



AVOIDABLE DEFORESTATION FOREST SECTOR REFORMS AND REDD IN THE DEMOCRATIC REPUBLIC OF CONGO

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Executive Summary

New interest in the climate services provided by the vast forests of the Democratic Republic of Congo (DRC) has spurred efforts to develop a national strategy to reduce emissions from deforestation and degradation (REDD). This impetus could offer an opportunity to right wrongs and chart a new course for forest policy and practice in the DRC, but it also risks amplifying past errors.

In order for any REDD initiative to be effective, concrete actions must be taken to address significant shortcomings in forest policies and ongoing legal reforms in the DRC. The last seven years of forest sector reforms have generated important lessons, in large part from mistakes that have been made. These mistakes can and should be rectified. In particular, the rights and interests of forest-dependent communities must be at the centre of reform processes and any new REDD initiatives, rather than marginalised as they have been to date.

The Rainforest Foundation believes the following priority actions in the forest sector are among the key prerequisites for any efforts to combat deforestation and degradation in the DRC:

- Enforcement of decisions to cancel illegal logging titles and resolution of ensuing socioeconomic impacts, as well as identification and resolution of outstanding social conflicts in logging titles deemed convertible into new logging concession contracts.
- Legal recognition of communities' right to refuse the allocation of new logging concessions on lands or in forests where they live or on which they depend.
- Reaffirmation and extension of the moratorium on the allocation of new logging concessions.
- Adoption of sound legal texts for community forests, which reflect and protect communities' traditional land tenure and customary forest uses.
- Establishment of a participatory national forest zoning/land-use planning process.

In addition, forest-climate programs must be integrated into forest sector policy and reforms in a way that ensures consistency with international agreements and norms, such as, *inter alia*, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention on Biological Diversity (CBD). Key principles recognized at the international level must guide actions taken in the DRC, including: indigenous peoples' right to self-determination and free prior and informed consent, land tenure and resource rights, protection of traditional forest uses, equitable benefit sharing, transparency and independent conflict resolution and recourse mechanisms.

We recommend that the DRC Government vigorously pursue the above priorities. Given the international community's significant involvement in DRC's forest sector in recent years and heightened interest in the future of the country's forests, international agencies and partner governments should support the DRC Government to prevent deforestation and degradation in a way that works for the climate and for the people of the DRC.



The forest viewed from above, Province Orientale. After the Amazon, the Congo Basin rainforest is the second largest in the world, sixty percent of which is located in the Democratic Republic of Congo. The DRC's forest is estimated to contain 20 billion tons of carbon. (Source: Johan Wildhagen/Rainforest Foundation Norway)

Introduction

The forest-climate policies currently under discussion in the Democratic Republic of Congo (DRC) are not being developed in a vacuum, devoid of historical context. They come on the heels of nearly a decade of (still ongoing) legal and policy reforms in the forest sector. Many of the elements of these reforms are essential prerequisites for any efforts to reduce emissions from deforestation and degradation (REDD). Without sound legislative and regulatory foundations including, crucially, recognition of the rights of indigenous peoples and other forest-dependent communities and support for their traditional sustainable practices, effective and lasting measures to keep DRC's forests standing are unlikely to prove possible.

To stand a good chance of success, any REDD initiative in the DRC must be integrated into the country's forest sector reforms, building upon progress and lessons learned, while avoiding past mistakes and correcting shortcomings. Furthermore, climate-motivated efforts to protect forests must be grounded in forest communities' rights and consistent with international environmental, human rights and development agreements and norms.

The Rainforest Foundation believes that any future mechanism for preventing or reducing deforestation and forest degradation in the DRC should be based on a clear set of principles and criteria, the most important of which, laid out below, have been widely accepted on an international level and are legally or politically binding on the DRC Government. Those principles and criteria should equally guide the completion of outstanding reforms of forest policy and legislation in the country. In this spirit, this paper reviews key lessons from reforms to date and presents a series of concrete recommendations, based on longstanding demands expressed by DRC civil society and international NGOs working for sustainable rights-based management of DRC's forests, as well as by nature conservation organisations.¹

¹ See Congolese civil society and International NGOs joint statements under Forest Forums in DRC, 2004 and 2006

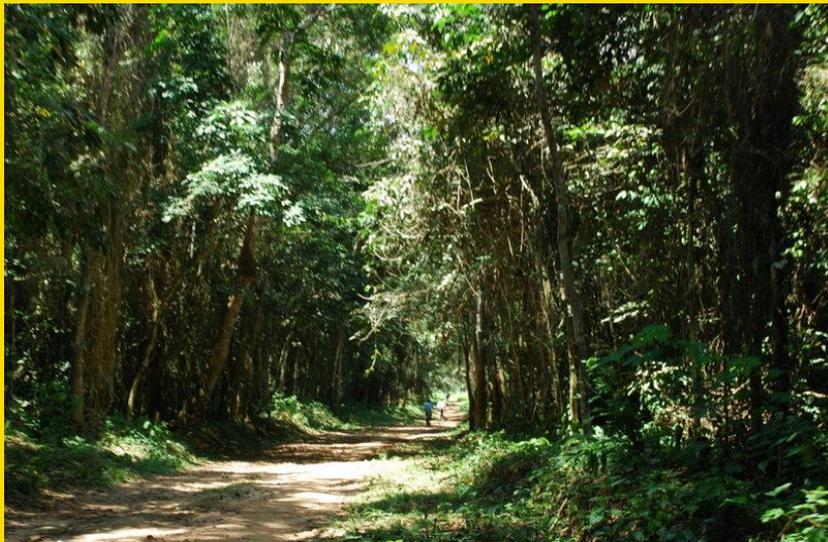
Context

For the past seven years, forest reforms in the DRC have been financed and guided primarily by the World Bank. Beginning with the adoption of a new Forest Code in 2002, the DRC has been developing the country's forest sector legal and regulatory framework and pursuing reforms of the sector's policies and administration - most of which remain unfinished and in some cases gravely overdue. However, there has been some progress and many lessons learned. These must form the basis for policy-making on forests and climate.

Central elements of reforms underway include:

- completion of the forest sector legislative framework (drafting of implementation decrees) with notable legal gaps regarding community forest legislation/regulations and inconsistencies between proposed laws and practice on the ground;
- participatory forest zoning/land-use planning;
- review and "clean-up" of the logging sector to eradicate extensive illegal and illegitimate logging and to enforce laws, including the national moratorium on the allocation of new logging concessions.

The first two of the above are critically overdue, while the latter is at risk of being reversed.



Forest in Equateur Province (Source: Nikki Reisch/Rainforest Foundation UK)

The Rainforest Foundation is concerned about the insufficient attention given by the DRC Government and its partners to the shortcomings of the ongoing forest sector reforms, and the apparent lack of willingness or ability to redress them. Furthermore, the Foundation believes that the development and effectiveness of future mechanisms for preventing or reducing deforestation and forest degradation in the DRC may be jeopardized by decisions currently under consideration.

Meanwhile, other non-forest sector activities, such as infrastructure and energy programmes and mining operations are setting in place developments that are likely to have long-term and possibly irreversible impacts on large areas of forests. For example, opaque negotiations are believed to be underway with foreign companies for the allocation of up to 3 million hectares of forest for conversion to palm oil plantations.

Lessons from reforms to date

Policy-makers and stakeholders interested in developing a forest-climate strategy in the DRC have the benefit of drawing on nearly a decade of reforms as they chart an alternative way forward for the management of the country's forests. Numerous analyses by civil society and inter-governmental organisations have called attention to flaws in the approaches undertaken to date and identified priorities on which to concentrate future efforts. Those insights are summarized below.

Identifying and correcting shortcomings – lessons from the World Bank Inspection Panel

In response to concerns of local indigenous peoples' organisations about the design, implementation and impacts of the Bank's forest-related interventions in the DRC since 2002, the Bank's independent watchdog body, the Inspection Panel, conducted an investigation of the Bank's operations.



Representatives of the indigenous peoples' organisations who submitted the complaint to the Panel meet with R. Zoellick, President of the World Bank, Washington, DC (Source : Susanne Breitkopf/Greenpeace International-Lionel Diss/Rainforest Foundation Norway)

The report of the Panel's investigation², published in 2007, is highly critical of the Bank's performance in DRC's forest sector. It highlights a series of failures on the part of the Bank to comply with its own internal social and environmental policies or to ensure participatory, consultative processes; a lack of recognition of the importance of the forests to the subsistence and sustainable development of the people who live in and depend on them; and a failure to move away from the industrial logging model – which the Bank actively encouraged the DRC Government to pursue – in favor of truly sustainable approaches to forestry management.

Below are highlights from the Panel's observations and conclusions.³ The Panel's report found that:

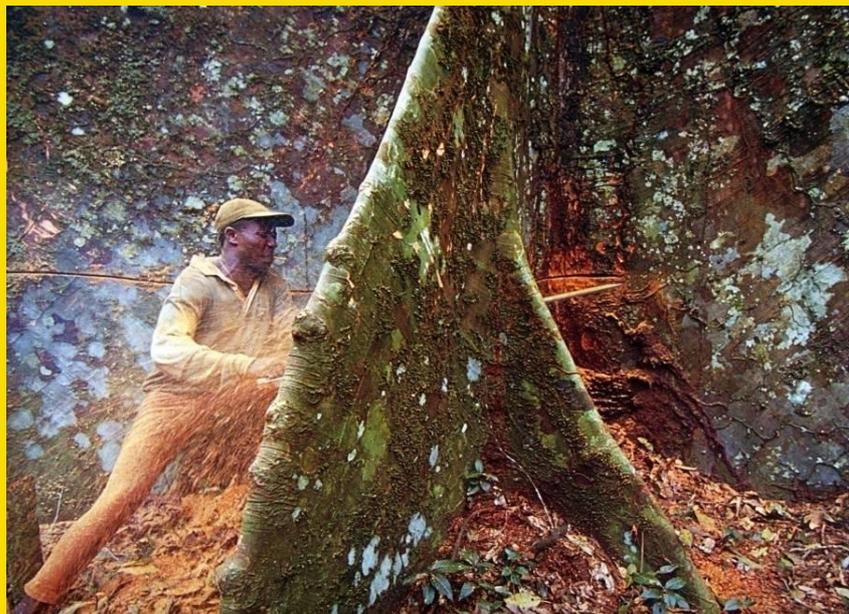
- Industrial logging is widely recognized to have severe social and environmental impacts, and to be fundamentally incompatible with local and indigenous communities' customary use of forests.

