

Making the Forest Sector Transparent

Annual Transparency Report 2011



global witness

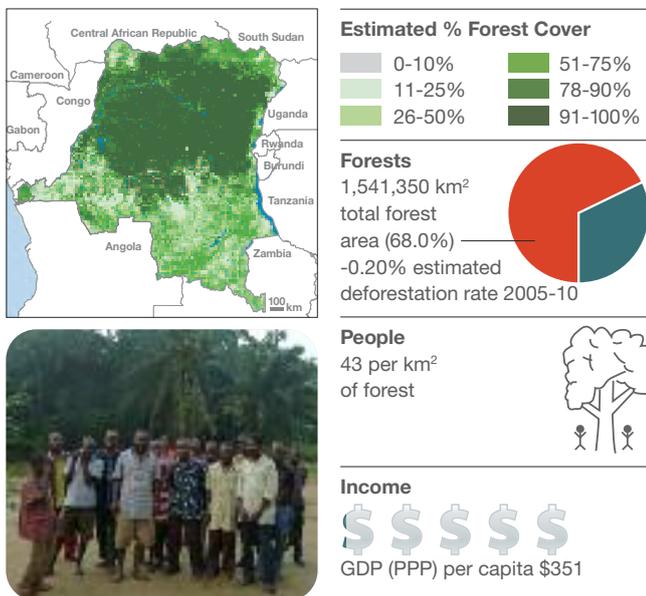
Country Specific Report: The Democratic Republic of Congo

Prepared by Réseau Ressources Naturelles (RRN) and Global Witness, October 2012

Introduction

The Democratic Republic of Congo (DRC) is one of seven forest-rich countries where the *Making the Forest Sector Transparency* programme is working. The Annual Transparency Report is published each year to assess whether the right information is being made available to citizens to ensure that they have a say in how their forests are managed. This summary presents the main findings from the first assessment of the forest sector in the DRC carried out in 2011 by RRN, which is a platform of civil society organisations. Members based in North Kivu, Orientale, Bandundu and Equateur are focal points in this programme. The 2011 Report Card applies a set of 20 'yes' (green circle), 'partial' (yellow circle) or 'no' (red circle) indicators to test whether the necessary provisions in the legal framework exist in the public domain and whether important documents and data are made publicly available. The assessment was largely carried out using desk research up to December 2011. The complete analysis and more recent updates are available at www.foresttransparency.info.

The DRC Vital Statistics



Community in Equateur Province interviewed on their experience of the forest title conversion process. Photo: Global Witness

Map of estimated % forest cover adapted from FAO Global Forest Resources Assessment 2010 and derived from Global Land Cover Facility data of vegetation continuous fields. Land area, forest area and estimated deforestation rate drawn from FAO Global Forest Resources Assessment 2010, accessed at <http://www.fao.org/forestry/ifa/tra2010/en/>. Data on total population and GDP per capita in 2010 based on purchasing power parity (PPP) converted to international dollars are drawn from the World Bank data accessed at <http://data.worldbank.org>

Key Conclusions from 2011

There are persistent obstacles to the implementation of the Forest Code – in force since 2002 – and the variety of supporting regulations and other instruments that have been produced. Provincial and local authorities have a critical role to play in managing forests, but they are compromised by conflicting interests, limited capacity and lack of information.

The process of review of 156 old title deeds and conversion of 80 of them into new concessions has attracted criticism over the arbitrary selection of titles and the lack of local participation. The new contract documents were not published despite international demands. Furthermore, there have been problems in the negotiation of the required social clauses in these contracts. The RRN members have assisted several communities to avoid these pitfalls, but others have struggled with lack of information and inadequate representation.

Artisanal logging permits have proliferated whilst there is a moratorium on new concessions. Although they are theoretically for smaller areas to produce for the national market, in practice they have been misused for industrial-scale exploitation. The RRN member in North Kivu was influential in drawing up a draft edict to regulate these permits there, but further work is needed to govern these activities across the country.

A step forward was that an Independent Forest Monitor was appointed in 2010 to work in collaboration with civil society, forest authorities and the private sector. It has started missions, but the review committee to approve publication of its reports has not yet been set up.

Progress on many important reforms, including the passing of a bill on local community forests, the negotiation of a Voluntary Partnership Agreement (VPA) with the European Union (EU), and the harmonisation of the laws for different sectors, largely stalled in 2011. Greater political will and resources are needed to move it forward.

