



Preliminary comments by the Environmental Investigation Agency on the Democratic Republic of the Congo's Emission Reduction Program Document for the World Bank Forest Carbon Partnership Facility, final draft dated January 2016

We commend the government of the DRC for the progress made in developing the program in the new Mai Ndombe province proposed for funding through an Emission Reduction Payment Agreement (ERPA) with the Carbon Fund (CF). We note with great concern however the 30th January statements by DRC's Minister of Environment, Nature Conservation and Sustainable Development, Robert Bopolo Mbongeza, that discussions are underway to lift the moratorium on the allocation of logging concessionsⁱ as this will greatly undermine any REDD+ efforts in the country.

We strongly recommend however that the **CF14 meeting in June would be premature for CF Participants to make a decision to begin ERPA negotiations with DRC** because additional work is needed to justify the high forest/low deforestation adjustment, to substantiate the carbon accounting, to clarify the analysis of drivers, to align the proposed program strategies with the drivers analysis, to carry out detailed land tenure assessments in the ER Program area, to develop more specific safeguards and benefit sharing plans, and to establish a functioning grievance mechanism, among other issues needing further attention.

We present below the results of a preliminary analysis of the emission reduction program document (ER-PD). We look forward to sharing further inputs by the time of the next Participants Committee meeting and to discussions of these issues ahead of CF14.

1. Summary of Concerns

- The upward adjustment of the reference level above historical averages is not sufficiently justified, and the data used to support it are not clear or transparently presented.
- The proposed methodologies for carbon accounting are also not transparent and are not fully aligned with the emerging national forest monitoring and MRV system.

- The analysis of drivers blames most deforestation on poor shifting cultivators when this does not appear to be supported by the data presented.
- The proposed program measures and budgets are misaligned to the drivers, focusing mostly on limiting subsistence shifting cultivation, with insufficient attention to industrial logging, artisanal logging and the broader governance reforms needed to reduce corruption and illegality in the forest sector and secure legal rights to land and forests for local communities and indigenous peoples.
- The analysis of industrial logging concessions has little discussion of illegality in the sector, problems with corruption, transparency and human rights abuses.
- The assessment of land tenure in the ER program area required by the CF methodological framework (criteria 28) has not been carried out and the information provided in the strategic environmental and social assessment report, the environmental and social management framework or its component resettlement framework and indigenous peoples planning framework, the frameworks for the FIP projects, the Bio-Carbon Fund Feasibility Study or social assessments for the Dedicated Grant Mechanism for Indigenous Peoples, as well as the ER-PD itself, are high level summaries of general information with little detail and almost no site specific information for the Mai Ndombe province.
- The proposed measures to address land tenure insecurity are vague and do not seem to be rooted in actions that will lead to permanent legal recognition of community and indigenous lands, rather towards sanctioning temporary land uses through local development plans ratified by provincial authorities.
- The Government does not propose the recognition of the carbon rights of communities or indigenous peoples, undercutting their basis for sharing in ER program revenues.
- The benefit sharing plans still require further development, while the principles seem sound, the proposed indicative division of resources seems inequitable, privileging the project holders and logging concessions over communities.
- The safeguard framework requires further development, the documents that exist are national level frameworks, with insufficient detail on time bound, place specific actions that will take place in the ER Program area. Safeguard implementation appears to be delegated to local executing agencies that are independent of government, undercutting the need to build permanent public sector capacity for social and environmental management.
- The program level grievance mechanism, required through the March 2011 Readiness Preparation Grant is still not operational, as required by the CF Methodological Framework.
- Corruption risk and elite capture, identified as a real concern for the REDD+ process in DRC, is not addressed in the ER-PD in a substantive way, so that neither the anti-corruption measures to be implemented at the program level nor the anticipated progress at the national level are clear.

2. Specific Comments on the draft ER-PD

2.1. Drivers of deforestation & alignment of program activities with drivers

The analysis of drivers presented in the ER-PD lacks a clear basis in an analysis of spatial data, while there are parameters for unplanned deforestation and degradation presented, there are no clear data presented for planned deforestation and degradation.ⁱⁱ There is no spatial analysis of the impact of industrial logging, nor artisanal logging. The ER-PD plays down the impact of industrial logging, while acknowledging “The region is seeing a chaotic expansion of illegal logging including small-scale logging and “semi-industrial” operators using heavy machinery.” This ignores widespread evidence that in the face of the moratorium on new logging concessions, logging companies are making widespread (and illegal) use of petty permits and chain saw permits.ⁱⁱⁱ

This leads to the assumption in much of the program design that the primary drivers of deforestation are poor shifting cultivators, such that the main interventions are targeted at getting people to give up their traditional livelihoods and shift from subsistence agriculture in the forest to agro-forestry schemes involving cash crops on the savannahs. While WWC has correctly identified a “cascade deforestation” pattern around the logging concessions, blame is still placed erroneously on the small holders, and not the industrial logging companies who hold the concessions and open up the roads that lead to further illegal logging and small scale agriculture. While some activities are proposed to address charcoal production, industrial logging and artisanal logging (discussed more below), these do not seem commensurate with the scale of the problem. This means that program measures are not well aligned to the underlying causes of deforestation, and program measures to limit shifting cultivation risk negative livelihood impacts on local communities.

