



Comments on the draft benefit-sharing plan presented by Democratic Republic of the Congo for the Mai Ndombe Emissions Reduction Program (March 27, 2017 version)

August 2017

- 1. The benefit-sharing plan lacks basic elements.** Although there are no UNFCCC decisions that prescribe which elements a benefit-sharing plan should include, different organizations working on REDD+ⁱ agree that it should clearly indicate the objectives and scope of the benefits, who gets rewarded, why, under what conditions, for how long, and in what proportions. These basic questions are not addressed in the provisional Benefit-sharing plan.

A number of promised developments set out in sections 15 and 16 of the ERPD that would go some way toward clarifying these questions, such as what the provisions of benefit sharing contracts and sub-contracts will be or how the program will deliver the non-carbon benefits, are largely absent from the plan.

The document specifies that implementation arrangements for benefit sharing are currently under development. A number of years into the project set-up, it is problematic that an element of the program that is so fundamental to its stated aim of poverty reduction is so under-developed.

- 2. Lack of principles underpinning the plan.** The draft does not sufficiently elaborate on what the underlying principles of the plan are, such as how it will ensure fair distribution of benefits and costs, transparency, FPIC of beneficiaries etc.
- 3. On the process for developing the plan.** The lack of substance in the plan appears to be a consequence of a rather opaque consultation process in which civil society organizations have criticized the lack of a clear process for developing the plan, insufficient outreach to communities in Mai Ndombe as well as non-disclosure of key consultation documentsⁱⁱ.
- 4. Participation and capacity building.** Engagement must go beyond consultations to meaningful and informed dialogue and decision-making about what the plan should consist of. The goal should be a document that clearly reflects local needs as well as REDD+ objectives. There is lack

of complete and systematic information available on the FCPF website to be able to sufficiently assess the Participation and Capacity Building aspects of the plan.

- 5. Requirements under the Carbon Fund Methodological Framework.** The Carbon Fund Methodological Framework indicates that at least an advanced draft of the benefit-sharing plan should be made publicly available prior to ERPA signature. It also says that if a final plan is not provided at the time of ERPA signature, it becomes a condition that must be fulfilled in order for the sale and purchase obligations under the ERPA to become effective. The current version of the plan is so lacking in basic information that it cannot in any way be considered an advanced draft. The Carbon Fund and Norway, as the representative of donor countries negotiating the ERPA with DRC, must require a new version that includes considerably more detail on the points raised in this critique. Moving forward with the signing of the ERPA in the absence of credible benefit-sharing plan will set a dangerous precedent for future forest protection efforts.
- 6. Coherence with complaints mechanism and safeguard plans.** Any benefits that local communities may derive from REDD+ activities in Mai Ndombe must be balanced against possible loss of livelihood and other impacts as a result of restrictions on forest access. The document must provide guidance for how it will be assured that community stakeholders fully understand this trade-off before consenting to any scheme and outline what recourse is available to them in case promised benefits aren't delivered. Safeguard documents and a complaints mechanism should also play a role in this but a recent critique of the former found them to be deficient in a number of waysⁱⁱⁱ while, as far as is known, the latter does not even exist yet. It is notable that a number of project activities supported by CAFI and FIP have already commenced in the program area in the absence of these documents.
- 7. A poor track record on benefit distribution.** Putting in place a robust and transparent benefit sharing plan is all the more important given the absence of any functioning previous examples of such a system in DRC, most notably concerning the logging industry. The document provides no guidance for how the project will ensure that benefits will filter down to community stakeholders and not be lost through corruption.
- 8. Transparency.** The overall financial plan or criteria used for calculating the payments and/or benefits that each beneficiary group is due to receive under the ER program is not indicated in the draft.
- 9. Identification of beneficiaries.** The draft states that the beneficiaries of the plan are those identified in the ERPD document (page 215). Nevertheless, as *Groupe de Travail Climat Redd – Rénové* (GTCR-R) in its letter dated from May 30th, 2017^{iv} and the ERPD itself indicates, the list is only indicative and a new evaluation must be carried out to identify the communities and organizations that de facto contribute to the implementation of the ER program. The identification of these beneficiaries in Mai Ndombe must happen before the distribution of payments. This means that (i) the detailed list of beneficiaries, (ii) the percentage and/or amount of money that they are going to receive; and, (iii) the criteria used to decide that percentage and/or amount must be included in the benefit sharing plan.

