

Forest governance in the Democratic Republic of Congo

An NGO perspective

A report produced for FERN by Simon Counsell, *March 2006*



Abbreviations

CENADEP	Centre National d'Appui au Developpement et à la Participation Populaire
EU	European Union
DfID	Department for International Development, UK
DRC	Democratic Republic of Congo
FLEGT	Forest Law Enforcement and Governance & Trade
REM	Resource Extraction Monitoring
RRN	Umbrella NGO: Réseau Ressources Naturelles
RAPI	Network of indigenous peoples groups: <i>Réseau des Associations Autochtones Pygmées</i>
VPA	Voluntary Partnership Agreement
GTZ	Gezellschaft fur Technische Zusammenarbeit, Germany

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*Cover photo:
At least 35 million
people in DRC
depend on forests
for their livelihood.*

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Contents

Summary	5
1 Forests in DRC	7
1.1 The political context	7
1.2 The forests	7
1.3 Forest people	8
1.4 Forestry industry	8
2 Forest owners and forest rights	11
2.1 Local community tenure	11
2.2 Logging company tenure	12
2.3 Legal review	13
2.4 Forest zoning	15
2.5 The Forest Code	16
3 Who benefits from forest exploitation?	18
4 History of, and influences over, forest policy	20
4.1 General policy background	20
4.2 The forest code and the role of the World Bank	20
4.3 The role of the private sector and state agencies	20
4.4 The role of civil society	21
4.5 Implementation of the Code	22
5 The role of the state in forest governance, policy development, implementation and monitoring	24
6 A credible and beneficial VPA	27
7 The main pitfalls for a credible and beneficial VPA	28
8 A proper consultative process	30
9 Steps forward	32
References	33

This report is one of a series looking at forest governance from an NGO perspective. Other reports in the same series cover Ghana, Congo (DRC) and Malaysia. These countries are among a group of countries that are expected to negotiate Voluntary Partnership Agreements with the EU. The aim of these Voluntary Partnership Agreements is to control illegal logging and to contribute to sustainable forest management. The series aims to provide constructive input to the development of these Voluntary Partnership Agreements. All reports are available at www.fern.org.

Summary

The forests of the Democratic Republic of Congo (DRC) and the many millions of people that live in them are at a critical juncture. The country has suffered decades of tyranny followed by a civil war that has claimed the lives of an estimated 3.5 million people. The chaos of the Mobutu decades and the failure to invest in infrastructure has meant that, up to now, relatively little of DRC's forests have been exploited industrially.

DRC's forests are crucially important for the wellbeing of Congolese people. An estimated 70% of the population is directly dependent on these forests. DRC is also a biological hotspot, being the 5th most biodiverse country on earth.

With the establishment of a transitional government in 2003, the international community, led by the World Bank, has moved quickly to begin the rebuilding of the country's political institutions and economy and encouraged foreign investment. A new legal framework (The Forest Code) has been adopted. How this Code will be implemented will determine the future of DRC's forests and people. At present, there is a serious 'legal vacuum'; most of the legal instruments that should govern the use of the country's forests are still incomplete or not yet adopted.

Furthermore, in a country the size of Western Europe, there is no geographical planning basis for implementation of the planned legal framework. The government's ability to enforce a new policy, legal and planning regime is anyway, at present, almost nil.

The EU's FLEGT Action Plan allows for the development of Voluntary Partnership Agreements (VPAs) with timber-producing countries, including DRC. The focus of the VPAs is to licence legal timber production. This paper argues that such a VPA is only possible in DRC if a clear and complete legal framework, as well as a rigorous 'Forest Zoning Plan', is in place. The process towards developing such a VPA could, however, give stimulus to the completion of the legal framework and ensure that forest zoning is carried out in such a way as to give it wide legitimacy and public 'ownership'. All depends on how this is done.

Several conditions will need to be met to make this process work. Firstly, the international community will need to be well-coordinated and take a long-term – perhaps a 10 year – perspective. Secondly, extraordinary efforts will be required to ensure that there is proper representation of civil society organisations, and all of the legitimate 'stakeholders' in DRC's forests. Customary rights will need special attention. Finally, the international community will need to carefully assess whether the VPA process should ultimately be aimed at facilitating international trade in DRC's timber, or focus on stimulating 'pro-poor' policy changes – such as widespread adoption of community forestry – that might give greater potential for maximising the developmental potential of DRC's forests.



DRC, by province. The country's forests cover an area four times the size of France

1. Forests in DRC

1.1 The political context

Following decades of despotic rule by Mobutu Sese Seko, DRC descended into a 'civil war' in which as many as nine foreign powers became involved, and that, directly and indirectly, claimed the lives of an estimated 3.5 million people. The war was, at least in part, fuelled by competition for control over natural resources. The United Nations Security Council Expert Panel on the Illegal Exploitation of DRC's Natural Resources reported in October 2002 that 'corrupt and criminal elites' both within DRC and neighbouring countries such as Uganda and Rwanda were profiting from the civil war by using it to gain access to minerals, timber and ivory¹. The proceeds from illegal mining and logging have been used to purchase arms and munitions, thus perpetuating the conflict.

The carnage which reigned over the country has now largely receded, but the illegal and uncontrolled exploitation of these resources has had devastating social and environmental impacts. Forest people such as the Twa 'Pygmies' of eastern DRC have suffered traumatic impacts during the conflict.

With the establishment of the transitional government in 2003, the international community has quickly moved to rebuild the country's political institutions and economy, and particularly to encourage foreign investment. DRC's natural resources, especially timber and minerals, are seen as a potential source of quick foreign earnings, and as a means of 'kick-starting' the country's collapsed economy.

1.2 The forests

DRC's forests cover an area of 2 million square kilometres of which roughly half are closed high rainforests and the remainder open forests and woody savannah. Designated parks and conservation areas occupy around 18 million hectares, or 8% of the national territory, though most of these exist only on paper². DRC contains an estimated 10,000 species of plant, 409 species of mammal, 1,117 species of bird and 400 species of fish – making it the 5th most biodiverse country on earth³.

The deforestation rate is thought to be around 0.4% per year. This is a low figure by continental standards, but nevertheless implies a gross loss of 400,000-500,000 hectares of closed forest per year. Most of the forest loss is occurring in the heavily logged Bas-Congo Province, in areas close to major cities and road networks in other provinces, and more generally in the Great Lakes region of the country⁴.

1 UN Security Council, 2002

2 World Bank, 2002a.

3 Anon, undated.

4 Anon, undated.

1.3 Forest people

As well as holding high biodiversity values, DRC's forests are crucially important as a resource for human inhabitants. According to World Bank estimates, some 35 million people (70% of the national population) are resident within, or to some extent dependent on, the country's forests⁵. The World Bank estimates that the average per capita income in DRC is presently the lowest in the world, at \$90 per year⁶; income in rural, forested, areas is likely to be even lower than the national average.

Bantu farming peoples are believed to have migrated from the west into much of the forest zone several thousand years ago⁷. Rotational slash-and-burn farming may have had a profound impact on Congo's forests, and there is some evidence that what is now perceived as a 'virgin forest' may actually be the product of millennia of human modification. Carbon layers within the soil profiles in large areas of the Congo suggest that fire – possibly of human origination – has created the conditions in which the present abundance of the rainforest is possible.

