

Case study 13

Democratic Republic of Congo (DRC): current situation with verification and forest control activities

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Informations			
Key facts		Date	Data source
Population	61.2 million	2007	UNFPA 2007
Land area	226,705 million ha		Karsenty 2007
Forest cover	58.9 %	2005	FAO 2007
Public forest ownership	100%	2000	FAO 2005
Industrial roundwood production	300,000	2005	Debroux et al. 2007
Formal forestry sector employment	15,000	2006	Karsenty 2007
Contribution of forestry sector to GDP	0.7 %	2004	CBFP 2006
Value of forest products exports	45 million dollars	2006	French Embassy, 2006
TI corruption perception index	2.0	2006	Transparency International 2007
Human development Index	0.411	2005	UNDP 2007

1. The national forest sector: Context and issues

The Democratic Republic of Congo is progressively restoring the legitimate power of the state after the political crises that began in the country in the 1990s (Weiss 1995). Shortly after independence, the country was under a dictatorship for close to thirty years. This situation led to a civil war and armed border scuffles with two neighbouring countries. In this context, and

under the guise of war, a number of internal and external armed groups carried out illegal overexploitation of the country's abundant natural resources¹, and it was only after the 'Dialogue inter-congolais' took place and political elections were held in 2006, that the rule of law slowly started to be restored, notably over the exploitation of natural resources.

The DRC is home to the second largest tropical forest in the world, after the Amazon. Its forest potential is



estimated at 133,361,000 ha, equivalent to a total area of 87,000,000 ha of production forests and 18.5 million ha of Protected Areas (FAO 2007). The forest cover also accounts for 50 % of the humid dense forests of the Central African sub-region. Logging began in the DRC before its independence. After 1960, the country produced close to 575,000 m³ of timber annually (Debroux et al. 2007). There was a fall in timber production between 1973 and 1982, which was a function of the political choices of the ruling regime at the time. This fall in production levels continued until late 1980s, when about fifty timber companies produced about 500,000 m³ of timber (Debroux et al. 2007). In 1995, official production was estimated at 300,000 m³ (Wolfire et al. 1998), while in 2002, during the transition period when public authorities were developing a new Forest Code (Eba'a Atyi and Vundu Dia 2005), production was estimated at about 44,000 m³. There was equally a decrease of industrial processing capacity as a result of armed conflicts. In the past, annual processing capacity was estimated at about 500,000 m³, but during the civil war most companies shut down while others were plundered. At present, the industrial capacity is not known. Some sources say there are about 12 companies left (Debroux et al. 2007), while the rest of the sector is mainly carrying out exports of roundwood and carry out informal logging with machine chain saws.

Since August 2002, the Congolese public authorities, with support of the international donor community, reorganised the forest sector with the adoption of a new Forest Code. This was done with the aim to improve the sector, establish good governance and increase the contribution of forest revenue to the economy and the livelihoods of rural communities. The Forest Code lays down a balanced management system integrating ecological, economic, as well as social factors. The new 2002 forest legislation divides the national forest territory into a public domain and a private domain of the state. Accordingly, the public domain is made up of classified forests and the private domain is made up of protected forests and community concessions, plus permanent production forests with concessions also called Forest Management Units (FMU). Thus, valid logging titles are FMUs and community concessions.

Consequently access to forests for domestic purposes can be obtained on the basis of user rights, while access for commercial purposes needs a) approval and a logging permit to carry out artisanal logging, or b) a forest concession and an ordinary licence for industrial logging. A statutory text issued on October 2006 added two other categories of titles, the carbonization and firewood licences for rural communities, and the special logging licence, for access to protected timber species. Article 83 of the Forest Code provides that concessions should be acquired normally through open bidding, though discretionary (*gré à gré*) attributions are exceptionally allowed.

At the moment, the logging sector in the DRC counts 156 allocated concessions, issued under the 'Timber Production Authorisation' (Guarantie d'Approvisionnement - GA) and/or the 'Letter of Intent' (Lettre d'Intention), for areas of more than

22,000,000 ha. Annual timber production is difficult to quantify, in particular because authorities do not have control over timber export outlets. However, according to Debroux et al. (2007), official production in 2005 was about 500,000 m³, and industrial processing estimated at 400,000 m³ (CBFP 2006). A study by Global Witness (2007), financed by the EU funds managed by the World Bank, on Independent Forest Monitoring and governance standards in DRC's forests found "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 applicability". This negative description is a cause for concern, as the country has to respect agreements it has entered into with international donors, in particular the World Bank, to improve the forest sector and its contribution to the GDP of the country. It also adhered to the EU's FLEGT process in order to obtain financial benefits and opening of so called 'green markets' through the Voluntary Partnership Agreement (VPA), though official negotiations have not started yet. Through its membership with COMIFAC, the country is committed to reach the 2015 sustainability and forest conservation targets through the implementation of the Convergence Plan. It is important to note that the Review of the forest sector by an International Panel of Experts under the auspices of the World Bank (2007), estimated that if the timber sector is efficiently and transparently managed in the DRC, it could generate annual logging tax income of about US\$60 million, area taxes of about US\$360 million annually and provide up to 50,000 jobs, hence a total revenue of about US\$1 billion annually that would contribute to national economy. The same study highlighted the importance of the role of an Independent Observer in the supervision of the allocation of titles, monitoring and control of logging operations. It held that forest verification will greatly help the country to fulfill the above mentioned commitments.