The other side of this equation is that logging companies with long record of being involved in illicit forest activities^{iv} and abusing human rights^v such as SODEFOR , are being treated as program partners, potentially privileged in fact above all other stakeholders (besides the nested WWC project) in accessing revenues from the sales of emission reductions. This opens the program to potentially severe reputational risks, as well as risks of elite capture of benefits.

The activities proposed are too limited in scale to accomplish the reduction of emissions envisioned in the ER-PD. The agricultural expansion and growing of fuel wood forests will only address a fraction of the deforestation in Mai Ndombe. Reports indicate that less than 10% of concessions are independently verified as legal or sustainable, and “The OI-FLEG records that while regulations require that each logging concession is visited at least four times a year, very few missions are ever undertaken, so most concessions go unmonitored. The number of properly empowered enforcement officials (*officiers de police judiciaire* – OPJs) is, according to the OI-FLEG, ‘derisory, given the size of the national territory’. Enforcement officers represent just 1% of the total staff of the MECNT, and most are based in cities, many miles from the logging concessions that they are meant to be monitoring.”^{vi} Likewise, four “eco-teams” set up within five years to protect both the protected areas and wildlife are unlikely to be a match for professional illegal loggers.

The primary proposed intervention to reduce emissions from the industrial logging concessions is application of reduced impact logging (RIL). The science behind RIL actually generating carbon savings is however in question, as investigations in Indonesia and elsewhere have failed to demonstrate any noticeable emission reduction, and other studies note that small possible reductions are lost by an increase in areas logged.^{vii}

Even if the correct application of RIL could reduce carbon emissions, there is recent evidence from the field that logging companies compliance with the rules is limited- non-application of RIL techniques being among the findings of an IM-FLEGT field visit to a Cotrefor concession in 2013.^{viii}

2.2. Reference Emissions Level and Carbon Accounting

As noted above, it is not clear that the data presented in the REL support the conclusions about drivers, and the assumptions around oil palm, population and gross domestic product growth, and food crop production made to adjust the reference level above historical also seem questionable. The possible unwarranted upward adjustment of the reference level, in combination with payment incentives for reduced impact logging means that industrial logging in primary forests in the current concessions could continue, and actually increase, whilst still garnering REDD+ payments for industrial logging companies. This could lead to continued deforestation and degradation (hence program failure) as well as the issuing of “hot air” credits, which would be detrimental to the whole REDD+ effort internationally, in addition of course to the damage to DRC’s forests.

For the industrial logging concessions specifically, the annexes 26 and 27 provide estimate annual emissions on a historical and adjusted basis. The historical average annual emissions (for years of exploitation) is 1,011,701, the adjusted annual emissions is 3,148,942, almost tripling the allowable emissions while still making logging concessionaires eligible for REDD+ payments.^{ix} Looking at the individual concession numbers, for example the largest of SODEFOR’s concessions (contract #030/03), the historical emissions are noted as 84,196 while the adjusted emissions are 379,993, more than a four-fold increase. We also note that almost half (48%) of the allowable adjustment to the reference level is allocated to planned deforestation, i.e. the logging concessions.^x

The data and calculations presented in the section on the Reference Level (RL) draw conclusions about drivers that are contradicted by numerous reports about deforestation and degradation in the region as well as the analysis itself. The area defined as subject to unplanned deforestation and degradation and included in the calculation of historic emissions are 1) forest concessions non-production areas, 2) protected areas and 3) unattributed areas. These areas include the entire ER Program Area less the forest concession production areas and the spatially defined palm areas. Additionally, degradation in all classes of forests was estimated to account for 30-50% of emissions and was thus included per the Carbon Fund Methodological Framework. However, the distribution of degradation was not defined although this could help to identify the drivers of this significant portion of the DRC’s historic emissions. The stratification of the forests can provide greater certainty of historic deforestation and degradation, however, the gaps in data and the assumptions made are not transparent and need further analysis, this is particularly true of degradation where the high-resolution remote sensing is of little use.

The linear regression analysis, relying on sparse data then through statistical calculation

reduced the drivers of all historic deforestation to only oil palm production and rural population growth and found an almost perfect correlation. However, this analysis ignores the sections of the ER-PD that cite charcoal production, artisanal logging, and widespread illegal logging as drivers of deforestation. It also misses the fact that there is no evidence presented of major illegal palm oil production, palm oil is not even listed as a major agricultural crop, and the approved palm oil production is stated not to be included in the calculation of unapproved deforestation and degradation. It should be noted that there was no data on palm oil production for the province so national data is used. Major deforestation for palm plantations should be visible on high-resolution remote images if they really account for a significant portion of the unapproved deforestation or degradation. Further analysis needs to be conducted to establish that one of the two major stated drivers even is occurring in the Province. Also, as the population in the Province is stated to be the lowest in density of all of the DRC, it seems unlikely that it is the slash and burn agriculture, which is the target of the ERPD that is causing most of the deforestation and degradation.