² Executive summary of final report of Inspection Panel, Investigation report, "Democratic Republic of Congo: Transitional Support for Economic Recovery Credit (IDA Grant No. H 1920-DRC) and Emergency Economic and Social Reunification Support Project (EESRSP) (Credit No. 3824-DRC and Grant No. H 064-DRC)", Report No. 40746 – ZR, August 31, 2007

(<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/EXECUTIVESUMMARYFINAL.pdf>).

³ The requesters to the World Bank Inspection Panel, *Conclusions of the World Bank Inspection Panel with regard to the request from indigenous Pygmy organizations and organizations supporting indigenous Pygmies in the Democratic Republic of Congo*, October 12, 2007.

- When communities' access to non-timber resources is significantly reduced by industrial logging, it is impossible to fully compensate for their loss.
- The economic value of logging represents only a small fraction of the total economic value of forests and forest products. The market value of timber production in the DRC, both industrial and small-scale, is estimated at US\$160 million per year, while the total economic value of resources used by the local communities, such as firewood, bush meat, forest fruits, honey, medicinal plants and other non-timber forest products, exceeds US\$2 billion per year.⁴
- As designed and implemented, the World Bank forest-related operations under investigation in the DRC were likely to contribute to increased poverty.
- The Bank underestimated, and even concealed, the social and environmental impacts of its forest sector operations, and failed to carry out an assessment of the potential environmental impacts of the reforms and measures it was supporting.
- The delay in the adoption of implementation measures for the Forest Code related to the customary rights of forest-dependent communities is of serious concern, as is the failure to ensure a truly participatory process for forest-dependent communities to engage in the development of the legal framework.



Source: (left) Nikki Reisch/Rainforest Foundation UK; (right) Filip Verbelen/Greenpeace

Setting a new course for more sustainable and equitable forest management

In response to the conclusions of the Inspection Panel, the World Bank's Management submitted an Action Plan to its Board of Directors on January 10, 2008. This plan was criticized, however, as lacking specificity, "*particularly on actions called for under Bank policies to fully address the land tenure and other rights of the Pygmy peoples in DRC forests, and to deal with problems in the logging concession review process, including major reported breaches of the Moratorium on new concessions*".⁵

⁴ The Inspection Panel, *Investigation Report, DRC: TSERO and EESRSP*, August 31, 2007, §303; CIFOR, CIRAD, World Bank, *Forests in Post-Conflict Democratic Republic of Congo: Analysis of a Priority Agenda*, 2007, page 23, Table 2

⁵ The World Bank, *World Bank discusses Inspection Panel investigation of forest sector operations in the Democratic Republic of Congo*, News release , No 2008/188/AFR, January 15, 2008 (<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PRESSRELEASEJAN2008.pdf>)

A progress report on the implementation of the Action Plan was to be submitted by Bank Management to the Bank's Board by January 9, 2009. At the time of writing (April 6, 2009), no such comprehensive report was publicly available.⁶ A brief communiqué was posted on the Bank's website in mid-March 2009⁷, after repeated inquiries by DRC civil society representatives, but the document merely skims over the shortcomings of the forest reforms and even presents some of them as illustrations of "significant progress". For example, the Bank fails to mention that the "many appeals" under the legal review of the existing logging titles (see page 10) were only those filed by logging companies, since local communities were denied the same right of recourse. Likewise, the Bank fails to mention that the so-called "Consensus Workshop" held in Kinshasa on March 4-6, 2009, was heavily criticized by DRC civil society and international NGOs for focusing on private sector interests and industrial logging ('sustainable forest management') as the central element of forest sector reforms⁸ – even though it was precisely the focus on these activities that triggered the Inspection Panel's investigation in the first place. The Bank's March communiqué reinforces the impression given at the workshop that forest sector reforms are geared toward promoting private sector logging operations. The document draws no link between forest sector policies and emerging work on climate, and makes no reference to truly sustainable, alternative approaches to forest management.



Logs destined for export at the main port in Kinshasa (Source: Nikki Reisch/Rainforest Foundation UK)

Just weeks later, on April 2, 2009, the World Bank's Board approved a further \$70 million grant to the DRC for a "Forest and Nature Conservation Project". Surprisingly, this approval appears neither to have been conditioned upon nor informed by the Bank Management Progress Report. Likewise, it is not clear to what extent this new forest sector project incorporates ongoing REDD initiatives in the DRC or foresees liaising with those initiatives and processes during the project's implementation. Concerns about this lack of coordination arose in January 2009, when two parallel Bank missions were conducted in the DRC – one focused on the Forest and Nature Conservation Project and another on the Forest Carbon Partnership Facility, UN-REDD and other climate-related activities – with virtually no demonstrable effort to integrate their activities.

⁶ N.B.: the progress report (only available in English) was published (only) on the web site of the Inspection Panel on April 7, 2009, at the time of translating the present document.

(http://siteresources.worldbank.org/EXT/INSPECTIONPANEL/Resources/DRC_Forests_First_Progress_Report.pdf)

⁷ The World Bank, *Progress on Inspection Panel Action Plan (only available in English)*

(<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0,,contentMDK:22110875~menuPK:2246551~pagePK:2865106~piPK:2865128~theSitePK:258644,00.html>)

⁸ DRC Ministry of Environment, Nature Conservation and Tourism, COMIFAC, GTZ, Workshop on the post-conversion process of forest titles in the Democratic Republic of Congo, Kinshasa, 4-6th March 2009, *The Workshop's Communiqué*, March 22, 2009 (See:

http://www.cbf.org/docs/news/Communique_atelier_postprocessus_conversionRDC_12mars09_VF.pdf for French version of communiqué.)

For the most part, the forest reforms in the DRC to date have been implemented (albeit partially) as they were designed in 2002 when the Forest Code was adopted. Neither the conclusions of the Inspection Panel investigation nor the latest REDD-related developments have resulted in a fundamental shift in the approach to reform and development of forest policy, legislation, or institutions.

Nevertheless, with increased recognition of the importance of the Congo Basin forests to the global climate, the DRC and its partners still have a significant opportunity to lay the foundations for an alternative, environment-friendly and pro-poor pathway to sustainable development in the DRC - a development based on standing trees, not logs; a development based on the logic of protecting and enhancing forest communities' livelihoods, not threatening those customary uses; a development that at the same time helps prevent the release of the 20 billion tons of carbon that the DRC's forests are estimated to contain.

Outstanding and threatened reforms

Although the DRC Minister for Environment has expressed enthusiasm about the potential for REDD in the DRC, recent suggestions by Government officials that they may reopen the logging sector⁹ have raised doubts about the likely effectiveness of future REDD initiatives - as has the continued neglect of essential reforms related to community forests and the national forest zoning process.

Industrial logging, legality and the moratorium on new concessions

In 2005, the DRC launched a legal review of existing logging titles¹⁰, to decide whether to convert them into new forest concession contracts as stipulated under the 2002 Forest Code. The objective was to clean up a forest sector characterized by weak law enforcement, speculation and arbitrary allocation of logging titles, many of which were issued in violation of the moratorium on new logging activities, established in May 2002. In total, 156 titles were submitted for review, covering an area of over 22 million hectares. Approximately 70% of the requests for conversion concerned titles that had been allocated, exchanged, relocated or renewed after the May 2002 moratorium.

Even by conservative estimates, the vast expanse of rainforest covered by the titles under review stores nearly 4 Gt of carbon - or approximately 1/10 of all the carbon contained in the Congo Basin forests.¹¹ Because logging degrades the forest and releases carbon into the atmosphere, the review's conclusions about where to allow logging operations have serious consequences for the climate, and for DRC's ability to benefit from future payments for the forest's climate services.

⁹ Democratic Republic of Congo, Ministry of Environment, Nature Conservation and Tourism, Speech by Minister José E.B. Edundo at the invitation of the Rotary Club Kinshasa on the environment and the management of DRC's forest estate, July 9, 2009: "Therefore it is appropriate to promote the extension of the management process with the aim of covering in the future a forest area of 40 million hectares, that is 4 times the area presently under management".

¹⁰ Democratic Republic of Congo, The President, Decree 05/116 of Oct 24, 2005 setting the modalities for the conversion of old forest titles into forest concession contracts and extension of the moratorium on the granting of new forest logging titles (Article 5). The process was designed and financed by the World Bank. An Independent Observer (IO), namely World Resources Institute-AGRECO, provided methodological and technical support to the Ministries and the Inter-Ministerial Commission in charge of the review. The IO mandate was to secure the objectivity, due process and transparency of the legal review. A Technical Working Group composed of representatives of the forest and finance ministries was in charge of the appraisal of the requests for conversion in preparation for their consideration by the Inter-Ministerial Commission, which comprised permanent representatives of several Ministries, logging companies, civil society, and rotating representatives of local communities.

¹¹ According to FAO 2007 figures, average carbon stock in a hectare of tropical rainforest in the Congo Basin is approximately 175 tons of carbon (see FAO, *State of the World's Forests 2007*, Annex, Table 3, page 116, at <http://ftp.fao.org/docrep/fao/009/a0773e/a0773e10.pdf>). Greenpeace uses a figure of 180 tons of carbon per hectare in its 2007 report, *Carving up the Congo*.



