrastructure (ERPD, 2016).

### Converted Logging Titles

These are broken down into three different tenure categories: production, protection and conservation, and rural development:

- Production series, covering 1.52 million ha, where the users are logging companies, and the relevant tenure regime arises under the Forestry Code's (2002) forestry concessions in permanent production forests.
- Protection and conservation covering 1.15 million ha, where the users are logging companies and the local population. The relevant formal tenure is depicted in the Forestry Code's forestry concessions in permanent production forests.

- Rural development covering 0.89 million ha, where the users are the local population and where formally tenure is governed by the Forestry Code as protected forest under customary regime.

## Classified Forests

These cover 2.04 million ha, where the users are the State and local populations. The relevant tenure regime is forest within the public domain under various status of protected areas.

## Conservation Concession

These cover 0.32 million ha, where users are conservation concession holders and local population. They are governed by forestry concessions in permanent production forests under the Forestry Code.

## Zones Under Customary Regime

These are broken into two groups, afforested and non-afforested:

- Afforested, covering 4.34 million ha, where the users are the local population and small-scale loggers. Relevant law is the Forestry Code as protected forest under customary regime.
- Non-afforested, covering 2.58 million ha, where users are the local population. It is governed by customary tenure.

## Emphyteutic Concessions and Farm Leases

This covers 0.8 million ha of area, where the users are farmers, livestock keepers, and neighboring communities. These are governed by the Land Tenure Code.

## Mining Sites and Infrastructure

These cover less than 0.01 million ha, where users are those who have state mining concessions. These are governed by the mining code and public domain for infrastructure.



## Social and Environmental Situation Analysis



Photo by [Johnnathan Tshibangu](#)

### Violence

The United Nations Joint Human Rights Office (UNJHRO) reported in April 2014 that the incidents of sexual violence between 2010 and end 2013 remain “extremely serious due to their scale, their systematic nature and the number of victims” (Davis, 2014).

### Marriage Practices

Customary marriage involves negotiations largely conducted by the male relatives of both families, with females being informed of arrangements made for the marriage of a daughter or female relative. This includes the payment of dowry or “bride price,” which is determined by social status (including the woman’s virginity). The payment of “bride price” or dowry gives the husband customary rights over the woman and their children (Landesa, CFLEDD & RRI, 2019).

“Wife inheritance,” the practice in which a widow must marry a relative of her deceased husband, is common throughout the DRC; if the widow refuses to participate in this custom, she may suffer various reprisals, including loss of custody of her children; repayment of the dowry, due immediately; and banishment from the home (OMCT & SNVS, 2013).

Polygamy remains prevalent in many communities throughout the country (OMCT & SNVS, 2013). Customarily, a man may take a second or third wife based on a number of factors. Second wives (and beyond) are generally thought to have little to no rights (OMCT & SNVS, 2013).

## Household Dynamics

Men have almost exclusive control over household resources. The income that women generate from tending small-scale plots is vital for feeding and housing the family. Yet in some cases, women may still have to pay her husband “rent” from the income earned from his land that she uses to farm. This rent comes from money she must also use to pay for education, food, and health care. What the man does with “his money” is up to him, but he is not expected to put it towards the family’s needs as his wife does (Davis, 2014).

Women’s access to services is generally weaker than men’s (Davis, 2014).

## Education

It is more likely that households will choose to invest in boys’ education over that of girls’ since boys’ education is more likely to provide for future financial support to parents (as women do not control finances). Female children are not seen as good investments (Davis, 2014). Related to this, female illiteracy is worse than that of similarly situated men in DRC and is as a barrier to women’s enjoyment of their legal rights (Davis, 2014).

## Health

Although women use health facilities more than men, women suffer from poorer health. Women’s health is undermined by men’s control over women’s bodies, women’s lack of freedom to move (e.g., to access health facilities), and their lack of access to resources, including food (women and girls are often the last to eat), repeated pregnancies, and the inability to pay for medical care (Davis, 2014). When families have scarce resources, they tend to prioritize boys’ health needs over that of girls. Traditionally, men control the family budget, and in some cases, women have to ask their husband permission to access health services (Davis, 2014).