Mbuti, Twa and other 'Pygmy' hunter-gatherers may have been present even before the arrival of Bantu farmers, and the forests are crucially important for them. Numbering around 500,000 (the figure is not known with any certainty), most Pygmy communities now live at least part of the time in close proximity to Bantu 'patrons'. The social and economic relationship between Bantus and 'Pygmies' is often complex and problematic, with many 'Pygmies' experiencing conditions of 'near-slavery'. As will be seen below, this relationship throws up special problems in considering the 'legality' of forest operations in terms of tenure, rights and benefits.

1.4 Forestry 'industry'

The economic chaos of the Mobutu decades, and failure to invest in infrastructure, has meant that relatively little of the forest has been exploited industrially. The timber industry in DRC has faced several critical bottlenecks. The most significant of these is that the vast Congo river system cannot alone be used to reach the main Atlantic export port of Matadi, because of the presence of the Stanley falls on the river below Kinshasa. Consequently, logging started in the Bas Congo region, between the port of Matadi and Kinshasa, during the 1890s, accelerating greatly during the 1950s⁸. Many of these areas are now exhausted of timber stocks. The timber industry started to move into the interior of the country in the 1970s.

The main logging areas currently include parts of Orientale, Equateur and Bandundu Provinces, usually close to the Congo and its larger tributaries. Transportation seawards from the interior of the country requires transfer of logs brought down river onto a rail or road link to bypass the Stanley Falls, both of which fell into disrepair during the Mobutu

5 World Bank, 2002a.

6 World Bank, 2003a.

7 Vansina, 1990

8 ARD, 2003.

era. The railway is presently under reconstruction, but some companies have also started exporting timber (legally and illegally) by road through Central African Republic and Cameroon to the west, and Uganda to the east. The port of Matadi itself is only able to handle an estimated 500,000 cubic metres of timber per year so, pending long-term expansion of the port, any export timber production in excess of this is likely to find its way across the country's porous inland borders. Some argue that this could make monitoring and control of the trade quite difficult.

A further obstacle has been the onerous, complex and corrupt nature of the forest and timber trade 'taxation' system. As with all other economic sectors under Mobutu, the role of government and administrators in forestry was largely to capture private wealth, often through arbitrarily contrived and imposed levies on the exploitation, transportation and processing of resources. This was particularly the case with ONATRA – the state Transport Agency – which held a virtual monopoly on transportation on the Congo river, and which levied US\$16 per cubic metre on timber delivered to Matadi port, representing "35% of the total fiscal burden on the sector"⁹. Altogether, no less than 155 fees and taxes are payable in the forest sector¹⁰. These systems were readily adapted to collection of revenues by armed factions during the various conflicts and, in some areas – including those in the forest-rich Provinces of Orientale and the Kivus – they are still in place. Although the World Bank is actively trying to restructure the fiscal systems in the forest sector, it is important to appreciate that this will threaten lucrative 'rent capturing' systems that have been in place for many years, and will no doubt be fiercely resisted by politicians, officials, and the extensive patronage networks that depend on them. The continuation of such an immensely complex and opaque (para)fiscal system will throw up interesting challenges in determining the legal compliance of forest sector operators.

Most logging in DRC is on a selective basis, though some areas, (such as in Bas Congo) that have already been selectively logged for export timbers may be clear-felled to produce wood for the domestic markets (and then converted to agricultural land). Around 80 species of commercially valuable trees are found in DRC's forests, but a handful dominates trade. These include: afrormosia (*Pericopsis elata*), which is listed under CITES but is still being intensively exploited in Equateur Province, doussie (*Azelia bipedesis*), iroko (*Chlorophora excelsa*) and sipo/sapelli (*Entandrophragma spp.*). The country has very little domestic wood processing capacity – there are 15 sawmills around Kinshasa, Mbandaka and Kisangani, and one plywood mill in Kinshasa¹¹.

Timber production

Timber production prior to the war was probably around 500,000 cubic metres per annum. It then declined to a low point of less than 100,000 cubic metres in 2002, but increased again to around 200,000 cubic metres in 2004¹². The DRC Government believes that as much as 60 million hectares could eventually be opened as 'production forest', and

9 Anon, undated.

10 Anon, undated.

11 ARD, 2003.

12 Anon, undated.

The first time many forest communities in DRC become aware that their local forest has been allocated as a logging concession is when the loggers arrive.



refers to a possible future level of 6 million cubic metres of timber production per year¹³. This is apparently based on theoretical projections deriving from UN FAO studies; more recent Bank documents indicate that production may only reach 1-2 million cubic metres in 5-10 years¹⁴.

In reality, the rapacious nature of some of the timber operators that have become established during the last 3 years, and the likelihood that even some of the worst illegalities this has involved will be difficult to contain indicates that, either legally or illegally, a production level of 6 million cubic meters industrial roundwood could be reached and possibly exceeded relatively rapidly.

13 World Bank, 2002a.

14 Anon, undated.

2. Forest owners and forest rights

2.1 Local community tenure

The basic land tenure regime reflects the 1967 Bakajika Law and the 1973 Land Tenure Law. The former suppressed all forms of private land ownership, asserting to the State “full ownership rights over its domain and full sovereignty in conceding rights to land to up to 20 kilometers, forests and mines through the extent of its territory”. The 1973 Law allowed for certain types of ‘permanent private concession’, and also recognised that customary laws apply to user rights over ‘non-allocated lands in rural areas’. However, according to the World Bank, “important implementation decrees of the 1973 law were not adopted and up to now, the Congolese land ownership legislative framework remains incomplete”¹⁵.

Forest ownership and user rights are now subject to the 2002 Forest Code (see paragraph 2.5), which sets out the basic ‘framework’ for the DRC Government’s forest policy. The Code does not modify the 1973 Land Law, and continues to assert state ownership over all areas of forest. It also broadly defines certain categories of forest, such as for ‘exploitation’, ‘community use’ and ‘conservation’.

Unsurprisingly, given the very long period of human inhabitation, management and adaptation of Congo’s forests, and the diverse ethnic composition of the current human inhabitants, there is a dense and complex pattern of traditional ownership and use of forest resources over much of the country. Within each of the broad categories of ‘Bantu’ agriculturalists and the various ‘Pygmy’ hunter-gatherers, there are marked differences and complexities of traditional land tenure regimes, and the two broad systems often overlap.

For example, within hunter-gatherer groups, ‘territories’, where ‘access rights’ can be exercised, may depend on family lineages, and specific individuals within any clan may have access rights to areas of forest according to as many as 10 different lineages. Different parts of the forest in relation to ‘camps’ or villages may have a different tenure or access status, with gathering of forest products taking place within 2-3 kilometres of camps (within an area of 12-14 square kilometres), whereas hunting areas may extend 30 kilometres away for good net-hunting sites¹⁶. The base ‘camps’ might move 4-6 times per year, so the already complex system of access rights is also constantly moving. Groups of hunter-gatherers might well share parts of their ‘territories’ with members of other clans, and certainly allow the migratory passage of them through their ‘own’ areas. The overall size of ‘territories’ is thus extremely difficult (and in some sense meaningless) to calculate, but it might be in the range of 70-400 square kilometres for any hunting-gathering clan – possibly depending on the richness of the flora and fauna to be found within it¹⁷. Some ‘territories’ are essentially linear, extending along preferred footpaths and other routes of migration through the forest.