Foundation of a school promised by a logging company, but never constructed, Province Orientale (Source: Nikki Reisch/Rainforest Foundation UK)



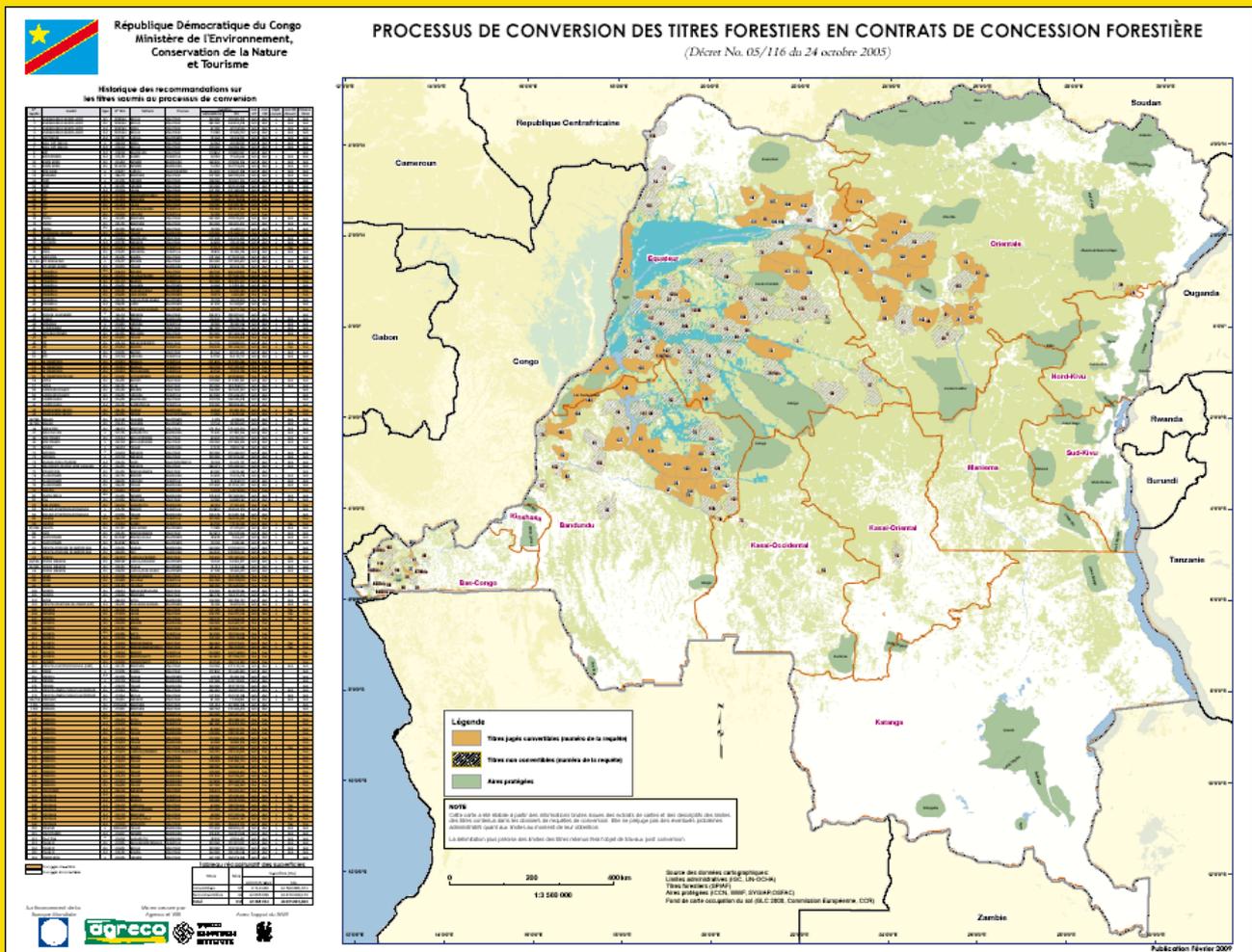
Logging company stockyard, logs waiting to be transported to Kinshasa by barge on the Congo River, Province Orientale (Source: Lionel Diss/Rainforest Foundation Norway)

Since its inception, the legal review was severely criticized by the Inspection Panel, the Independent Observer of the process (led by the World Resources Institute and AGRECO), DRC civil society and international NGOs, alike. In a 2007 letter to the World Bank, the Independent Observer outlined its principal concerns with the process, including, among others:

- the fact that the conversion process was conducted before a zoning process "creates a presumption that because the titles have already been awarded for industrial forestry this land is indeed suitable for this purpose";
- "insufficient criteria, time and resources available to effectively assess social and environmental problems associated with titles proposed for conversion";
- "limited capacities to enforce the cancellation of forest titles, as well as the absence of a protocol for implementing the cancellation";
- "[no anticipation of and lack of preparation regarding] potential for negative social and economic impacts on local communities as a result of title cancellation"; and
- "the forest title conversion process is unbalanced in terms of the protection it provides to logging company rights versus other stakeholders."¹²

Although the majority of these shortcomings were never addressed, the review was recently concluded.

¹² World Resources Institute, Letter to the World Bank Board of Directors (+ annexes), *DRC Forest Title Conversion Process and the Inspection Panel Report – WRI Concerns and Recommendations*, December 5, 2007.



Map showing the results of the conversion process: location of forest titles submitted for review and the recommendations of the IMC regarding their conversion (Source: Ministry of Environment, Nature Conservation and Tourism, WRI/AGRECO, WWF, World Bank, 2008)

The Inter-Ministerial Commission (IMC) in charge of the review process initially recommended the conversion of only 46 of the 156 titles under consideration, covering an area of approximately 7 million hectares. However, following appeals from logging companies, 65 titles covering an area of 9.7 million hectares were approved for conversion to long-term (25 year) logging concessions.¹³ This outcome reflects the weak application of insufficient review criteria and the failure to provide forest communities living in the logging areas with an equal opportunity to defend their rights and interests by appealing IMC decisions, as companies were able to do. As evidence, nearly 80% of the titles deemed legally convertible were in fact acquired in breach of the 2002 moratorium, and there are outstanding social conflicts in many of these logging areas.¹⁴

¹³ Out of the 156 requests for conversion (22.438.605 ha), only 29 titles (4.382.152 ha) were recommended for conversion by the Technical Working Group, while the Inter-Ministerial Commission considered, in a first instance, that 46 titles (7.001.970 ha) should be converted, and 65 titles (9.719.246 ha) after the consideration of logging companies' appeals.

¹⁴ Of the 65 titles approved for conversion, 51 were acquired after the moratorium on the allocation of new logging titles was issued on May 14, 2002 – see *Ministerial arrêté n° CAB/MIN/AF.F.-E.T/194/MAS/02 du 14 mai 2002 portant suspension de l'octroi des allocations forestières*.

Furthermore, a statement by the DRC Government in February 2009, following the completion of the review, suggested that the IMC's conclusions may not be implemented after all. On the pretext of saving jobs and maintaining revenues from DRC's logging sector, the Environment Minister may overrule the IMC's decisions and convert another 16 titles that had been recommended for cancellation. However, there is little evidence that logging provides anywhere near the number of jobs claimed by the Government, and ample evidence that the employment it does provide is in harsh conditions, for meager pay, and that Government revenues from logging sector taxes are paltry.¹⁵

Such a move would mean that the Government could, at its discretion, convert even more illegal logging titles into long-term contracts and jeopardize prospects of benefiting from alternative, sustainable forest uses and payments for the climate services provided by intact forests. Surprisingly, however, this potential rollback of efforts aimed at curbing illegal logging has prompted no response from DRC's international partners or the World Bank.¹⁶

Even "selective" industrial logging of the 9.7 million hectares already approved for conversion into concessions would release approximately 81 million tons of carbon, or 296 million tons of CO₂ (based on an estimated carbon loss of 8.3 tons per hectare under logging concession).¹⁷ If the Government were to further expand the area of forest opened to logging operations by converting another 16 titles, covering an area of 2.7 million hectares¹⁸, this could lead to the release of an additional 22 million tons of carbon over the lifetime of logging operations in those concessions.¹⁹

¹⁵ According to the 2007 CIFOR, CIRAD and World Bank publication, *Forests in Post-Conflict Democratic Republic of Congo: Analysis of a Priority Agenda*, in 2002, official government revenues from the timber industry reached \$1.8 million, and they were projected to grow to \$10 million/year by 2007. In 2002, the timber industry, including small and medium-sized companies, was estimated to employ only 6,000 people. The most optimistic estimates of the growth of the timber industry in DRC suggest that, if production increased to 1-2 million cubic meters per year (from its current level of less than 500,000 cubic meters annually), government revenues could reach between \$20 and \$40 million, and employment could increase to 10,000-15,000. However, for a country the size of Western Europe with a population of more than 60 million people, even these high-end estimates are quite meagre. (See pages 30-31).

¹⁶ Global Witness, Greenpeace, Rainforest Foundation, *Joint Statement by international NGOs on follow-up to the Legal Review of Logging Operations in the Democratic Republic of Congo (DRC)*, March 4, 2009; Dynamique des Groupes des Peuples Autochtones, *Une revue légale fustige les droits des autochtones Pygmées et des peuples des forêts en RD Congo*, March 2, 2009 (see Annexes 2 & 3).

¹⁷ These calculations are based on figures used by Greenpeace in its 2007 report, *Carving Up the Congo*, in which lifetime emissions from Siforco's 170,000 hectare logging concession in Equateur Province in the DRC are estimated to be 1.4 million tons of carbon (including emissions due to clearing of logging roads, timber extraction and decomposition/collateral damage, as well as forest fragmentation). See page 71, table on Siforco's K7 holding (<http://www.greenpeace.org.uk/media/reports/carving-up-the-congo>). Greenpeace's figures for carbon loss due to logging are more conservative than those of Sandra Brown et al, *Impact of Selective Logging on Carbon Stocks of Tropical Forests: Republic of Congo as a case study*, Winrock International, 2005, (http://carpe.umd.edu/resources/Documents/rpt_carbon_congo_3_2005_winrock.pdf/view) which found that the average total biomass carbon affected by logging practices in Republic of Congo was 10.2 tons carbon/hectare.

¹⁸ Ministère de l'Environnement, Conservation de la Nature et Tourisme, Communiqué officiel n°6500/CAB/MIN/ECN-T/15/JEB/2008 du 29/12/2008, *Tableau récapitulatif détaillé par titre des recommandations de la Commission Inter-Ministérielle de conversion des anciens titres forestiers ayant fait l'objet de recours pour second examen (cf. Article 14, alinéa 3 du Décret 05/116 du 24 octobre 2005)*. The 16 disputed titles are those in the table which are accompanied by comments from the IMC in the column entitled 'Observations particulières au Gouvernement'. N.B.: the Independent Observer considered that it did not have the mandate to comment on the implications of these additional IMC observations or their potential impacts on the conclusions of the legal review.

