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global witness

The cut-price sale of DRC's forests

Tax avoidance, illegal deals: 90% of taxes missing from public coffers

Loggers in DRC already pay the lowest rate of Surface Tax in Central Africa, at US$ 0.50 per hectare.

The tax avoidance and illegal tax deals of industrial logging companies in the Democratic Republic of Congo

Almost 15 million hectares of forest are currently allocated to industrial logging in the Democratic Republic of Congo (DRC), an area six times the size of Rwanda. Proponents of industrial logging in the DRC often assert that it has the potential to bring in much-needed tax revenue to DRC's coffers. A 2002 World Bank document for example predicted that "tax revenues (from logging)… could reach between US$ 60 million and US$ 360 million per year"[1].

However, official documents seen by Global Witness point to a shortfall of over **US$ 11 million in the Congolese Treasury's receipts of forestry Surface Tax** (*taxe de superficie), DRC's main logging tax, during 2011 and 2012.*[2] **In 2012 the Surface Taxes received by the Treasury were only 10% of what should have been collected, had the taxes been paid in full.** Global Witness believes that the shortfall can in part be explained by a deal struck between the logging industry and officials in the Ministry of Environment, Nature Conservation and Tourism (MECNT), which could have cost the country's treasury as much as US$ 3 million per year. This deal is, in the words of the EU-funded Independent Observer for Forests in DRC, 'without any legal basis'.

The logging industry's routine tax avoidance and illegal tax deals serve to highlight the raw economic deal DRC is getting from industrial logging. DRC's precious natural resources are not only being depleted, but these losses are failing to generate even the bare minimum economic returns prescribed by law.

This is not the first time that loggers in DRC have benefited from generous tax discounts. During the global financial crisis, logging companies were granted an exemption from paying any Surface Tax for 2009 and a 50 per cent exemption for 2010.

But even without these discounts, loggers in DRC already pay the lowest rate of Surface Tax in Central Africa, at US$0.50 per hectare. Rates in Cameroon, Central African Republic, Gabon and Republic of Congo range between US$ 1 and US$ 4 per hectare.

Our evidence shows the extent to which DRC is losing out from its industrial logging business. Legal requirements generate the bare minimum economic returns for the loss of DRC's precious natural resources. But even these are considered too onerous by a logging industry engaged in tax avoidance and illegal tax deals.

Millions of dollars lost: calculating the full extent of the logging industry's fiscal illegality

1. Logging companies illegal avoidance of DRC's main logging tax

In February 2013 a new law devolved the authority to collect a range of taxes to DRC's provincial authorities. This step was part of the DRC's process of decentralising power and resources from the central government to the provincial level, a process initiated in 2008. One of the taxes devolved for collection at the provincial level was the Surface Tax on logging titles and concessions. Provincial authorities in the Provinces of Equateur, Bandundu and Orientale, where huge swathes of forest are given over to logging, may have expected a welcome boost to their finances for regional development.

Details of tax revenues[3] from DRC's natural resource sector have been released by the country's Ministry of Finance over the last year as part of an effort to meet 'economic governance' benchmarks agreed with the World Bank[4]. These figures indicate that the total amount of Surface Tax received by the *Direction Générale des Recettes Administratives et Domaniales* (DGRAD) in 2011 and 2012 is a mere fraction of what should have been generated.

- Based on the actual surface area of all of the DRC's logging concessions (14,941,935 hectares), and the legally prescribed rate of 0.50 dollars per ha, the Treasury should have received US $ 7,470,967.50 per year[5].
- Figures released by the Ministry of Finance show that US $ 3,090,586 was received in 2011.
- Figures released by the Ministry of Finance show that US $ 777,908 was received in 2012.
- This means that according to Ministry of Finance figures in 2011 and 2012, US $ 11,073,441 in Surface Tax was effectively missing from the government coffers for these two years alone.
- During 2012 only 10 % of the revenues that should have been generated by the Surface Tax found their way into the Treasury's coffers.