15 Anon, undated.

16 Hoare, 2006.

17 Hoare, 2006.

For agricultural communities, fields and fallow may extend up to 5 kilometres, and sometimes up to 10 kilometres from the village, but fishing, gathering and trapping might extend 20 kilometres. The 'territories' used and claimed by agricultural communities are generally more fixed than those of hunter-gatherers, but not necessarily static. Rights to cultivate certain parts of the forest might only be granted to individuals by the community as a whole until the forest reaches a certain stage in regeneration, at which point it reverts to the community. Colonial and post-colonial governments added to the traditional tenure complexity by agglomerating smaller communities together, such that individuals within any given community might now, through their lineages in other communities, retain rights to cultivate land far from their own villages and closer to others¹⁸.

As can be seen, each of these arrangements is complex enough, but they are often superimposed on top of each other, creating an enormously complex system that is likely to shift in both time and space. It is sometimes even further complicated by the fact that one or other of the ethnic groups might at least partly define their own 'territories' in terms of the other groups' land use.

2.2 Logging company tenure

The legal status of industrial forestry operations is in a state of major flux. In the period during and following the wars of 1996-2001, something in the order of 40 million hectares of felling 'permits' were issued, not including an arrangement with the Zimbabwean military to log 33 million hectares of forests, which had apparently been made in return for Zimbabwean military support for the Kinshasa authorities at the height of the conflict¹⁹.

In April 2002, under pressure from the World Bank, 143 logging permits were the subject of Ministerial Arrêtés, effectively cancelling 23.4 million hectares of logging operations²⁰. The following month, also under pressure from the World Bank, a Ministerial Decree was re-issued prohibiting the issuing of any new logging permits²¹. The intention was that, under a new framework Forest Code that was then under development, the designation of 'logging permits' would be removed. Following a review of the remaining permits, and on completion of all the legal decrees necessary to implement the new Code, the remaining valid permits would be 'converted' into new style forestry 'concessions', and the moratorium lifted.

This Forest Code was adopted in August 2002. Under the Code, forestry concessions of up to 500,000 hectares²² can be granted, within which the operator has the right to exploit all timber. 'Concessions' cannot be sold, rented or exchanged. 'Concessions' are subject to

18 Hoare, 2006.

19 Global Witness, 2002

20 World Bank, 2002a

21 GoDRC, 2002a

22 The Forest Code also stipulates that previously obtained (logging) rights - 'droits acquis' - are being recognised. In other words: it may not be illegal for certain companies to have a lot more than 500,000 hectares if these cutting permits were already obtained prior to the adoption of the Forest Code and prior to the May 2002 moratorium.

various stipulations, similar to those in other countries such as Cameroon, which are set out in the Code and implementation decrees.

2.3 Legal review

In practice, however, in contravention of the new Code and the May 2002 moratorium, 'concessions' have continued to be granted. As a result of this, and once again under pressure from the World Bank, the Moratorium on the issuing of new logging allocations was restated in a new Presidential Decree in October 2005²³. However, between May 2002 and November 2005, around 17 million hectares of logging permits had either been issued or re-issued.²⁴

The Presidential Decree formally initiated a legal review of all the existing logging allocations, including both the permits that had been in existence before the Moratorium and the new Forest Code, and those that had been issued subsequently²⁵. The legal review of all logging operations – which is supported by the World Bank, is supposed to be completed by the end of 2006²⁶.

Probably the majority of all logging permits issued since May 2002 should be cancelled (as they were allocated illegally), but there is some doubt that this will be the outcome of the review process. Firstly, there is some ambiguity in the wording of the Presidential Decree about which aspects of 'legality' are being reviewed. Secondly, the actual functioning of the review process has raised suspicions that only certain elements of the 'legality' of the existing forestry operations – such as whether operators are respecting the boundaries of their allocations, and whether *cahiers de charges* are being honoured – are being assessed, rather than the legality of the process of issuing them in the first place²⁷.

As of March 2006, probably at least 17 million hectares, and perhaps as much as 25 million hectares, of DRC's forests remains under 'concession' or permits. Logging is probably increasing, and taking place in many of the allocated areas, as well as in others that fall completely outside the government's administrative systems. Jobs in the timber industry are temporarily being created, and expectations raised locally of future employment and other benefits. The Congolese logging industry talks persuasively of how it will bring health-care, schools, roads and trade into remote areas²⁸. Most local communities in the forest zone have suffered years of desperate poverty and hardship, have little or no experience of dealing with logging companies, and are eagerly awaiting a better life. The closing of logging operations under these circumstances could spark local conflict, unless it is accompanied by careful re-employment of logging workers and their families, which is extremely unlikely to materialise in the foreseeable future.

23 GoDRC, 2005a

24 GoDRC, 2005b

25 World Bank, 2005

26 However, this might well be delayed because of the Presidential, parliamentary, provincial and local elections due to start in June and possibly extending throughout the second half of the year.

27 Verbelen, 2005

28 Comité professionnel industriel du Bois, 2006

There is an extensive and complex regime of traditional tenure and resource rights across much of DRC's forests'

*Photo Kjell Kuhne/
Rainforest Foundation.*



Importantly, it is quite probable that many of the ‘concessions’ that have been allocated in breach of the moratorium have gone to members of the political elite, and represent valuable ‘currency’ in the coming re-shaping of Congo’s political structure.

A final problem is that the legal validity of both the Ministerial and the Presidential moratorium decrees is also being challenged. In 2005, the director of the Ministry of Environment, Conservation of Nature, Water and Forests issued an ‘opinion’ claiming that logging ‘concessions’ issued since the Ministerial moratorium decree of 2002 were still valid²⁹; the private sector is, apparently, also now challenging the legal validity of the later Presidential decree. As a result, there are now questions hanging over the legal effect

29 Vundu, 2005.

of the Moratorium, which in turn relate to the legality of the ‘concessions’ which have been issued since the Moratorium was established.

There are, therefore, strong reasons to believe that the Congolese government will have neither the power, nor the inclination, nor perhaps the legal basis to forcibly halt logging activities going on within the (mostly) illegally allocated or managed areas. Statements issued in DRC by World Bank staff indicate that the cancellation of (illegal) contracts is not necessarily a foregone conclusion³⁰. It is probable that, whatever the outcomes of the current legal review of ‘logging concessions’ and permits, many ‘illegal’ operations are likely to stay in business, and be ‘tolerated’ by the authorities and international donors.

2.4 Forest zoning

To date, DRC has lacked a geographical planning basis for forest management: permits to exploit forests, as well as strictly protected areas, were issued by national or provincial officials, and any overlap with existing forest users was largely left to negotiation between the newcomers and those already present. The existing official maps of ‘forest concessions’ are extremely crude, allowing vast scope for interpretation and abuse. The majority of the forest remains under customary usage which may or may not be formally set down in paper, or simply divided according to verbal agreement and tradition.

Thus, alongside the process of developing and implementing the Forest Code, international agencies have also set out to establish a comprehensive and modern ‘forest zoning plan’, which would provide a geographical basis for the various classifications and designations within the Forest Code. This zoning work would provide an essential aspect of DRC’s overall ‘forest policy’ as it would determine how much of the forest estate would be ascribed to industrial logging, how much to strict conservation, and how much to community use etc.

