

Open letter to Mr. José Endundo Bononge, Minister of the Environment, Nature Conservation and Tourism

Concerning: DRC forests – Request for clarifications regarding current reforms

Dear Mr. Minister,

The reform of the forestry sector in the Democratic Republic of Congo, launched seven years ago and supported by the World Bank, is intended to bring legal compliance and transparency to industry practices, but these goals are far from being achieved. Clarifications are urgently needed regarding a situation marked by irregularities. The implementation of forestry sector reform, particularly regarding industrial logging, is as opaque as ever.

This is evident from our recent exchanges with over 50 representatives from forest-dependent communities, followed by discussions with the Environmental Commission of the Provincial Assembly in Orientale province, at two workshops organised by Greenpeace in Kisangani from 13-18 July 2009 on the future of Orientale province forests. Clearly, the follow-up to the logging titles legal review process is even less transparent than the process itself. This lack of transparency heightens the risk of expanded uncontrolled logging.

Much is at stake. Forestry reform could be an historic opportunity for DRC to bring about sustainable use of its forests, integrating environmental, social and economic aspects. This requires two elements that are sorely lacking – transparency and good governance. It also calls for a **participatory land use plan** which identifies zones containing intact primary forest and high conservation value forests, and which above all respects the rights and needs of indigenous peoples and other forest-dependent communities.

As it stands, however, **forestry sector “reform” appears to be no more than a fig leaf, barely concealing unregulated industrial and artisanal logging in the forested provinces.** Recent numerous legal measures have not been implemented on the ground. Paradoxically, it's in this context that industrial loggers in DRC want international donors to believe that they represent a model of “sustainable forest management”!

It is not too late to implement the radical changes promised by the Congolese government and major donors in the Brussels Declaration¹. Nor is it too late to seize the opportunities offered by the international focus on the exceptional richness of Congo's forests. The biodiversity of these forests and their role in reduced emissions from deforestation and degradation (REDD) can and should be promoted.² In the current context, where even the volume of logs being taken out of the forest is unknown, it is unlikely that DRC will be able to establish the credibility necessary to fully benefit from these opportunities.

Mr. Minister, allow us therefore to present our main concerns, and to request clarifications from you regarding:

¹ “Déclaration de Bruxelles sur la gestion durable des forêts de la République Démocratique du Congo”, 27 February 2007. This declaration was supported by the Congolese government as well as international donors (World Bank, DFID, Belgium, France, FAO, among others) and civil society.

² See Greenpeace – Forest for Climate reports and solution - http://www.greenpeace.org/international/campaigns/climate-change/forests_for_climate

1 - Legal review of logging titles, conversion of titles into legal concessions.

The legal review of logging titles was a key step of the reform. **This process was marked by serious irregularities**, which civil society and international NGOs reported several times³ to no avail. The Independent Observer of the review also voiced concern⁴, although took no action. **Today, we are particularly worried about the implementation of the review process.**

On 19 January 2009, you presented the final results of the logging title legal review and approved the "conversion" status of 65 titles, 19 of which were approved on appeal⁵. Allow us to list as follows our primary concerns, recommendations and questions regarding the follow-up to the review process:

- **We would like to first point out that forest-dependent communities were not given the right to appeal the decisions of the Interministerial Commission (IMC), unlike logging companies.**
- **Plans to override IMC decisions**

At a Council of Ministers meeting on 13 February 2009, you appear to have announced plans to convert, in addition to the titles recommended by the IMC, certain titles which it had cancelled.⁶

We believe that any decision which bypasses those of the Commission is a violation of Presidential Decree No. 05/116 of 24 October 2005, establishing the procedure for the conversion of prior logging titles into logging concessions and confirming the moratorium on the allocation of new logging titles.

We demand strict adherence to IMC final results.