- 10. Inclusion of indigenous peoples and local communities as beneficiaries.** On page 1 of the draft, it is stated that the short-term priority is to benefit existing projects, such as the Integrated REDD+ Sub-Project in the Plateau district (FIP and CAFI-supported, WWF-implemented), and the Wildlife Works Carbon (WWC) conservation concession. Subsequently, the draft states that new stakeholders, such as local communities, will receive benefits at a later stage – and apparently through a new fund to be managed by UNDP, which has not yet been set up and as yet has no specified terms of reference that we are aware of (see para 18 below). We consider this is seriously inadequate, and that local communities living in the project area should be considered as primary beneficiaries from the outset of the benefit sharing plan's implementation, and that the specific mechanisms through which this would happen need to be established before program effectiveness.
- 11. Inadequate legal framework.** The draft states that it is based on a legal framework that sets out procedures for the development of benefit sharing plans, amongst other things. As far as we are aware, there is yet no clear legal basis for benefit sharing in DRC that clearly sets out rights and responsibilities of project developers and beneficiaries (Section 15.3 of the ERPD '*Description of the Legal Context of Arrangements of Benefit Sharing*' is blank). What legislation that does exist appears to forbid local communities and indigeneous peoples from developing REDD projects on their own lands, having instead having to go through intermediaries. Article 2 of the Homologation arrete states that only public or prviate entities legally constituted in the DRC can develop projects, which many local communities are not. We understand that there is currently no legal basis for the local development committees (CLDs), which would seem to be the most likely channel for payments in cash or in kind to communities.
- 12. Providing direct and co-benefits to communities.** There is little mention of the local development committees (CLDs), which as we understand it are supposed to be the main interface between the community and REDD+ activities. Nor is there reference to the newly-completed community forest legislation which would provide a good theoretical basis for channeling benefits more directly to communities (as opposed to via rent seekers). The document should set out a clear plan for how PIREDD can support the development of community forests and the CLDs as well as the building of necessary institutions to administer them.
- 13. Who really benefits?** The document lists the different actors having a direct influence on forests such as protected area managers, forestry concession holders, conservation concession holders as well as farming communities and indigenous peoples. Yet what is not made explicit is how the benefit-sharing plan will disentangle the various rights and responsibilities of the different interest groups, whose land claims and uses frequently overlap. The project seems to privilege actors that hold legally enforceable rights to land such as conservation and logging concessionaries, regardless of the fact that many of the areas were established without the consent, or even consultation, of customary rights holders^v. How will the plan ensure equity for these people?
- 14. Disproportionate payments to large private owners and logging companies.** On page 4 of the draft, it is stated that payment for performance benefits for large private sub-project owners can

be as much as 25% of the ERPA nominal value. The calculation used to determine this high figure is not explained in the document.

15. Risks of third party benefit sharing arrangements. It is implicit in the document that benefits channeled to sub-projects are conditional, amongst other things, on the project manager demonstrating an adequate plan for distributing these benefits to communities. Yet, these kind of top-down distribution mechanisms have a very poor track record in DRC. 'Cahier des charge' agreements that so-called sustainable forest management companies are legally obliged by the 2002 Forest Code to sign with communities for local development projects are rarely implemented or enforced, despite the best efforts of WWF, AFD and the World Bank. On the contrary, there is a strong tendency for any benefits from resource extraction in DRC to accrue upwards, often in the form of corruption and political patronage and 'rent capture'. The document provides no indication as to how the PIREDD project will avoid a similar fate.

16. Process for allocating reference levels for stakeholders: Possible perverse incentives. The process for assigning emissions reference levels to stakeholders and sub-projects is potentially problematic, especially so in areas where there are multiple and often poorly understood factors underpinning resource use. What measures are in place to ensure that benefits are distributed according to accurate and impartial assessments of forest loss or gain in a given sub-project area, and to avoid a scenario in which one interest group misrepresents the causes of forest loss in order to derive greater benefits from the program?