In 2002 the UN FAO initiated a ‘pilot zoning’ project in the Bumba-Lisala-Businga region of Equateur Province³¹. This consisted largely of analysis of satellite images of the region, followed by rough designation of various parts of the forest according to the evidence visible on the images of current land-uses. Ground-truthing, consultation and participation of local communities was extremely limited. Thus, the preliminary zoning produced from this exercise essentially allocated all evident intact forest into the ‘production’ forest designation, whilst visible cultivation areas were ascribed to use for communities. The subtle complexity of traditional land-uses was ignored, as was any presence of non-destructive forest users – such as hunter-gatherers – who do not, of course, appear on satellite images. Funding for this exercise appears to have run out during 2004-05, and the resulting maps have not been officially adopted or incorporated into actual forest management planning.

The World Bank set out to support pilot forest zoning work through a \$4 million forestry component in a project entitled ‘Emergency Economic and Social Reunification Support

30 Le Phare, 2005

31 GoDRC/FAO, 2003.

Project' (EESRSP), which was approved by the World Bank Board in September 2003³². Under this, the Bank would support the preparation of a zoning plan, which would "organise rural areas into three broad categories according to their primary objectives (rural development, sustainable production, environmental protection)". The Bank stated that such zoning is "critical to secure land rights and transparent access to forest resources for all stakeholders", but also stated that the project would "lay the ground for implementation of the new law's forest concession system". As it was, the forest zoning element of the EESRSP was dropped from the project and never started, though not before it was the subject of a formal complaint to the World Bank Inspection Panel by indigenous peoples' organisations, for failing to properly comply with the World Bank's internal safeguard policies³³.

DRC thus remains without any formal geographical planning basis for forest management, even insofar as would provide broad guidance for the implementation of the Forest Code. This is likely to present a major hurdle to wide acceptance of the 'legality' of 'logging concessions', as well as to the proper establishment of other forest users, such as community forests. Ultimately, the legitimacy of any geographical basis for forest policy in DRC will depend on meaningful participation and involvement of local people in establishing a zoning plan from the community level upwards, such that traditional and customary land uses and rights are fully taken into account. Clearly, in a country the size of DRC, this is a long term prospect, but one that is essential to underpin the legitimacy of the Forest Code.

2.5 The Forest Code

In August 2002, a new Forest Code was adopted by the unelected Interim Government³⁴. The Code provides a basic 'skeleton' legal framework for the management of DRC's forests, including broad definitions of different forest management objectives, such as for industrial timber production, nature conservation and community use. According to the World Bank, the new Forest Code:

*"introduced innovations such as: legal protection of traditional users' right in all forests; the right for local people to manage community forests; mandatory sustainable management plans for production forests; revenue sharing with local governing bodies, social responsibility clauses attached to concession contracts (cahiers de charges), expanding the protected areas network; and promoting environmental services... As in the French legal system, the Code sets basic principles, leaving implementation modalities to be defined in regulations."*³⁵

In fact, as explained in section 4 below, the Code served as a first building block in what was essentially an almost complete legal vacuum. Although the framework Forest Code is

32 World Bank, 2003c

33 World Bank Inspection Panel, 2006.

34 GoDRC, 2002b.

35 World Bank Inspection Panel, 2006

flawed in important ways – most notably because it sets out the basis for the industrialisation of DRC’s forests and makes no provision for hunter-gatherer communities – the prospect of continuing with a legal vacuum is worse still. To a certain extent, the flaws in the Forest Code could be corrected through development of appropriate implementation decrees, and through the establishment of appropriate institutional structures to put such decrees into force. However, the decrees as they presently exist relate exclusively to industrial logging; important issues such as community forestry, management of non-timber forest products, relationships between communities and logging companies – all of which are likely to affect the lives of millions of Congolese people – remain, as yet, in a legal vacuum.

Moreover, forestry institutions of any kind are essentially absent, and unlikely to be functional in any form for a number of years. The task of building from scratch government agencies that could diligently implement an entirely new forestry legal framework, against a context of decades of corruption and resource mis-management, and under immense pressure from powerful vested economic interests, is surely immense and will take many years.

3. Who benefits from forest exploitation?

It is important to note that most of the current exploitation and management of DRC's forests takes place entirely in the informal sector. As noted earlier, the World Bank estimates that around 35 million people in Congo depend on the forests at least partly for their livelihoods. Most of these will be using forest lands for rotational agriculture, hunting and consuming forest-derived animal protein, using forest-based natural medicines (upon which, according to the World Bank, "almost all rural and urban Congolese depend"³⁶), trading in other non-timber forest products, or collecting and selling fuelwood.

Neither the numbers of people engaged in each these activities, nor the economic value of them, is known with any degree of accuracy. The annual market value of bushmeat in DRC – between 1.1 – 1.7 million tonnes – has been estimated at about \$250 million³⁷, but most of this value accrues to traders and sellers. Collecting forest produce can be more profitable than cultivating land; the sale of the forest herb *Gnetum africanum* provides a good monthly average income of \$139 to more than 1,000 women in Kinshasa alone³⁸. Fuelwood represents 80% of all DRC's energy needs, and accounts for perhaps 40 million cubic metres of wood harvested annually. Many tens of thousands of people are employed in fuelwood harvesting and trading³⁹.

As noted elsewhere, the forest also provides a means of sustenance to many indigenous forest people, collectively known as 'Pygmies'. Many Pygmy groups are now semi-sedentarised, but most retain very strong cultural links with the forest, and spend a significant portion of the year in the forest hunting, gathering and cultivating.

The trade in timber represents a very small source of benefits in comparison. One estimate puts the number of small-scale loggers at around 8,000, producing 1.5-2.4 million cubic metres per year.⁴⁰ Most of the wood produced probably ends up in small local markets and is consumed domestically. This nevertheless represent around 10 times the current volume production of the formal sector, which, in 2002 employed around 6,000 people and paid approximately US\$6.5 million in salaries⁴¹. The World Bank believes that "In the coming 5-10 years, provided that the industrialisation policy promoted by the new Code is successful, the formal timber industry could account for up to 30,000 new jobs"⁴². If producing 1-2 million cubic metres of timber for export, this could generate a market value of around US\$200-\$400 million, according to the Bank⁴³. The vast majority of this, however, would accrue outside of DRC.

36 Anon, undated.

37 Anon, undated.

38 Muntahli and Mughogho, cited in Anon, undated.

39 Anon, undated.

40 Anon, undated.

41 Anon, undated.

42 Anon, undated.

43 Anon, undated.

As discussed in more detail below, the value of the new ‘forest area tax,’ as introduced under the Forest Code, remains extremely low in relation to the potential value of the timber. At the current level of \$0.20 per hectare per year, a 200,000 hectare forest ‘concession’ yields only \$40,000 per year to the Congolese Treasury; according to the World Bank, the value of the timber found in such a ‘concession’ could amount to \$200 million⁴⁴.

The new Forest Code does introduce important new provisions regarding the redistribution of forest revenues. The system of ‘cahiers des charges’ – in which logging companies contract directly with local communities and authorities to provide certain financial benefits and other developments such as roads and civic buildings – is formalised. Also, the Code provides for 40% retrocession of forestry taxes back to the Province in which the exploitation is occurring.

