Call for tender

Analysis of the options for better integration of community rights in conservation of forests in the Republic of Congo

Objectives

Analysis of options for better integration of community rights in conservation of forests in the Republic of Congo

Context

ClientEarth is a public interest environmental law organisation founded in 2007. Our work combines legal approaches with scientific and policy analysis to create practical solutions to the most pressing environmental problems. ClientEarth’s Forest Programme works to influence the development, implementation and enforcement of legal frameworks and policies. We seek to improve the operation and effectiveness of law in the EU and in tropical forested countries, to minimise the impacts of deforestation and ensure the rights of local communities and Indigenous peoples (LCIPs) are recognised and upheld.

ClientEarth is leading a consortium to implement the project “Building Legal Bases for Sustainable Forests and Livelihoods”: a new five-year programme with particular focus on Liberia, Gabon and the Republic of Congo. Our work builds on the central role that law plays in the development and implementation of community forest governance systems. Our activities aim to ensure that legal frameworks recognize and protect the rights of LCIPs; and that the livelihoods of LCIPs contribute to the
preservation of ecosystems. The aim of the programme is to improve community forestry as a tool to enhance forest management and generate sustainable development.

“Community-based conservation” refers broadly to the sustainable use and management of lands and territories directly by communities. While there are different models for community-based conservation, key elements generally include that (a) it is led and controlled predominantly by communities themselves; (b) it has a territorial component (usually on lands traditionally owned or managed by the community); and (c) it generates positive social and conservation outcomes.

In addition to community-based conservation, there are a variety of other intermediate measures (access and use arrangements, co-management, etc) that can also improve respect for human rights in the conservation setting, but which are not in themselves community-based conservation.

The Republic of Congo is reviewing its legal framework governing protected areas, which are the principal vehicle for conservation in Congo at present. This constitutes an opportunity to ensure the rights of LCIPs are better integrated in existing conservation initiatives, including through the legal recognition and promotion of community-based conservation.

The consultancy will play an important role in identifying viable options for a more human rights compliant and community-based conservation in the Republic of Congo. The consultant will also present their findings to civil society organisations in order to strengthen their expertise and ability to produce recommendations for the upcoming stages of the law reform process. The consultant will work with ClientEarth and civil society in order to formulate comments, propositions and amendments to the legal reform processes, as well as to carry out advocacy activities in this context.

**Activities**

**Analysis of options for better integrating community rights into conservation law, policy and initiatives**

The consultancy will mainly focus on an **analysis of options for better integration of community rights in conservation in the Republic of Congo**, in French. The report will include the following sections:

1) **An introduction:**

- A short presentation of the conservation context in the Republic of Congo – when, why and how – and of its current status, including the scale of protected areas and how of protected areas circumscribes the exercise of LCIPs’ rights (about 1 page)
- An overview of different models for integrating rights into conservation policy, including successful community-based conservation models
- A short introduction of the policies, laws and regulations relevant to conservation (and community rights within conservation) in the Republic of Congo (a few paragraphs)
- An overview of the current ongoing legal reform process, including where the participation of stakeholders is foreseen (a few paragraphs)

2) **An analysis of legislative options:**
• A description of legal gaps and options to better respect community rights in conservation, revolving around 10 key elements for an enabling legal framework around community forestry, guided by the following questions/elements (non-exhaustive) (15 pages maximum)
   Each section will provide a critical analysis of the enabling and disabling provisions, as well as the gaps and/or inconsistencies in the legislation currently applicable.

1. Communities and land tenure
   o What is the definition of a community (if any)?
   o What differences are there between indigenous and non-indigenous communities?
   o What are the key features of the land tenure regime as it relates to communities’ customary rights to own, occupy, access and use customary lands?

2. Creation of protected areas
   o What are the steps to create a protected area?
   o Where can protected areas be created and on what type of forests? What are the guiding methodologies (ecological criteria) for the choice of the areas?
   o What are the legal time and space limitations to protected areas?
   o Does the law provide for the free, prior and informed consent (FPIC) of LCIPs as a condition of the protected area creation? Does the law provide that the compensation of LCIPs is a condition to the protected area establishment?
   o To what extent does or can the existing laws integrate community rights? Would the existing protected area framework permit the creation of a community-based conservation area, and what would or could this look like if so?
   o What legal entity (if any) could communities use for community-based conservation? What are the main steps to create this legal entity?
   o What steps should the law require for the creation of protected areas suitable for community-based conservation?

3. Participation in and potential co-management of protected areas
   o What bodies manage and monitor protected areas? How do they function? How do local communities and Indigenous people take part in these bodies?
   o What are the provisions for the involvement of women and Indigenous people in the management of protected areas? Do these provisions foresee their possible involvement at every step of the process? How are other vulnerable groups identified?
   o How should these rules be adapted to ensure the effective participation of all segments of a community, including women and Indigenous people, in community-based conservation?
   o How could community participation in management of protected areas be strengthened?