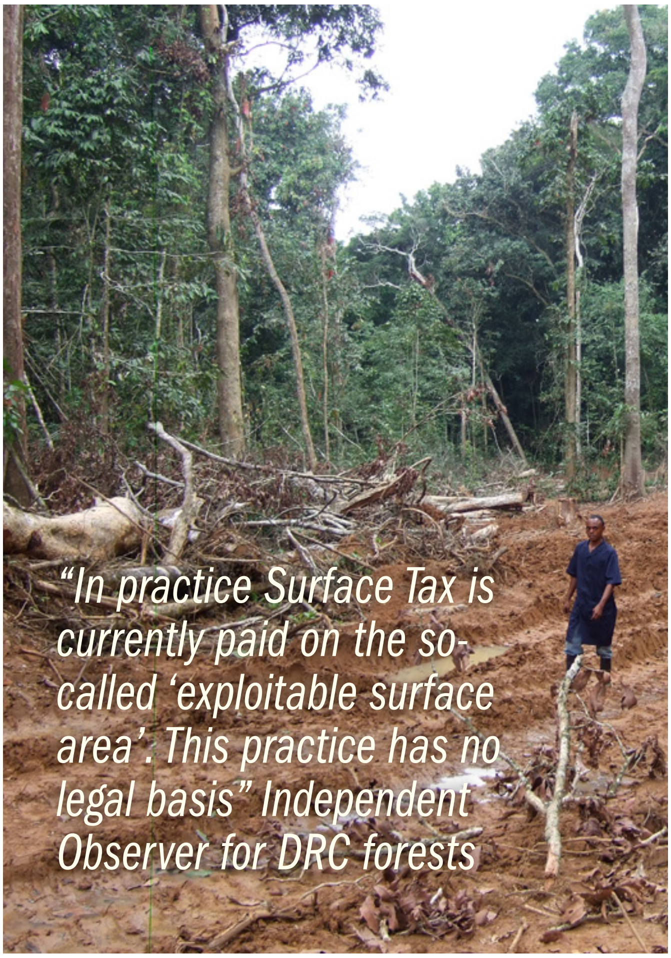
2. The logging industry's illegal tax deal

Part of the fiscal shortfall can also be explained by special tax arrangements with the logging industry. Documents seen by Global Witness show that the majority of loggers in DRC did not pay Surface Tax on the entirety of their concessions during 2011 and 2012. Instead they paid tax on a smaller 'exploitable' surface area.

DRC's forest laws state that loggers should pay US$ 0.5 per hectare in Surface Tax, based on the entire surface area of their concession[6]. Once a 25-year Forest Management Plan (*Plan d'Amenagement*) covering the whole concession has been approved by the forest administration, the tax would only be paid for a smaller 'exploitable surface area', which excludes areas of swamp, savannah and land occupied by communities that are not suitable for logging. However, during 2012, no concession holder in DRC had developed a 25-year Forest Management Plan.

Documents seen by Global Witness, which are signed by an official from MECNT's Forest Management Department (*Direction de Gestion Forestiere*), show that in 2012 loggers were only paying Surface Tax on 8,773,992 hectares of forest, despite the fact that close to 15 million hectares of forest are in fact allocated to logging. The documents show that Surface Tax is being calculated on the basis of an 'exploitable surface area' that is in most cases much smaller than the overall surface area of the concession. **This was effectively an illegal hand-out of over $3 million dollars to the logging industry for 2012.**

To take a specific example of one logging company, the total surface area of Cotrefor's three concessions is 746,000 hectares. On this basis they should have paid US$ 373,000 in Surface Tax during 2012. However, documents seen by GW show that during 2012 they paid just US$ 197,231, on the



Industrial logging has begun a cycle of decline – built on illegal and unsustainable activities – that brings no real or lasting benefits.

basis that the 'exploitable surface area' of their concessions is only 394,459 hectares.

This tax arrangement with the logging industry clearly contradicts DRC's tax regulations for the forest sector[7]. This is made clear in an analysis published in April 2013 by the EU-funded Independent Observer for DRC forests. This analysis finds that "in practice Surface Tax is currently paid on the so-called 'exploitable surface area'. This practice has no legal basis[8]."

3. A lack of transparency prevents a full analysis of tax losses for DRC

The aforementioned tax breaks however do not account for the entire shortfall we have calculated. Even taking into account these special arrangements, the amount of area tax collected according to figures published by the Ministry of Finance is still considerably lower than expected. There is an almost total lack of transparency regarding the taxes paid by loggers in DRC. Whereas many mining and oil companies in DRC disclose tax payments as part of the Extractive Industries Transparency Initiative (EITI), no such information is published by the logging industry. This makes it all but impossible to ascertain why tax revenues actually generated are so low in the forest sector.

If tax payments were published on a company-by-company basis it would shed light on why only a fraction of the expected Surface Taxes are reaching the Treasury as well as helping timber buyers to ascertain whether loggers are in compliance with the law including tax laws.

4. DRC's regional development prejudiced by these losses

In February 2013 a new law devolved the authority to collect a range of taxes to DRC's provincial authorities. This step was part of the DRC's process of decentralising power and resources from the central government to the provincial level. Although the 2002 Forest Code specifies that 40% of Surface Tax should be received by the provincial authorities where the logging took place, this has never been properly implemented. Historically, DRC's provinces have benefitted little in fiscal terms from logging and other extractive industries.