An analysis of the documented drivers of deforestation and degradation rather than a statistical model should be conducted to ensure that the correct drivers of deforestation are identified. This is particularly important where a country is seeking to increase its reference level above the historic baseline.

Many of the assumptions made to adjust the reference level above historical are also questionable and need further analysis. The adjustment sought is 0.1% of total forest carbon stocks in the program area, or 1.434 million tons of carbon and 5,259,494 tons of carbon dioxide. This is a large adjustment and proposed increase in the allowable level of deforestation and degradation in the province, so it is essential that the assumptions made are valid and achievable. In terms of estimating future deforestation, there are questions about how the proposed adjustment was generated. It appears to be based on national population growth data, national income data (GDP) and national values for production of cassava, maize and other crops. The GDP figures given (16.8% increase per year)^{xi} are more than twice the GDP projections provided by other sources, for example World Bank country data (projected at 8 or 9% per year)^{xii}. Problems with the reliability of the population data are noted in the ER-PD (“Thus no highly reliable data exist for population numbers or growth in population for Mai-Ndombe”)^{xiii}, with no census since 1984, there is little credibility to the figures, and the highest possible values (3%) are chosen. We note that the ER-PD reports that the UNDP population data show population growth to be zero. As the population density in Mai Ndombe is the lowest in the DRC, the assumption of population growth should be calculated for the province. Even if the correct range of population growth is between 2.6% and 3% a 0.4% miscalculation will result in a potentially large number of false credits. If the population growth turns out to be reflective of the low population density, the number of false credits could be dramatically higher.

The source of this adjustment should be better documented and quantified as it will shed light on recent drivers. This massive increase is also contrary to statements in the ER-PD such as agriculture has been stable, and only 2 of 20 concessions have cutting plans in place. Could the difference be the results of different data sets or some other anomaly? Given the low population density, the lack of data of any illegal palm oil plantations, and low industrial logging or industrial palm development, it appears that the real drivers of this 250% increase in deforestation do not appear to be properly characterized in Mai Ndombe. If the data is averaged over the entire period, the level of emissions is dramatically lower and the allowable increase from the historic REL would likewise be lower.

The proposed conservation concessions to be removed from logging should only apply to forests that can be legally cut which contain virgin or secondary forests. Assuming savings from restriction of logged off forests and forests that are un-loggingable due to proximity to rivers, streams, or wetlands, are on to steep a slope or are un-harvestable for any other reason should not be factored into the emissions reductions for which ER credits are granted.

These are only a few of the assumptions that need detailed scrutiny before it can be verified that an increase is warranted. Not quantifying these measures on a national basis also undermines the analysis of leakage and reversal. How can it be said that there will be no leakage if the primary destination of fuel wood and charcoal is Kinshasa and demand can be met from other provinces.

In terms of the uncertainty levels of the analysis, while most of the proposed parameters (Annex 23) used to measure planned DD are in the 0-15% confidence interval (most are 10%), we note with some concern that the uncertainty levels for some of the main parameters for monitoring and understanding planned deforestation are very elevated (all at 90% confidence level): area harvested at $\pm 50\%$; Volume harvested at $\pm 50\%$; average area of felling site at $\pm 70-282$; the factor for abandoned timber at $\pm 100\%$ and the average area of log landings at $\pm 255-775\%$.

These would appear to be the main parameters needed to understand the dynamics of DD within the industrial logging concessions. We note further that the source of some of these critical values are “part of the regular requirements of forestry concessions”, supposedly submitted every three months, or annual “field sampling by forestry concessionaire” or “records of forestry concessionaire”. Given the widespread non-compliance with forest sector transparency rules in DRC, and further, the strong economic incentive to underestimate these figures (for tax and now REDD+ revenue purposes), we question whether this constitutes a reliable and viable plan. Without presenting the historical non-adjusted values of these parameters, it is difficult to understand what is really going on with DD in the concessions, or to verify that the drivers analysis is realistic.

2.3. Governance Reforms, Land and Forest Tenure

We support and reiterate the recommendations made by the Rainforest Foundation Norway in their comments on the ER-PD. We commend the Government of the DRC for the recent February 9, 2016 approval of *Arrete Ministerial No. 025* on community forestry.

In terms of the governance reforms needed to make the ER Program feasible, effective and sustainable, we commend the DRC for some important steps in the right direction. We note however that in the ER-PD there is insufficient information to judge whether there are indeed credible plans to aggressively move land and forest tenure reform, land use planning, enhanced forest law enforcement, anti-corruption measures and institutional strengthening for effective environmental and local management by local, provincial and national public institutions. We do not believe that undertaking program measures in Mai Ndombe, isolated and unsupported by broader reforms, can be effective. This is especially true if management of the ER Program is delegated to an independent project implementation unit, and not embedded directly in provincial and local government.