2. Mandate and legal framework for forest control

According to article 75 of the August 29, 2002 Forest Code, "control, monitoring and evaluation of the implementation of management plans of FMUs are to be carried out by the forest administration". This article mandates the forest administration to control and monitor forests, and is completed by articles 76, 78 and 111 of the law. This study particularly lays emphasis on the supervisory powers of the local forest administration with regards to forests belonging to communities. Also, article 127 of the law authorises senior police officers under the Ministry of Justice and sworn forest administration personnel to investigate infractions. In the same vein, article 129 specifies that "forest inspectors, sworn in civil servants, officials and senior police officers can seize and detain" objects that were used in committing an offence.

Provisions of the forest Code, which legitimates the forest administration and its personnel, are completed by two decrees issued in 2006. The

latter set the modalities for forest management and logging. Concerning the issuing of logging titles, the forest administration shares the authority with an Interministerial Commission, which has the duty to deliberate on the conversion of old titles into FMUs, in accordance with the new legal provisions. At the organisational level, the Ministry of the environment, nature conservation, water and forests (MECNEF) has an Inspections and Control Board (DCI), which is part of the central administration. Within the DCI, there is a pool of forest controllers. This agency gets support for control missions from the Forest Management Board and from the *Service Permanent d'Inventaire et d'Aménagement* (SPIA) which provide information and the necessary tools to carry out inspections of forest activities. At the decentralised level of administration, each province in the country has a Control and Inspections Office (BCI), which manages district control offices. Lastly, at the bottom of the management structure, there are control branches in the territories.

Other administrations in the forest control chain in the DRC, with a precise mandate are: the Ministry of Justice that deals with infractions; the Ministry of the Interior that deals with security; the Ministry of Finance working through agencies like the Customs Office (OFIDA), the National and Administrative Incomes Head Office (DGRAD), and the Congolese Control Office (OCC), which inspects the quantity and quality of exports. Added to these are state agencies that carry out informal forest product control missions, namely the Direction des Migrations, the General Intelligence Office and the Military Intelligence Agency.

As a result of contracts signed with the forest administration, there are new actors on the forest control scene in the DRC.

- i. Remote sensing and GIS monitoring of logging activities: an agreement was signed between the MECNEF, Global Forest Watch (GFW) and WRI in October 2006. The agreement covers the monitoring of logging through GIS and remote sensing, to create database of maps and statistics and also training of MECNEF staff. This latter aspect is already effective. Inventory and forest management officials affirm they have the necessary equipment for up to date mapping.
- ii. Independent forest monitoring and control: Independent Observation (IO) of forest monitoring and control by a third party does not exist in the DRC at the moment. However, the British NGO, Global Witness carried out a feasibility study on IO in August and September 2007, within the framework of a test support to forest control in the DRC, funded by the EU. According to the study (Global Witness, 2007) on third party support to forest monitoring and control, field observations should be improved through funding, by any willing donor, of a second 4 month pilot phase. In fact, the introduction of an IO in the DRC mainly depends on international donors, as the Congolese government provided for the integration of an IO since 14th April 2007 in its Law².

3. Organisation of forest control and verification

Forest control and verification is carried out at central administration level by the Inspections and Control Board (DCI). This control and verification should build on preliminary information provided by the Forest Management Administration (DGF) and the *Service Permanent d'Inventaire et d'Aménagement* (SPIA). At the level of branches, Control and Inspections Office (BCI) and its units carry out control and verification in the districts and territories. These MECNEF administrative units are authorized to verify the legality of forest-related operations in the entire forest sector. Precisely, this entails analyzing technical and administrative documents on logging activities, verification of logging permits, forest titles, quarterly reports, payment of taxes, respect of boundaries and mapping, verifying felling operations, sawing, unloading, transportation, numbering and state seals. Also, controls are carried out to verify respect of the environment, social aspects relating to local development and the opening of roads.

A study on forest control in the DRC by Eba'a Atyi and Vundu Dia (2005) shows that between 2004 and 2005, DCI carried out 4 control missions, including 3 in Kinshasa and only one in a province (Bandundu). In 2006, after a training seminar on forest control by WWF- CARPO, a test control mission was carried out. Lastly, field control missions to logging sites were carried out during the Independent Observation feasibility study by Global Witness in August and September 2007, in the *Orientale* Province (north-eastern DRC) and in Bas-Congo Province (south-western DRC). During these control missions, 12 companies were visited. Controls carried out by provincial branches are not documented; consequently, it is not certain that the statistics from such missions are known to the central administration and the general public. However, BCIs carry out forest inspection alongside governorates and security services.

