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Civil Society briefing on the threat of lifting the logging moratorium in DRC

On 30th January DRC's Minister of Environment, Nature Conservation and Sustainable Development, Robert Bopolo Mbongeza, stated that "measures are underway" to lift the moratorium on the allocation of new industrial logging concessions imposed in 2002.¹

National and international non-governmental organisations believe that lifting the moratorium would likely unleash a tidal wave of environmental destruction, social abuses and corruption in the world's second largest tropical rainforest and could seriously undermine the efforts to conserve DRC's forests as a contribution to preventing climate change.

Why a moratorium?

DRC's logging moratorium was first established by ministerial order in May 2002.² Its purpose was to give a pause in what threatened to become a post-war free-for-all in the exploitation and destruction of the country's huge forests. With World Bank guidance and financial support, the country was to embark on a path whereby forest management would become a sustainable industry, generating billions of dollars of revenues and tens of thousands of jobs, whilst supposedly conserving the forest.³ The moratorium was immediately violated, as scores of logging concessions were issued, in a flood of illegal and corrupt allocations.⁴ However, a Presidential Decree reinforcing the initial order was signed in 2005,⁵ and a "legal review" of all existing industrial titles carried out. Unfortunately, 15 illegal titles cancelled in 2009 were reinstated by the Ministry in 2011.⁶ In the end, the "legal review" resulted in the cancellation

¹ Robert Bopolo Mbongeza, « Allocation de Monsieur le ministre de l'Environnement, Conservation de la nature et Développement durable prononcée à l'occasion de la cérémonie d'échange de vœux avec les agents et cadres du MECNDD », 30 January 2016. « C'est ici le lieu d'informer les Agents et Cadres de mon Ministère que le moratoire sur l'octroi de nouvelles concessions forestières décrété en 2002 [...] a occasionné un manque à gagner énorme à notre pays. Les démarches sont en cours pour obtenir du Gouvernement la levée de cette mesure. » The moratorium also covered the renewal or extension of validity of existing titles.

² Ministère des Affaires foncières, Environnement et Tourisme, « Arrêté ministériel n°CAB/MIN/AF.F-E.T./194/MAS/02 du 14 mai 2002 portant suspension de l'octroi des allocations forestières »

³ World Bank, « République démocratique du Congo Secteur forestier Mission de prise de contact (17 février – 7 mars 2002) Aide mémoire », p. 2.

⁴ Greenpeace, Logging sector Review, 2008, <http://www.greenpeace.org/africa/en/Press-Centre-Hub/Publications/Logging-Sector-Briefing-for-the-Democratic-Republic-of-the-Congo/>

⁵ Joseph Kabila, « Décret n°05/116 du 24 octobre 2005 fixant les modalités de conversion des anciens titres forestiers en contrats de concession forestière et portant extension du moratoire en matière d'octroi des titres d'exploitation forestière », 24 October 2005

⁶ Ministère de l'Environnement, Conservation de la nature, et Tourisme (MECNT), « Point de presse du 29

of only dormant titles, entrenching the status quo ante.

In September 2014, DRC had around 10.7 million hectares of logging concessions.⁷

As noted below, the experience of industrial-scale logging amply shows that expanding, rather than further scaling down, DRC's logging industry would be accompanied by many extremely serious problems, and no lasting benefits.

The World Bank's view

The World Bank states that "*The Bank Group view is that the moratorium should stay in place until: participatory zoning is completed on potential concession areas, a transparent and competitive system is used to select future concessionaires; institutional capacity to regulate, monitor and control commercial forestry has been created; and a three-year rolling plan has been established indicating the exact number, areas and locations where concessions will be gradually awarded.*"⁸

None of these requirements appears to have been met.

While methodologies have been developed for some aspects of national forest zoning, no participatory zoning has actually been carried out anywhere in the DRC.

Although a decree regulating award by auction was signed in 2008,⁹ no "system" for "transparent and competitive" tendering is in place.

