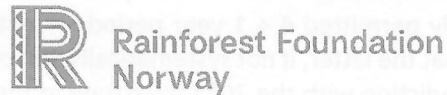


ACCUSE RECEPTION



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To: Inter-Donor Group for the Environment in the DRC (*GIBE - Groupe Inter-Bailleurs pour l'Environnement*)

Re: Concerns over the planned lifting of the DRC national moratorium on the allocation of new logging concessions and other priorities set out by the Environment and Sustainable Development Ministry

We are writing to express our serious concern over the DRC Vice-Prime Minister, Environment and Sustainable Development Minister, Mrs Eve Bazaiba Masudi's intended lifting of the national moratorium on the allocation of new logging concessions as well as several other 'urgent measures' announced by her on 9th of July. We fully support much of GTCRR's analysis of these measures¹ and ask that you make the necessary representations to your government counterparts that any premature lifting of the ban is incompatible with DRC's international climate engagements including the proposed new 2021-2030 CAFI Letter of Intent (LoI) and its revised nationally determined contribution (NDC).

There is nothing in the existing concession system to suggest why any credible international support programme to protect DRC's forests would condone any expansion of it. Several multi-million dollar programmes in recent decades have failed to reform the forest/environment sector, which remains mired in political patronage, poor social practices and negligible benefits for local communities or the state coffers². To persevere with the now debunked notion that 'selective' logging can save tropical forests is dangerous folly. It is clear that opening up some the world's remaining intact tropical forests to more logging would be an unmitigated disaster for the climate, biodiversity and forest communities.³

Any consideration of lifting the ban must be informed by several factors. First is the endemic illegality and malpractices within the forest sector. The focus of national and international intervention should

¹ Analyses Dix Mesures Prises par le Gouvernement, July 2021, Groupe de Travail Climat REDD Rénové.

² See for example, Implementation Completion and Results Report (IDA-H4570 TF-92910 TF-94135) for the Democratic Republic of Congo Forest and Nature Conservation Project, World Bank, December 9, 2015

³ A recent study by the Rainforest Foundation UK established a link between the creation of logging concessions in DRC and the 'cascade' of deforestation as logging roads eventually open up new tracks of forest for further exploitation.

thus be on bringing the existing industry under control. While much has been made of the long-delayed EU-supported legal review of existing concessions to address some basic governance issues, we note with concern that its extremely narrow remit is now restricted – for reasons that have not been explained/made public – only to logging titles that have been allocated after April 22nd 2016, i.e. the date of the current Lol signing. We are also concerned that the review will not include titles which may have been converted to conservation titles, and that the present situation as depicted in the latest progress report⁴ neither reassures that *all existing* titles will be *systematically* reviewed in terms of management obligations, nor that *all existing* titles will be *systematically* reviewed and duly cancelled if they have passed the legally permitted 4 + 1 year period for obtaining a government-approved management plan. We note that the latter, if not systematically and consistently considered by the review, would be in direct contradiction with the 2018 milestone in the current CAFI-DRC Lol that states all such titles should be returned to the state by no later than January 1st 2019.⁵ (It should be noted that this in itself was an arbitrary date that is inconsistent with what is in the DRC forest code).

As a consequence of the successive limitations of its scope, we understand that, as far as the legality of concession *allocations* is concerned, the review now only intends to confirm the illegality of allocations that took place after April 22nd 2016. Here we would like to recall the terms of the 2005 Presidential Decree, whose article 23 paragraph 2 states that “[t]his moratorium covers any acquisition of exploitation rights, including by exchange, relocation or rehabilitation of old titles”⁶. All logging titles allocated after April 22nd 2016 are thereby illegal *per se*, like all other titles allocated in the past after the adoption of the moratorium. Furthermore, we would like to underline that article 23 §2 is applicable to all ‘movements’, including reallocations of titles deemed convertible to legal concession contracts under the previous legal review, as long as *all* conditions stated under article 23 §1 are not met. From our analyses, the titles that should be deemed illegal by the proposed narrow review represent only a fraction of all illegal concessions that should be returned to the Congolese State.⁷

Moreover, we further note that the consultants undertaking the legal review have cited severe impediments to their accessing of even the most basic information pertaining to logging concessions in the country – hardly a solid basis for expanding the industry further. The Vice-Prime Minister's refusal, until two months after an intervention by the EU ambassador, to sign a mission order for the auditors of the legal review indicates a distressing attachment to business as usual. In order to clean up the industry, and in keeping with the Vice-Prime Minister's purported anti-corruption drive, it would be essential for the DRC government to publish a full list of beneficial ownership of logging and conservation concessions.

Second, and echoing the position of GTCRR, is that any lifting of the ban must be conditional on the fulfilment of the third legal condition on geographical programming set out in the 2005 Presidential

⁴ Revue des titres légaux des concessions forestières en RDC : Rapport d'avancement des travaux, Juin 2021, Contrat № 300013142 (SIEA-2018-1798)

⁵ CAFI-DRC Intermediate Milestones December 2018: “*Application of the provisions of the Forest Code to all existing industrial forest concessions. Concessions without approved, or at least formally and transparently submitted, management plans according to the conditions and deadlines set by the law and regulations in force, will be returned to the State by 1st January 2019 at the latest*”.