With regards to actual control, DCI inspectors carry out forest inspection following a method which consists in making documentation analysis, field missions, examinations and criminal statements of offence in the event of reported infractions (offences). This approach does not seem appropriate considering the realities of current logging activities: there is a need to take into account technological developments (Global Witness 2007). In fact, the team of inspectors, made up of 6 forest engineers and agronomists, 1 lawyer and 2 agents face a number of challenges. Besides the fact that their technical capabilities need to be updated, they do not have a clear operational budget. They lack technical equipment, sufficient human resources, uniforms and cars for field missions. Furthermore, they have difficulties interpreting and understanding legal and regulatory texts in force. In all the provinces, inspectors are estimated to be about 443 (Eba'a Atyi and Vundu Dia 2005). Another issue is the absence of a central forest information management system (SIGEF). In this context characterized by many weaknesses, inspectors on the ground and reports by

Global Witness (2007) confirm that the situation encourages forest crimes.

Lastly, though sustainable management of forest blocks is still a medium or long term objective in the DRC, some companies have started carrying out audits of the legality of their products, without approved management plans. One company has already obtained a certificate of legality, while another recently started a pre-audit.

4. The verification system: an interim assessment

The verification system in the DRC is based on provisions of the 2002 Forest Code and its application decrees. However, the legal and regulatory framework is little known by the forest administration and other actors operating in the sector (Global Witness 2007). Along the same line, the verification system is mainly the business of the Inspections and Control Board (DCI) and its various branches spread around the country, coupled by many other administrative structures with official mandates, like justice, OFIDA, DGRAD and OCC. Recently, as said, the verification system is also getting technical support from Global Forest Watch (GFW), for the monitoring of logging activities through mapping equipment and remote sensing. However, one notes the constant interference in the verification system of administrative bodies that have a military and/or police role, but with no established mandate. This aspect of interference is as a result of the absence of the definition of clear roles for some actors, which is currently observed in the timber sector. Indeed, some actors are taking advantage of the unclear situation..

In the absence of documents providing reliable statistics, it is difficult to assess the impacts of the country's forest control model. Nevertheless, the performance of the forest verification system can be partially evaluated through sporadic field missions. From this point of view, one can state that there is no organised and systematic control of forest operations in the DRC. The few inspection missions that took place recently were instigated either by WWF, or by Global Witness. The theoretical organisational diagram of the system, characterized by the intervention of many separate administrative structures, is vague. In fact, this disorganised setup results in duplication and overlapping roles in the system, which generates institutional conflicts and inefficiency. This chaotic institutional situation is in part due to the involvement of police/military officials in forest verification, which is contrary to provisions of the 2002 forest law.

The factors that explain the current state of forest verification in the DRC can be traced back to the history of the country, which has been marred by conflicts. In addition, issues such as the lack of human resources, finances, equipment and logistics, regulatory texts, a national strategy and the centralisation of information management system, make control more difficult. Consequently, the objectives of the country for the forest sector are far from being achieved, because there are too many dysfunctions in control operations. Actually, forest verification in the DRC is the reflection

of the macrostructure of the State. In other words, the break down period of state institutions in the country (Weiss 1995), was followed by a gradual restoration of the State's authority in the early 2000s and of its administrative branches. The forest verification system was also affected by the crisis situation. It is almost inexistent in the field, and its reconstruction began only recently. As such, it is difficult to guarantee the traceability of timber from the Democratic Republic of Congo, at least in the short and medium term. In fact, it is hoped that support of organizations and programs such as WWF, Global Forest Watch (GFW) and others may speed up its restoration in a near future.

It is also worth noting that there has been the emergence of a dynamic civil society in the DRC, mainly in the form of NGOs such as the *Avocat Vert* or the *Ligue Nationale des Pygmées du Congo* that carry out advocacy on the situation of local communities in relation with the exploitation of natural resources and forest governance. However, they do not have adequate expertise on logging monitoring and control methods.

Conclusion

An effective and functional forest verification is quasi non-existent in the DRC. This is mainly revealed by the sporadic presence of DCI inspectors in the field. Legally speaking, though the 2002 Forest Code provides a legal framework for the system, it is necessary to supplement it with legal texts and a fitting national forest control policy. Moreover, forest control in the DRC needs human, financial and material resources that match the dimension of the forest biodiversity richness of the country. At the organisational level, there is an urgent need to clarify the roles of each forest management mandated administrative body, to avoid institutional overlapping. On the other hand, interferences in forest operations by the police/military should be limited or completely stopped.

To improve forest verification in the DRC, there is need to develop and institutionalize an inspection system based on methods, procedures and tools that make it possible to guarantee the legality of timber from forests to the export market. The main lesson that can be drawn from the evaluation of the logging verification system is that the control model can not be separated from the states administrative organs. This case study argues DRC's forest verification system is reflective of other administrative institutions in the country, characterised by fragility as a result of decadence during the conflict period.

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Notes

1 E.g. see the decision of the International Court of Justice (ICJ) in *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Rwanda, DRC v. Uganda 2005)*. In the latter case, the ICJ proved and condemned illegal exploitation of natural resources in the Congo by irregular forces from Uganda.

2 Comment by DRC Minister of Environment and Forests during discussions with the World Bank on 14th April 2007, Washington DC

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