However, as the World Bank has noted, these arrangements all face serious problems. Firstly, the accumulation of large forest land holdings by individuals and companies, who are currently paying extremely low land ‘rents,’ effectively deprives local communities of substantial amounts of potential revenue. Secondly, the process of negotiating cahiers des charges tends to be extremely unequal and ‘corruptible.’ Given the weakness of democratic governance, juridical and policing structures in DRC, the dangers are very obvious. Finally, in other cases where transfer of forest taxes back to the timber-producing regions has been attempted, the experience has been that the funds simply tend to be absorbed by provincial elites rather than national ones, never reaching the communities for which they were intended⁴⁵. In DRC, the actual collection of national forest area taxes in 2003 was only US\$174,000, and this would increase to around US\$2 million assuming that 10 million hectares of forest were under ‘concession’ and tax collection from these ‘concessions’ was 100% effective. At present rates, the area tax from allocation of 50 million hectares (i.e., half of the country’s closed forest) as ‘logging concessions’ would yield only US\$0.20 per year per member of the population.

The conclusion of this, inevitably, is that, even under the best scenarios, the timber industry is unlikely to make anything other than a very small contribution to the development process in much of rural DRC, given the current legal framework. On the other hand, immense profits are likely to accrue to timber operators and linked political elites. The greatest ‘value’ of the forest is in the goods and benefits provided for the wider population; at present, these remain largely unquantified, and potentially jeopardised, at least in part, by the expansion of industrial logging.

44 Anon, undated.

45 Anon, undated.

4.

History of, and influences over, forest policy

4.1 General policy background

Prior to the adoption of the present Forest Code, the basic legal framework for forestry was provided by a decree dating from 1949, and two decrees dating from 1950. Under the 1949 forest regulation, the government had complete discretion to issue ‘authorisations for prospecting’, in an area defined by the company itself, which were usually converted immediately into 25-year exploitation permits. The government could issue these permits or establish strictly protected areas without any consultation with local communities living there. According to the World Bank, “these legal texts became obsolete and were replaced by a technical document, the “Loggers Guide”. This document did not have any legal status and could not be challenged in tribunals. It was largely focused on the timber industry”⁴⁶.

In addition to the Forest Code (see also paragraph 2.5 and below) a new Nature Conservation law is also under development, replacing the 1969 Law. This new law is likely to have important implications for forest management, and certain aspects of the Forest Code defer to it, even though it does not yet exist.

4.2 The Forest Code, and the role of the World Bank

As can be noted from the foregoing, the World Bank has had a major influence on the development of forest policy in DRC since the return of relative peace to DRC in 2002. The development of the Forest Code was supported and encouraged by the World Bank, which made the release of a \$15 million ‘forest sector tranche’ of a structural credit in May 2002 conditional on its adoption⁴⁷. Although \$3 million of the credit was said to have been used directly on the development of the Code, it was in fact very similar to the Forest Law that the Bank developed for Cameroon in 1994⁴⁸.

It is important to note that there was almost no consultation over the Forest Code, and very few people other than senior officials in the Ministry of Environment were aware of its development.

4.3 The role of the private sector, and state agencies

The private sector appears to have had little influence over the development and adoption of the Code, and was probably largely unaware of its existence until relatively recently.

⁴⁶ Anon, undated.

⁴⁷ World Bank, 2002b

⁴⁸ Questions as to the use of the remaining \$12 million of the credit have remained unanswered, and there are suspicions that at least part of it may have been used to ‘ensure political support’ for the Code, as had been the case in Cameroon 8 years earlier.

Certain elements of the Code are certainly opposed by the logging industry, which is currently calling for it to be reviewed and revised. However, the private sector is known to have had a more proactive role concerning the development and implementation of the implementation decrees. All the draft decrees are supposed to be passed through, and approved by, a 'Comité de Pilotage', consisting of government officials, members of the private sector, NGOs and special advisers, before being forwarded to the Minister or President for final approval. However, having approved some of the basic decrees required for the allocation of industrial concessions up to early 2004, the Comité basically stopped meeting, and private sector members refused to continue considering draft decree texts. This has effectively blocked policy development for most of the last two years.

Whilst policy development is being obstructed or blocked altogether, the private sector is evidently being successful in pressing the government to allocate areas of forest for logging. The World Bank has noted the "pressing demands" on the government "from outside investors who are willing to start operations in the DRC"⁴⁹.

Much of this obstructionism and pressure appears to have been prompted by World Bank-backed changes to the forest fiscal system, which is, in itself, an important part of government forest policy. For example, as of 2002, forest area tax stood at \$0.00143 per hectare, meaning that a 200,000 hectare 'concession' would generate only \$286 per year in government revenues from area taxation⁵⁰. The Bank pressured the Congolese government to increase these taxes substantially, urging that they should be raised to \$0.50 per hectare per year (still low in regional terms and very low in global terms). Whilst this was initially agreed by the government, these changes have been fiercely resisted by the logging industry, which successfully pressured the government to introduce the area taxes progressively, and only payable on one-quarter of the 'concession' area. The tax currently remains at \$0.20 per hectare.

Similarly, the State Transport Agency, ONATRA, has strongly resisted any changes to the (para)fiscal systems under which it collects a substantial portion of total forest revenues through taxation on river transportation of wood⁵¹. In terms of the World Bank's overall package of proposed fiscal reforms, the Bank reports that, following a decree in March 2004, the Congolese government "began to apply the new forestry tax, however almost none of the measures aimed at reducing the fiscal burden were enforced. Besides this, ONATRA failed to reduce its transit fees"⁵². The combined effect of this resistance has been effectively to block reform of forest sector fiscal policy.

4.4 The role of civil society

Civil society's influence on forest policy has so far been extremely limited. There was no consultation with national NGOs during the preparation of the Forest Code, though there may have been limited consultation with international conservation groups such as

49 Anon, undated.

50 World Bank, 2003b.

51 Anon, undated.

52 Anon, undated.

Although flawed, the 2002 Forest Code establishes a legal framework for forestry, but most of the all-important implementation decrees are still missing.



WWF and Wildlife Conservation Society. Whilst civil society did argue successfully for greater representation on the Comité de Pilotage which considers the draft legal decrees, the Comité has not actually met since more NGOs became members.

4.5 Implementation of the Code

The Code suffers from numerous deficiencies. Whilst it makes provision for the designation of community forests, and retrocession of a certain portion of forest taxes back to local communities, the Code nevertheless primarily serves to establish the legal basis for development of the country's forest estate as an *industrial commodity*, rather than as a source of sustenance and livelihood for the majority of DRC's populace. In this sense, it potentially sets out a framework that will promote conflict between the industrial forest sector and local communities; the similarities between the DRC Forest Code and the 1994 Forest Law in Cameroon have been noted, and there are grounds to believe that the consequences might also be similar⁵³. Arguably, it is inconsistent with both the Congolese constitution and with the Convention on Biological Diversity⁵⁴.

The World Bank has also noted some of the problems with the Forest Code. According to a draft review of the DRC forest sector still in preparation by the Bank:

“The Code does have gaps and shortcomings. It fails to create a specific framework for the small-scale timber sector. It maintains the discretionary allocation of concessions.

53 CED, 2003

54 Diss, 2003.

Although this is supposed to apply only to exceptional circumstances, it may end up undermining the whole new system. It uses unclear terminology about the different categories of forests. These issues need to be carefully addressed in the [implementation] decrees and, even more, during implementation and enforcement.⁵⁵

Under the May 2002 World Bank credit which promoted the adoption of the new Forest Code, it was intended that the entire new legal system for the forestry sector, consisting of a raft of new presidential and ministerial ‘implementation decrees,’ would be put in place by the end of 2002, i.e., within only a few months of the adoption of the Code⁵⁶. It is expected that probably forty decrees will be needed to complete the legal framework⁵⁷.