17. Arbitrary fixed payments for indigenous peoples. Page 3 of the draft indicates that the minimum percentage to be allocated to indigenous peoples is 2% of the value of the ERPA, although the criteria used to determine this figure is not specified in the document. While indigenous peoples in the region certainly do require specific support, the document provides no justification as to why other forest-dependent Bantu communities, which constitute a considerable majority in the area, do not qualify for minimum fixed benefits.

We consider that a fair fixed percentage to both indigenous peoples and local communities should be stated in the Benefit-Sharing from the very beginning.

18. Payments to communities. The draft specifies that payments for communities will be deposited in a FONAREDD holding account administered by UNDP until new integrated REDD + projects with communities are identified. There is currently no information about how this fund will work and how it will reach the estimated 1.4 million people living in the program area within the five-year timeframe.

19. Land rights in the program area. The Carbon Fund Methodological Framework (criteria 28) requires that all emission reductions programs map the land rights situation of the project area, specifying that this applies, among other things, to indigenous peoples who are subject to serious discrimination, both in terms of their land and customary rights. Nevertheless, only a fraction of the program area has so far been mapped and it is unclear even which methodology has been used. Any attempt to rush participatory mapping work will lead to inaccurate

representations of customary tenure systems and very likely perverse outcomes such as elite capture of benefit sharing arrangements.

In addition, the technical expert panel (TAP)^{vi} assessment for the Carbon Fund pointed out a number of significant deficiencies in the program in relation to land rights. Among other things, the TAP identified that: (i) conflicts which in DRC are commonplace between the state, which maintains overall sovereignty over land, and local communities, who are mostly granted varying degrees of usufruct rights, must be addressed and solved before a Benefit-Sharing plan is approved and (ii) The ERPD presents too few solutions to the challenges that the document itself describes. The draft plan must therefore specify how the program will help clarify or strengthen customary land tenure.

20. Absence of government institutions. There is currently extremely limited institutional capacity in the newly created Mai Ndombe province or at the central level to monitor the implementation of benefit sharing plans (or indeed to oversee program safeguards and a complaints mechanism). The draft benefit-sharing plan provides little explanation for how the project intends to address this capacity gap.

21. Practicalities of distributing benefits. The draft plan does not address the practicalities of how financial benefits from avoided deforestation will be delivered, particularly in a region where there is essentially no banking infrastructure.



Photo of benefit distribution in the Forest Investment Programme in DRC: In one of the most corrupt and lawless of countries, cash is carried around the country and distributed to project chiefs in wads of notes. The method distributing funds to individual community members is not known.

- i UN-REDD Program, "Principles of REDD+ Benefit Distribution System" available at: http://www.google.no/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwia7_6P2OzUAhUKYIAKHeqiCvUQFgg0MAE&url=http%3A%2F%2Fwww.unredd.net%2Fdocuments%2Fun-redd-partner-countries-181%2Fasia-the-pacific-333%2Fa-p-knowledge-management-a-resources%2Fasia-pacific-lessons-learned-series-749%2F2118-asia-pacific-lessons-learned-benefit-distribution-system-2118%2Ffile.html&usg=AFQjCNGwsfGOgjIBGRE3AgjXklgbThMoQg
- FCPF og UN-REDD Program, "REDD+ Benefit-Sharing: A comparative assessment of three national Policy Approaches" available at: <https://www.forestcarbonpartnership.org/fcpf-un-redd-joint-papers-stakeholder-participation-benefit-sharing-safeguards>
- FCPF, "Benefit-Sharing" available at: <http://www.forestcarbonpartnership.org/benefit-sharing>
- ii GTCR-R comments to the Benefit-Sharing plan.
- iii A critical analysis of the safeguards framework of the Mai Ndombe PIREDD project by RFUK, August 2017.
- iv The document contains GTCR-R comments to the Benefit-Sharing plan. The document is attached.
- v See, for example, www.MappingForRights.org
- vi TAP-review mai 2016, s. 31 og 36-37
http://www.forestcarbonpartnership.org/sites/fcpf/files/2016/May/TAP%20DRC-Second%20review-Version%2030%20May-Final_0.pdf og TAP-review februar 2016, s. 41-43
<http://www.forestcarbonpartnership.org/sites/fcpf/files/2016/Jan/ER-PD%20TAP%20Review-7Feb-2016.pdf>