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Joint Statement by international NGOs on follow-up to the Legal Review of Logging Operations in the Democratic Republic of Congo (DRC)

On the opening of a government workshop in Kinshasa on the post-conversion process concerning DRC forest titles, international non-governmental organisations Global Witness, Greenpeace and Rainforest Foundation urge international donors to prevent the reversal of forest sector reforms that aim to increase transparency and legality and ensure that the conclusions of the Inter-Ministerial Commission (IMC), responsible for the review and conversion of eligible logging titles, be enforced. At the very moment when the Congolese government and international partners should be strengthening forest policies and law enforcement, and resolving outstanding conflicts related to logging, Congolese government authorities are instead signalling their intent to back-track on decisions and expand industrial logging activities in the DRC. Such a move would jeopardize progress made through the conversion process, demonstrate a disregard for the rights of local communities, undermine efforts to reduce deforestation and degradation and thwart opportunities for the DRC to benefit from climate-related payments.

Since 2007, our organisations have been urging the Congolese government, foreign donors and international organisations to prepare for the post-conversion phase. We urged donors to ensure that adequate funds and capacity were available to include social and environmental impact assessments in the review of logging activities and, at its conclusion, enforce the decisions of the legal review. This would include dismantling illegal logging operations, resolving outstanding social conflicts and financing re-employment programmes. Congolese civil society organisations, the Independent Observer of the review process, and the World Bank's own Inspection Panel have all pointed to flaws in the conversion process and called for stricter – not more lax – application of the law. Now, it seems these calls are being ignored. International donors must urge the government to implement the IMC decisions, urgently address outstanding social conflicts, and reaffirm the moratorium on the allocation of new logging concessions, as requested by Congolese civil society organisations in a recent statement and in an open letter from indigenous peoples' groups.¹

Recent developments of concern

- On 19 January 2009, the Congolese government announced the final results of the conversion of logging titles, after the appeals process. The results contradict the conclusions of the government-appointed Technical Working Group, which had recommended the exclusion of 70% of old titles for conversion, which would have reduced the area under logging to 4.4 million hectares. Instead, the government indicated that the area under logging would be 9.7 million hectares. European-based multinational companies such as the German-Swiss Danzer Group and the Nordsüdtimber Group based in the tax haven of Liechtenstein have retained hundreds of thousands of hectares of forests in breach of the 2002 moratorium on the issuing of new titles, under the pretext of “re-mapping” and “relocating” old permits.
- On the same day, the Environment Minister admitted that reprisals by security forces called in by former title holders to quell protests have “often resulted in cases of rape, beatings and injuries and in certain cases in death.”² He failed to list in which of the 65 newly-legalized permit areas these atrocities have taken place. The human rights abuses which the Minister himself acknowledged have taken place in the context of logging activities have gone unpunished and have not received any public attention.
- On the same occasion, the Minister promised to notify companies of the final results of the conversion process within 48 hours. However, local communities have not been given comparable access to information. In a 7 February 2009 press conference in Mbandaka, a Ministry spokesperson recommended that civil society leaders *not* inform local people about the current status of logging permits “until

companies whose titles were not upheld have been notified, in order to avoid frustration or social unrest.”ⁱⁱⁱ

- During a 13 February 2009 Council of Ministers meeting, the Environment Minister claimed that implementing the IMC’s decisions would mean losing 20,000 jobs, and that unspecified “options” for saving them had been approved. An open letter of protest signed by thirty Congolese NGOs described this number as totally inaccurate and demanded that the IMC’s decisions be respected. Their letter has gone unanswered by the Ministry and apparently unnoticed by donors and the media.

Flaws in the conversion process

Congolese civil society organisations, international NGOs, the World Bank Inspection Panel, Executive Directors on the World Bank Board and the Independent Observer of the legal review process have all criticized the design and implementation of the conversion process, and warned about its likely negative impacts. None of these concerns has resulted in any serious adjustment of the process. The Inspection Panel in particular highlighted the fact that no environmental and social impact assessments had been undertaken before the launch of the conversion process. Still today, no assessment has been done of the impacts of the conversion process. The Panel also recalled that “it is widely acknowledged that the industrial exploitation of timber has deep social and environmental impacts, and that it is completely incompatible with the customary use of forests on the part of local and indigenous communities”^{iv} – a point reiterated clearly by local civil society and indigenous peoples’ organisations in their recent letters.

Negotiation of social investment agreements

Local communities require maximum support at this critical stage in order to stand up to loggers bent on “negotiating” social investment agreements as quickly as possible, and often behind closed doors. The legally binding process of establishing “*cahier des charges*” (social investment agreements) presents an opportunity for civil society and donors alike to insist upon transparency and good governance as essential prerequisites for effective and just forestry reform.