The ER-PD notes that the proposed program is aligned with the governance reforms agreed to with the World Bank as part of the Economic Governance Matrix, which was revised in 2013 to include REDD+ related aspects. However on the two primary reform processes included there- land use planning and land tenure reform neither the progress being made at the national level nor the provincial level activities proposed for the ER Program are described in enough detail to have confidence that these issues will be adequately addressed.

2.3.1. Strengthening governance and law enforcement

Three of the proposed key activities for governance strengthening: strengthening forest and wildlife law enforcement, legal compliance of industrial logging concessions and development of community forestry have no recorded source of national funds for their implementation, they rely on a proposed up front donation from the FCPF CF—each are budgeted \$1.5m over the five year program- around \$300,000/year for each of the key initiatives, which is unlikely to be enough to make significant changes, especially in the absence of a conducive national policy framework.

Community forestry is proposed in potentially three 50,000 ha areas^{xiv}, so in total an area constituting .01% of Mai Ndombe’s forests. Further, the proposal is to group communities together with artisanal loggers in these community forestry concessions, an idea which seems questionable at best given the risks of elite capture and the uneven playing field between communities and small logging companies.

The ER-PD says that investments in land tenure reform (\$10m), land use planning (\$12m) and governance (\$23m) are being sought from CAFI, but does not describe the proposed activities, mention a national budget allocation or when they might be implemented.^{xv}

The ER-PD states “The resources made available to the State for controlling the legality of wood transported and for controlling compliance with management plans and standards will contribute to a substantial reduction in illegal and semi-industrial logging, and will help to formalize the small- scale sector.”^{xvi} We note however that this may be optimistic, as the recently concluded WB Forest and Nature Conservation project reported that “The project could not take on entrenched vested interests in the forest sector, making some successes elusive, as illustrated by the failure of the *Programme de contrôle de la production et de la commercialisation des bois* (Timber production control and marketing program, PCPCB).”^{xvii}

We note that the most recent (2014) Chatham House report on illegal logging in the DRC reports fourteen separate reforms identified by the FLEGT Independent Observer needed to create a coherent policy framework.^{xviii} This was based on a review of the sector legislation. These include the absence of regulations for artisanal logging, and the need to harmonize the Forest Law with other sector legislation, among others. The report concludes that “Forest law enforcement structures in the DRC are fundamentally flawed in all important respects. Enforcement is so under-resourced and ill-coordinated that infractions are rarely uncovered. Even where they are, the penalties applied are insufficient to dissuade those responsible from continuing to behave illegally.”^{xix}

2.3.2. Land Tenure assessment and reform

The question of whether a land tenure assessment has been conducted as required by criteria 28 of the Carbon Fund Methodological Framework is another relevant point here. The description of the land tenure situation in the ER-PD, while more fulsome than the ER-

PIN, is high level and brief, an overview. There is no land tenure assessment in the national SESA report, the section of which on tenure issues and natural resource management is short and provides little or no discussion of the specific situation of communities in the Mai Ndombe province. The SESA report concludes that despite protections in the constitution and the Forest Code, the land rights of communities cannot be effectively exercised or enforced because of a lack of regulations and institutional capacity. ^{xx}

The ER-PD refers to “thousands” of villages, but there is no accurate estimate of the population or a detailed description of where and how they live.^{xxi} Equally the social and environmental management frameworks for the overlapping WB FIP project are in large part identical to the national ESMF, with some customization for the FIP program activities, but no specific information on the tenure status of communities in the Mai Ndombe area. Two other sources, the Bio Carbon Fund Feasibility Study and the social assessments for the DGM, provide a little bit more information, but do not constitute land tenure studies for the province.^{xxii} Both are also of uneven quality.

It is not sufficient to cite the fact that the state own lands, it is divided into different categories, etc., as the official land tenure system overlaps with the customary system which is recognized by the Forest Code, but not by other laws, creating a confusing situation that benefits the state and local elites. In order to effectively plan and execute activities related to tenure security, there needs to be a detailed analysis of the situation of the communities on the ground.

2.4. Carbon rights

The section on carbon rights reaffirms that the government owns all carbon, has the right to transfer credits to whomever it chooses, and can regulate and prohibit others from doing so. The non-recognition of carbon rights in DRC law is based on the fact that they lack physical form, are not a forest product, and are not tied to a particular form of usage. It goes on to say that although there is no case law yet, it is likely that Congolese law will affirm that there can be rights to emission reduction credits issued in a registry.