The *Making the Forest Sector Transparent* programme is coordinated by Global Witness and works with a coalition of leading local NGOs in Cameroon, the Democratic Republic of Congo, Ecuador, Ghana, Liberia and Peru to engage policymakers and advocate for capable, responsive and accountable forest sector governance. Each partner has administered a mini-grants fund to support grassroots advocacy in their country.

DRC Indicators 2011

Indicator:  Yes  Partial  No  Not applicable

Freedom of Information Legislation		Although the principle of access to information is mentioned in the Constitution, there is currently no specific FOI law and citizens are not able to access important information on the forest sector. Civil society has instigated the preparation of a draft FOI law, which has been submitted to the Senate and is waiting to be reviewed by an ad hoc commission.
National Forest Policy		The 'Priority Agenda' agenda drawn up by the World Bank in 2007 is used as a reference document, while the actual forest policy document is being drafted by Ministry for Environment, Nature Conservation and Tourism (MECNT) . Stakeholders have participated in the drafting of the policy, but consultation has not reached forest areas and a draft document is not yet available to the public.
Codified Forest Law and Supporting Norms		There is a Forest Code and 37 regulatory measures out of the expected 45, as well as about twenty operational guides for forest management, but these norms have not been made available at provincial or local levels, even to civil servants, and they are not implemented consistently due to conflicting interests, limited capacity and insufficient financial resources.
Signed International Agreements Related to Forest Products		There are negotiations with the EU on a VPA, but this process has been slowed down by bureaucracy and postponement of working group meetings. Opportunities for civil society participation in the negotiations and drafting of the framework have also been limited and the public is inadequately informed on the process.
Provisions for Transparency in Forest Laws and Norms		The Forest Code does not include clear provisions for transparency and its procedures are insufficient for guaranteeing access to information. The law passed in 2011 on Fundamental Principles related to the Protection of the Environment recognises the right to information but it lacks regulatory measures to implement it.
Legal Recognition of Customary Rights in Forest Laws and Norms		The Forest Code recognises customary and traditional rights to use forests, but it also prioritises written law and establishes state ownership of forests. Most local people have little access to the legal texts or knowledge of their rights. If it was passed, the draft community forest decree would recognise the right of communities to request forest ownership from the state.
Legally Recognised Procedure for Consultation on New Forest Norms		Some legal texts set out consultation procedures, for example for allocating forest to different purposes, and consultation is increasingly a part of the elaboration of new norms. However, only limited stakeholders are usually included. Forest communities' points of view are hardly ever considered and they are not always given comprehensive information during consultations.
Legal Recognition of the Right to Free Prior and Informed Consent		FPIC is mentioned in the Forest Code and the law on the Fundamental Principles related to the Protection of the Environment, but it has not yet been implemented in regulations or communicated to communities, so they are not aware of their rights and are not able to give their consent in practice to forest activities.
National Land Tenure Policy		There is no national land policy. The land tenure code dates from 1973, and there are many inconsistencies and conflicts between it and other legislation (for example, relating to forests, oil and mining). A commission was set this year to review the code but its work has not been disseminated to the public.
Forest Ownership and Resource Use Maps		The available maps are very general and difficult to access by local communities. Only concession holders have maps showing their exact boundaries. Maps of artisanal logging permits are lacking. Civil society organisations have produced some maps with communities to identify their lands, but there are no maps detailing forest use and micro-zoning is considered to be too costly.