However, some three and a half years after the adoption of the Forest Code, only 13 decrees have been signed off by the Minister or President. Of these, only 4 are of ‘adequate quality’ in their present form⁵⁸, and only one has been published in the official legal gazette. Drafting of the remaining 25 or so decrees has not yet begun.

The extent to which any of the implementation decrees that have been adopted have actually been disseminated throughout the forest administration is open to doubt; very few local officials seem to know of the existence of the Forest Code, let alone any of the specific implementation decrees. A practical problem likely to occur with implementation of a VPA is that local or regional Forest Departments are operating according to what they believe to be the legal framework, which may or may not reflect the actual state of legal developments in Kinshasa.

Reflecting the emphasis on large-scale commercial forest exploitation, most of the decrees so far passed relate to the industrial ‘concessions system,’ whilst the decrees required in order to establish community rights, community forestry, environmental protection etc, are amongst those still awaiting development.

It is very unlikely that the remaining decrees will be completed before the end of 2006, when it is possible that the Moratorium on ‘logging concessions’ will be lifted, and when ‘concessions’ may start to be ‘legally’ allocated in conformity with the few implementation decrees that do exist. However, subsequent decrees, relating to, for example, the role of local communities in ‘negotiating’ the boundaries of ‘concessions’ in relation to community-held lands, may well conflict with any ‘concessions’ that have been issued according to the present, and incomplete, legal structure. There is therefore much potential for serious legal uncertainty and conflict unless the complete legal and policy structure is in place before any new ‘concessions’ are issued.

55 Anon, undated.

56 World Bank, 2002b.

57 Anon, undated.

58 FNPP/GoDRC 2005.

5. The role of the state in forest governance, policy development, implementation and monitoring

As can be gathered from the above, the Transitional Government has been almost totally dependent on ‘guidance’, support and encouragement from external agencies, especially the World Bank, for the ‘modernisation’ of its forest policy structure. The Bank, the FAO and to a lesser extent NGOs such as WWF, have provided ‘technical assistance’ in the drafting of the Code and the few implementation decrees that have followed. They almost certainly would not have happened at all had it not been for international interventions.

This has to be seen in the historical context that timber exploitation, along with all other economic sectors, was essentially used by political elites as a means of accumulating personal wealth and status and as an important ‘unit of currency’ in political patronage systems. As noted in a report for USAID:

“It is not accidental that no efforts have been made to construct the fundamentals of a regime to combat corruption and illicit finance schemes in the DRC. The DRC’s history is one of rulers aspiring to hold and retain a monopoly of power. Salaries of DRC officials have, in practice, been regularly and heavily supplemented by revenues from bribery. Currently, corrupt government institutions include the presidential administration, the Council of Ministers, provincial governors, and the regional and local administration.”⁵⁹

The study further noted that:

“The danger now hovering over the DRC’s forests is weak governance, that is, the likelihood that the state will be unable to regulate access to forest resources effectively and, once concessions are allocated, control harvesting within them to ensure that concession boundaries are respected, etc. If the state proves unable or unwilling to control domestic and expatriate logging concessionaires, this may signal the start of a logging boom that could rapidly decimate the country’s wood resources. This could, in turn, unleash a wave of negative environmental consequences.”⁶⁰

In its investigation into illegal exploitation of DRC’s natural resources, an Expert Panel for the UN Security Council clearly recognised the dangers that re-activation of the natural resources sectors in DRC would present. In January 2003, the Security Council unanimously passed resolution 1457, calling on “States, international financial institutions, and other organizations to assist...in efforts to create appropriate national structures and institutions to control resource exploitation” in DRC⁶¹.

⁵⁹ ARD, 2003.

⁶⁰ ARD, 2003.

⁶¹ UN Security Council Resolution, 2003.

As yet, this has not happened; in fact the capacity and desire of the forest ‘administration’ to actually administer the forest sector has fallen to almost zero. This extends from the most senior level downwards – as noted above, the Minister for Environment was at once responsible for a moratorium banning the issuing of ‘logging concessions’ and then consistently, over a period of more than 3 years, issuing nearly 150 such ‘concessions’ covering around 15 million hectares. The Ministry suffers, on the one hand, from ‘over-staffing’, which has led to proliferation of special services and duplication of duties; even the actual number of employees of the Environment Ministry is only vaguely known, being estimated by the World Bank as somewhere “between 2,000 and 4,000” based outside Kinshasa⁶². On the other hand, basic technical skills, such as in forest management planning, geographical mapping, and forest inventories, are largely lacking. According to the World Bank, the country “has not produced a single new professional forester in the last ten years”⁶³. Local forestry officials have no information even about current forest laws and policies, and no basic means such as vehicles, computers or telephones necessary to undertake their work⁶⁴.

As the World Bank has noted:

“Creating national structures to control natural resources exploitation perhaps represents the greatest challenge. The large gap between the institutional capacity that would be required to actually implement the Code and the regulations and what can realistically be expected in terms of institutional and human resource capacity within the next ten years is significant. The danger is that the more positive aspects of the Code and regulations are not applied, while others are.[...]Participatory land use planning and consultations, [‘concession’] auctions, forest management plans, law enforcement obviously requires more and better trained human resources than currently exist... These things will not come over night, but the international community must invest in these areas now if it wants to see things move in the right direction ten years from now”⁶⁵.

In its report for USAID concerning the Congolese government’s ability to manage natural resources sectors, the ARD consultancy goes further, and says that:

“It is not simply question of restoring governance systems and restarting a dormant economy, but rather the much more difficult challenge of totally reforming existing, ill-adapted governance and economic systems. This will involve controlling criminal and corrupt systems and gradually replacing them with transparent, equitable and democratic systems and institutions.”⁶⁶

The history of ‘institutional strengthening’ of the forest sector in other countries in the Congo Basin region has not been a terribly successful one; the importance of logging

62 Anon, undated.

63 Anon, undated.

64 Greenpeace, 2005

65 Anon, undated.

66 ARD, 2003.

DRC is at the start of the road that could lead to massive logging and plundering of its forest resources.



revenues for the personal benefit of the political elite has meant that any reforms which threaten these benefits have been consistently, fiercely and cleverly resisted⁶⁷.

Under these circumstances, the issue of 'monitoring' is somewhat academic because, in the absence of the complete legal framework, it is not clear what the government – or indeed, independent international agencies – would be monitoring against. The performance of the Congolese government as a meaningful agent of policy development, monitoring and implementation thus has to be seen as a very distant prospect.

67 RF UK/Forests Monitor, 2006.

6. A credible and beneficial VPA

Broadly speaking, civil society might judge the outcome of any VPA negotiations on the Council of Europe Conclusions of October 2003, i.e, that the process of reaching agreement should serve to:

- strengthen land tenure and access rights, especially for marginalized, rural communities and indigenous peoples;
- strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;
- increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;
- reduce corruption in association with the award of ‘forest concessions’ and the harvesting and trade of timber;
- engage the private sector of the timber-producing countries in the efforts to combat illegal logging⁶⁸.

As can be seen from the foregoing, many of these general requirements translate into specific issues that are currently under discussion in DRC and internationally.

