



# Forest Governance in the Democratic Republic of Congo

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## EXECUTIVE SUMMARY

Following a review of old logging titles, the forestry sector in the Democratic Republic of Congo (DRC) still faces many governance challenges. Communities lack knowledge of forest law and policies due to poor access to legal regulations and guidelines. The sector is characterised by corrupt practices and a culture of impunity. Punishments for breaking the law lack severity to act as a deterrent for illegal logging. This, combined with frequent harassment by state agents, leads to an increase in illegal activities. There is insufficient institutional capacity for forest management, and a huge gap between policy and practice. The government's commitment to the involvement of local communities in forest governance is theoretical, as it appears unwilling to contribute constructively to the sector. The forestry sector contributes very little to the national economy, at just 1% to GDP, compared to an average of 5% for other countries in the Central Africa Forestry Commission (COMIFAC).

## INTRODUCTION

Between 2006 and 2009, an inter-ministerial commission conducted a review of the DRC's old logging titles. Basing their assessment on objective evaluation criteria, they initially recommended that 65 out of an original 152 of the DRC's old forest titles be converted to logging concessions. The commission also recommended the cancellation of the other titles, barring a few that were subject to special comments. At the end of an extended process that stretched well into 2010, the DRC was left with a total of 80 logging concessions, covering less than 20% of the country's forested area. Despite this process, the DRC's forests are still left with some serious governance challenges.

## RECOMMENDATIONS

- All stakeholders in the forestry sector should promote a culture of transparency and active partnership.
- The application of laws and regulations is not only the responsibility of the state, but of all stakeholders. That being said, political elites should set the moral tone and cannot simply leave the management of the forestry sector to the private sector and development partners.
- To end the vicious cycle of dependency, a change in mentality and behaviour is required. The current situation of 'guidance from the top (or outside)' should be changed to one in which stakeholders are 'agents of collective contribution'. Experts are urged to think about ways to stimulate equitable citizen involvement in decision-making through innovative mechanisms of community involvement and empowerment.
- The state should mobilise all stakeholders to swap a rent-seeking logic for one of investment seeking to fight against the illegal timber trade.
- Development partners should support the government at both national and provincial levels in their efforts to regulate the artisanal, semi-industrial logging sector.

The 2002 Forest Code requires that forests are governed in a consensus-based multi-stakeholder framework. This is easier said than done in a country like the DRC, where complex forest governance problems related to the different scales of decision-making (national, provincial and local) are compounded by an information asymmetry among stakeholders. Moreover, the DRC government lacks the capacity to build the required framework. As a result, forest governance reform initiatives – including such things as the establishment of multi-stakeholder forums – are almost completely donor-funded. The policy briefing analyses various issues underlying the formulation and implementation of forest laws and policies.

### LEGAL ISSUES

Stakeholders implicated in the DRC's forest laws and policies include national and provincial governments, civil society organisations and the Federation of Timber Industries (FIB). Given the inability of local inspectors to monitor logging activities, the government signed a contract with the Société Générale de Surveillance (SGS) – a Swiss inspection, verification, testing and certification company – to assume responsibility for this task. However, despite the investment of substantial human, technical and financial resources in the process, forest monitoring (not only of logging, but of all forest activities, including slash and burn agriculture) will remain ineffective unless the local population is involved. This emphasises the challenge of ensuring the implementation of policies.

Informing and educating the local population about forest laws and policies remain a key challenge. Many local civil society organisations in the DRC focus on so-called 'issues of the belly', which are basic human needs, such as food security. Even so, it would be beneficial to include credible civil society organisations in the forest governance process.

### SOCIAL ISSUES

An order passed in June 2010<sup>2</sup> requires that logging companies negotiate a social contract (known as a *cahier des charges*) with local communities.

These contracts are in line with the DRC's Poverty Reduction Strategy Paper (PSRP). They provide details on corporate actions and/or projects that contribute to local communities' fight against poverty. Stakeholders that should be involved in these negotiations include logging companies; riparian communities; and relevant political and administrative authorities at the national, provincial and local levels.

Logging companies complain that they carry a double burden. As is the case for companies and investors everywhere, logging companies pay taxes to the Congolese government. In addition, they often shoulder the responsibility of local development in the areas in which they operate. The proper negotiation, design and implementation of these social contracts require more human and financial resources than are currently available. Stumbling blocks in the social contract negotiating process, which according to the vision expressed in the Forest Code should be participatory, include differing expectations and a lack of communities' negotiating capacity.

Questions that arise during the process of negotiating a social contract include who should negotiate; what communities should negotiate for; and how to mitigate the unwanted influence of the intellectual, political and commercial elite, in relation to the needs of riparian communities. The answers communities give to such questions highlight the vast gap between expectations and what is provided for in local by-laws, and between communities' expectations and companies' performance. The overarching question remains whether these *cahiers des charges* will include the provision of roads, schools, hospitals and socio-economic development projects – services usually provided by the state. In the DRC, communities' expectations of companies often serve to exempt the state from its responsibilities. It seems that social responsibility contributions will still be made informally in cash, in services or in kind, rather than as more formal transactions through financial institutions.

Many social issues need to be addressed, which include the following:

- Ensuring the success of negotiation and implementation. Officials often hide behind the argument that local communities' capacity for

implementation is limited and so they cannot be entrusted fully with the governance of forest resources.