- **A difference of 2.9 million hectares**

In March 2009, your Ministry published a map with two different lists of the surface areas of the titles submitted for conversion three years before.⁷ Previously unpublished "Geographic Information System" (GIS) surface area data reveals that 12.6 million hectares of Congolese forest is to be converted into logging concessions, according to the GIS, and not 9.7 million hectares as announced to the press in January 2009, and repeated by the World Bank and other international donors. **This represents a difference of 2,880,639 hectares : an area nearly the size of Belgium!**

Could you please explain why the GIS surface area figures were not made public during the conversion process?

³ See « Lettre de 17 ONG congolaises et internationales à son Excellence Monsieur le Ministre Endundo », 23 April 2008 ; « Déclaration Finale de l'atelier d'évaluation du processus de conversion des titres forestiers en RDC par la société civile » ; « Communiqué de presse des organisations de la société civile environnementale sur le compte rendu du Conseil des Ministres du vendredi 13 février 2009 » ; « Joint statement by international NGOs on follow-up to the legal review of logging operations in DRC, 4 March 2009 » by Greenpeace, Rainforest Foundation and Global Witness.

⁴ World Resources Institute: Letter to the Board of Directors of the World Bank, 5 December 2007 ;

⁵ « 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.

⁶ « Compte rendu du conseil des ministres du vendredi 13 février. Point 8 - Dossiers prioritaires du Ministère de l'Environnement, Conservation de la Nature et Tourisme », p.3, 14 February 2009

⁷ Ministry of the Environment, Nature Conservation and Tourism, « Processus de conversion des titres forestiers en contrats de concession forestière », February 2009 (Map)

- **Violations of Decree No. 090 of 23 January 2009 concerning the 91 cancelled titles**

At your press conference on 19 January 2009, you promised to proceed "within 48 hours, with the notification of all applicants having received a negative decision of the Interministerial Commission by cancellation orders of their respective contracts".

Decree No. 090 of 23 January 2009 states that upon notification by the Ministry, all rejected applicants must "immediately" stop logging, "notwithstanding any pending appeal process" (Art. 5)⁸. Furthermore, any "moveable assets and trees felled before the notification" on the permits concerned are placed under provisional seizure (Art. 9). In the 30 days following notification, the rejected applicant must haul trees cut before notice was received, "so as to permit an inventory of them" (Art. 6).

Lastly, Article 11 of Decree No. 090 states that within 30 days of notification, a log inventory report and notice of provisional seizure are to be issued for the title of each rejected applicant⁹.

To the contrary, we have information proving that certain loggers whose titles were invalidated by the IMC are continuing to ship logs out of their sites to Kinshasa in 2009.

In June 2009, Trans M Bois was able to remove timber from its invalidated title GA 033/05 after the issuing of a derogation dated 11 May 2009, signed by the Planning Minister in your absence.¹⁰ The document authorized the company to "evacuate all of its ACIBO" [annual industrial cutting permits] from 2008, "pending implementation of the decision of the Council of Ministers of 13 February 2009". Three weeks later, on 2 June 2009, the provincial coordinator of the Ministry of Environment in Orientale Province prohibited this same company from "proceeding to fell any trees [...] in light of certain irregularities which run counter to Forestry Code provisions"¹¹. Despite this cacophony, many of the logs were in fact shipped out.

Could you please, Mr. Minister, enlighten us as to the following:

- *Regarding how Decree No. 090 is being implemented, and the publication of inventory reports of companies with invalidated titles.*
- *What is the legal basis of derogations such as the one granted to Trans M?*
- *When will your Ministry publish the complete list of these derogations?*

⁸ Arrêté ministériel n° 090 CAB/MIN/ECN-T/JEB/2009 du 23 janvier 2009 portant mesures de mise en œuvre des décisions de rejet des requêtes de conversion et de résiliation des anciens titres forestiers
http://www.cbfp.org/docs/news/mars_avril2009/atelier_conversiontitreskinshasa/Arrete%20N°090_Mesures%20de%20mise%20en%20oeuvre.pdf

⁹ « This report provides detailed information on the inventory, including species, diameter, length, volume and any other elements required to fully identify the felled trees » (Art. 11).