## Culture

Traditional beliefs and norms about women can be severe, establishing taboos and prohibitions that women must submit to or risk being stigmatized by the guardians of tradition, and even,

as some believe, by the ancestors. There are forbidden foods and forbidden labor for women. Women are not associated with the ancestors and the knowledge transmitted by them, but they are associated with uncontrollable forces from the non-human world, such as witchcraft and magic attack (OMCT & SNSV, 2013).

## Access to Justice

Women's access to justice is limited by both institutional factors and customary practices in the DRC, including the cost of legal proceedings, which is often untenably high for the poor in rural areas; corruption at multiple political and administrative levels; legal illiteracy; and lack of trust or legitimacy in the legal system. Inadequate training of lawyers, prosecutors, and judicial officers on women's rights, in addition to deep-rooted discrimination, provide additional barriers to access to justice for women. Discriminatory provisions of the Family Code also curtail women's access to justice, such as the requirement that a woman must obtain her husband's authorization to access judicial institutions (Landesa, CFLEDD, & RRI, 2019, p. 4).

## Indigenous Women

The Batwa (also known as Pygmies, or Indigenous Pygmy Persons) represent between 3%-4% of the population of Mai Ndombe District; they have 39 villages of their own and share 177 villages with the people of Bantu origin (the Anamongo) (ERPD, 2016). Over many generations, in the ER-P accounting area, the Pygmies have become sedentary or semi-sedentary and integrated into the dominant cultural and political system. All of the Twa communities in the ER-P accounting area have strong ties to village lands, even if they do not own them. Hunting and gathering activities are centered around the village that they attach themselves within barely more than a 20-30 km radius (ERPD, 2016). Pygmy women are among the most disadvantaged members of Congolese society. In the Pygmy custom, women are generally not permitted to speak on the same level as men, nor take part in decision making or inherit land rights (Landesa, CFLEDD, & RRI, 2019, p. 4).

## Religion

The churches in DRC, the majority of which are Christian, can be particularly conservative regarding gender norms (Davis, 2014).



## Climate Change Programming and Gender Inclusion



Photo by [Jordy Matabaro](#)

### ERPD

The ERPD outlines both sectoral activities and enabling activities under the program; some enabling activities are linked directly to a sector and others are stand alone. The ERPD components and activities are outlined by sector in the first column of Table 2 below. The final column shows some high-level gender equity considerations determined as part of the analysis conducted in this case study, based on the legal, social, and cultural context of the DRC.

Table 2. Gender equity considerations by component.

Component from ERPD	Activity from ARPD	Operators & beneficiaries (defined in ERPD)	Gender equity considerations
<b>AGRICULTURE</b>			
Agroforestry and improvement of cultivation techniques.	Support development of small-scale agroforestry models that help to ensure food security for households and generate additional incomes from the sale of	Household and small farmers.	If the unit of operation is the household, there needs to be assurance that women and men in households are appropriately considered and treated

	<p>agricultural and wood products.</p> <p>Promote agroforestry systems that offer a good mix of short-cycle crops with potential for penetration into urban markets, in combination with energy trees such as acacia, fruit trees, moringa, and other legumes and caterpillar-bearing trees (e.g., acacia or mango, avocado, safou, etc.).</p> <p>The combination of short-cycle crops and reforestation will allow households and farmers to generate additional incomes in the short term until the trees start to generate revenues.</p>		<p>differently based on their needs, knowledge, and experience.</p> <p>If the focus is on cash/income generating crops, then given the context, women may not benefit from these activities unless there are specific set asides for women.</p> <p>If the goal is food security, then a focus on women is critical because women are responsible for food production and feeding their families in DRC.</p> <p>Understand the impact of changes on women's current uses and needs and how they will be impacted by changed techniques/products.</p> <p>Training or extension that recognizes that women and men have different starting points and needs from extension support.</p>
Perennial crops development in non-forest areas (e.g., coffee, cocoa, palm oil, rubber).	Perennial crops will be developed primarily in the district of Mai-Ndombe by focusing on the rehabilitation of former coffee and cocoa plantations.	Households and small farmers. One objective will be to create a professional class of small farmers who will be	Women and men currently play different roles with regard to crops, where women mostly engage in subsistence activities. For this component, opportunities for how women can directly