It says further: “While Congolese law does not grant the right to emission reductions the status as a right in rem, it does not mean that holders of land titles and rights of use were defenseless against the government or a third party restricting the scope of their title. This includes the right of e.g. concession holders (and/or of a deforestation permit under Article 53 Forestry Code) to perform logging in accordance with the terms of the concession or permit, or the right of indigenous communities to use the forest environment as recognized by Congolese formalized and non-formalized law.”^{xxiii} It is unclear what this means, because the creation on an emission reduction over a particular area of land being monitored and verified necessarily imposes restrictions on forest clearing.

The ER-PD goes to say that unjust enrichment has remedies under Congolese law, but the ability of rights holders to claim compensation should not be interpreted as an encumbrance on the ER title. This also doesn’t appear to make much sense, because if a party has a right to make a claim against the state for unjust enrichment this means title to emission reduction credits isn’t free and clear.

Additionally the ER-PD mentions that Ministerial Regulation No 4/201226 on REDD project proponents does not create carbon rights as such, but that the legal framework around the

issuance of conservation concessions do “confer an exclusive right to valorize emission reductions and receive REDD+ credits for the area under concession”.^{xxiv} Again, this seems somewhat less than straightforwardly clear.

What this does seem to establish is that concession holders will have the right to generate credits, but other land users will not. This is reflected also in the proposed benefit sharing arrangements.

Finally, the ER-PD goes on to say that “Challenges are mostly foreseen with respect to the contractual integration of customary land holders. This does not concern so much the contractual negotiation process at both the level of clan chiefs as well as the level of local and indigenous communities as a whole, which are addressed in dedicated stakeholder consultations (see below section 5). Rather it concerns the long-term effectiveness of any contracts concluded.”^{xxv}

The ER-PD then details some of the many potential reasons for conflicts among rights-holders around land and forest ownership and use and proposes a set of activities to mitigate these risks to ER title challenges: compliance checks around contracts, integrated “contract awareness” campaigns, an integrated approach to REDD+, more secure tenure for those who invest in improvements, some of which is included in the proposed program, some of which, like long term monitoring of compliance, seems unlikely to be feasible.

In sum, it appears that the legal framework for carbon, as explained in the ER-PD, privileges government and project holders who hold contracts with government to commercialize carbon, and denies all others any legal basis for claims to carbon revenue, except through judicial claims of unjust enrichment. This does not appear to be a sound basis for benefit sharing of carbon revenue.

2.5. Benefit sharing

There is a good set of principles to guide benefit sharing, which notably includes the idea the non carbon benefits will be the major incentive for some stakeholders, rather than revenues from ER credit sales. The section on benefit sharing distinguishes several types of carbon benefits that will be generated: investments to generate ER’s, payments for environmental services, emission reduction credits, revenue from the sale of ERC and goods and services generated by PES or the sale of emission reduction credits. Positively, the ER-PD proposes to recognize the historic role of IPs in sustainable forest management and earmark some benefits for them.

The benefit-sharing scheme also distinguishes between two classes of beneficiaries- those who are project holders and those who are not. Project holders, i.e. the government and WWC, possibly some of the logging concessions implementing RIL, have access to “carbon contracts” which entitle them to a percentage or portion of emission reduction credits, or revenue therein. Other beneficiaries have access to “implementation contracts” which specify rights and obligations, and may spell out rules for compensation, but are “formally disconnected from the carbon-related contracts and do not imply the allocation, sale or transfer of ERCs”.^{xxvi} For clarity sake, it reiterates “their execution and implementation is *strictu sensu* not linked to the carbon performance of the project or program or the issuance and transfer of ERCs”.^{xxvii} There is then a risk that the majority of benefits from the sale of carbon revenues will be channeled to the government and project holders, while benefits

for other rights holders are dependent on generation of non carbon benefits that may or may not materialize. There is also a risk that benefits to communities are one-off investments in buildings such as schools or health posts, which are no doubt needed, but do not constitute a sustainable stream of revenue from forests. This risk was recognized by the World Bank in approving the additional finance for readiness, “Elite capture of benefits is common practice in DRC. REDD+ revenues may be captured by local elites (government, NGOs, community leaders or businesses), which would prevent them from reaching local forest-dependent communities.”^{xxviii}

The ER-PD goes on to propose an indicative breakdown of benefits, which allocates 30% of the benefits to the nested projects, and 50% for reinvestment in program activities, 10% for program transaction and monitoring costs and 10% to indigenous peoples, free of any contracts. Within the 30% for nested projects, half would go directly to WWC (15%), and the other half would be split between logging companies (7%), and nested communities benefit sharing (8%). Of the 50% reinvested, about half (24%) would go to communities sectoral activities, 17% to enabling environment (i.e. government presumably), and 6% to co-financing activities with the private sector. Another 7% would be set aside for operating costs. The ER-PD estimates \$97.5 m over five years, \$78m from the FCPF CF, selling ERs at \$6/ton.^{xxix}

2.6. Safeguards

The REDD+ process in DRC has taken a number of important steps in creating a system for the adequate implementation of safeguards, these include the elaboration of FPIC guidelines, the elaboration of a set of national REDD+ standards, the identification of many of the potential social and environmental risks of REDD+ through the SESA process, and the creation of a national ESMF, including specific frameworks for resettlement and indigenous peoples. These are all positive advances, and DRC is one of few countries to have completed them. The description of proposed safeguards in the ER-PD is based on sound principles, but lacks sufficient details to create confidence that there is really capacity to implement the proposed standards.