This final, key phase of the conversion process should put forest community empowerment centre stage, by:

- ensuring that communities’ right to refuse concession contracts in their region is protected [NB: the right to Free, Prior, Informed Consent (FPIC), which the DRC government has committed to respect, through statements made at the 2007 Brussels Conference on Sustainable Management of DRC’s Forests and through endorsement of the UN Declaration on the Rights of Indigenous Peoples, implies the right to freely give *or to withhold* consent];
- guaranteeing dissemination of all available information on logging operations to communities (including maps of prospective concessions showing present land use pattern and tenure; maps of past, present and future logging areas and logging road networks; past and projected production figures; company statutes and shareholder identification; market prices of wood species to be logged; and audited company accounts).
- ensuring that community members and an independent third party be present in all “*cahier des charges*” negotiations;
- ensuring maximum transparency of negotiations and publication of final, notarized “*cahier des charges*”;
- ensuring the participation of the Congolese State as a guarantor of “*cahier des charges*” agreements.

Independent Forest Monitoring

The Congolese government and international donors have been discussing the feasibility of deploying a long-term Independent Forest Monitor (IFM) in the DRC. We are concerned that the necessary framework is not yet in place to make such a programme effective. Despite some modest steps forward in the reform of the forest sector, many recommendations made by Global Witness in its 2007 scoping mission on the feasibility of an IFM in DRC are still pertinent and have not yet been implemented. The study revealed a situation of anarchy and absence of control in the forest sector, characterised by ignorance of the forest law and regulations – both by loggers and by the forest administration – and confusion regarding their application. This has not only led to the absence of standardised practices, but has opened the door to abuse and fraud which are set to continue in the post-conversion period unless effective reforms are implemented. The

intervention of a permanent IFM is conditioned on the functioning of a regular forest control system, founded on transparency and professional expertise and secured by a budget to facilitate regulatory control operations which the Monitor accompanies but does not substitute. We would therefore not support the installation of an IFM in the post-conversion period until a system of effective, regular and transparent controls has been built, and a dedicated budget allocated to execute thorough control operations. None of these conditions are currently present in the DRC.

Reduced Emissions from Deforestation and Forest Degradation

We believe there is a unique opportunity for the DRC to benefit from a REDD (Reduced Emissions from Deforestation and Forest Degradation) mechanism that is designed to prevent forest destruction, protect biodiversity, respect rights and tenure of forest communities and be additional to, not a substitute for, drastic emissions reductions in industrialized countries. We also believe that funds are needed for immediate actions to avert deforestation and degradation in the short-term – principally support for efforts to clarify and secure tenure, combat illegal logging and increase community-based management of forests. The Congo Basin Forest Fund (CBFF) could show promising ways to tackle forest destruction and promote beneficial forest use by communities. However, the absence of strict measures to efficiently regulate and control the logging industry, ensure social and environmental sustainability, and prevent increasing encroachment on forests by industrial agriculture, undermine prospects for the DRC to benefit from a future "REDD" mechanism.

We therefore urge the international donors supporting reforms in the Congolese forest sector to use their influence with the DRC government to support the call by Congolese civil society for the government to uphold the current moratorium on new logging concessions until credible forest governance and control systems are established and a participatory land use planning process, based on the traditional forest uses of indigenous peoples and local communities and the needs of the rural poor, has been completed. This will provide the necessary breathing space to achieve true pro-poor development whilst tackling climate change and preserving biodiversity in the DRC.

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Notes:

ⁱ Communiqué de presse des organisations de la société civile environnementale sur le compte rendu du Conseil des Ministres du vendredi 13 février 2009; Open letter from DGPA (Dynamique des Groupes des Peuples Autochtones) to the Congolese Minister of Environment, Nature Conservation and Tourism dated 2 March 2009.

ⁱⁱ « Conférence de presse de Monsieur le Ministre de l'Environnement, conservation de la nature et tourisme à l'occasion de la publication des recommandations issues de la deuxième saisine de la commission interministérielle de conversion des anciens titres forestiers en contrats de concession forestière », 19 January 2009, p. 17.

ⁱⁱⁱ Jose Ilanga, Environment Ministry advisor, Mbandaka, 7 February 2009.

^{iv} Executive summary of final report of Inspection Panel, p. xiv, Investigation report, 31 August 2007, "Democratic Republic of Congo: Transitional Support for Economic Recovery Credit (IDA Grant No. H 1920-DRC) and Emergency Economic and Social Reunification Support Project (EESRSP) (Credit No. 3824-DRC and Grant No. H 064-DRC)", Report No. 40746 - ZR.