	<p>In the savanna areas, palm oil and rubber plantations.</p> <p>Cycled with subsistence and short cycle income crops as well as perennial crops.</p>	<p>organized into producer associations by type of crop.</p>	<p>benefit from this investment are needed, and also what incentives for behavioural change among women is needed.</p>
Strengthening agricultural value chains.	<p>Attract experienced buyers.</p> <p>Construct or repair storage and processing facilities.</p> <p>Create buying agencies at strategic points.</p> <p>Support the development of product certifications and in particular to guarantee that the development of perennial crops is not exacerbating deforestation.</p>	<p>Professional operators: i) cooperatives and associations of planters, ii) large private operators already active in the zone, and iii) specialized private companies already operating in the DRC or elsewhere.</p>	<p>Understand likelihood, barriers, and opportunities for women to be part of professional agriculture class, and/or cooperatives considering that most of their farming now is subsistence focused and they will not likely be considered in this “professional” group.</p> <p>Not clear whether women and men have the same capacity needs with regard to engaging with a professional agriculture class.</p> <p>Will products that women traditionally cultivate and sell for income be included?</p>
<b>ENERGY</b>			
Assisted natural regeneration for charcoal production	<p>Establishing and maintaining fire breaks.</p> <p>Develop a sustainable charcoal offer in the short term.</p> <p>Create a cost-effective leakage mitigation</p>	<p>LDCs, households, small farmers, specialist NGOs, or private operators.</p>	<p>Gender equity considerations include a deep understanding of how women contribute to, benefit from, or are burdened by the status quo for charcoal production</p>

	mechanism linked to fuelwood.		and consumption. Also, to the extent that a program of formalization of fuelwood is taken up, given the potential value of the income, ensuring that any benefit that women currently gain from the status quo is not lost, and that women do not bare a disproportionate economic or labor burden from the change.
Formalization and strengthening of the fuelwood sector.	<p>Introduce efficient and low-cost technologies for cookstoves. Support charcoal makers and other stakeholders in the sector by disseminating sustainable charcoal production practices. Develop improved cookstoves in Kinshasa (planned in component 2b of the FIP), in order to accommodate charcoal quality and cookstoves design. Develop a network for the transportation, distribution, and marketing of sustainable fuelwood. Contribute to the formalization of the fuelwood sector in the province of Mai-Ndombe through fiscal measures encouraging</p>	Professional operators: i) cooperatives or associations of producers, ii) specialist private companies already operating in the DRC or elsewhere.	<p>Women are key users of cookstoves and should be included among direct beneficiaries. Women's perspectives on cookstove related challenges and needs are needed to influence this activity.</p>

	sustainable practices and discouraging practices that are harmful to the environment		
<b>FOREST SECTOR</b>			
Reduced impact logging.	Reduce length and width of primary and secondary roads. Improve planning of extraction paths, extension of conservation areas, and reduction of storage areas. Provide monetary incentives to logging companies. Encourage progress of the forest companies toward certification scheme (FSC or others) to ensure sustainability of the system if the Carbon Fund payments are not available after 2021.	Industrial timber companies.	Not clear on how current practices impact women and women's needs, or whether and how they will share in the direct or indirect benefits of this component. Further assessment needed.
Conservation of local community forests.	Provide direct incentives for conservation of local community forests in line with the local sustainable development plan developed by communities in a participatory manner. Offer incentives to rightsholders to improve their management of the allocation of forest parcels for charcoaling or non-sustainable agriculture in favor of	Local communities and others.	It is not clear how and whether women are meaningfully participating in community forestry now and whether women are taking a share of benefits. However, most literature suggests that they are likely excluded. This is the suggestion that "rightsholders" will gain something from this program.