The fact that FPIC is embedded in the new national REDD+ standards, and is proposed to be integrated into the ER Program is very positive, an important policy achievement, but the capacity to carry out fair and transparent FPIC processes on the ground appears to still be very limited.^{xxx} WB policy requires there be a time bound action plan for legal recognition of indigenous peoples land and forests in projects where they are present and which can seriously impact their livelihoods, access to land and forests.^{xxxi} That means plans that list the names of communities and the dates when they are going to get legal title, what the steps are and how much it is going to cost, not general references to participatory mapping and local land use planning.

The safeguard frameworks developed during the national readiness phase, including the overall ESMF, the RF and the IPPF, as well as those developed for the FIP project, which are also frameworks, all hold out promise to inform national policy and local regulations for the application of socially and environmentally sound rules for managing REDD+ projects, if they are aligned with the rules for investments in other sectors as well. They are however “free-standing” frameworks at this point, with no status in national law or regulation, and little implementation capacity exists at the national level to apply them, less at the province and district level.

Much of the “respect for rights” rhetoric in the ER-PD, which proposes a set of interventions to create an enabling environment, including for governance strengthening, rely on short term, individually negotiated contracts between the program entity and local stakeholders. The ER-PD states that secure land tenure for example, can be gained through “the identification of their rights during the elaboration of the regional management and development plan .The individual and collective rights recognized in this way will become enforceable on the administration and third parties.”^{xxxii} However it is unclear what legal standing these contracts would really have, especially over time, and what power local communities would have both to be able to negotiate fair deals and to ensure their enforcement if the underlying tenure situation (state ownership) remains unchanged and the state in the future decides to do something else with the land, such as grant further logging or mining concessions, or allow for the expansion of oil palm or other cash crops. The use of contracts in a situation with strong governance institutions and rule of law, including a strong and efficient judiciary, would be more acceptable, in the DRC there is not enough of a track record to inspire confidence.

There is a proposed indicator in the result framework for “percentage of indigenous peoples and local/forest communities benefiting from land use and/or land rights recognized clearly and legally” – expresses this ambiguity- land use rights could be clearly and legally recognized, or people could just benefit from being able to use land for a period of time.

The social and environmental risk matrix in Annex 12 is not yet complete, many risks noted by stakeholders and recorded in the SESA or noted in the IPPF, RF or in the ERPD itself are not mentioned, and the mitigation measures remain at a vague and general level, for example: “Close accompaniment of forest management agents in their efforts to apply The Law.” in response to the risk of illegal wildlife trade and biodiversity loss in logging concessions.^{xxxiii} Another example- when discussing the risks of the reduced impact logging approach, there is no mention of industrial logging concessionaires not following the rules, or monitoring and compliance enforcement not being robust enough (both well documented and widespread phenomena), rather only indigenous peoples and local communities not following the rules is listed as a risk.

As noted above, two of the primary risks to vulnerable peoples, including indigenous peoples in the ER Program area, would be a reduction in their access to land for shifting cultivation, and a reduction in their access to forest land, both of which are likely critical to maintaining food security, and for indigenous peoples, cultural survival. While the ER-PD says there would be no specific effort to limit access to land or forest, the BioCF Feasibility Study contradicts this and says: “The project targets a 50% reduction in the subsistence crops that currently provide these incomes, halving monetary incomes per household to USD 200.”^{xxxiv} It claims these losses would be made up by perennial crops, although later acknowledges that many of those crops would not bear fruit for seven years (after project subsidies have stopped), while also noting that yields are generally poor. In an effort to protect biodiversity, the same document suggests that the project would address these through enclosures: “The tracts whose forests are most threatened by destruction, for example in forest-savannah mosaic areas, may decide to set up forest enclosures at the same time as investments are made in the savannah areas. The Project sets aside specific resources for this purpose, with payment by results. An indicative amount is set aside for the purpose of enclosing 15,000 hectares of primary forest in exchange for agroforestry

plantations in the savannah. Forest and savannah exclosures are encouraged by payment-by-results clauses written into SDP contracts.”^{xxxv}

The BioCF Feasibility study also suggests a fast pace for planning these efforts: “One week is needed to create the LDCs and demarcate the tracts, while another is needed for participative planning...”^{xxxvi}, while underplaying the amount of conflict, marginalization and elite capture that goes on in the area, specifically with respect to indigenous peoples as well.

