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# DRC's forests: "towards satisfactory management and governance standards"?

## *Mission findings and policy recommendations from a feasibility study for Independent Forest Monitoring in the Democratic Republic of Congo*

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### I. Global Witness feasibility study

In the second half of 2007, Global Witness was commissioned to conduct a three month feasibility study on Independent Forest Monitoring (IFM)<sup>2</sup> in the Democratic Republic of Congo (DRC), with funds from the European Union. The aim of the study was to evaluate the nature and extent of illegal logging in selected areas of the DRC's forests as well as the effectiveness and performance of the Congolese forest administration's control system.

The study was carried out by a three person team: a forest monitoring expert from Global Witness and two members of Congolese non-governmental organisations (NGOs), one with expertise in civil society relations, the other with expertise in forest law. It followed a pattern typical for IFM<sup>3</sup>:

- Familiarisation with the key issues and actors (government officials; representatives of the private sector, civil society, and the donor community);
- awareness-raising on the mission and the contribution IFM can make;
- assembling an evidence base through conducting field missions jointly with the forest authority and/or other actors; and
- generating ownership of the findings and responsibility for follow-up action through a report validation process.

The team carried out two field missions, accompanying inspectors from the central forest administration: one in August 2007, in Ubundu, Banalia, Isangi and Basoko Districts, in Province Orientale (north-eastern DRC, where six forest permits and artisanal logging operations were inspected); the other was in September 2007 in the ports of Matadi and Boma and on forest operations in Tshela District in Bas-Congo Province (south-western DRC).

The full report of the feasibility study was validated by a steering committee set up by the Congolese

government and is available in French at [www.globalwitness.org/ifm/drc](http://www.globalwitness.org/ifm/drc). The main findings and priority recommendations are summarised in this briefing.

### Key Messages

- The absence of meaningful controls, legal ambiguity and lack of standardised practices leave the sector in anarchy and provide fertile ground for abuse and fraud.
- The benefits accruing to forest-dependent communities, through revenue and benefit sharing, and to the state and international community, through the conservation of ecosystem services, are not commensurate with the value of timber currently being extracted from the forest.
- A full moratorium on all industrial-scale logging is necessary as an interim measure whilst forest land use zoning, a comprehensive legal framework, development of meaningful regulatory capacity, and measures to strengthen community rights and participation are completed.

### II. Findings of the study: preliminary observations on the state of the forest sector in the DRC

#### 1. Legal confusion

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 applicability. This has not only led to the absence of standardised practices, but has opened the door to abuse and fraud.

Efforts have been made by the government of the DRC, with the assistance of donors and NGOs, to reform the forest sector. A new Forest Code was adopted in August 2002 and awareness-raising activities were conducted with forest communities about land rights in the new law.

However, five years after its adoption, the Forest Code is still not being implemented. Only four out of 42 application texts (decrees) for the implementation of reforms have been promulgated, and even they do not contain the standard forms to be used in the planning, logging and circulation of forest products. There are serious differences between, on the one hand, the provisions of the Forest Code and these four application decrees and, on the other, the reality of administrative practices and logging operations on the ground. The Forest Code remains unknown in rural areas and its provisions, like those of the four decrees, are not followed.

There are flaws and uncertainties in the regulations concerning logging. For example, there are no limits on the number of annual logging permits for forest titles which can be granted annually; and there is confusion surrounding the definition of key concepts such as “annual logging permits”, “annual logging areas”, “annual operational plans”, “origin of wood”.

Combined with the absence of control of timber production operations in the field, these weaknesses in the legal and regulatory framework guarantee impunity for illegal activities.



Taking a GPS reading

## 2. Absence of government control

The Ministry of Environment does not have a specific budget for control operations or for providing its officials with appropriate technical equipment and logistics. In addition, low salaries expose these officials to the risk of corruption.

## Legal Chaos

Despite the adoption of the Forest Code in 2002, the forest administration continues to observe old forest regulations – in particular, the *Guide de l'Exploitant Forestier* (The Timber Operator's Guide) of 1984. Yet the 2002 Forest Code explicitly repealed both the old forest law, dating from 1949, which had long ceased to be applied, as well as the standards and procedures contained in the *Guide de l'Exploitant Forestier*.

Of the 42 application decrees which were supposed to accompany the Forest Code, two months after it was promulgated, only seven implementing provisions were published in the Official Journal. These were without their appendices (the standardised forms for licences and other logging documents). Subsequently, the Ministry of Environment decided to suspend their implementation in order to submit them for consultation with relevant parties. However, the Ministry did not officially record the suspension of the implementation of these texts in any way. From a legal perspective, these texts are therefore still in force.

In October 2006, the Ministry of Environment signed four texts replacing four of the seven texts signed in 2002. These texts are considered by lawyers in the Ministry, and donor governments, as the most important texts regulating forest management plans, logging and permits for purchases, sales and exports. The timber industry contests these because they have not been published in the Official Journal; nonetheless they became effective on the date they were signed.

There are no systematic, regular or targeted inspections of timber production operations along the chain of custody, from the preparation of logging areas, logging and storing, transport, timber processing and export.

An analysis of processes for verifying the origins of timber showed that the marking of timber and the current inspection system in export ports do not conform to any specific standard. In such circumstances, it is extremely difficult to guarantee the traceability of Congolese wood.

Forest control staff claim insufficient expertise in investigation and reporting, and have therefore failed to prosecute violations of laws and regulations.

The Global Witness team documented forest administration management practices which were in violation of existing forest laws.