	<p>conservation of community forests. These direct revenues will supplement household incomes and finance collective investments. Payments will be performance-based in accordance with modalities that are still in detailed design and that will be tested during the first years of the program. A portion of these forests might be formalized into local community forests, thereby enabling the implementation of the recent decree.</p>		<p>Women are not rightsholders under custom, so they may be excluded from any net gains from this unless specific effort is made to ensure that they are included.</p>
Conservation concession.	<p>Offer carbon incentives to the private sector. The concession holders will develop activities with the communities, who must ideally incorporate the various key activities of the program into their management plan (agroforestry, perennial crops, reforestation, family planning, etc.).</p>	<p>Conservation companies; industrial timber companies (SODEFOR, SIFORCO, SOMICONGO and Maison NBK).</p>	<p>Explicit attention needed on how these conservation efforts are likely to impact women, and whether there is opportunity for women to share in potential benefits and not carry a disproportionate burden. Communities are not a homogenous group and women and men's perspectives will be different.</p>
Afforestation/reforestation for lumber production.	<p>Assist private operators to establish and manage industrial lumber plantations for the local and regional lumber market (construction,</p>	<p>Professional operators: i) cooperatives or associations of planters, ii) specialist</p>	<p>Lumber tends to be a male-dominated field.</p>

	manufactured products, etc.).	private companies already operating in the DRC or elsewhere.	
Strengthening forest and wildlife law enforcement.	Control logging products derived from small-scale and industrial logging. Control and tax charcoal. Control poaching and animal traffic.	State agencies.	Not clear how women are currently benefitting or burdened by current arrangements and what, if any, impact these changes will have on women being able to satisfy their needs.
Legal compliance of industrial logging operations.	Technical assistance and financing to help industrial loggers comply with their social obligations.	Industrial timber companies.	N/A
Development of community forestry.	Support creation and management of forestry concessions for local communities at a sufficiently large scale that would be managed and exploited in collaboration with artisanal loggers. Negotiate exploitation contracts with communities holding the concessions, including, among other things, an equitable benefit-sharing mechanism and procedures for the monitoring and control of the operation. An important precondition to the allocation of a	Local communities and associations of artisanal loggers.	Gender dynamics at local community level can impact whether women meaningfully participate in and benefit from these processes. Women are not rightsholders under custom, so this analysis might not catch women's needs and perspectives if it focuses on rightsholders without also assessing experience and perspectives of those who currently rely on these resources.



	community forest will be the fair and participatory identification of rights and rightsholders.		
Support management of protected areas.	Support the management of protected areas in the zone.	Agencies in charge of protected areas.	As above.
<b>ENABLING PILLARS</b>			
Address land tenure issues.	Coordinate with CAFE program, which includes land tenure reforms. Strengthen local development activities at community level to remove land tenure security.	Not provided.	Formal law and customary law both exclude women from having rights to land that are equitable with those of men. These facts must be included in the land tenure reform process, but there is very little meaningful commitment in existing materials. Gender equity considerations for land tenure include: are many depending on the type of tenure reforms, processes for reform and their accessibility to women and men, the nature and content of any legal or regulatory reforms, and strength of existing customary rules or social norms that impact women's land tenure.

Capacity building of decentralized state services.		Not provided.	Not clear from how and whether women's perspectives have been incorporated into this objective.
Capacity building for sustainable development plans.		Not provided.	Not clear from how and whether women's perspectives have been incorporated into this objective.
Implementing collective and strategic facilities.	Investments in roads and bridges, processing, and storage equipment.	Not provided.	Not clear from how and whether women's perspectives have been incorporated into this objective.
Family planning.	Achieve family planning objectives of the National Strategic Plan for Family Planning (2013).	Not provided.	Not clear from how and whether women's perspectives have been incorporated into this objective.

## Benefit Sharing Plan

Under the advance draft of the BSP (2018) there are three types of beneficiaries that can receive payments from the ER Program: 1) institutions involved in the governance of the ER Program with associated fixed operational costs; 2) local communities and IPs to recognize their efforts in reducing emissions and/or their willingness to do so; and 3) private sector including owners of logging and conservation concessions, sustainable charcoal producers, growers, and others for the emission reductions generated by their sub-projects and verified against an agreed reference level.

When beneficiaries are communities and IPs, payments will be deposited in a special fund of the national agency managing REDD activities (FONAREDD), which is administered by the Multi-Partner Trust Fund Office of the United Nations. These will be used to finance future project-based mechanisms benefiting communities and IPs. The precise mechanisms that will be used for this will be specified at a later stage, though it is envisaged that FONAREDD would adopt the approach currently used under the CFI funding, which uses calls for proposals to select projects

developed by delivery partners in close cooperation with communities and Indigenous persons (BSP, 2018).