Other ‘benchmarks’ include:

- The government should guarantee the legitimate representation of national civil society organisations (NGOs, associations and organisations of indigenous peoples) in the VPA process. Appropriate funding, managed by a national NGO such as CENADEP, should be earmarked and made available by the EU to ensure proper NGO participation;
- Representatives of the national civil society and indigenous peoples should be specifically appointed to the various VPA preparation, negotiation and implementation fora;
- Customary rights-related aspects should be incorporated in the definition of legality;
- All forest products (timber and non-timber) and wildlife should be taken into account in the VPA;
- Legality certification should not replace sustainability certification, but be considered as the first step towards the sustainable management of forests;
- Legality certification should be compulsory for all forest sector operators, irrespective of the final destination of the products;
- National civil society should be actively involved in the independent monitoring of legality certification.

68 Council of the European Union, 2003.

7. The main pitfalls for a credible and beneficial VPA

The main pitfall for a good VPA would be to advance a VPA process before a comprehensive and clear legal structure is in place, and before the government has the capacity to both implement the legal structure and participatory forest zoning plan to participate in the VPA, and whilst NGOs are not properly resourced to participate fully. To summarise some specific problems, as indicated earlier in this study:

- Much of the legal framework, in terms of the decrees and arrêtés needed to implement the Forest Code, are missing. It is therefore very unclear, at present, what is legal and what is not;
- The process of legal review of old-style logging permits and new (illegal) ‘concessions’ issued during 2002-2006, and re-allocation of these to new, ‘legal logging concessions’, is likely to be subject to heavy political pressure and manipulation. This could result in ‘illegally allocated concessions’ being allowed to continue operating, for the sake of vested interest and political expediency. The legal status of these ‘concessions’ could be very difficult to determine, and to be subject to much dispute;
- The immense complexity of the ‘taxation’ and fee structure of the forest sector will present serious challenges to rigorously determining the legal compliance of forest sector operators. Major reform and simplification of the forest sector fiscal structure, as is currently being promoted by the World Bank, would help to address this problem, but it will be fiercely resisted by deeply entrenched vested interests linked to the political elite and their patronage networks;
- There is currently a complete absence of any geographical planning basis for the implementation of DRC’s forest policy. The present ad hoc allocation of ‘concessions’ and logging permits conflicts with traditional and customary tenure regimes, and is likely to lead to actual conflict between and within loggers, local communities and local authorities;
- If the methodology used for zoning DRC’s forests – and thus, ultimately, for the delineation and designation of ‘logging concessions’ – does not properly take account of existing land claims and traditional tenure regimes, then it may not be consistent with the Council Resolution on the FLEGT Action Plan, the Congolese constitution, or with international standards, such as International Labour Organisation resolution 169. All ‘logging concessions’ allocated under such a process are likely to be challenged locally, and to be a source of conflict. Because of the size of DRC, and the intention to phase the allocation of ‘concessions’ over time, such conflicts are likely to continue to emerge over a period of many years;
- Institutional capacity to carry out basic functions of forest administration, let alone ensure compliance with complex agreements relating to international trade, is presently almost non-existent;
- The complexity of the relationships between different ethnic groups, particularly between Bantus and the various ‘Pygmy’ peoples throws up difficult problems. Because the latter are largely unrepresented and effectively excluded from possessing legal land tenure – though they are often ‘misrepresented’ by their Bantu ‘patrons’ –



there is a strong likelihood that any forestry operation operating in areas inhabited by Pygmy people will not have been able to take proper account of their rights according to international norms and standards;

8.

A proper consultative process

The main point to appreciate about the prospects for a consultative VPA process in DRC is that any VPA process would have to be led by the government – and it is not at all clear that the government could or would be able to do this at present. In the short term, all government departments are going to be preoccupied by the forthcoming elections and, as noted elsewhere, the full range of national, provincial and local elections could extend throughout 2006. Assuming that this process passes peacefully and there is not a recurrence of major military hostilities, there will then likely be a long period of ‘settling down’ in all government departments.

Assuming that the present ‘concessions legality review’ can be completed – as presently anticipated by the World Bank – by the end of 2006, the results of this are then likely to preoccupy the forestry administration (such as it is) for some considerable time afterwards. The World Bank and Congolese government anticipate a ‘three year strategy for future concession allocations’ once the review has been conducted and the moratorium lifted. In reality, because of the disruption due to elections, it is probably unlikely that the ‘concessions’ legality review *will* be completed during 2006, and therefore roll-out of the subsequent ‘three-year strategy’ will probably take at least until 2010.

These pressing priority issues are likely to preoccupy the administration for some years to come – and this does not even take into account that there is likely to be considerable political ‘jockeying’ for control of key economic sectors following the election process. This could result in several years of instability and change at the ministerial and senior official level within the relevant ministries. As has been noted above, the World Bank has indicated that a fully functional Ministry could take 10 years to establish; this seems like a reasonable if optimistic estimate. One of the conditions for successful negotiation of a VPA would therefore be a concerted international effort over a period of years to build the capacity of the relevant governmental agencies. The international community would need to consider carefully what form this support would take and what the outcome would be: in order to achieve greatest developmental benefits, for example, forestry institutions should probably have much greater capacity and expertise for supporting community forests, rather than industrial logging.

Ironically, civil society participation in any VPA negotiation process would probably be less problematic than that of the government. Congolese NGOs have become increasingly organised over the last two years. Many of the key groups throughout the country are now grouped under the umbrella of the Réseau Ressources Naturelles (RRN), which is coordinated from Kinshasa by the Centre National d’Appui au Développement et à la Participation Populaire (CENADEP). The RRN has a ‘focal point’ in each of the 10 Provinces, each of which is responsible for feeding information out, and gathering it, from the provincial NGO networks. The national network focal points tend to meet on a fairly regular basis, perhaps 2-3 times per year. This network has already been instrumental in providing popular guidance on the Forest Code, having produced illustrated pamphlet ‘guides’ to the law in four main local languages, plus French, and

distributed many thousands of these to officials, the private sector, local communities, and other NGOs.

Similarly, indigenous peoples are increasingly represented by articulate and well-organised organisations. As yet, there is no national equivalent of the RRN, although there is a network of 'Pygmy' organisations, called the Réseau des Associations Autochtones Pygmées (RAPY) based in Bukavu, South Kivu. A wider, informal, national network of Pygmy organisations – and 'Pygmy support NGOs' – recently came together to submit a detailed technical complaint to the World Bank Inspection Panel, thereby demonstrating an ability to engage in complex international policy issues⁶⁹.

However, as might be gathered from the foregoing, the focus of DRC's civil society at present, and for the foreseeable future, is on the establishment of a complete and equitable legal framework, and then on its 'popularisation'. The issue of forest zoning is seen as critical, and many groups are becoming engaged in participatory mapping exercises. Also, whilst the national network of NGOs is becoming increasingly well organised, resources and expertise within the network remain seriously limited. The network as a whole is dependent on support from international NGOs, so would not necessarily be sustainable over the very long period of time that this study suggests would be necessary to project a VPA process. The costs of organising consultations with the national network can be considerable, due to the necessity to travel by plane on most internal routes, and the need for long 'stopover' periods because of the infrequency of return flights.