### **3. Titles granted or amended in violation of the moratorium**

A study of existing forest titles showed that around 70% – 108 titles covering a total area of more than 15½ million hectares (over 1½ times the total land area of Liberia) – were granted or amended following a moratorium on new industrial logging titles declared in May 2002. The granting of these titles also violated regulations in the new Forest Code concerning the allocation of industrial logging titles. In addition, they were issued without consulting the provincial and local authorities or the communities directly affected. Any "Timber Production Authorisation" (Garantie d'approvisionnement, GA) and/or "Letter of intent" (Lettre d'intention, LI) issued after the moratorium should therefore be considered legally invalid.<sup>4</sup>

### **4. Failure to implement social responsibility commitments**

The 2002 Forest Code provides that forest resource management should contribute to economic, social and cultural development. Yet the Global Witness team was unable to observe any evidence of completed projects using government funds from forest revenues.

The companies which Global Witness visited still have tense relationships with local communities, in particular regarding social responsibility agreements (*cahiers des charges*) and the slow pace at which these commitments are being met, in comparison with the value being extracted from the forest in the form of logs and lumber.

In their agreements with local communities, most logging companies continue to offer hand-outs (such as salt, sugar, soap, oil) instead of making commitments to "develop socio-economic infrastructure" as prescribed by the law. Even in cases where companies make such commitments, many communities do not have the power to insist that they deliver on their promises.

Staff salaries in most of the companies inspected meet the minimum wage but do not compensate for the hours worked. In some cases, salaries were paid up to four months late. In all the logging camps visited by the team, workers' accommodation was of an unacceptable standard. In some cases, companies failed to provide clean drinking water for workers and their families.

### **5. Failures at the level of logging companies**

The right of individuals and communities to cut and sell trees found in their immediate environment is widely abused by logging companies and timber traders, with the collusion of the forest administration which authorises extensive logging in villages.

None of the companies inspected in the field could present a comprehensive annual operation plan, which they are legally required to produce as the basis for an annual logging permit.

None of the companies inspected adhere to the legal requirements for marking logs. Vague terminology in the law means that modifications can be made once the logs have left the forest.



Logging in close proximity to a village

## **III. Priority recommendations**

### **1. To the Congolese government**

#### Immediate interim measure

Declare a moratorium on all industrial logging operations until the forest administration can demonstrate full control of the sector and the measures below are in place.

#### Other priority measures

- Adopt an inclusive national zoning plan developed in consultation with concerned populations, as required in the 2002 Forest Code.
- Complete the Forest Code with all the necessary application texts and the appendices to those texts which have already been signed.
- Remove any inconsistencies and contradictions between different laws and regulations and ensure that the forest administration, as well as provincial and local authorities, applies the 2002 Forest Code and other current legislation, and ceases to apply the *Guide de l'Exploitant Forestier*.

- Respect the moratorium on the allocation of new industrial logging permits until the conditions set by Decree no. 05-116 of 24 October 2005 are fulfilled, namely the publication of the final results of the conversion process, the binding abrogation of unconverted licences, and the adoption of a programme of future concession allocations based on an equitable, transparent, consultative process.
- Show commitment to social development and poverty alleviation of forest-dependent peoples by developing and implementing a programme that assists local communities in negotiations and in monitoring whether logging companies are respecting their social obligations and other commitments.

## 2. To donors and international financial institutions

Seek funds to compensate the Congolese state for the loss of revenues incurred through the moratorium. However, such funds should not be made available until the Congolese government has established an effective system of responsibility, transparency and accountability, including strong safeguards to prevent corruption and the mismanagement of funds.

### III. Next steps: extending the feasibility study for an Independent Forest Monitor

This three month study piloted IFM in just two provinces. It was also limited by logistical and other constraints. A second, four month phase would enable the team to carry out a more detailed evaluation, including by observing practices in other regions (such as Equateur Province and the Ituri District in Province Orientale, where extensive unregulated artisanal logging has been reported). It would also enable a more thorough examination of the regulations relating to revenue collection and their application, including for example the exemption from stumpage fees enjoyed by industrial forest operators to since early 2007.

A second phase would provide a more extensive and deeper understanding of the scale of the problems facing the forest sector and would facilitate the formulation of more detailed recommendations, in particular for long term control, verification, and monitoring systems.

### IV. The prospect for long-term Independent Forest Monitoring in the DRC

A permanent Independent Forest Monitor can only operate where there is at least a functioning system to monitor, albeit a weak one. As this briefing shows, this is not yet the case in the DRC. During this feasibility study, control operations by the forest authority only took place in contrived circumstances

– when the Global Witness team needed to observe them. Thus the monitor and the monitored merged into a single control team.



IFM and forest authority team in the field

It should be recognised that in the current situation in the DRC, an independent monitor can only monitor forest operations, not the performance of forest control officials. This will continue to be the case until basic control systems are put in place and resourced. A system of effective, regular and transparent controls needs to be built, and a dedicated budget needs to be allocated to execute thorough control operations. Only then can monitoring adopt a more sustainable, and purposeful approach.

- <sup>1</sup> "The moratorium should stay in place until satisfactory management and governance standards have been achieved in the existing concessions." The World Bank et al, Forests in post-conflict Democratic Republic of Congo – Analysis of a Priority Agenda, February 2007
- <sup>2</sup> IFM collects objective evidence of infractions, assesses the level of illegality, and observes the system of control. It highlights where words and deeds are inconsistent, and promotes corrective actions. By working with the officials concerned this can lead directly to improvements in forest laws, regulation, enforcement, and forest management. IFM has been pioneered by Global Witness since 1999, and has been incorporated into the EU FLEGT legality licensing systems, for example.
- <sup>3</sup> The Terms of Reference for the study are available at [www.globalwitness.org/ifm/drc](http://www.globalwitness.org/ifm/drc)
- <sup>4</sup> The Global Witness team did not embark on further investigations into the legality of these titles as a separate Independent Observer was commissioned to facilitate the conversion process of old titles into concessions.

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