Incentives for communities through results-based payments for forest protection are already being tested at a small scale through contracts for Payments for Environmental Services (PES) in the ER-P accounting area (BSP, 2018).

*A deep dive line of inquiry could look into the degree that existing programs and pilots that will influence the final sharing of benefits with communities and IPs have included gender equitable processes and have had gender equitable outcomes. The BSP overall does not mention gender dynamics (except to say that data will be gender disaggregated whenever possible) of communities and Indigenous persons groups. Also, to the extent that sharing in benefits by community is determined by ownership rights (by the community), women's membership in that ownership group is a critical question that should be answered to ensure that women can benefit.*

## Other Projects

The Central African Forest Initiative (CAFI) supports the implementation of the National REDD+ Framework Strategy

The Letter of Intent for the establishment of a partnership between the DRC and CAFI was signed on April 18, 2016. This partnership allows DRC to implement key reforms at the national level and support integrated programs in provinces. Among its components is the Land Tenure (US\$ 11.2 million, out of which US\$ 3.2 million are for integrated programs): develop and implement in a participatory and transparent manner a land-tenure policy that is equitable—including with regard to gender, vulnerable people, local communities and Indigenous Pygmy Peoples—and that could ensure the sustainable and non-confrontational management of land and the clarification of tenure rights with the goal of limiting the conversion of forestlands. *Deep dive into the successes or learning from this project with regard to women. Also, critically, whether and how it might be possible to consider family law reform as well as reforms to procedures, rules, and regulations for community forestry to be built into this project, which has considerable funding and is influential to the REDD+ planning of the country.*

Itombwe Reforestation Project, Women's Earth and Climate Action Network (WECAN) and SAFECO, implemented between 2016-2017 (WECAN, 2017)

Under WECAN, the Itombwe Reforestation Project supported local women leaders in the development of tree nurseries and reforestation efforts. The primary goals were the protection of the remaining Itombwe natural forest from deforestation, the regeneration of the new forest, and collaboration with and support of the Indigenous Pygmy Peoples of the region in the protection of their traditional lifeways and knowledge. Women were the principal stakeholders in this project; they took an active part in the establishment of the nurseries and planted over 20,000 trees by hand. Reportedly, active involvement of women in establishing nurseries and planting trees supports women in gaining land titles to the traditional lands. *This should be explored more in a deep dive, especially with regard to how successful it was and what the outcomes for women have been.*

Forest Dependent Communities Support Project, DGM (World Bank, 2014) with the implementation period of 2016-2021

It focused on strengthening the capacity of targeted Indigenous Peoples and Local Communities (IPLC) in selected territories and at the national level to participate in REDD-oriented land and forest management activities. The project set up at the initial stage the importance of giving particular attention to activities addressing gender-specific livelihood, health, and cultural issues, and to activities promoting the engagement of youth. It was proposed to include communication efforts targeted at women and youth, designing grant windows focused on women and youth-friendly activities, among others. Special attention recommended to be given to women's capacity as micro-projects beneficiaries and to ensure their representation in the various governance processes. *Deep dive question is how this is going with regard to women's needs and experiences.*

Restoration and Sustainable Management of Ecosystems in South Kivu under the Restoration Initiative with implementation planned for 2018-2023 (FAO & GEF, n.d.)

It focuses on reforestation and sustainable management of natural resources with participation from local communities, using the Forest and Landscape Restoration (FLR) approach in South-Kivu Province. The implementation of the project interventions is based on the "Dimitra Clubs" approach, which ensures a community-based and gender-sensitive approach and promotes

inclusive participation and ownership of the actions undertaken.<sup>52</sup> *Deep dive into the successes or learning from this project with regard to women.*

### The Forest Investment Program (FIP)

The objective of Improved Forested Landscape Management Project (PGAPF) in the Kinshasa supply basin is to improve the living conditions and management of forest landscapes to reduce GHG emissions generated by deforestation and forest degradation. It has US\$ 36.9 million in funding and was launched in the first quarter of 2015 (ERPD, 2016). It comprises of four components. *Deep dive into the successes or learning from this project with regard to women.*