One of the taxes recently devolved for collection at the provincial level was the Surface Tax on logging titles and concessions. Provincial authorities in the Provinces of Equateur, Bandundu and Orientale – where huge swathes of forest have been handed out for logging – may have expected a welcome boost to their finances for regional development. However, as this briefing shows, revenues from Surface Tax are in fact extremely low, and are likely to remain so even in the absence of these egregious tax abuses by logging companies.

Who's losing out: halting the damage to DRC's development

The logging industry's routine tax avoidance and illegal tax deals serve to highlight the raw economic deal DRC is getting from industrial logging.

DRC's precious natural resources are not only being depleted, but these losses are failing to generate even the bare minimum economic returns prescribed by law.

In the short term, Global Witness recommends clamping down on the fiscal illegalities of logging companies in DRC, as well as the administrative failings and lack of transparency on the part of DRC's authorities that allowed these to happen.

However, we believe our evidence reveals a deeper, more fundamental problem about DRC's industrial logging activity and its failure to contribute to the nation's sustainable development. It suggests that real progress is unlikely to follow from reliance on simple liquidation of natural assets. Industrial logging has begun a cycle of decline – built on illegal and unsustainable activities - that brings no real or lasting benefits.

We recommend that the Prime Minister urgently set up an inter-ministerial inquiry to examine the economic, environmental and social losses associated with DRC's current concession model of industry logging and to propose alternative models of forest management more likely to generate sustainable development.

References

1. World Bank internal Aide Memoire (2002), quoted in World Bank Inspection Panel (2007), Investigation Report No. 40746 – ZR, p39, http://www.illegal-logging.info/uploads/WB%20DRC%20report.pdf

2. Surface Tax is intended to be paid based on the surface area of a company's concessions, and is in theory the main tax on the logging industry in DRC.

3. Figures on tax revenues from the natural resource sector are published on a three-monthly basis by DRC's Ministry of Finances. Some of these summaries are available online, for example: http://minfinrdc.com/minfin/wp-content/uploads/2013/08/Communiqu%C3%A9-N%C2%B0003-du-26-juillet-2013.pdf

4. These benchmarks are laid out in an Economic Governance Matrix, published by the World Bank. http://documents.worldbank.org/curated/en/2013/01/17210200/congo-economic-governance-program

5. There are in fact two existing figures relating to the surface area of logging concessions in DRC. The figure given here of 14,941,935 hectares is the 'GIS' surface area, calculated by World Resources Institute. A second set of figures exists, known as 'administrative surface area' (*Superficie Administratif*), which is the surface area used in the contracts of DRC's old logging titles, some of which have now been converted into forest concessions. *Superficie Administratif* figures are less accurate than GIS figures, which are based on a thorough mapping exercise. Detailed information on the surface areas of concessions can be found in World Resource Institute's Forest Atlas: http://pdf.wri.org/interactive_forest_atlas_drc_fr.pdf

6. Arrêté Interministériel 003/CAB/MIN/MECN-T/2010 et 029 CAB/MIN/FINANCES/2010 du 26 avril 2010. Article 2.

7. The relevant legal text during 2012 was *Arrete Interministeriel 003/CAB/MIN/MECN-T/2010 et 029 CAB/MIN/FINANCES/2010 du 26 avril 2010*. Article 2 of this text reads: « *La taxe de superficie porte sur l'ensemble de l'aire concédée jusqu'au moment ou un plan d'aménagement de la forêt concernée sera réalisé par le concessionnaire et agrée par l'administration Forestière. Alors, la redevance ne s'appliquera que sur la superficie exploitable, telle que couverte par le plan d'aménagement, à l'exclusion des parties libérées par le concessionnaire, lesquelles seront circonscrites en blocs contigus sans pour autant remettre en cause l'unité de la concession.* ». A new legal text on forest taxes was introduced in March 2013, but this did not significantly alter the rules on Surface Tax.

8. « *En effet, dans la pratique, la redevance de superficie est désormais payée sur la superficie dite « superficie exploitable »….Cette pratique n'a pas d'assise juridique, puisque le code forestier assoit la redevance de superficie sur la totalité de la superficie concédée, et un Arrêté interministériel d'avril 2010 confirme cette assiette. La pratique, et la confusion qu'elle a amené dans l'interprétation de la loi, sont basées sur une « lettre » du MECNT de juillet 2011 qui enjoint la régie financière en charge de la perception à procéder à une taxation basée sur la « superficie exploitable » en se basant sur un arrêté de 2008 qui avait été abrogé en 2010. La lettre vient donc violer l'arrêté interministériel en vigueur et le code forestier. Par le principe de la hiérarchie des normes juridiques, une lettre ne peut pas annuler ou suspendre l'application d'une disposition légale* ». Resource Extraction Monitoring, 2011, Note de Briefing. Analyse de la fiscalité forestière, p10. http://www.observation-rdc.info/documents/REM_OIFLEG_2013_taxes_DRC.pdf

Global Witness investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses.

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