¹⁹ Using Greenpeace's estimate of a carbon loss of 8.3 tons per hectare logged, opening an additional 2.7 million hectares to logging could lead to the release of some 22.41 million tons of carbon, or 82 million tons of CO₂ over the lifetime of those logging operations.



Loading a logging truck in the SICOBOIS concession, which was recommended for conversion, Equateur Province. Logging roads, timber extraction, and collateral damage contribute significantly to the overall carbon emissions caused by industrial logging. (Source: Lionel Diss/Rainforest Foundation Norway)

Beyond having adverse consequences for the climate, such a decision would also set a catastrophic precedent in terms of forest governance. Large parts of DRC's high forest estate would, in fact, have been handed to known illegal operators. Both they and the decision-makers who have colluded with them to establish their illegal operations will not only have escaped with complete impunity, but also benefited from their malfeasance.

Forest Code regulations and community forests



Indigenous community settlement in their traditional forest, Province Orientale (Source: Johan Wildhagen/Rainforest Foundation Norway)

Until now, priority has been given to the development and adoption of regulations concerning the logging industry, supposedly because of the acute need to regulate the sector. However, virtually nothing has been done to guarantee that these regulations will be implemented in the field, where extremely weak local administrations have little authority over logging companies that often behave like local authorities in their own right. Furthermore, although a few civil society representatives managed to secure seats on the committees in charge of the development of the Forest Code regulations²⁰, no effort has been made on the part of the DRC Government or its international partners to ensure broad consultations or informed, meaningful participation of civil society and forest communities in this process. In the meantime, the adoption of Forest Code implementation texts related to forest communities' rights and use of the forests has been sidelined and delayed.

Although draft regulations on community forests have been developed, they do not seem to draw lessons from other countries like Cameroon - where the legal provisions for community forests have failed to create an opportunity to develop a viable 'pro-poor' alternative to the industrial logging and strict conservation paradigm of forest management. Similarly, the draft DRC regulations do not take into consideration the outcomes of studies of community forest management conducted by DRC NGOs.²¹

The concept of community forests seems to be presented as a new framework developed for the benefit of local communities, rather than as a description of existing practices. While virtually all the forests in the DRC are the customary/traditional property of local communities (including indigenous peoples), the Forest Code and the regulations drafted to date give the impression that local communities are being granted privileges, not that their existing rights to the forest are being recognized. The new regulations as drafted therefore risk falling into precisely the same trap as have similar regulations elsewhere in the Congo Basin and more widely in Africa: local forest communities are treated in a 'top-down' highly prescriptive manner, rather than on the basis that their use of and traditional rights over the forest are a reality, and that new policy instruments should seek to reflect and adapt to that reality, facilitate communities' active management of the forest and promote poverty alleviation.

Specific problematic features of the current draft regulations on community forests²² include, among others:



Caterpillars are one of the most important non-timber forest products for the subsistence of indigenous peoples in Province Orientale (Source: Johan Wildhagen/Rainforest Foundation Norway)

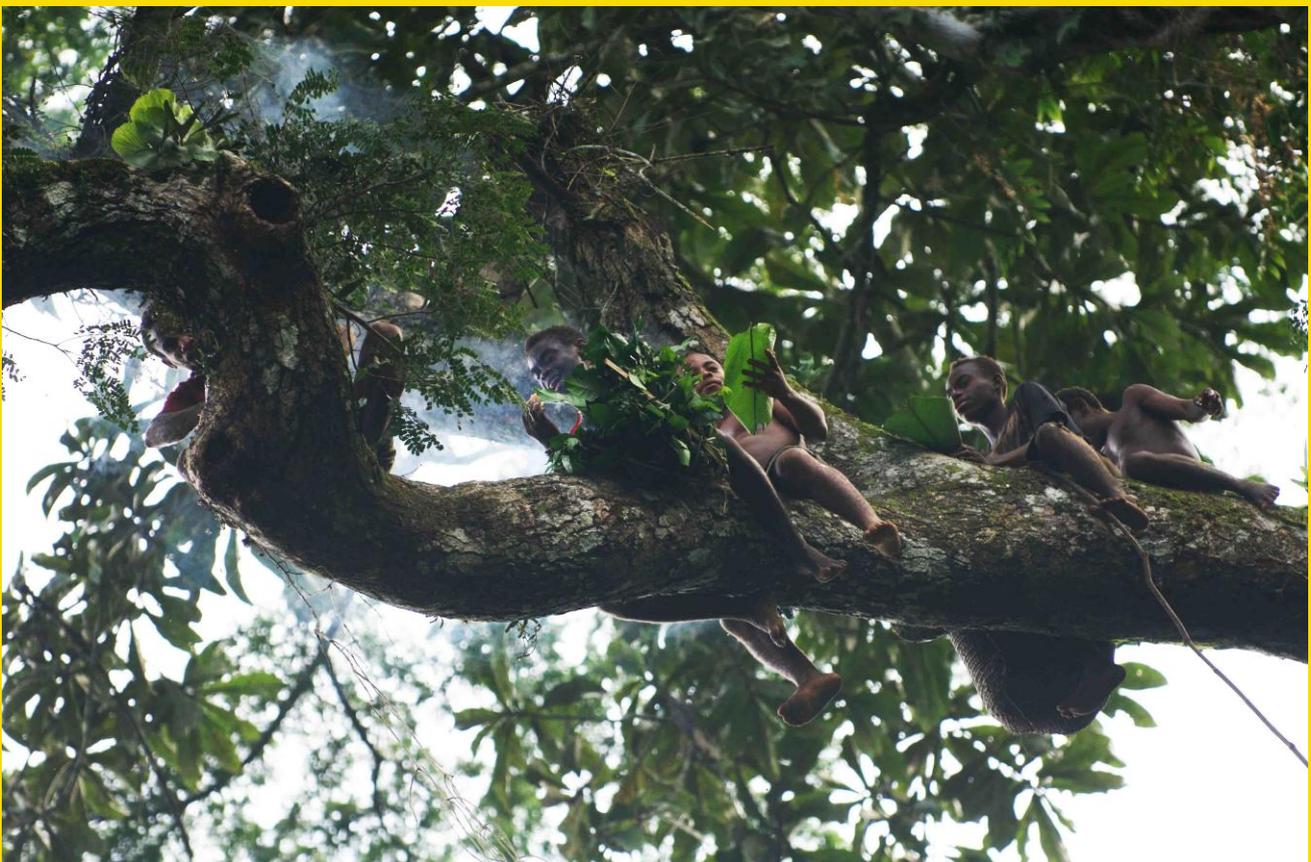
²⁰ In 2002, a 'Steering Committee' (*Comité de pilotage*) was established to review and comment upon draft Forest Code regulations. In 2006, after a long paralysis of the Committee's work, it was divided into two different committees: the 'Comité de rédaction des textes d'application' and the 'Comité de validation technique des textes d'application'. Donors that have supported the work of these committees since 2002 include: The Netherlands, European Union, and the United Nations Environment Program.

²¹ AMAR, OCEAN, Réseau CREF, *Etude sur l'état des lieux de la foresterie communautaire en RDC*, 2006.

²² *Décret fixant les modalités d'attribution des forêts aux communautés locales* (draft) ; *Arrêté ministériel portant dispositions relatives à la gestion de la forêt des communautés locales* (draft), October 29, 2008. See also Annex 1 for more detailed comments on the proposed texts.

- the limitation of the size of community forests without consideration of communities' historical, actual and future use of their forests;
- a focus on logging and timber extraction to the detriment of other commercial activities;
- the lack of provisions to ensure consultation and participation of the community as a whole, rather than a 'chief' alone, in the establishment and management of a community forest;
- the lack of consideration for the specificities of indigenous peoples;
- burdensome administrative requirements; and
- the weakness of the legal status of community forest titles.

These elements indicate that communities are perceived as marginal to the management of DRC's forests, and are not being actively integrated into efforts to prevent or reduce deforestation and forest degradation in the DRC.



Harvesting honey, Province Orientale (Source: Johan Wildhagen/Rainforest Foundation Norway)

These shortcomings should be urgently addressed. A strong legal framework for community forests is not only essential to the protection of the lives and livelihoods of the millions of Congolese who depend on the forest, but would also constitute the backbone of an effective strategy to keep DRC's forests standing.

Forest zoning

To date, the DRC's approach to the creation of a forest zoning plan reflects a similar bias towards industrial logging activities and an overly narrow conception of forests as either logging concessions or nature conservation areas/parks.

After being indefinitely postponed by the World Bank while the legal review of logging titles took precedence, the development of a methodology for a forest zoning plan is back on the reform agenda. However, some DRC officials and Bank staff still demonstrate a limited understanding of this zoning process, which, according to them, consists of little more than a readjustment of logging concession boundaries.

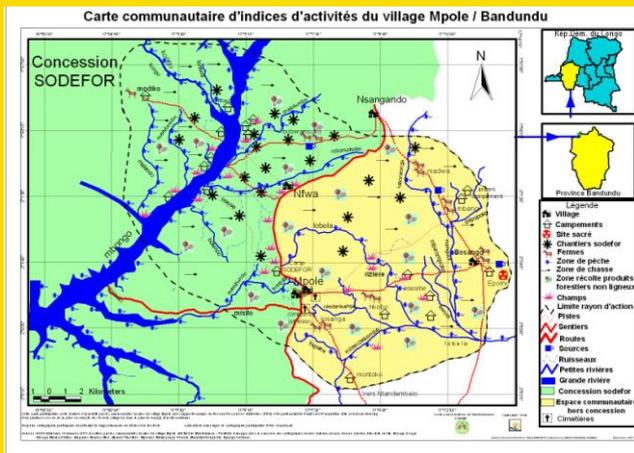
The Inspection Panel drew attention to the fact that the process of converting old logging titles into new forest concessions without prior recognition of traditional community forests can be likened to a *de facto* zoning exercise in which the legal and economic interests of logging companies will be considered with a view to long-term recognition (25 year contracts) whilst consideration of the land and resource rights of the communities living in or depending on the forests is postponed until after logging areas are already identified and established on the ground. Consequently, the rights of numerous local communities and indigenous peoples are threatened by the potential legalization of forest concessions covering millions of hectares of the primary tropical forests in which they live.