- Information and expertise are concentrated in the hands of government and a few local non-governmental organisations, which dominate decision-making while communities are reduced to mere bystanders. This information asymmetry increases conflicts related to sustainable management efforts. True empowerment will require that communities enjoy equity in benefit-sharing rather than merely being on the receiving end of charity efforts, as is currently the case.
- The zoning process aims to ensure secure user rights and to avoid an overlap of forest titles with mining, agriculture and transportation areas. However, in reality the process, which is meant to be participatory, exacerbates a situation in which more benefits flow to urban elites than to local people. In improving the zoning process, it is important to establish the number of people who should be involved; the types of people who should be involved (including gender and marginalised groups); how they should be involved; challenges that could arise and how they are dealt with; and how to ensure successful implementation and equitable benefit-sharing.

In the DRC, the autochthonous population's weak organisational and bargaining position prevents them from making their voices heard. These communities have high social and economic expectations, and numerous immediate basic needs. Consequently, they desire practical modalities for benefit-sharing, which unfortunately, are ill-defined. Their concerns are practical, such as how educational and medical facilities will be funded and maintained once built; and how they will fund their children's tertiary education. In a context of social discrimination, ensuring that these communities operate at a level that is on par with other groups might even require that they be accorded veto power over certain decisions.

## FINANCIAL ISSUES

For some the post-conversion process promises

large financial benefits. Section 12 of the 2002 Forest Code requires that forest taxes and royalties are paid to the public treasury. Of this money, 60% should go to the national level and 40% to local administrations. That this is not taking place has already led to conflict between central and lower levels of government. In a province like Equateur, this type of conflict is further complicated by the governor having more decision-making powers than some national ministers. Government officials' low levels of tolerance for dissent discourage political dialogue and consensus-building.

Furthermore, the tax reform package of March 2004, which was meant to increase revenues while reducing the tax burden, has not been fully implemented. As part of this reform, a financial law provides for a single revenue collector that would collect revenue on behalf of the public treasury. Effectively implementing this provision would, however, mean a loss of income for the many Congolese officials whose income depends on levying taxes, both official and unofficial. These officials resist any attempts at tax reform and revenue traceability. Perversely, a partially implemented tax reform process could even create additional opportunities for rent-seeking, placing yet another revenue burden on forest-based enterprises.

As a result of these issues, forestry's contribution to the state budget remains low compared with other forest countries of COMIFAC. Government has lost its credibility by becoming a passive partner in efforts to improve forest governance. It has also lost its regulatory role. This has allowed for a vicious cycle of dependency, in which the forestry sector contributes very little to the state budget and the state, in turn, concedes almost nothing to the ministry of environment, who is responsible for addressing issues in the forestry sector. A political solution is to resort to external partners such as the World Bank, the EU, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and USAID's Central Africa Regional Program for the Environment. However, their disbursement procedures are cumbersome and restrictive, and dictate not only the letter but also the spirit of any reform programme they support. In the absence of state authority, the private sector has assumed

some responsibilities. In the territory of Oshwe, SODEFOR (a logging company) recently invited – at their expense – experts, political authorities, provincial ministers of parliament and riparian communities to discuss and negotiate the *cahiers des charges*. Unequal power relations described above distort negotiations even before they begin.

### STRATEGIC ISSUES

Three strategic issues related to post-conversion processes can be identified. These are the ‘Asian rush’, vengeance of the ‘non-runners’ and sensitisation about the *cahiers des charges*.

The Asian rush refers to the rising interest of Asian players in Africa’s resources, including its forest resources. This increases pressure on the forests. In the DRC, some Asian operators serve as brokers or middlemen for the export of wood from the market in Kinkole. Others focus their attention on agricultural and bio-energy programmes. The arrival of these players, who operate according to new and unfamiliar sets of rules, raises question marks around governance.

Vengeance of the non-runners refers to those whose forest titles were cancelled and who subsequently reverted to artisanal exploitation. Blaming this shift – from more formal exploitation to artisanal exploitation – on the absence of any local (Congolese) companies’ titles being converted, these ‘non-runners’ have resorted to informal exploitation and selling species and products that are produced outside measures designed to legalise the timber chain.

Finally, there are challenges related to the negotiation of the *cahiers des charges*. The social partnership model reflected in the spirit of the law serves only to entrench the domination and intellectual power imbalance in favour of urban elites, to the detriment of those at the local level. In order to address this imbalance, it is firstly important to strengthen local communities’ knowledge of both the letter and the unsaid implications of the law. In addition, it is important

to consider the dynamics of decision-making bodies, the assessment of development projects, the management of funds at the local level, and monitoring and evaluation. These steps will most likely require long-term commitment to the communities by development partners. Currently, communities are overburdened with learning material. This results in them being marginalised and trapped in a vicious circle of the unilateral transfer of knowledge. This circle ultimately leads to their infantilisation. Through consultations in international organisations, urban elites feed at the breast of external partners to the detriment of those in the countryside.

### CONCLUSION

The success of the post-conversion process depends on the effective implementation of regulatory and legal provisions, the strengthening of local governance and the promotion of a culture of transparency and accountability. It is difficult to gain access to information in the DRC. Too often hidden information – so-called ‘state secrets’ – is relayed through intermediaries. Failing to implement fiscal, administrative and technical transparency will lead to the confiscation of the post-conversion process by a handful of experts, leaving a multitude of frustrations. Centralised authority at the national level needs to be substituted or joined by functional and viable decision-making structures at the local level. Until then, communities will remain passive agents and interested spectators in their own development.

### ENDNOTES

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- 2 Order 023/CAB/MIN/ECN-T/28/JEB/10/ of 7 June 2010.

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