The actual application of safeguards (i.e. the development of specific, time bound, place based, risk mitigation plans and their implementation) in the ERP appears to be delegated to project entities and the proposed local executing agencies. While this might be more efficient, the capacity of these actors to implement safeguards won’t be clear until they are selected, and the distancing of safeguard implementation from line ministries and local or regional governmental authorities will mean the program is less likely to build institutional social and environmental management capacity.^{xxxvii}

A final point on the safeguards framework relates to the development of the feedback and grievance redress mechanism (FGRM). Despite the inclusion of funds to study options and develop an effective mechanism in the 2011 readiness grant, as of the end of 2015, an assessment study had not been carried out and a FGRM for either the national or Mai Ndombe levels had been put in place.. The proposed plan in the ER-PD is to use the national Registry as a place to file complaints. For the (majority of rural) stakeholders who do not have access to internet, complaints are to be filed using local multi-stakeholder bodies. While it may be that multi-stakeholder bodies can plan a role in informal conflict resolution, they are unlikely to have the legal authority to modify contracts, order the implementation of safeguard measures, impose sanctions or other such steps needed to remedy grievances. In fact the ER-PD suggests that: “The procedure to cancel or to forbid bad practices which are generating grievances are to be addressed to the administrative and judiciary institutions that are habilitated to receive and treat the cases. The same for plaints on any mismanagement of the contracts obliging as well the project itself and the local communities or anyone else (administrations etc.)”^{xxxviii}

However it appears that before being sent to the relevant administrative or judicial authority, complaints must go through “mediation” at first the local, then provincial, and then national levels, a process that might take a good deal of time (although timeframes are not yet defined). If a complaint is not resolved internally, it would be referred to an ombudsman, and failing that, the judicial system. The proposal to include an independent ombudsperson is a good one, especially if access to that person is not delayed by several layers of internal review, and if the position is truly independent and well resourced. There is no analysis of the capacity of the DRC judicial system to resolve complaints around access to land, forests, contracts, benefit sharing agreements and the like is, but, for example the social assessments for the DGM report that indigenous peoples face systematic discrimination by police and the courts, including in the Mai Ndombe area. Given vested economic interests, and unequal power relationships, especially between IPs and Bantus, care will be needed to design systems which are effective. The proposed use of the Moabi platform as an additional way to make transparent the efficacy of the FGRM is a welcome addition. The program budget identifies the cost of implementing the FGRM at \$1.6m over ten years, and the ER-PD says these costs will be born by the program, but where they are coming from is not specified.

2.7. Institutional arrangements and financing

The institutional arrangements for the management and implementation of the ER program seem to be growing increasingly complex as the design process has advanced. While some of this may result from a healthy desire to create checks and balances, and facilitate the involvement of actors independent of government, in may prove to be challenging in practice. In particular, the use of an independent project management team and the use of local executing agencies may represent a trade off between efficiency and building capacity, and perhaps ultimately, accountability.

The recently (2015) closed Forest and Nature Conservation Project provides some instructive, if worrisome, information on WB led efforts to strengthen environmental management in the DRC. The project was evaluated as unsatisfactory by the Bank, with many of the key objectives not achieved. Among the projects objectives was increasing the capacity of the MECNT to monitor and enforce the laws around industrial logging concessions. However little progress was made on several fronts, the most costly failure in terms of project resources was the creation of a chain of custody timber tracking tool which “the government decided not to honor its contractual commitment to attempt to rescue the PCPCB, thus sealing its fate in August 2014.”^{xxxix}

Related to project design: “The focus on capacity building was also appropriate in the face of exceedingly low existing capacity. Technical implementation was supposed to be managed by MEDD directorates and ICCN, empowering them in theory. However, a lack of ownership and capacity by the institutions thwarted this good design idea. Overcoming MEDD weaknesses by using 12 delegated management contracts allowed the project to benefit from the experience of organizations already operating in the target areas, while minimizing duplication of effort and interventions with the same populations. This worked reasonably well in terms of yielding results, but produced few capacity improvements.”^{xl}

The Implementation Completion Report also notes that hundreds of thousands of dollars of ineligible expenditures were made and that a fraud and corruption investigation of one project staff member is ongoing.

2.8. Corruption Risk

Given the governance context in the DRC, corruption risk was identified early on as a concern among both national stakeholders and international donors. The 2011 PwC study documented that not only is corruption a significant enabler of deforestation, but stands to block and undermine the REDD+ effort.^{xli} A number of the risks identified are relevant for the Mai Ndombe project, including “Agricultural or timber conglomerates bribe sub-national officials responsible for forest protection to ignore violations of conservation laws” and “Local administrators extract rents from environmental service schemes aimed at benefiting local communities”.^{xlii} A more recent (2015) study by U4 documents another series of risks related to kick backs, nepotism, politicization of REDD+ staff positions and the misappropriation of funds, providing evidence that some of this risks are already in fact being realized.^{xliii} The ER-PD mentions that a training plan for the Judiciary was to lead to a plan for fighting corruption in REDD+, targeted for completion in June 2015, but does not report on the contents of the plan, and there is no further discussion of the issue in the ER-PD. In light of the recent report from the World Bank citing significant ineligible expenditures and the corruption investigation of a government person working on the

Forest and Nature Conservation Project, further treatment of this issue seems warranted. A discussion of the anti-corruption measures contemplated in the ER-Program, and in the National REDD+ Fund could clarify what is currently being planned.

