



5th October 2015

Re: DR Congo Arrêté 050 on logging permits, and its implications for REDD and other forest governance reforms

To:

Bruno Hugel - UNDP
Loic Braune - World Bank
Jean-Christophe Carret, World Bank
Ahmadou Moustapha Ndiaye, World Bank Director of Operations, DRC
Ellysar Baroudi, Facility Management Team, FCPF, World Bank
Daniele de Bernardi – European Commission
Emmanuel Heuse – European Commission
Jostein Lindland – Government of Norway
Per Frederick Pharo, NICFI, Government of Norway,
Pierre Bardoux, UNDP-MPTF
Josep Gari, UNDP-UNREDD
Christina Connolly – UK/DFID
Sean Frisby – UK/DECC
John Verdick – U.S State Department
Tania Rödiger-Vorwerk, Government of Germany, BMZ
Ulrike Haupt, Government of Germany, BMZ

Dear recipients

Following the recent announcement that the international community is prepared to invest significant new resources through the Central African Forest Initiative, we are writing to raise our concerns that new legislation recently enacted in DRC could seriously undermine international efforts to promote forest conservation and more sustainable use – including REDD Programmes – in that country.

Ministerial Order (*Arrêté*) No. 050 relating to the DRC Forest Code creates a new category of “artisanal” logging concession - called *unités forestières artisanales aménagées*. As part of the ongoing devolvement of powers to local forest administrations, these concessions would be held and managed at the level of local government by “Decentralized Territorial Entities” (ETDs) on the basis of an agreement with local communities with customary land rights to

the area¹. Sections of these concessions can then be opened up to logging companies through the allocation of annual permits.

However, this legal text could severely impact communities, who continue to have no official land or resource rights and for whom there is no provision to be involved in the management of these new concessions. The new allocations could result in a drastic reduction in the geographical space available for community forestry, and could easily be used by unscrupulous individuals and companies to bypass a moratorium on the allocation of logging concessions that has been in place since 2002. Given the large-scale and well-documented abuse of artisanal logging permits in order to undertake what has been characterised as ‘semi-industrial’ logging that has taken place in DRC in recent years², we are concerned that this *arrêté* risks opening up swathes of DRC’s forest to this form of logging. The result could be serious environmental damage, uncontrolled exploitation and loss of valuable resources, widespread corruption and graft, and a serious diminution of the potential for DRC’s forests to contribute to the sustainable development of its rural areas.

The new type of artisanal logging concession established by Arrêté 050 has no legal basis in the DRC Forest Code³ and was passed on September 25th without due public consultation. It appears to be aimed at legalising the existing widespread illegal semi-industrial exploitation of forests in DRC⁴. These concessions can be created anywhere within what is classified as ‘forêts protégées’, meaning that potentially tens of millions of hectares of rainforest could be opened up to this kind of exploitation⁵.

- The legislation also contains significant loopholes and a lack of safeguards which could open the way to significant abuses: The law for example sets no limits on the volume of timber that can be extracted by permit holders.⁶
- The legislation allows for permits to be allocated without any open tendering process⁷,
- Permission to log in the new types of concessions can be ‘awarded’ simply by the provincial forestry administration failing to respond to an application within 30 days⁸.
- The government bodies tasked with managing and monitoring these concessions are barely functional in many places. There is thus an increased likelihood of corrupt relationships with logging operators, many of whom will have substantial foreign interests⁹.

¹ See Article 7

² Global Witness, 2012, *The art of logging industrially in the Congo*; Greenpeace, 2012, *Artisanal logging = industrial logging in disguise*.

³ Under Congolese law, an Arrêté cannot institute a new type of de facto concession, and there is no evident higher level Decree or legislation to define its allocation process.

⁴ The Arrêté creates a new type of ‘artisanal permit’, meaning that there are now two types. The first (Category 1 artisanal logging) is essentially the same as the existing type as outlined in the old Arrêté 35 (i.e. Congolese individuals, limited to 50 ha, equipped with manual saws or chainsaw). The second type (Category 2 artisanal logging) could be used more for a “semi-industrial” form of logging requiring mobile sawmills and covering an area of 500ha..

⁵ These concessions form part of the *forets protegees* domain, essentially a basket category of forest that is not currently or previously in concessions or classified for conservation

⁶ See Article 28

⁷ See Article 18

⁸ See Article 48

⁹ Although the Arrêté states the companies have to be ‘*de droit congolais*’, it effectively allows for substantial foreign interests (Article 12). It permits 49% of the concession to be foreign-owned but there are also possible loopholes through which foreign companies can gain a greater stake or be ‘sub-contracted’.

Experience has shown that many of these areas will be logged for a quick profit rather than environmental goals and long term local development. There are few provisions or safeguards for local communities, with diminished and poorly defined legal requirements for ETDs to uphold social agreements¹⁰.

Moreover it is likely that by creating the ideal conditions for a resource grab, this will create new conflicts in forest areas and may serve to undermine efforts to establish community forests¹¹, tenure reform and land-use planning in DRC, which are widely regarded as necessary to ensure sustainable and equitable outcomes from REDD.

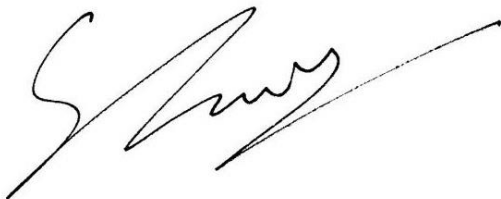
The credibility of REDD in DRC is at stake – not the least because the plans to establish many areas as REDD projects, such as the 11million hectare Mai Ndombe project, could be quickly and comprehensively undermined by widespread allocation of the new types of artisanal concessions. The enactment of this legislation raises serious questions about the commitment of the DRC government to protect its forests.

We therefore call on:

- The Government of Norway to ensure that further REDD funding earmarked through the REDD Investment Plan for DRC is linked to a time-bound package of legal and institutional reforms which include the rescinding of Arrêté 050;
- Participants of the Carbon Fund to attach binding conditions to the approval of the emissions reduction programme document (ERPD) for the Jurisdictional Mai Ndombe REDD Programme, including the rescinding of Arrêté 050 and other readiness reforms;
- Bilateral and multilateral donors should write to DRC's Minister of Environment and Sustainable Development to express their concern about Arrêté 050 and make any further forest sector support subject to rescinding of this legislation

We thank you for taking the time to consider this letter.

Signed

A handwritten signature in black ink, appearing to read 'Simon Counsell', written over a horizontal line.

Simon Counsell, Executive Director, Rainforest Foundation UK

On behalf of:

¹⁰ See Article 18

¹¹ The Forest Code article 22 provides the possibility for communities to establish Forest Concessions of Local Communities. The Decree to make this possible was passed in August 2014, and the last piece of legislation required to operationalise the law is currently ongoing through a multi-stakeholder validation process.

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