DRC Indicators 2011

Indicator:  Yes  Partial  No  Not applicable

Regulated System of Permits for Commercial Logging Operations		The moratorium on new industrial logging concessions was upheld throughout 2011 while existing title conversion continued. There is a well-established system of different types of permits, but the conversion criteria have only partly been complied with. Despite a commitment by government to publish all contracts, it remains difficult to access logging permits from the authorities or permit-holders..
Legal Requirement for Consultation before Commercial Logging Allocation		There are no regulations requiring consultation as part of the allocation of logging permits. However, consultation does take place during the drawing up of management plans, and prospective concession-holders have to sign "social agreements" with affected local communities before contracts can be signed with the government.
Verification Process (Due Diligence) on Eligibility of Commercial Operators		An inter-ministerial commission published and disseminated in 2008 the results of the legal review on the conversion of former forest titles. Because of the moratorium on new logging allocations, new concessions cannot be granted. This is leading to an increase in artisanal logging, for which there is no due diligence process.
Forest Management Plans		Management plans provide information on valid logging periods, locations and volumes. Although the Forest Code states that they should be published, and plans are being drafted as part of title conversion, in practice they are often available only on request and local communities have not been able to access this information.
Regulation of Environmental Services		There is no regulation that applies to the environmental services of forests. The question of ownership of carbon has started to be discussed in the context of REDD+ processes, but the development of a law is still far off. The DRC has signed the Convention on Biodiversity, but there are no regulatory instruments for its application.
Strategic Environmental Assessment		Environmental assessment is rarely carried out, and the need for land use planning is widely recognised but such a process would involve various ministries and has not yet commenced. The REDD+ process also requires macro and micro zoning of forest capability, but little progress is currently being made.
Independent Forest Monitoring		In 2010 the government signed a partnership agreement with the NGO REM to play the role of independent monitor. REM has led some missions to record violations of the Forest Code in the Equateur and Bandundu provinces. However, the review committee to approve publication of its reports has not yet been set up.
Fiscal Systems to Distribute Forestry Royalties or Incentives		The government started uploading quarterly reports in 2011 with a summary of net taxes collected from the mining, oil and forest sectors. The Forest Code requires that 40% of royalties are distributed to provinces, including 15% to territorial level bodies but information on these amounts is not published.
Information on Forest Law Infractions		MECNT is in charge of monitoring infractions and collecting related data. It has delegated law enforcement to the Department for Control and Verification, but due to the inadequate resourcing of the authorities, few checks has been carried out so far and, consequently, little information is available and few forest infractions are pursued by relevant services.
Annual Forest Authority Report		Forest authorities are very vague about the drafting and availability of annual reports on the forest sector. Even though the World Bank's 'Priority Agenda' requires regular publication of reports, no annual report has ever been produced. Civil society has also never requested such reports and there is no debate on this matter.

Analysis

It is striking that none of the indicators on forest governance in the DRC warranted a 'green', which signifies that the current legal framework and access to information has been inadequate across the board for improving forest sector transparency. Although the Forest Code and other norms set out procedures for managing the sector, they are generally not accessible to the public and often unknown even by regional and local officials. There is no freedom of information legislation or sector-specific provisions that oblige authorities to publish information, and access is limited to key documents and data such as contracts, maps and management plans.

The forest sector is currently at a crossroads following the review and conversion of forest land title deeds. Even though this process heralded the introduction of greater transparency, much of it has taken place in obscurity and haste. Participation of civil society organisation and, above all, the affected local communities, has been limited. Likewise, there has been a lack of political will to implement measures that would support recognition of the rights of local communities and indigenous peoples. For example, adoption of the draft decree on local community forests has been delayed. The administration has also been reluctant to include consultation of local people in the planned forest land use zoning process. Long-standing concerns also surround the lack of adequate representation of local people in the negotiation of 'social clauses' with timber companies as a pre-condition for granting concessions.

The moratorium on new concessions has not stopped exploitation of timber resources. In particular, artisanal permits have been inappropriately granted to timber companies and misused for industrial scale logging. Another threat to forests and communities has been continued precedence given to extra-sectoral activities such as oil prospecting. There is a need for harmonisation between the laws applied to different sectors, but little evidence to suggest that there is political will to drive forward such reforms. Similarly, negotiations on the proposed Voluntary Partnership Agreement (VPA) with the European Union largely stalled in 2011. Dialogue on REDD+ has also been problematic, with civil society organisation criticising the lack of information on preparations and funds.

Key Recommendations

The Government of the DRC should:

- Adopt the draft decree on local community forests as prepared in agreement with CSOs.
- Maintain the moratorium on new forestry concessions until shortfalls in the conversion process and micro-zoning system are addressed.
- Harmonise legislation to address contradictions between the Forest Code and laws on mining, agriculture and other sectors.
- Set up an official committee to approve publication of the Independent Observers' reports.

MECNT should:

- Publish all signed contracts from the conversion process and make maps and plans available.
- Complete regulations to implement the Forest Code and recognise local community forests.
- Prioritise consultation with local communities in the micro-zoning process.
- Commit to the production of an annual report on forest activities and trends.
- Publish information on forest sector taxation by concession and disbursement by province.
- Strengthen its capacity to punish forest offenders at all levels.
- Promote transparency by making information available and consulting all stakeholders on the development of the VPA and REDD+.

Provincial and local authorities should:

- Ensure that artisanal permits are issued according to the law and are not abused for industrial exploitation or timber exports.

Civil society organisations should:

- Provide further assistance to local communities in negotiations with authorities and concession holders.
- Raise public awareness around the problems caused by illegal logging.
- Support information dissemination on the ground on REDD+ and promote local community participation.

The international community should:

- Maintain demands for transparency in forest governance.
- Influence the government to maintain its moratorium on new concessions until the established requirements have been fully met.

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