⁶ 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. Article 23 al. 2 « *Ce moratoire couvre toute acquisition de droit d'exploitation, y compris par échange, relocalisation ou réhabilitation d'anciens titres* ».

⁷ CAFI and DRC forests, GP, GTCR-R, GW, RFN, RFUK, RRN, Briefing, July 2017, specifically *The moratorium on allocations of new logging concessions must not be lifted* p. 3-4. See also Avoidable Deforestation - Forest Sector Reforms and REDD in the Democratic Republic of Congo, RFN & RFUK, April 2009, especially *Outstanding and threatened reforms* p. 10-14

decree, such that it is explicitly linked to ongoing land use planning reforms. Only a process that is participatory and multi-sectoral in nature will avoid conflict and other negative outcomes down the line.⁸ In that respect, we would like to draw your attention to your responsibility, as key strategic international partners of the DRC, to ensure that any lifting of the moratorium does not materialize as a 'fait accompli' – as was *inter alia* the case with the flawed national land use policy adopted by the DRC Council of Ministers in July 2020. The issue of the moratorium should be properly addressed based on a meaningful participatory process and one fundamental strategic objective that should be integrated in all relevant policy reforms: to protect the integrity of the country's intact tropical forests, including from industrial logging operations.

We would like to underline that the CAFI-International NGO meeting on June 17th has not brought convincing answers on the specific matter of the moratorium. We were concerned that the Board seemed to consider a lifting of the moratorium as an unavoidable legal consequence, and at the same time did not give any indication on how the major risks and threats implied by a lifting of the moratorium would be efficiently addressed by the CAFI-DRC partnership. A summary of the meeting, including the questions asked by International NGOs prior to the meeting, has still not been published by CAFI.

Third, while the Vice-Prime Minister has announced a raft of other priorities such as the creation of a national carbon market, community forests - the only legal means that can enable local communities and indigenous peoples to directly participate in and benefit from the management of DRC's forest resources - is entirely absent. The scientific evidence from around the world increasingly shows that forests under local and indigenous control store more carbon, harbour more biodiversity and benefit more people, as recognized by both the Intergovernmental Panel on Climate Change (IPCC) and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES).

DRC has one of the most progressive and innovative laws of its kind in Africa, which communities are enthusiastically using. There is huge potential for this to be expanded across the country, as well as President Tshisekedi's commitment to legally secure indigenous pygmy peoples' lands and ancestral territories⁹, and both should be supported and encouraged by the government and the international community¹⁰. Otherwise, any lifting of the moratorium would create insecurity for communities who will have to compete unfairly for lands with forest industries for their community-based projects.

Finally, and following on from the GTCRR analysis, it is important to flag the lack of coherence and sequencing of the Vice-Prime Minister's stated priorities that would be inconsistent with any rational international programme to protect DRC's forests. As stated above, it makes no sense to consider lifting the moratorium without having first complied with the third legal condition or completed the legal review and returning illegal concessions to the state. It is our view that the development of the forest policy, which is necessary, would be a starting point for a road map to address, among other issues, those set out by the Vice-Prime Minister.

⁸ At Loggerheads: The Moratorium, Geographical Programming & Community Mapping in DRC, [Briefing](#), RFUK, November 2018

⁹ Discours du Chef de l'Etat à l'occasion de la Journée internationale des peuples autochtones (JIPA), 8 août 2020, « *Sécuriser juridiquement les terres et terroirs ancestraux des Autochtones Pygmées sous forme de grandes réserves naturelles, écologiques et communautaires, selon la volonté et sous le contrôle de ces peuples* ».

¹⁰ [Stratégie nationale relative à la Foresterie communautaire en République démocratique du Congo](#), Ministère de l'Environnement et Développement durable, Direction de la Gestion Forestière, Division de la Foresterie Communautaire, 2018. *See also Réussir la foresterie communautaire en RDC : Perspectives anthropologiques sur la gestion communautaire des forêts*, Rainforest Foundation UK, Septembre 2019. *See also Mpenzele : les communautés en charge de la gestion durable des forêts*, Livre vert des approches participatives dans la gouvernance forestière en République Démocratique du Congo, Rainforest Foundation Norway, Décembre 2019.

In order to avoid what would be a devastating blow to the credibility of international efforts to protect the world's second largest tropical forest, we urge DRC's international development partners to ensure that further support, including the signature of a new 2021-2030 CAFI Lol, is conditioned on:

- The completion of the legal review of *all existing* logging titles in DRC, not just those allocated since 2016, and the return to the state of all those shown to be illegal. This should also include a detailed and transparent audit of beneficial ownership of all existing concessions. The TORs for the review should be revised as such and made publicly available.
- A clearly defined process of multi-sectoral and participatory land-use planning based on the strategic objective of protecting the integrity of the country's intact tropical forests.
- The development of a participatory road map for the definition of a comprehensive forest policy and the revision of the Forest Code.
- Increased support for community forests as a mainstream forest management tool and major land use category in DRC.
- Passage and implementation of the Indigenous Pygmy Peoples law, with particular attention to securing indigenous pygmy peoples' fundamental land and resource rights. The Government should also take steps to address and provide redress for the dispossession of Indigenous Pygmy Peoples' lands effected prior to the law's enactment.

Signatories

Forest Peoples Programme

Global Witness

Greenpeace Africa

Minority Rights Group

Rainforest Foundation Norway

Rainforest Foundation UK