Local mappers, from a community trained by the Réseau Ressources Naturelles in participatory mapping, sketch a map of customary land and forest uses on the ground, Equateur Province.
(Source: Théophile Gata/Réseau Ressources Naturelles)

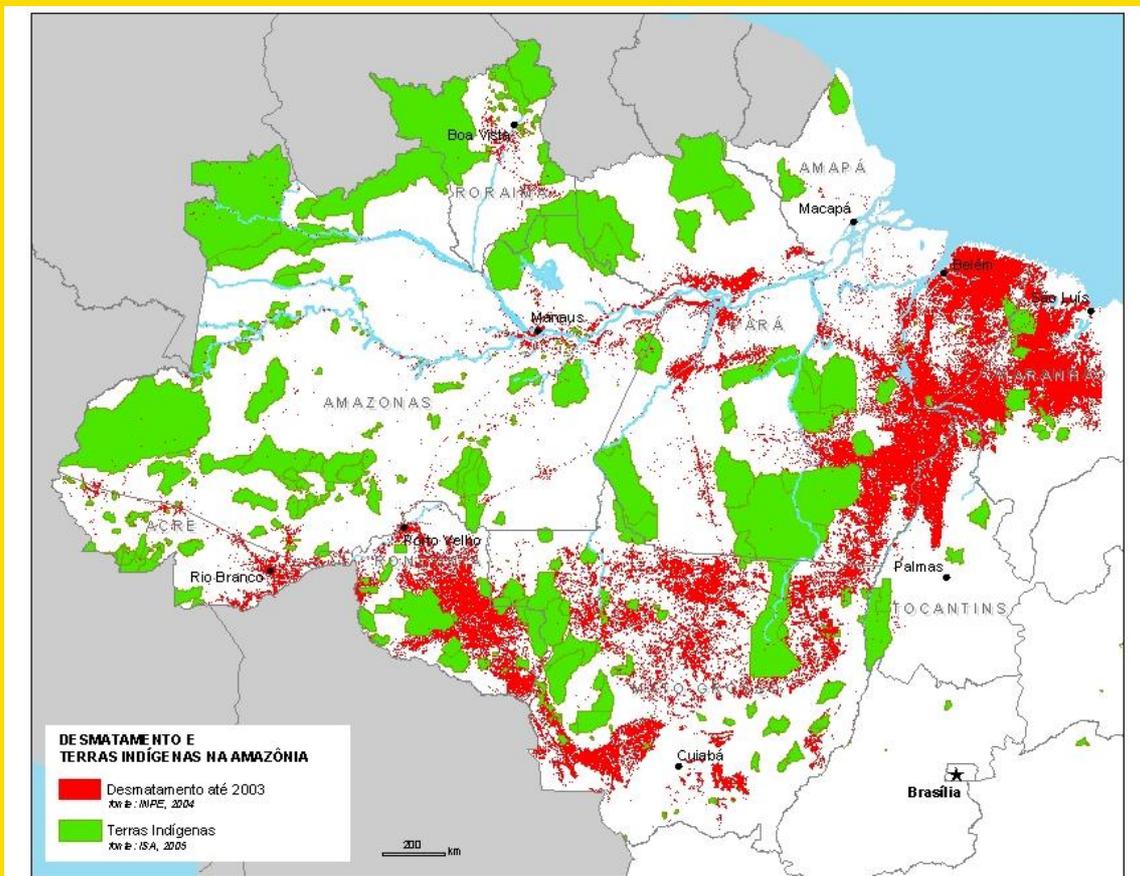
Local mappers survey their traditional forest using a GPS device to take locations corresponding to places where the community performs various activities, Equateur Province.
(Source: Théophile Gata/Réseau Ressources Naturelles)



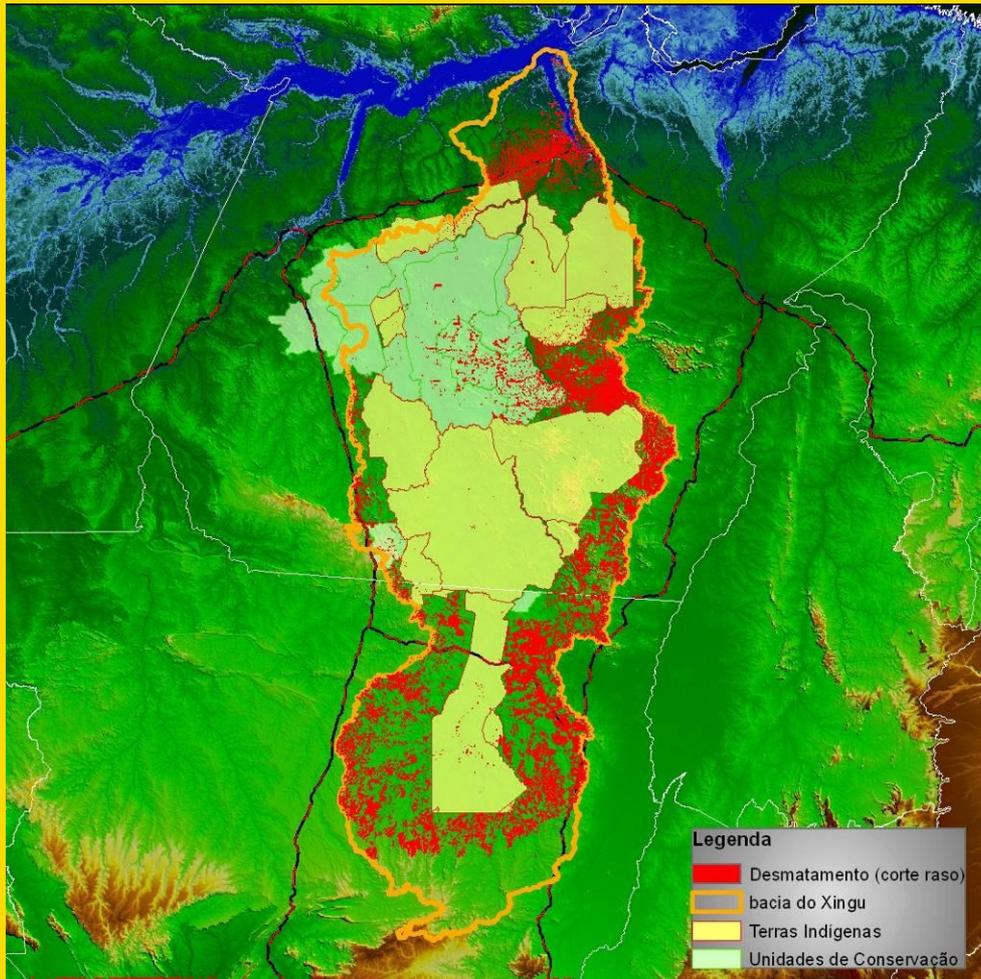


Community map, produced by local mappers from a community in Bandundu Province, which demarcates their traditional forest, its use by the community, as well as the overlap between their forest and a logging title. (Source: Community of Mpole, CEDEN, Réseau Ressources Naturelles)

The starting point for a forest zoning/land-use plan should be existing community use of forests, not logging concessions. Developing a participatory, national forest zoning plan is widely recognized as the necessary foundation for the country's forest policy, and a fundamental prerequisite not only to the lifting of the moratorium on the allocation of new logging concessions, but more generally, to any decision about other uses of the forests. Indeed, clarifying to whom the forest belongs and how it is used is a necessary first step in the design and implementation of any REDD programme. "Paying to keep the forest standing" requires knowing whose forest it is and whom to pay for its protection, identifying who has the power and capacity to affect how a forest is used and to safeguard it against potential pressures.



Map of the Amazon Basin. The red areas indicate deforestation; the green zones are areas controlled by indigenous peoples. The map demonstrates that lands belonging to/managed by indigenous peoples are more resistant to deforestation than other territories. See the detailed image below. (Source: Instituto Socioambiental (ISA), Brazil)



Extent of deforestation in the Xingu Basin ("bacia do Xingu") in 2007, Brazil. Deforested areas ("Desmatamento") are marked in red; the yellowish-green area corresponds to indigenous territories ("Terras Indigenas"); the pale green (separating the indigenous territories) corresponds to conservation areas ("Unidades de Conservação"). (Source: PRODES, 2007). This image shows that the indigenous territories are the best protected against deforestation, the areas managed most sustainably.

Criteria for sustainable management of DRC's forests

Listed below are the principles concerning forest communities' rights, biodiversity and participation which Rainforest Foundation believes must be respected in the development of a forest-climate or REDD policy, and similarly in the development and implementation of the ongoing forest reforms in DRC. The majority of these principles are enshrined in international agreements, conventions and norms, such as the UNDRIP and CBD, to which the DRC is a signatory.

Biodiversity

- *Take into account DRC commitments under relevant international environmental agreements (Kyoto Protocol, Art. 2.a.ii), in particular the CBD. Contribute to the conservation of biological diversity and the sustainable use of its components (CBD, Art. 1).*

Rights of indigenous peoples and local communities

➤ Respect and promote the rights of indigenous peoples and local communities, and accordingly adhere to the principles of and obligations and commitments under relevant international agreements and declarations, *inter alia* the UNDRIP and CBD, the most important of which include:

- The right to self-determination and self-government.
Acknowledge indigenous peoples' right to self-determination, including the right to autonomy or self-government in matters relating to their internal and local affairs, as well as their right to participate fully, if they so choose, in the political life of the State (UNDRIP, Art. 4 and 5).
- Free, prior and informed consent.
The free and informed consent of indigenous peoples must be sought prior to the approval of any project affecting their lands or territories and other resources (UNDRIP, Art. 32.2. The principle is also addressed in articles 10, 11, 19, 28, 29).
- Land tenure issues and land rights.
Recognise that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (UNDRIP, Art. 26.1). Give legal recognition and protection to these lands (UNDRIP, Art. 26.3) and clarify land tenure issues.
- The right to management and customary use of natural resources.
Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (CBD, Art. 10.c).
- Equitable benefit-sharing.
Equitable sharing of the benefits arising from REDD must be promoted (CBD, Art. 8.j). REDD must benefit traditional stewards of the forests, and must avoid creating perverse incentives where actors behind deforestation and forest degradation are the main beneficiaries of REDD.