There is arguably no more capacity to "regulate, monitor and control" commercial forestry in DRC than there was in 2002. According to a December 2015 World Bank report, a six-year, \$64 million GEF project, which included as an objective the strengthening of the Environment Ministry generated results which could only be described by the Bank as "modest." Most of the indicators of success for this part of the project had to be dropped for one reason or another, or were inconclusive.¹⁰

Congolese civil society is unaware of the existence of a three-year rolling plan for new allocations. No public consultation, much less participatory zoning, appears to have been undertaken in the areas the Ministry announced in August 2014 would be opened to logging in the "short term (12 months)" or the "mid term (48 months)."¹¹

Logging is still out of control and failing to deliver national benefits

Despite 14 years of so-called forest sector reform and tens of millions of dollars in financial aid, industrial logging remains out of control in the DRC, fueling corruption and elite capture, and thwarting development.

Although the 2005 Presidential decree stipulated that loggers lacking Ministry-approved 25-year management plans (*plans d'aménagement*) four years after the contract was awarded would be "automatically" cancelled, we are aware of only a single – extremely controversial – concession with an approved 25-year management plan,¹² even though most contracts date from 2011. In the meantime,

janvier 2011», 29 January 2011.

⁷ MECNT, « Note technique à l'attention de son Excellence Monsieur le Premier Ministre, chef du gouvernement », 26 August 2014, p.3

⁸ <http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20779255~pagePK:283622~piPK:3544780~theSitePK:95474,00.html#9>

⁹ MECNT, « Décret n°08/09 du 08 avril 2008 fixant la procédure d'attribution des concessions forestières »

¹⁰ World Bank, "Implementation Completion and Results Report (IDA-H4570 TF-92910 TF-94135), on a Credit from the International Development Association," 9 December 2015. According to the Bank's own evaluation of this project, "*The most successful contribution to MEDD's institutional strengthening, in spite of initial political resistance, was the provision of compensation to allow the retirement of 1,702 staff and 972 managers who had passed the retirement age.*"

¹¹ MECNT, « Note technique », op. cit., pp. 5-6

¹² CITES, PC22 Doc. 12.1, « RAPPORT SUR L'AVIS DE COMMERCE NON PREJUDICIALE POUR

violence and intimidation, especially against villagers seeking enforcement of “social investment” promises, has remained a constant feature of logging throughout the “reform” period.¹³

Furthermore, the scientific evidence is mounting that so-called sustainable forest management concessions lead to increased rates of deforestation, even where these operations have approved management plans.¹⁴

The fiscal returns from industrial logging have been meagre, at best. In a 2002 memo the World Bank looked forward to the logging area tax (*taxe de superficie*) alone bringing in between \$60 and \$360 million *per year*.¹⁵ In reality, revenues have been *14 to 21 percent of the low end of the World Bank estimate*.

For example, according to a study by the Extractive Industries Transparency Initiative, in 2013 DRC national and provincial governments obtained US\$ 12,896,258 from the logging sector. This figure fell by over a third to US\$ 8,349,439 in 2014, the last full year for which data is available.¹⁶ The 2014 figure represents about 12 cents every year for every Congolese.

One of Congo’s prime timber species, Afrormosia (*Pericopsis elata*) is listed under annex II of CITES (The Convention on International Trade in Endangered Species of Wild Fauna and Flora), but there have been constant problems of administration of the licenses required to export such species.¹⁷ Even the CITES Secretariat appears no longer willing to overlook the dysfunctionality of the DRC Environment Ministry. In April 2014 it announced it had learned of “*a large number of fake or falsified [CITES export] permits apparently issued by the Democratic Republic of the Congo, which have come to light over the course of many months*.”¹⁸ Following a November 2015 visit to Kinshasa, the Secretariat complained that it’s “difficult, if not impossible, to properly regulate [...] trade when permits are repeatedly cancelled and replaced, as is done by the CITES Management Authority of DRC.”¹⁹ And, “It seems that CITES permits [...] represent more of a ‘right’, a ‘license to export’, a ‘marketable security’ than a document that authorizes the export of a consignment of specimens of CITES-listed species [...]. This may generate the false impression that CITES permits are like ‘gold’ to users [...]”²⁰

A challenge to DRC’s REDD plans, FLEGT, and damaging the promise of wider adoption of community forestry

The Minister’s statement comes at a time when the government of DRC is hoping to benefit from at least two major international initiatives to provide funding to protect the country’s forests. The first of these, a World Bank Carbon Fund-backed \$436 million project to generate carbon credits by reducing deforestation across the future 13 million hectare Mai Ndombe province, could be critically compromised if the moratorium were lifted and new concessions issued within the region. The area already has 11 logging concessions within it (none of which, the draft project document notes, has the legally required management plan²¹) and, being relatively close to Kinshasa is very likely to be the target of new