4. Community management of conservation areas
   • How should community management of conservation areas be organised at community level? How could this be incorporated in the law to ensure community governance is inclusive, accountable (both internally and externally), transparent and effective? Is the village structure suitable or should local communities and indigenous people be able to have distinct governing bodies?

5. Access, use and livelihood activities in conservation
6. Access to markets
   - What “for profit” activities can be conducted in protected areas? How are these regulated?
   - What “for profit” activities should communities be allowed to carry out in the context of community-based conservation? What set of criteria could be used to assess these activities?
   - What legal mechanisms or market incentives could facilitate and/or deter access to local, national, international markets?

7. Benefit sharing / Compensation
   - Does the law foresee a mechanism to share in benefits (deriving from activities within the protected area (incl. the use of genetic resources) or compensate communities affected by protected areas? Are there safeguards to ensure it benefits LCIPs?
   - What are the options for benefit-sharing in the context of community-based conservation?
   - What should a benefit sharing mechanism ideally look like?

8. Enforcement
   - What are the sanctions foreseen for infringements in protected areas?
   - What are the sanctions foreseen for infringements during the public consultation process prior to the designation of the protected areas and during the implementation of their management plans/measures?
   - Who controls the application of protected areas’ rules?
   - Are enforcement mechanisms suitable for community-based conservation?

9. Dispute resolution mechanism
   - Is there a complaint mechanism and/or a dispute resolution mechanism?
   - Does this mechanism take into account customary dispute resolution means?
   - Are these mechanisms suitable for community-based conservation?

10. Support from external actors
   - What support mechanism could be given communities in the creation of community-based protected areas (from government, NGOs or other)?

Any legal text/provision mentioned in the report should be referenced.

3) Key recommendations where gaps are identified to input into the ongoing legal reform processes and, where applicable, in which regulations/law reform process the recommendations can be embedded (2 pages).

4) Annexes to the main report, containing, as relevant:
   - A list of the relevant policies, laws and regulations, as well as key procedures (e.g. guidelines and other key non-binding documents additional to the legislation, if any) and policies covering the access, management and control of community forests – as well as the electronic versions of all the legal texts
If relevant/possible, any useful diagram to explain the procedures depicted in the main report

Presentation of findings to civil society groups

The report’s findings will be presented and discussed with civil society groups and, if possible community representatives, during a workshop held in Brazzaville.

The consultant will facilitate exchanges and collect participants contributions to the report’s findings. A consolidated report will then be published.

Method

The consultant will work in collaboration and coordinate with the consultancy manager – a designated lawyer in ClientEarth’s Forest Programme, as well as in coordination with a designated person at ClientEarth’s Congolese partner, Comptoir Juridique Junior.

Meetings will be organised via phone or Skype to coordinate and follow up on the work as it progresses and provide comments and guidance where needed.

The consultant is expected to provide for her/his own office space, accommodation, transport, IT equipment and working materials. The consultant will be responsible for her/his own social, pension, travel, medical or other type of insurance.

Profile

Candidates should meet the following selection criteria:

Qualifications

• Individual with a Law degree or organisation with demonstrated legal expertise

Experience

• 5 or more years of directly relevant experience in the Republic of Congo or the Congo Basin
• Demonstrated experience in legal and policy analysis
• Experience in and knowledge of local communities and Indigenous peoples' rights
• Experience in working with and supporting national civil society organisation and facilitating trainings, workshops other capacity building events

Skills and competencies

• Strong analytical, verbal, and report writing skills
• Ability to work independently and be proactive
• Fluent in French
• Knowledge of at least one of those fields: conservation, communities’ rights, natural resources, land tenure.
**Timetable**

The activities will start upon signature of contract. They will be spread between January and April 2022. A detailed timetable will be agreed on with ClientEarth.

**Funding**

The funding available for this work will be determined after negotiation with ClientEarth. Respondents are invited to provide a budget.

**Application process**

Applications must include the following documents in English:

- An up-to-date CV for all persons involved in the activities;
- An explanation of how the activities will be approached;
- An indication of the time required to undertake the tasks described above;
- An indication of whether the task will be undertaken fully by one or more consultants; and
- An indicative workplan and budget, including daily rates (in pounds or euros).

All applicants must also confirm in writing that none of the following situations apply to them:

1. they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations.

2. they or persons having powers of representation, decision-making or control over them have been convicted of an offence concerning their professional conduct by a final judgment;

3. they have been guilty of grave professional misconduct;

4. they have not fulfilled obligations relating to the payment of social security contributions or taxes in accordance with the legal provisions of the country in which they are established;

5. they or persons having powers of representation, decision-making or control over them have been convicted for fraud, corruption, involvement in a criminal organisation or money laundering by a final judgment; and

6. they make use of child labour or forced labour and/or practise discrimination, and/or do not respect the right to freedom of association and the right to organise and engage in collective bargaining pursuant to the core conventions of the International Labour Organization (ILO).

Applications must be submitted before 6 January to: Benjamin Ichou (bichou@clientearth.org). Applications will be reviewed against a combination of technical and financial criteria.
ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.