The Dedicated Grant Mechanism (DGM) is conceived and developed as a special window under the FIP to provide grants to the Indigenous People and local communities. It is intended to enhance their capacity and support initiatives to strengthen their participation in the FIP and other REDD+ processes. The project started in 2017 to be implemented over a five-year period for US\$ 6 million and comprises of three components: Component 1a (US\$ 0.5 million) is aimed at building capacities at the national level for strengthening Indigenous People and local communities' voices on land and forest policies, especially in regard to the recognition and promotion of Indigenous Peoples' rights. Component 2b (US\$ 0.5 million) is aimed at exploring innovative ways to secure Indigenous Peoples and local communities' forest management activities and to recognize traditional governance systems. This will entail work on both the legal status of the land (protected areas and community forest concession) and on the governance system that will be established for managing users' rights, drawing on this last aspect on international experiences such as the Indigenous Pygmy Peoples and Community Conserved Areas and Territories (ICCA) (ERPD, 2016). *Deep dive into the successes or learning from this project with regard to women.*

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<sup>52</sup> Women will make up 50% of members of the Dimitra clubs. In addition, 40% of participants of the capacity building program, conducted within the project, will be women. Women will make up at least 40% of project beneficiaries and 50% of micro-projects will be allocated to women associations.

## Existing Organizations Working with Women



Photo by [Madeleine MBuyu](#)

Women's activism within Congolese civil society has tended to be around issues of sexual violence, and the Congolese women's movement has not yet taken up land as a key issue (Lang, 2011).

Civil society influences policy making more through advocacy than through consultation as national authorities and international actors rarely consult civil society. It is important to note the different strengths of civil society movements across the country (Davis, 2014). Women's participation in civil society at national and provincial levels is largely through women's associations (Davis, 2014).

International NGOs provide much of the essential services and emergency relief, as strong national human rights movements also begin to appear. Connections between international NGOs and local networks that started as local associations finding their time/resources to respond to local challenges are common, making them susceptible developing agendas consistent with their funders or partners. Many of these are the initiatives of individual Congolese development professionals, mostly males, who have had access to higher education and have studied such subjects as law or rural development, and who set up institutions in order to pursue issues or themes that they consider important. Very few are women professionals (Lang, 2011).

**SOFEDDEC**, is an association for defending the rights of women and children in the DRC.

ADDF, *Association pour la Défense des Droits de la Femme*, works on women's rights.

## Analysis and Recommendations for Gender Inclusion

### Deep Dive

A deep dive inquiry could focus almost entirely on a deeper and more nuanced understand of the barriers that women face in engaging in participatory processes, governance, and decision making at the community and household levels, especially on matters related to land and forest rights. A deep dive inquiry could also investigate into the feasibility of different approaches that address the underlying social and cultural norms that justify women's exclusion.

Also, because there is considerable attention and investment from international NGOs and donors on reforms to forest and land sector in DRC, effort could be made to understand the gender related results and lessons learned from those programs. For example, what specifically was attempted and did those approaches make a material difference in women's lives? If so, how and what can be learned for other projects?

A deeper understanding of how the activities under each component could benefit or potentially harm women, especially those that are not focused on community forestry but are focused instead on agriculture or forestry practices that disrupt women's current uses and needs from land and forestry (e.g., food and subsistence agriculture).

### Initial Recommendations

Given that women have limited rights to clan land, no decision-making authority over land or forests, limited to no decision-making authority in the household, and do not control their everyday lives or money, it is extremely difficult to see how any of the proposed activities will positively affect women without significant intervention related to formal law and behavioral change communication. Without focusing on women's exclusion, women will not share in benefits. The possibility of community forestry is new in DRC and, as it is piloted in different areas, presents immediate opportunities for testing approaches that address the significant customary exclusion of women from land and forest rights, governance, and decision making (at community and household levels). One must ensure that these pilots and tests integrate gender equity outcomes and M&E from the beginning and then assess the relative success of different approaches that can then be integrated into the regulatory framework. For example,



one intervention could be improving women's literacy generally and then their ability to engage in public meetings or play an executive role.

There is significant investment as part of the ERPD as well as other projects to invest in the enabling environment, including on land tenure reforms. These investments present an immediate opportunity to address the considerable discrimination that women face in all matters related to land rights in both formal law (including family law) and in customary law.

Invest in civil society in a way that can support meaningful engagement and support of women in the newly introduced participatory/community level process for forest tenure.

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