¹⁰ Letter from Ministère de l'Environnement, Conservation de la Nature et Tourisme to Directeur Général-Adjoint of Trans-M sprl. « Objet: Demande d'autorisation transitoire » signed by the Planning Minister Olivier Kamitatu Etsu, 11 May 2009

¹¹ Letter from Coordination Provinciale de l'environnement, conservation de la Nature, Eaux et Forêts to Directeur d'exploitation Trans-M à Alibuku. « Objet: Suspension abattage d'arbres dans la concession Trans-M Alibuku » signed by the Coordinateur Provincial Somwe Kihassula, 2 June 2009

- **Legal logging for the 65 convertible titles?**

Opacity is more present than ever on the ground. Affected forest-dependent communities are not being informed of current or future steps in the process. No list of cutting permits has been published, preventing Congolese citizens – as since the beginning of the conversion process – from knowing where and to what extent industrial logging is currently legal or not in their own forests.

It is essential that answers to the following questions be published immediately:

- *Have cutting permits been issued for 2009? If so, on what legal grounds and when will they be made public?*
- *Have special derogations been granted? If so, on what legal grounds and when will they be made public?*

- **Acute lack of transparency: releasing basic information to the public**

In the interest of transparency, the time has long since come to publish basic information on the 65 convertible titles. Forest-dependent communities, the most affected by industrial logging activities, have a right to this information before entering into negotiations with loggers on the famous “cahier des charges” specifying the social investments to be made by them over the next 25 years.

When and how will your Ministry publish the following information:

- *maps showing the boundaries of concessions and cutblocks, as well as the location of villages and agricultural areas, and sacred sites designated by indigenous populations?*
- *information about employment on each title: number and percentage of employees hired full-time versus day workers, compliance with regulation on union activities?*
- *previous and expected production figures of each title?*
- *the breakdown of felled tree species and their market value?*
- *tax payments made or converted into “installments” that have been validated by the IMC?*

2 - DE FACTO land-use planning for the expansion of the logging industry, or PARTICIPATORY planning reflecting the environmental and social stakes?

The *Brussels Declaration* and the *Priority Agenda*¹² both identify participatory land-use planning as a pillar of forestry reform. **This planning is indeed central to what is currently at stake. We must ensure that land-use planning is actually based on the rights and needs of the communities involved. In an appropriate manner and based on a participatory model, it must also reflect the various uses of forests, for sustainable development, such as:** classified forests, protected forests, forests of local communities and the lands of indigenous peoples, areas designated for alternative forest uses and permanent production forests.

The credibility of this participatory land-use plan will also determine the fate of a REDD mechanism capable of compensating for the prevention of forest degradation and deforestation.

¹² Debroux, L., Hart, T., Kaimowitz, D., Karsenty, A. and Topa, G. (Eds.) 2007 Forests in Post-Conflict Democratic Republic of Congo: Analysis of a Priority Agenda. A collective report by the World Bank, Center for International Forestry Research (CIFOR), Centre International de Recherche Agronomique pour le Développement (CIRAD), African Wildlife Foundation (AWF), Conseil National des ONG de Développement du Congo (CNONGD), Conservation International (CI), Groupe de Travail Forêts (GTF), Ligue Nationale des Pygmées du Congo (LINAPYCO), Netherlands Development Organisation (SNV), Réseau des Partenaires pour l'Environnement au Congo (REPEC), Wildlife Conservation Society (WCS), Woods Hole Research Center (WHRC), World Agroforestry, Centre (ICRAF) and World Wide Fund for Nature (WWF).

In 2007, the World Bank Inspection Panel confirmed that the conversion process itself constituted "de facto zoning under which the legal and economic interests of the logging companies will be considered for long-term recognition, while consideration and recognition of the land tenure and livelihood of the peoples living in the forests or dependent upon them will be delayed."¹³

We would like to express our concern regarding the current version of the "Operational Guide : forest zoning norms", circulated in June.¹⁴

The pro-logging stance taken in this approach to land planning is troubling: the guide recommends, even before the process has begun, that "each type of vegetation is often associated with a predominant activity which is tied to its primary use. Thus, dense forest on firm ground is ideal for timber production [...]" (page 18).