ⁱ See <http://www.redd-monitor.org/2016/03/02/democratic-republic-of-congo-threatens-to-open-forests-to-industrial-logging/>

ⁱⁱ The ER-PD states that during the reference period (2004-2014) unplanned deforestation and degradation activities including slash and burn agriculture has caused a loss 154,175 hectares annually whereas planned degradation activities including based on the concession date from industrial logging has impacted an area of 229,126 ha over the same period.

ⁱⁱⁱ See for example: Global Witness *The Art of Logging Industrially in the Congo* (2012); Global Witness, *Exporting Impunity* (2015), Greenpeace, *Artisanal Logging=Industrial Logging in Disguise* (2012); Greenpeace, *Illegal Logging in the DRC* (2013), Greenpeace, *Trading in Chaos* (2015)

^{iv} See Global Witness: *Exporting Impunity* (2015)

^v See Greenpeace complaint to FSC

^{vi} Chatham House 2014, p2; p.14

^{vii} Griscom, B., et.al., *Carbon emissions performance of commercial logging in East Kalimantan, Indonesia*, *Global Change Biology* (2014) and Martin, P.A., et al. *Impacts of tropical selective logging on carbon storage and tree species richness: A meta-analysis*. *Forest Ecol. Manage.* (2015)

^{viii} Greenpeace 2015, p.6

^{ix} While there might be a (weak) rationale for allowing the concessions that are not currently operating to get underway, the Annex 26 shows historic emissions from all but three concessions, indicating the logging is happening whether or not the required management plan is in place.

^x ER-PD, p.128

^{xi} *Ibid*, p.121

^{xii} See for example World Bank Country Data for DRC

^{xiii} ER-PD, p.120

^{xiv} ER-PD, p.61

^{xv} *Ibid*, p.46

^{xvi} *Ibid*, p.57

^{xvii} World Bank Implementation Completion Report on Forest and Nature Conservation Project, P.23, the ICR also reports that a number of other objectives were not met, and indicators designed to monitor them were dropped at midterm through a restructuring, with no monitoring carried out, these include an increase in field supervision missions, preparation of monitoring reports, prosecutions of violators for illegal logging infractions, extension of illegal logging roads, areas of participatory zoning, percentages of forest users aware of their rights, number of people trained in safeguard measures, number of mitigation measures implemented, and the list goes on.

^{xviii} Lawson, S. *Illegal Logging in the Democratic Republic of the Congo*, Chatham House, April 2014

^{xix} *Ibid*, p.2

^{xx} DRC National REDD+ SESA report, p. 57

^{xxi} ER-PD, p.35

^{xxii} The BIO CF Feasibility Study contains the most information of any of the documents, and is specific to the ER program area. It states that there are 1,371 villages and 1,110 farm tracks in Mai Ndombe (p.59). It however treats the issues of rights to land and forest as a question of access to property, concluding that it is only problematic on the outskirts of cities where demand for land is high. It provides an overview of the legal situation, noting state ownership, considerable informality, and notes nine different types of land conflicts that can ensue, although does not attempt to provide any indication of how widespread or prevalent any of these conflicts are, nor propose any means to mitigate.

^{xxiii} ER-PD, p.67

^{xxiv} *Ibid*, p.68

^{xxv} *Ibid*, p.69

^{xxvi} *Ibid*, p.177

^{xxvii} *Ibid*, p.177

^{xxviii} FCPF Assessment Note Additional Readiness Financing, Annex 1:Operational Risk Assessment Framework, p. 32

^{xxix} ER-PD, p. 181

xxx See TAP Review of the DRC R-Package Self Assessment, p.10; and TAP review of ER-PD, p.5; DRC National REDD+ Indigenous Peoples Planning Framework, p.61, Background Paper for the The Forest Dialogue, Field Dialogue on Free, Prior, Informed Consent in the DRC

xxxi See World Bank Operational Policy 4.10 on Indigenous Peoples

xxxii ER-PD, p.184

xxxiii Ibid, p.215

xxxiv BioCF Feasibility Study, p.69

xxxv Ibid, p.68

xxxvi Ibid, p.63

xxxvii ER-PD, p.170

xxxviii Ibid, p.173

xxxix World Bank Implementation Completion Report, Forest and Nature Conservation Project, p. 23

xl Ibid

xli PwC, Implementing REDD+ in DRC – How to manage the risk of corruption, 2011

xlii Ibid, p.20

xliiii Assombe, S. National-level corruption risks and mitigation strategies in the implementation of REDD+ in the Democratic Republic of the Congo: An overview of the current situation, U4 Anti Corruption Resource Centre, Issue 2015-9