PERICOPSIS ELATA EN REPUBLIQUE DEMOCRATIQUE DU CONGO, » 19-23 October 2015, p.2, <https://cites.org/sites/default/files/fra/com/pc/22/F-PC22-12-01.pdf>

¹³ See for example, <https://vimeo.com/channels/818953>

¹⁴ Jodi S. Brandt, Christoph Nolte, Arun Agrawal, “Deforestation and timber production in Congo after implementation of sustainable forest management policy,” *Land Use Policy*, 2016; 52: 15 DOI: 10.1016/j.landusepol.2015.11.028

¹⁵ World Bank, « Aide mémoire », op. cit., p.2

¹⁶ Initiative pour la Transparence dans les Industries Extractives à la République Démocratique du Congo (ITIE RDC), Moore Stephens, [Rapport sur l’étude de cadrage du Secteur Forestier en RDC, November 2015](https://drive.google.com/file/d/0B1C1A1j5TqAgveEN0N1ZwOWkwREU/view?pref=2&pli=1), <https://drive.google.com/file/d/0B1C1A1j5TqAgveEN0N1ZwOWkwREU/view?pref=2&pli=1>

¹⁷ CITES, “Notification to the Parties No. 2014/017 concerning Democratic Republic of the Congo Missing permits and Verification of permits,” 2 April 2014, <https://cites.org/sites/default/files/notif/E-Notif-2014-017.pdf>

¹⁸ Ibid.

¹⁹ CITES, SC66 Doc. 28, “Interpretation and implementation of the Convention Compliance and enforcement APPLICATION OF ARTICLE XIII,” 11-15 January 2016, pp.3-4, <https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-28.pdf>

²⁰ Ibid., p.5

²¹ Forest Carbon Partnership Facility (FCPF) Carbon Fund, Emission Reductions Program Document (ER-PD) ER Program Name and Country: Mai-Ndombe Emission Reductions Program, Democratic Republic of Congo:

concession requests from logging companies. The second, the DRC National REDD+ Investment Plan could foresee as much as \$1 billion foreign investment in protecting DRC's forests, and would also need to be substantially reconsidered if the expansion of industrial logging concessions were to become a reality.

As noted above, given the widespread non-compliance with basic forest governance requirements, such as the need to have a 25-year forest management plans, the lifting of the moratorium would be highly problematic in terms of any future efforts to develop a Voluntary Partnership Agreement under the EU-FLEGT programme. Given the apparent extent of illegalities with DRC's forest sector, it seems likely that many timber operators could lose access to EU markets.

Finally, the unleashing of large-scale commercial logging could serve to seriously undermine DRC's more progressive approach to the development of community forestry. The completion of the community forestry legislation this month has been welcomed by international NGOs²². However, under the legislation, future community forests could only be developed in areas not already designated for other purposes, and hence the expansion of industrial logging concessions could deprive many forest communities of an opportunity to benefit directly from local control and management of their traditionally occupied forests.

Conclusions

- Expanding industrial logging would greatly exacerbate the existing social and environmental problems caused by industrial logging.
- The DRC government clearly does not have the capacity to govern the forest sector.
- Industrial logging continues to be a vector of corruption and violence, and contributes astonishingly little to state coffers.
- None of the World Bank's preconditions for lifting the moratorium appears to have been met.
- Lifting the moratorium would cause immense damage to the credibility of DRC's REDD efforts.

In order to avoid the problems of the past, the DRC government could instead focus on scaling down the logging industry, intensifying law enforcement and supporting alternative, pro-poor and climate-friendly approaches to forest management. Collective efforts should now be channeled towards necessary reforms such as participatory land-use planning and the implementation of the new Community Forest Law, which has been welcomed by international donors and civil society alike. Without such an approach, efforts towards becoming a pioneer in REDD projects are likely to founder.

Signed by,

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²² Rainforest Foundation UK, February 2016, <http://www.rainforestfoundationuk.org/news/february-2016/tens-of-millions-of-hectares-of-africa-s-rainforests-could-benefit-from-local-community-control/>