In addition to de-facto zoning, the guide also sets out a list of the "several positive effects that local populations can expect to see from the operating of a logging concession" (page 17). Oddly, a list of the advantages of community management of those same areas is not offered. Most importantly, actual proof of these "positive effects" has yet to be seen in a context where many forest-dependent community representatives testify to a lack of positive social or economic impact, and instead highlight the problems created by logging (the disappearance of caterpillar trees in certain areas, open social conflicts, etc.).

Promotion of the logging industry of this kind has no place in a land-use planning guide worthy of the name.

Furthermore, the authors base their text on "principles defined over the course of a long process begun in 2003 by the MECNT and tested on the ground [...]" (page 5). One project they cite is the "Isangi WWF-SAFBOIS partnership programme". We have on numerous occasions denounced repeated violations of the rights of local populations by this company at Isangi over many years.¹⁵

A serious and appropriate land-use planning model is critical. To achieve this, we are willing to contribute to any participatory endeavour that involves all stakeholders.

We are also very **worried by the draft decree on the allocation of local community forests** recently submitted to the Prime Minister for approval by the Council of Ministers without real prior consultation with affected communities. As you are aware, this proposal has attracted criticism and recommendations in two recently published documents:

- « Avoidable Deforestation : Forest Sector Reforms and REDD in the Democratic Republic of Congo, Rainforest Foundation », April 2009¹⁶,
- « Mémoire des Organisations de la Société Civile de la République Démocratique du Congo », members of Réseau Ressources Naturelles (RRN), transmitted to the cabinet of the Prime Minister on 8 July, requesting the withdrawal of this text.

Was this draft decree returned to you for further consultations with all stakeholders, as requested by civil society?

¹³ World Bank, Inspection Panel, Investigation Report, Democratic Republic of Congo : Transitional Support for Economic Recovery Grant (TSERO) (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), 31 August 2007, page xxxiii.

¹⁴ Service Permanent d'Inventaire et d'Aménagement Forestiers (SPIAF), June 2009.

¹⁵ Greenpeace, « Carving Up the Congo », April 2007, <http://www.greenpeace.org/international/campaigns/forests/africa/congo-report> ; Greenpeace « Logging Sector Briefing for the Democratic Republic of Congo. DRC logging review: The carving up of the Congo continues », October 2008, <http://www.greenpeace.org/raw/content/international/press/reports/DRC-logging-sector-briefing.pdf>

¹⁶ http://www.rainforestfoundationuk.org/Avoidable_Deforestation-DRC



8, avenue lodja, Q. "Socimat"
Commune de la Gombe - Kinshasa
République démocratique du Congo

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More generally, we call on your Ministry to better integrate civil society into the reform process, and most importantly, to listen more carefully to their recommendations.

In recent months, members of civil society have sent you several letters, to which no replies seem to have been made¹⁷.

Greenpeace is keen to strengthen dialogue about the aforementioned problems and to contribute to a **truly** sustainable management of RDC's forests by, for, and with the most-affected segments of the Congolese population.

We look forward to receiving your answers and clarifications in these matters.

Yours sincerely,

Kinshasa, 23 July 2009,

René Ngongo
Policy advisor
Greenpeace Africa

rngongo@greenpeace.org

Karine Jacquemart
Coordinator, Africa Forests Campaign
Greenpeace International

karine.jacquemart@greenpeace.org

¹⁷ See for example « Communiqué de presse des organisations de la société civile environnementale sur le compte rendu du Conseil des ministres du vendredi 13 février 2009 » and « Lettre ouverte de la DGPA (Dynamique des Groupes des Peuples Autochtones) au ministère congolais de l'Environnement, de la Conservation de la nature et du Tourisme », 2 March 2009.