Indigenous woman preparing leaves for use in the construction of a traditional house, Province Orientale (Source: Lionel Diss/Rainforest Foundation Norway)

➤ Noting that *ways and means of ensuring participation of indigenous peoples regarding issues affecting them must be established (UNDRIP, Art. 41)*, one must ensure opportunities for meaningful participation by indigenous peoples in the design and implementation of a future REDD mechanism.

Governance issues

➤ To ensure long-term, “permanent” emission reductions, any REDD scheme at the national level must be based on widespread consultation and multi-stakeholder processes. This is necessary to create broader ownership of the national REDD scheme,

to ensure that all relevant stakeholders are included in its development, and that all relevant drivers of deforestation and forest degradation are addressed.

- All global and national transfers of funds in REDD schemes must be equitable, transparent and open to public scrutiny. Data on forest loss or carbon emissions from deforestation and forest degradation that may serve as the basis for REDD schemes and payments shall also be open and transparent. All transfers of funds and data on forest loss or carbon emissions from deforestation and forest degradation should be monitored by independent third parties, with the participation of forest-dwellers, both at the global, national and local levels.
- Independent complaint and conflict-resolution mechanisms must be incorporated within the overall framework, and must be available both on the national and international level to address any conflicts which might arise between the Government, communities and other stakeholders.



Indigenous community of Nkwete, Equateur Province (Source: Nikki Reisch/Rainforest Foundation UK)

Recommendations

In light of these criteria and principles, the Rainforest Foundation believes there are a number of concrete steps that the DRC Government and its international partners should undertake to establish a policy of sustainable management of the DRC's forests, based on the rights of forest communities (including indigenous peoples), for the sustainable development of these peoples and the country, and to pave the way for alternative, income-generating forest management practices, such as REDD. The following suggestions reiterate a number of essential recommendations which have been repeatedly asserted by DRC civil society and international NGOs over the past seven years:

- Maintain the moratorium on the allocation of new logging concessions until a national participatory forest zoning plan has been developed and applied.
- Develop and implement a shared methodology for the realization of a national forest zoning /land-use plan that integrates participatory (community-driven) mapping.
- Inform forest communities living in areas of logging titles about the outcomes of the legal review of logging titles, and ensure that they can exercise their equal right to appeal the Inter-Ministerial Commission's (IMC's) decisions (as logging companies were able to do).
- Enforce the IMC decisions (subject to forest communities' right to appeal) and ensure that no more existing forest titles (other than those deemed convertible by the IMC) are converted into new logging concession contracts.
- Put an immediate halt to logging in the titles canceled by the IMC and back it up with proper satellite and field monitoring and law enforcement.
- Ensure that the DRC Government has the support and backing of the international community to enable it to shut-down illegal logging operations and to set in place programmes for re-employment of local workers and the funding of any social infrastructure that might currently be dependent on illegal logging operations.
- Identify and resolve social conflicts before any formal title conversion is completed. This must take place prior to the formulation of logging management plans and cannot be the sole responsibility of logging companies.
- Legally recognize communities' right to refuse the allocation of a new logging concession on lands or in forests where they live or on which they depend.²³
- Ensure that the World Bank and the DRC Government respect their commitment to scrupulously adhere to the principle of free, prior and informed consent of local communities and indigenous peoples.²⁴
- Complete and adopt regulations which have important impacts on the lives and rights of people living in and from the forests (e.g. regulations pertaining to the forest zoning plan, allocation and management of local communities' forests, establishment of conservation concessions, permanent production forests, logging concessions) on the basis of wide consultations and participatory processes, and incorporating lessons from other countries' experiences.

²³ CIFOR, CIRAD, World Bank, *Forests in Post-Conflict Democratic Republic of Congo: Analysis of a Priority Agenda*, 2007, page 34: "the actual process of creating protected areas, community forests or concessions, should follow specific gazetting procedures that should also include extensive and in-depth local consultations following the principle of free, prior and informed consent".

²⁴ United Nations General Assembly, *UNDRIP*, September 12, 2007, articles 10, 11, 19, 28, 29, 32.2; The DRC and Belgian Governments, *Brussels Declaration on Sustainable Management of DRC's Forests*, February 27, 2007.

- Give priority to the development and adoption of community forest regulations under the Forest Code, given their importance to the security of forest-dependent communities' tenure rights and their participation in any forest-climate schemes.
- Strengthen institutional capacities, both technical and operational, focusing on sustainable alternatives to industrial logging, such as local community forest management, environmental services, and monitoring of illegal logging.
- Clarify the DRC Government's commitment to an alternative development model, not based on industrial logging, and ensure that the Government guarantees effective and participatory REDD processes and plans in DRC.



Source: Rainforest Foundation UK

Annex 1: Summary of Rainforest Foundation and local partners' concerns and comments on draft community forest legal texts in DRC

The following is a list of concerns, shared by Rainforest Foundation and local partners, pertaining to the October 29, 2008 draft texts on community forests: « Décret *fixant les modalités d'attribution des forêts aux communautés locales* » and « Arrêté ministériel *portant dispositions relatives à la gestion de la forêt des communautés locales* ».

We are concerned that the texts:

1. Present the concept of "local community forests" as a new framework, developed for the benefit of communities (echoing clauses in the Forest Code which portray community rights as a privilege granted by the Government), despite the fact that the forests are the customary, traditional property of the communities.
2. Fail to integrate efforts to prevent or reduce deforestation and forest degradation (e.g. REDD) into the understanding and concept of community forests.
3. Arbitrarily limit the area of a community forest to 10,000 hectares, without regard for the historic or current size of the forest which belongs to and is used by the community, or for the size of the community or future population growth.
4. Lack clarity about how the rights of local communities on a given forest would be identified, given the absence of forest /land-use planning in the DRC.
5. Require taxes and fees to be paid to the Government upon submission of a request for a community forest title, meaning that communities must pay to retain forests that are already theirs.
6. "Bureaucratize" numerous activities, including domestic/daily subsistence uses of the forest rather than recognizing them as automatic rights (as they are in the Forest Code), for which authorization is not required.
7. Emphasize logging as a priority activity in community forests, to the exclusion of other commercial activities, as evinced by the requirement that communities conduct a full inventory of exploitable trees.
8. Lack clarity regarding the rights of communities to use their forests for commercial ends (in addition to subsistence uses, which are already recognized in the Forest Code). Local communities conduct commercial activities other than logging, despite the fact that the Forest Code (Article 37) establishes a general prohibition on the commercialization of forest products drawn from users' rights (with the one exception of a limited "list of fruits and products" as determined by the Provincial Governor). Many of these activities are sustainable and could be promoted in community forests.
9. Overemphasize the role of the "chief" in the management of local community forests while neglecting to address the question of how representative (s)he is vis-à-vis the rest of the community, particularly in indigenous peoples' communities, which may not have a similarly hierarchical structure. (E.g., there is a risk that someone could pronounce himself "chief" of a given indigenous community or other population, without being authorized by the community).

10. Introduce the risk that community forests will be exploited by third parties (and subject to potential related abuses) – a risk that arises because the texts suggest involvement of third parties as “experts” necessary to carry out studies required to obtain a community forest title, as well as the possibility that communities may cede exploitation (logging) rights to others (such as artisanal loggers or small-scale industrial suppliers) under contract.
11. Stipulate a procedure and requirements for the drafting of a request for a community forest title and the management plan that will pose an obstacle for certain communities. The understanding, drafting and follow up of documents relating to community forest allocation and management must be straightforward.
12. Fail to address the lack of capacity at the level of local forest administration/authorities to support and monitor community forest management.
13. Authorize the state to suspend a community forest title with little (or no) justification, and without any requirement to provide communities with support to resolve problems which may have led to a suspension of the title.

Annex 2: Joint statement from Rainforest Foundation, Global Witness and Greenpeace, following the conclusion of the legal review



Wednesday 4 March 2009

Joint Statement by international NGOs on follow-up to the Legal Review of Logging Operations in the Democratic Republic of Congo (DRC)

On the opening of a government workshop in Kinshasa on the post-conversion process concerning DRC forest titles, international non-governmental organisations Global Witness, Greenpeace and Rainforest Foundation urge international donors to prevent the reversal of forest sector reforms that aim to increase transparency and legality and ensure that the conclusions of the Inter-Ministerial Commission (IMC), responsible for the review and conversion of eligible logging titles, be enforced. At the very moment when the Congolese government and international partners should be strengthening forest policies and law enforcement, and resolving outstanding conflicts related to logging, Congolese government authorities are instead signalling their intent to back-track on decisions and expand industrial logging activities in the DRC. Such a move would jeopardize progress made through the conversion process, demonstrate a disregard for the rights of local communities, undermine efforts to reduce deforestation and degradation and thwart opportunities for the DRC to benefit from climate-related payments.

Since 2007, our organisations have been urging the Congolese government, foreign donors and international organisations to prepare for the post-conversion phase. We urged donors to ensure that adequate funds and capacity were available to include social and environmental impact assessments in the review of logging activities and, at its conclusion, enforce the decisions of the legal review. This would include dismantling illegal logging operations, resolving outstanding social conflicts and financing re-employment programmes. Congolese civil society organisations, the Independent Observer of the review process, and the World Bank's own Inspection Panel have all pointed to flaws in the conversion process and called for stricter – not more lax – application of the law. Now, it seems these calls are being ignored. International donors must urge the government to implement the IMC decisions, urgently address outstanding social conflicts, and reaffirm the moratorium on the allocation of new logging concessions, as requested by Congolese civil society organisations in a recent statement and in an open letter from indigenous peoples' groups.¹

Recent developments of concern

- On 19 January 2009, the Congolese government announced the final results of the conversion of logging titles, after the appeals process. The results contradict the conclusions of the government-appointed Technical Working Group, which had recommended the exclusion of 70% of old titles for conversion, which would have reduced the area under logging to 4.4 million hectares. Instead, the government indicated that the area under logging would be 9.7 million hectares. European-based multinational companies such as the German-Swiss Danzer Group and the Nordsüdtimber Group based in the tax haven

of Liechtenstein have retained hundreds of thousands of hectares of forests in breach of the 2002 moratorium on the issuing of new titles, under the pretext of “re-mapping” and “relocating” old permits.