A further condition for successful completion of a VPA process would therefore be a concerted effort to strengthen and maintain the capacity of the RRN and RAPY, and to provide the means for them to participate fully in the negotiations.

69 Organisations Autochtones Pygmées et accompagnant les Autochtones Pygmées en République Démocratique du Congo, 2005.

9. Steps forward

For the reasons detailed above, the government of DRC is very unlikely to be able or willing to play a central or even major role in a VPA process for some considerable time to come. The role of outside agencies will therefore be critical to the success of the process.

The World Bank would clearly be a major potential influence. It has to be recognised that, as yet, the Bank has primarily supported an ‘industrialising strategy’, which may not be the most developmentally appropriate or consistent with the Millennium Development Goals and objectives of other international development agencies. Nevertheless, the Bank has also played an increasingly active role in attempting to control the worst illegalities, and has the financial and political ‘clout’ required to tackle these problems at the highest level.

There would need to be close donor coordination, of a kind which has yet to manifest itself in DRC’s forest sector. The European Union, which has so far concentrated mostly on protected areas’ issues, would probably need to re-orientate its interventions more towards community forest management, and the huge challenge of ensuring that the country’s forests are put under a participatory zoning plan. The EU would need to carefully consider whether its interventions in other sectors – especially in terms of infrastructure development – might inadvertently play a role in facilitating illegal logging, and if so to take ameliorative action.

Bilateral donor agencies that could be particularly important include: French Cooperation, which is starting to engage in DRC’s forest sector; DFID, which does not yet have a programme in DRC’s natural resources, but has much relevant experience in comparable countries such as Cameroon; the Belgian Government and GTZ (Germany), which have also been actively involved in technical forest monitoring, mapping and management planning in other nearby countries such as Cameroon.

The role of international NGOs will also be important. As yet, few such organisations are actively involved in forest policy issues in DRC, though others, such as WWF and Wildlife Conservation Society, have long experience of practical field projects. The experience of groups such as the Rainforest Foundation in working with the national civil society network and indigenous peoples organisations could be invaluable, as could that of groups such as Resource Extraction Monitoring (REM), which are conducting practical independent forest monitoring, and the Forest Peoples Programme, which has experience in capacity building and supporting indigenous groups in the region.

References

Anon, undated. Forests and Post-Conflict Recovery in the Democratic Republic of Congo – Analysis of Priority Agenda.

ARD, 2003. Conflict Timber: dimensions of the problem. Vol III, Africa Case Studies, ARD/USAID, Vermont.

CED (Centre for Environment and Development), 2003.

Lecture du nouveau code forestier de la République Démocratique du Congo a la lumière de l'expérience camerounaise, Groupe de Travail Forêts/Rainforest Foundation, Kinshasa.

Comité professionnel industriel du Bois, 2006.

Le Potentiel newspaper, February 24th.

Council of the European Union, 2003.

Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan – Council Conclusions, Brussels.

Diss, Lionel 2003.

Nouveau code forestier de la République Démocratique du Congo; une mise en œuvre potentielle des obligations internationales relatives à la protection de l'environnement et des droits de l'homme, Groupe de Travail Forêts/Rainforest Foundation, Kinshasa.

ETFERN – European Tropical Forest Research Network, 2004.

News, 39/40: Globalisation, localisation and tropical forest management, undated, accessed at http://www.etfrn.org/etfrn/newsletter/news39/nl39_oip_4_2.htm, 27/1/04.

FNPP/GoDRC 2005.

'Etat des Lieux des Mesures d'Execution de la Nouvelle Loi Forestiere', June, Kinshasa.

Global Witness 2002.

Branching out: Zimbabwe's resource colonialism in the Democratic Republic of Congo, London.

Government of DRC 2002a.

MIN/AF.F-E.T/190, 14th May, Kinshasa.

Government of DRC, 2002b.

Loi n° 011/2002 Code Forestiere, 29th August, Kinshasa.



'Many forest communities in DRC urgently need better infrastructure - but the roads bulldozed by logging companies are often badly planned and of very poor quality'.

*Photo Kjell Kuhne/
Rainforest Foundation*

Government of DRC/FAO, 2003.

Rapport Synthèse du Projet 'Appui a la relance du Secteur Forestier', TCP DRC 2905, July, Kinshasa.

Government of DRC 2005a.

Decret No 05/116. Fixant les modalités de conversion des anciens titres forestiers en contrats de concession forestiere et portant extension du moratoire en matiere d'octroi des titres d'exploitation forestiere, 24th October, Kinshasa.

Government of DRC 2005b.

Communique de Presse. Liste des allocations forestieres existantes a somettre au processus de conversions en contrats de concessions forestieres, La Reference Plus, 1st November, Kinshasa.

Government of DCR, undated.

Draft Arrêté Ministériel fixant les procédures d'élaboration, d'approbation, de suivi et de contrôle de la mise en œuvre des plans d'aménagement des concessions forestières, Kinshasa.

Greenpeace 2005. pers comm.

Hoare, Alison, 2005.

Divided Forests: Towards fairer zoning of forest lands, Rainforest Foundation, London.

Hoare, Alison, 2006.

Resource rights and timber concessions: Integrating local peoples' land-use practices land forest management strategies in the Congo Basin, Rainforest Foundation, London.

Le Phare, 2005.

Forêt et conservation de la nature: La Banque mondiale relève que le nouveau Code forestier est un test pour la relance de l'économie congolaise, Kinshasa, 9th December.

Organisations Autochtones Pygmées et accompagnant les Autochtones Pygmées en République Démocratique du Congo, 2005.

Requête adressée au Panel d'Inspection de la Banque Mondiale 30th October, Kinshasa.

Rainforest Foundation/Forests Monitor, 2006.

Use it and Lose it : The Logging Concession System in Africa, in press.

UN Security Council, 2002.

Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2002/1146, New York 16th October.

UN Security Council, 2003. Resolution 1457, New York.**Vansina, J, 1990. Paths in the Rainforests: Towards a History of Political Tradition in Equatorial Africa. James Curry, London.****Verbelen, F, 2005.** pers comm.**Vundu, dia Massamba, 2005.**

Validite actuelle du Moratoire relative a l'octroi des allocations forestieres en Republic Democratique du Congo, March 3rd, Kinshasa.

World Bank, 2002a.

Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002.

World Bank, 2002b.

Report and Recommendation of the President of the IDA to the Executive Directors on a Proposed Credit of SDR \$360.4 to DRC for an Economic Recovery Credit, May 17, 2002, Washington DC.

World Bank, 2003a.

World Development Indicators database, Washington DC.

World Bank, 2003b.

Democratic Republic of Congo, Mission de Suivi Sectoriel, 1-12 July, 2003.

World Bank, 2003c.

Technical Annex for a Proposed Grant in the Amount of SDR 117 million (US\$164 million equivalent) and a Proposed Credit in the Amount of SDR 35.7 million (US\$50

million equivalent) to the Democratic Republic of Congo for an Emergency Economic and Social Reunification Support Project, August 14, 2003, Washington DC.

World Bank, 2005.

Report No. 33785-ZR, Program Document for a proposed grant in the amount of SDR 62.1 million (US \$90 million equivalent) to the Democratic Republic of Congo for a Transitional Support for Economic Recovery Operation, November 8th, Washington DC.

World Bank Inspection Panel, 2006.

Report and Recommendation on Request for Inspection, DRC: TSER and EESRSP, World Bank, January, Washington.
