

Annex 6.

The Legal Framework Relating to the Peatlands

Summary of the legal framework relating to the peatlands

In the Republic of the Congo there are two key laws protecting the peatlands from drainage, namely Article 178, Law No. 33-2020 of July 8 relating to the Forest Code, (2020), and Article 45, Law No. 33-2023 of November 17, 2023 on the Sustainable Management of the Environmental (2023), which prohibits mining, forestry, agropastoral and aquaculture activities, petrol, gas and hydroelectric developments are prohibited in peatland zones. The 2023 law requires the creation of a national policy on peatlands protection and sustainable management (Article 44) and a sustainable management plan for the peatlands zones (Article 46). It states that the legal status of the peatlands will be established by decree (Article 47). Furthermore, the Letter of Intent between CAFI and the government of the Republic of the Congo says the peatlands will have a special legal status by 2025 (CAFI & The Republic of the Congo, 2019). A summary of laws relating to the peatlands is in Table A6.1.

Table A6.1 Laws of the Republic of the Congo relating to Peatlands

Key Points Relating to the Peatlands

Law n°33-2020 of 8 July 2020 on the Forest Code

The permanent forest domain comprises forests that have been classified and is divided into production, protection, conservation, private and community forests. The non-permanent forest domain is unclassified and is reserved for public use.

Article 50: All use of forest resources must be sustainable and support environmental and biodiversity conservation. Article 51: Production in sensitive ecosystems such as swamp forest are guided by a Ministerial Order and respect the rules of Reduced Impact Logging.

Article 59-60: In Protected Areas, IPLC have user rights, unless regulations state otherwise. They have user rights in private and collective forests, in community forests and community development zones. This right applies not only to meet personal needs but also to produce intended for sale.

Articles 5, Article 40: FPIC is required at the time of planning, implementing and monitoring decisions and actions about the exploitation of forest resources (Article 5); and in forest classification (Article 40).

Article 17: The minister will define the process for the creation and organisation of community forests. Article 15 Community forests can be created on IPLC land with natural forest that has been classified for their benefit. Community forests give management rights, not tenure rights.

Article 178: the Government will take necessary measures for the protection and sustainable management of peatlands and mangroves and establishes fines for the commercial extraction of peat (Article 237)

Articles 179-180 define the ownership of carbon credits, which will be split between the government, in state-owned forest, and the carbon project, and to which communities with customary tenure have a benefit sharing right. In the case of community forests, carbon rights belong to the community and/or Indigenous Peoples.

Law n°33-2023 of 17 Novembre 2023 on the Sustainable Management of the Environment

Articles 11, 12: Protected Areas are created by the Ministries of the Environment, Forest Economy and Land Management according to procedures. If classification negatively affects an individual's interests, there may be a right to compensation if they are the land title holder.

Article 44: The state will define a national policy for the conservation and sustainable management of the peatlands for carbon sequestration, water regulation and biodiversity

Article 45: Mining, forestry, agropastoral and aquaculture activities, petrol, gas and hydroelectric developments are prohibited in peatland zones. The extraction of peat for commercial use is also prohibited.

Article 46: The state will develop and implement a peatlands management plan, with the involvement of local populations in its development, implementation and evaluation. The plan will determine "the authorized activities and the locations where they are carried out." The plan is defined jointly by the ministries responsible for the environment, forests, land affairs, scientific research and regional planning.

Law n°5-2011 of 25 February 2011 on the Promotion and Protection of Indigenous Populations

Article 31 recognizes the collective and individual rights of Indigenous Peoples to ownership of and access to land and natural resources traditionally used by them.

Article 32 guarantee the customary rights of these populations without the need to obtain a land title through registration.

Article 32 states that the state is responsible for demarcating the lands of Indigenous Peoples to facilitate recognition of their land rights.

Articles 38, 39 state that Indigenous Peoples must be consulted before the development and implementation of any project affecting their lands and natural resources, including the creation of protected areas.

Article 3 highlights that the consent process must be conducted by Indigenous institutions or by chosen representatives, in a language that is understood, with all information in terms that are understandable, without pressure, and with the aim of obtaining free prior and informed consent.

Article 41 states that, Indigenous Peoples are entitled to the benefits of commercial exploitation of their land and natural resources when these projects materialize.

Article 42 recognizes that Indigenous Peoples can claim compensation for the violation of their land rights and natural resources.

Land Tenure Regime

Law n°21-2018 of 13 June 2018 establishing the rules for occupying and acquiring land

Law n°25-2008 of 22 September 2008 establishing agricultural land tenure

Law n°10-2004 du 26 mars 2004 establishing the general principles applicable to the land tenure system

Men and women have equal land rights.

Article 9 states that property rights can be individual or collective.

Private land ownership is ownership of the soil but not the natural resources below ground which belong to the state (2018 law, contradicting the civil code)

Untitled occupation of rural land is permitted for subsistence so long as it does not encroach on the rights of the state.

Acquiring land through customary tenure requires the holder (individual, family or community) to get recognition from the Ministry of Land Affairs based on minutes from the National Commission for Recognition of Customary Lands.

Article 31 states that preexisting customary land rights are recognised. The procedure for official recognition and obtaining land title is set out in the 2018 Law, including proof of development.

Articles 4 et 5, Law n°25-2008 guarantee that access to the property is subject to a requirement of "development".

The ad hoc commissions for the recognition and establishment of customary land rights were abolished and replaced with a national commission.

Law n°25-2008 of 22 September 2008 establishing the agricultural land regime

Order N°9450/MAEP/MAFDPRP of the Ministry for Agriculture, Livestock and Fisheries

New industrial agricultural plantations greater than 5 ha will be in savannah areas (Order N°9450/MAEP/MAFDPRP).

Law n°37-2008 of 28 November 2008 on Wildlife and Protected Areas

Protected Areas are created by a council of ministers after an environmental impact assessment (Articles 6, 7)

Classification must take into account the conservation objectives and the needs of the river people.

Article 11 states that the act creating a protected area must include the role of the river people in managing it and usage rights.

Article 12 establishes that, where circumstances allow, the protected area may include a buffer zone for river peoples' socio-economic activities compatible with the conservation objectives.

Article 13 prohibits hunting, fishing, grazing, clearing and logging in a protected area without special permission from the competent authority.

Article 41 states that hunting permits for villagers exist.

Article 17 prohibits arms except for officials of Water & Forests

Article 20 established that the Council of Ministers' decree determines the role of riparian people in the development and implementation of management plans and in the management of the protected area.

Article 22 recognizes Riparian people benefit from activities they implement under the decree.

Riparian people participate in natural resource monitoring committees.

Law n°21-2018 of 13 June 2018 on Water Management

The State has the right to use the expropriation procedure for reasons of public utility to exploit a public hydraulic domain (Article 8).

Articles 10, 11 and 12 establish the obligation to take into account the preservation of the balance of ecosystems in the use of a public water resource; causing damage to the natural environment is prohibited

Water resources, soils and groundwater tables are protected against all forms of pollution; and water sources intended for human consumption are protected from degradation (Art. 20 to 23, 26 to 27 and 28 to 30)

Penalties will be incurred for offences in this area, including for aspects related to the protection of peatlands (Articles 88 to 99). However, the type of damage to the peatlands the would incur penalties is not defined.