- On the same day, the Environment Minister admitted that reprisals by security forces called in by former title holders to quell protests have “often resulted in cases of rape, beatings and injuries and in certain cases in death.”ⁱⁱ He failed to list in which of the 65 newly-legalized permit areas these atrocities have taken place. The human rights abuses which the Minister himself acknowledged have taken place in the context of logging activities have gone unpunished and have not received any public attention.
- On the same occasion, the Minister promised to notify companies of the final results of the conversion process within 48 hours. However, local communities have not been given comparable access to information. In a 7 February 2009 press conference in Mbandaka, a Ministry spokesperson recommended that civil society leaders *not* inform local people about the current status of logging permits “until companies whose titles were not upheld have been notified, in order to avoid frustration or social unrest.”ⁱⁱⁱ
- During a 13 February 2009 Council of Ministers meeting, the Environment Minister claimed that implementing the IMC’s decisions would mean losing 20,000 jobs, and that unspecified “options” for saving them had been approved. An open letter of protest signed by thirty Congolese NGOs described this number as totally inaccurate and demanded that the IMC’s decisions be respected. Their letter has gone unanswered by the Ministry and apparently unnoticed by donors and the media.

Flaws in the conversion process

Congolese civil society organisations, international NGOs, the World Bank Inspection Panel, Executive Directors on the World Bank Board and the Independent Observer of the legal review process have all criticized the design and implementation of the conversion process, and warned about its likely negative impacts. None of these concerns has resulted in any serious adjustment of the process. The Inspection Panel in particular highlighted the fact that no environmental and social impact assessments had been undertaken before the launch of the conversion process. Still today, no assessment has been done of the impacts of the conversion process. The Panel also recalled that “it is widely acknowledged that the industrial exploitation of timber has deep social and environmental impacts, and that it is completely incompatible with the customary use of forests on the part of local and indigenous communities”^{iv} – a point reiterated clearly by local civil society and indigenous peoples’ organisations in their recent letters.

Negotiation of social investment agreements

Local communities require maximum support at this critical stage in order to stand up to loggers bent on “negotiating” social investment agreements as quickly as possible, and often behind closed doors. The legally binding process of establishing “*cahier des charges*” (social investment agreements) presents an opportunity for civil society and donors alike to insist upon transparency and good governance as essential prerequisites for effective and just forestry reform.

This final, key phase of the conversion process should put forest community empowerment centre stage, by:

- ensuring that communities’ right to refuse concession contracts in their region is protected [NB: the right to Free, Prior, Informed Consent (FPIC), which the DRC government has committed to respect, through statements made at the 2007 Brussels Conference on Sustainable Management of DRC’s Forests and through endorsement of the UN Declaration on the Rights of Indigenous Peoples, implies the right to freely give *or to withhold* consent];
- guaranteeing dissemination of all available information on logging operations to communities (including maps of prospective concessions showing present land-use pattern and tenure; maps of past, present and future logging areas and logging road networks; past and projected production figures; company statutes

and shareholder identification; market prices of wood species to be logged; and audited company accounts).

- ensuring that community members and an independent third party be present in all “*cahier des charges*” negotiations;
- ensuring maximum transparency of negotiations and publication of final, notarized “*cahier des charges*”;
- ensuring the participation of the Congolese State as a guarantor of “*cahier des charges*” agreements.

Independent Forest Monitoring

The Congolese government and international donors have been discussing the feasibility of deploying a long-term Independent Forest Monitor (IFM) in the DRC. We are concerned that the necessary framework is not yet in place to make such a programme effective. Despite some modest steps forward in the reform of the forest sector, many recommendations made by Global Witness in its 2007 scoping mission on the feasibility of an IFM in DRC are still pertinent and have not yet been implemented. The study revealed a situation of anarchy and absence of control in the forest sector, characterised by ignorance of the forest law and regulations – both by loggers and by the forest administration – and confusion regarding their application. This has not only led to the absence of standardised practices, but has opened the door to abuse and fraud which are set to continue in the post-conversion period unless effective reforms are implemented. The intervention of a permanent IFM is conditioned on the functioning of a regular forest control system, founded on transparency and professional expertise and secured by a budget to facilitate regulatory control operations which the Monitor accompanies but does not substitute. We would therefore not support the installation of an IFM in the post-conversion period until a system of effective, regular and transparent controls has been built, and a dedicated budget allocated to execute thorough control operations. None of these conditions are currently present in the DRC.

Reduced Emissions from Deforestation and Forest Degradation

We believe there is a unique opportunity for the DRC to benefit from a REDD (Reduced Emissions from Deforestation and Forest Degradation) mechanism that is designed to prevent forest destruction, protect biodiversity, respect rights and tenure of forest communities and be additional to, not a substitute for, drastic emissions reductions in industrialized countries. We also believe that funds are needed for immediate actions to avert deforestation and degradation in the short-term – principally support for efforts to clarify and secure tenure, combat illegal logging and increase community-based management of forests. The Congo Basin Forest Fund (CBFF) could show promising ways to tackle forest destruction and promote beneficial forest use by communities. However, the absence of strict measures to efficiently regulate and control the logging industry, ensure social and environmental sustainability, and prevent increasing encroachment on forests by industrial agriculture, undermine prospects for the DRC to benefit from a future "REDD" mechanism.

We therefore urge the international donors supporting reforms in the Congolese forest sector to use their influence with the DRC government to support the call by Congolese civil society for the government to uphold the current moratorium on new logging concessions until credible forest governance and control systems are established and a participatory land-use planning process, based on the traditional forest uses of indigenous peoples and local communities and the needs of the rural poor, has been completed. This will provide the necessary breathing space to achieve true pro-poor development whilst tackling climate change and preserving biodiversity in the DRC.

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Notes:

ⁱ Communiqué de presse des organisations de la société civile environnementale sur le compte rendu du Conseil des Ministres du vendredi 13 février 2009; Open letter from DGPA (Dynamique des Groupes des Peuples Autochtones) to the Congolese Minister of Environment, Nature Conservation and Tourism dated 2 March 2009.

ⁱⁱ « Conférence de presse de Monsieur le Ministre de l'Environnement, conservation de la nature et tourisme à l'occasion de la publication des recommandations issues de la deuxième saisine de la commission interministérielle de conversion des anciens titres forestiers en contrats de concession forestière », 19 January 2009, p. 17.

ⁱⁱⁱ Jose Ilanga, Environment Ministry advisor, Mbandaka, 7 February 2009.

^{iv} Executive summary of final report of Inspection Panel, p. xiv, Investigation report, 31 August 2007, "Democratic Republic of Congo: Transitional Support for Economic Recovery Credit (IDA Grant No. H 1920-DRC) and Emergency Economic and Social Reunification Support Project (EESRSP) (Credit No. 3824-DRC and Grant No. H 064-DRC)", Report No. 40746 - ZR.

Annex 3: Letter from indigenous peoples' organisations to the Congolese Minister of the Environment regarding the post-conversion process

[Unofficial English Translation]

DGPA

DYNAMIQUE DES GROUPES DES PEUPLES AUTOCHTONES

Open letter to
His Excellency the Minister of Environment, Nature
Conservation and Tourism, of the Democratic Republic
of Congo

Regarding: The legal review abuses the rights of Indigenous Pygmies and forest peoples in the Democratic Republic of Congo

Your Excellency, Mr. Minister:

We, the signatories of this letter, acting on behalf of the *Dynamique Autochtone*, a platform comprised of indigenous peoples-Pygmies' associations and their support organisations in the DRC, are conveying the opinions and sentiments expressed by the indigenous Pygmy communities whom we represent and/or support throughout the country.

We are writing to express our disappointment with the manner in which forest sector reforms are being conducted in our country (and above all, the turn that they are taking today. The reform process has systematically, deliberately, and discriminatorily violated and totally disregarded the rights of the indigenous Pygmy peoples who live in and/or depend on the forests.

This denial of Pygmies' rights affects their right to life, their right to development, their right to have and preserve their own lifestyles and cultural identities.

If the "reform" of the forest sector is based on the Forest Code adopted on 29 August 2002, it must be noted that this law, which was drafted without participation by or consultation with the indigenous Pygmies who live in/of the forests, does not even recognize their existence. Nowhere does the law mention *pygmy communities living in* the forests. Rather, it refers to "local communities" or "bordering communities" of the forest.

The forest sector reforms are thus fundamentally based upon the non-recognition of Pygmies, the non-recognition of their traditional rights, their specific cultural identity, and their inextricable link to the forests. But regardless, the Forest Code exists. While we sincerely hope that the Code will be revised and adapted to the current context, in the meantime, we must participate in the drafting of the Code's implementation measures, in order to ensure that they take into account the interests, rights and traditional practices of indigenous Pygmy peoples.

Under advice from the World Bank, forest sector reforms in the DRC have been guided by a logic of industrial logging-driven development. In its Report # T7601-ZR, the technical annex to the EESRSP project, the World Bank maintained that the ‘Congolese forest code laid the ground for the revival of a key sector for economic growth and an increase in export revenues.’ The implementation of forest reforms throughout the country aimed, according to the Bank, at creating “a favorable environment for private sector-driven development.”²⁵ Incidentally, the performance indicators for the forest component of EESRSP referred only to the “number of new concessions allocated in a transparent manner.” This suggested that the success of forest sector reforms in DRC is measured only by the number of new concessions granted, without taking into account any potential risks, such as lack of consultation, the failure to respect the interests and rights of forest-dependent communities, or the premature lifting of the moratorium, which would prevent the country from creating the necessary conditions for better management of the forest sector.

Despite this emphasis on logging as a driver of economic growth, the profitability of the forest sector for the DRC has never been convincing. The sectoral monitoring mission of the World Bank from 1-12 July 2003 said, among other things: « ...the new direction (taken by the Forest Code) can be summarized as the reestablishment of a favorable environment for private investment and the creation of industrial added value.” World Bank forest specialists projected that annual timber production would increase by 60 to 100 times, reaching between 6 and 10 million cubic meters of wood per year. In his recent speech at the Rotary Club, His Excellency the Environment Minister made reference to these estimates. If these production forecasts were actually achieved, what would be the impact of the destruction of the forests on the lives and livelihoods of the 40 million Congolese people who live in/of the forest?

After the success of our request for investigation, submitted to the Inspection Panel, Bank Management itself admitted the necessity of considering alternatives to industrial logging. Unfortunately, in practice, no changes are visible on the ground. By participating in the first REDD mission in the DRC, the World Bank seems interested in participating in a process that, in theory, aims to make standing forests more valuable than logged forests.

However, the World Bank put so much emphasis on industrial logging as a means of development in the DRC that it actually violated its own safeguard policies with regard to forests (OP 4.36), indigenous peoples (OP 4.10) and environmental assessment (OP 4.01). These violations prompted us to submit a request to the Inspection Panel of the World Bank in November 2005. The Bank’s Inspection Panel confirmed our allegations and published its conclusions, most of which criticized the forest title legal review process as being designed without consideration for the interests, rights and traditional practices of communities and without a prior environmental evaluation. To this day, there has been no environmental assessment of Component 2 of the EESRSP.²⁶

The limits of the industrial logging-based model of development have been proven in numerous countries, like in Cameroon, where logging has not only been at the origins of numerous social conflicts, but also further impoverished already very poor segments of the population, and particularly forest-dependent peoples. The experience in the DRC has been no different, after six years of forest reforms centered on industrial logging. It is difficult today to prove to the Congolese people that industrial logging has contributed to poverty reduction among local communities and indigenous peoples. It is difficult to demonstrate that industrial logging is “a key sector for the

²⁵ World Bank, EESRSP, Technical Annex, Report No T7601-ZR, page 25

²⁶ This environmental assessment should have been that which would be carried out on ‘Category A’ World Bank projects.

country's economic growth and the increase of export revenues.” What contribution does logging make annually to the Congolese national budget? The logging industry puts forward unverified figures of the employment created by logging companies. We who witness the realities on the ground believe that if the Congolese people are going to be so mocked as to call this despicable form of human exploitation, this way of using poor Congolese to pillage the resources of their own country, “employment”, then better to leave our forests alone.

Today, it is recognized that 40 million out of the 60 million Congolese who live in DRC (nearly 70% of the population), depend on the forests for their survival.

However, in the name of this industrial logging-led development model, forest areas vital for the physical, cultural and spiritual survival of the Pygmies have been allocated to loggers without any concern for what would become of those who have been the stewards of the forest for hundreds, indeed thousands, of years – the Pygmies – and without consulting them at all. Logging renders the forests useless for the hunter-gatherer Pygmies. With the advent of industrial logging in their areas, Pygmies who receive no form of equitable compensation, watch powerlessly as living conditions in their community deteriorate.

Thus we welcomed the publication of Presidential Decree No. 05/116 of 24 October 2005, laying down the procedures for converting old forest titles into forest concession contracts and extending the moratorium on the allocation of new logging titles. We hoped that the forest sector would be cleaned up through this legal review. However, this hope was dashed because of the way in which the legal review was conducted, notably the failure to take into account the views of the communities living around concession areas or to provide them with any recourse, equivalent to that which companies had, to appeal decisions by the Inter-Ministerial Commission which prejudiced their rights.

The Presidential Decree of November 2006 did bring some positive developments. For the first time, an official legal document clearly distinguished between « local communities » (speaking of non-Pygmies) and « indigenous communities » (referring to Pygmies). Little by little, this language began to become part of official discourse. Several authorities, above all from your Ministry, Your Excellency Mr. Minister, regularly mentioned « indigenous Pygmies » in their public speeches at home and abroad.

To be sure, two indigenous Pygmy representatives participated as permanent members of the Inter-Ministerial Commission on the legal review of forest titles. Although this representation was only symbolic in number, it reflected an important principle, in so far as it recognized the particularity of Pygmies' dependence on the forest and their associated rights. Because they were limited in number and poorly prepared to participate effectively in the discussions, the delegates from affected communities could not decisively influence the decisions of the Inter-Ministerial Commission, even when those decisions went against the interests of communities or of the country. When the logging companies' appeals were being considered, community delegates were not even involved in the Inter-Ministerial Commission discussions.

We greatly appreciated the recognition that Pygmies are the indigenous population of the DRC. This development was, honestly speaking, a first in the Congolese context where for decades everyone has been considered “indigenous”. And all Congolese are “indigenous” in contrast to European colonizers of the DRC. But among Congolese, it is agreed that Pygmies are the first inhabitants and traditionally have a culture and lifestyle that is different from the rest of the Congolese, characterized by, among other things, a special and close link with the forest and nature. These are part of the

characteristics of Indigenous Peoples around the world recognized by the United Nations system and other international agencies, including notably the African Human Rights Commission, which has convened a working group of experts to examine issues related to indigenous peoples. Conventions like the Convention on Biological Diversity, to which the DRC is a Party (having signed and ratified it), ILO Convention 169 on the rights of indigenous and tribal peoples of independent countries (which the DRC has not yet signed), recognize the particular rights of indigenous peoples. The World Bank, principal partner of the DRC in the forest sector, has developed an entire operational policy devoted to indigenous peoples that recognizes Pygmies as such. Recently, on 13 September 2007, the General Assembly of the United Nations adopted the UN Declaration on the Rights of Indigenous Peoples. The DRC voted in support of the Declaration.

Why, then, are we disappointed?

1. Because the results of the Inter-Ministerial Commission, which are already weak and mixed as it is, are now at risk of being overturned. The Council of Ministers' discussions on 13 February 2009 are not reassuring with regard to the enforcement of the Inter-Ministerial Commission's decisions. The figure of 50,000 employees who will reportedly lose their jobs as a result of the cancellation of certain forest titles is not based on reality and is simply an estimate. The Environment Minister had succeeded in doing a lot to reassure external partners and civil society and restore the image of the DRC in their eyes. An environment of trust was beginning to be established. But these latest turnarounds suggest ulterior motives and raise a lot of questions.
2. There is no reason to reopen discussion on the cancelled titles. The Inter-Ministerial Commission had several months to carry out its work as mandated by law and if anything, the decisions it made were at times too conciliatory, if not complacent, with regard to certain titles. This process was sufficient; we should not be seeking unnecessarily to lengthen the list of illegal titles to be legalized.
3. We are troubled by the insistence upon being flexible with the decisions of the Inter-Ministerial Commission because the DRC, which is engaged in the REDD process, should instead be identifying areas in which to implement socio-environmental projects. Finding ways to reconsider or reverse the cancellation of titles actually shrinks the space that could be used for REDD projects.
4. Cancelled titles were judged illegal by the Inter-Ministerial Commission. Indeed, the holders of these titles were illegally logging to the detriment of the Congolese state. The companies that pillaged the resources of the Congolese state should be held accountable for their actions. They should be prosecuted in court rather than treated with compassion as if they were weak, oppressed people. The seizure and sale of their property will not provide anything to the impoverished and ragged communities who have lost their resources and their forests.
5. The announcement of a post-conversion workshop initiated by CBFP. The CBFP advocates 'sustainable' logging, which is often confused with 'sustainable forest management', although they are not at all the same thing. The composition of the workshop is telling: there are only 3 members of civil society, compared to 10 from the private sector and a dozen from the forest administration. Seeing the strong presence of the private sector at the workshop, one is tempted to conclude that this is pro-private sector workshop, at which the agenda of the few civil society participants would certainly be suppressed.
6. In organizing this workshop, the CBFP sought, according to its own language, "to intensify the dialogue between partners, in order to break the predictable deadlock in the debate around the Congo Basin forests between those who support "business as usual" on the one hand, those who occupy an intermediate position, such as for example those supporting conservation concessions, or on the other extreme, those who hold a stronger line and are

advocating a moratorium on industrial logging until the framework conditions for sustainable management of the forest are effectively in place.” Civil society has always insisted that the moratorium should not be lifted for at least 10 years, until certain logical conditions are met, including notably the strengthening of the administration’s capacity to implement different reforms and the zoning of DRC’s national territory. Is this simply a “radical” position? Is it not rather a realistic and sensible position, if the real objective is sustainable management of our forests?

Your Excellency, what should be done manage the social impacts of the IMC decisions? Is it not the following?

- Ensure that complete and accurate information reaches all communities in the areas affected by IMC decisions regarding the nature and consequences of these decisions, so that the communities can fully understand the situation that affects their rights and interests, and be in a position to defend those rights and interests;
- In the areas where titles have been cancelled, support communities in the development of alternative forest management models (other than industrial logging), in line with REDD ;
- In the areas where logging titles have been converted, provide support to communities in the drafting of “*cahiers de charge*”, social investment contracts (ensure that the logging companies do not control the process, that the process is inclusive, participatory, and involves all the members of the community, ensure independent monitoring of the cahiers de charge once they are finalized, etc).

In brief, we should take advantage of the ‘social’ potential in the IMC decisions and ensure that the follow-up to the conversion process is consistent with REDD and does not represent a return to a conventional vision of forest management (focused on industrial logging).

In view of all of the above, and with our consideration, we respectfully request, Your Excellency Mr. Minister, that you:

1. Rapidly notify all title holders whose titles have been cancelled and instruct them to immediately cease their activities in the concessions which they were illegally exploiting;
2. Apply the ministerial decree N° 090 CAB/MIN/ECN-T/JEB/2009 from 23 January 2009 regarding the implementation of the decisions rejecting requests for conversion and cancellation of old forest titles ;
3. Abandon all efforts to question or re-open IMC decisions ;
4. Accelerate the REDD process in the country, ensuring participation of civil society and local communities in the drafting of a national REDD plan, and capitalising on the results of the recent work done during the meetings and discussions organized by UNREDD in Kinshasa;
5. Issue a ministerial decree, under whatever authority necessary, to maintain the moratorium for at least ten years with a view to completing forest zoning and ensuring that the forest administration has all the necessary capacities to monitor reforms on the ground.

Signed in Kinshasa, 2 March 2009.

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