



**Legal Review and Conversion of Old Forest Titles to New Concessions in
the Democratic Republic of Congo
Overview of the World Resources Institute Involvement**

Summary

The World Resources Institute (WRI) is acting as an independent observer and providing technical advice to the government of the Democratic Republic of Congo in its process to conduct a legal review of existing forest titles and to convert old eligible forest titles to new concessions. It is a complex process with distinct challenges and opportunities. The following provides an overview of the conversion process and WRI's involvement. For reference purposes, an unofficial English translation of Presidential Decree 50/116 is provided as Annex 1, and the full decree in French is included as Annex 2.

Background

The Democratic Republic of the Congo (DRC) is rebuilding after more than a decade of civil war and 30 years of extremely poor governance. During this time, the industrial forest sector has seen a downward trend in production due to civil unrest and a lack of security. Government management and oversight of the sector diminished significantly and the industrial forest sector contributed little to poverty alleviation.

In an effort to move the forest sector towards more sustainable management of forest resources, the DRC government developed a Forest Code in 2002, to replace 1949 colonial rules and regulations.

The major innovations of the Forest Code can be summarized as follows:

- Mandatory implementation of sustainable management plans including the protection of biodiversity in all production forests (art. 71, 99, 100);
- Preservation in all production forests of traditional users' rights, including those of indigenous people (art. 44);
- Transferal of 40% of forest area fees to decentralized administrative entities ("*Provinces*" and "*Territoires*", art. 122);
- Mandatory in-kind contributions by forest companies to rural development in neighboring villages ("*Cahiers des Charges*", art. 89);
- Direct management of forest by local communities ("*concessions des communautés locales*", art. 22);
- Establishment of national and provincial forest consultative councils; various types of protected areas should total 15% of the national territory (art. 14);
- Allocation of future logging rights through a transparent competitive bidding process following consultations with local communities (art. 83, 15, 84); and
- Provisions for new non-extractive uses of forests and the valorization of environmental services (art. 72, 87, 96, 119).

The Forest Code seeks to improve forest sector management and improve its contribution to sustainable development, by providing the framework for sustainable forest management. To put this framework into practice, the new Forest Code requires that all old forest titles be converted to new forest concession agreements. The forest concession will replace all prior forms of agreements such as 'letters of intent' and 'supply guarantees'. In May 2002, the government of the DRC also imposed a moratorium on the issuance of new concessions (Arrêté Ministeriel No. CAB/MIN/AF.F.E.T/195/MAS/02) until new rules for the awarding of forest concessions had been published. Unfortunately, since that time, new logging titles have been awarded or exchanged in contravention of the moratorium.

To support the forest title legal review and conversion process, the government of the DRC identified the need for an independent monitor and technical advisor. In June 2004, with funding from the World Bank, the DRC government made a request for proposals to procure this support. The objectives of the project fall within WRI's institutional objectives set in its Forest Landscapes objectives. These objectives include improvements in the sustainability and legality of forest landscape management by harnessing the potential of new technology and stakeholder collaboration to identify and eliminate the barriers to good governance. A joint venture between the World Resources Institute and Agreco¹ was established, was successful in the competitive bidding process, and was awarded the contract in September 2005.

Subsequently in October 2005, the government of DRC issued a presidential decree (PD 50/116 – see Annex 1) that prescribed:

- The criteria for evaluating conversion requests;
- The criteria for forest titles that are eligible for conversion;
- The time frame for the conversion process;
- The decision-making mechanisms within the process;
- The composition of the decision-making bodies;
- Consultation mechanisms for the process;
- Three elements (including the conversion process) that will trigger the lifting of the moratorium² on issuance of new forest concessions in DRC.

The conversion process in brief

The objective of the conversion process, required under the general objectives of the Forest Code of the Democratic Republic of the Congo, is to conduct a legal review of the old forest titles and convert the valid ones into forest concessions. In Article 155, the Forest Code anticipates the implementation of a new type of forestry title in DRC, 'the forestry concession' that will replace all other forestry titles (including letters of intent and wood supply guarantees).

The verification process of the requests for conversion submitted by titles holders will be based on the following criteria:

- a. The conformity of the documents submitted to the documentation required (Article 2);
- b. The legal validity of the conventions (titles) under which the conversion is requested and of their eventual transfer to a third party (Article 5);
- c. Respect of the legal, environmental, social and fiscal obligations attached to the existing titles, by the title holder or by all other third parties to which logging rights may have been transferred (Article 5);
- d. The existence and maintenance of a wood processing plant, in conformity with the terms of the wood supply guarantee and/or letter of intent, exception made to well-documented cases of force majeure (Article 5);
- e. The analysis of the proposed business plan (Article 5).

Eligible titles will be evaluated for conversion by a Technical Working Group (TWG). The TWG has four months to make its evaluation. The TWG is composed of representatives from the SPIAF (Service Permanent d'Inventaire et d'Aménagement Forestier - under the Ministère de l'Environnement, Conservation de la Nature, Eaux et Forêts, MECNEF), the DGF (Direction de la Gestion Forestière – under MECNEF) and the DGRAD (Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de la Participation – under the Ministère des Finances).

Those forest titles that qualify will be converted to a forest concession contract that adheres to the new law and temporary boundaries will be set. These boundaries will only be finalized after government

1 Agreco is a private belgo-italian consulting company that specializes in natural resource management and community development projects.

2 The logging moratorium was established on May 14, 2002, suspending the granting of forestry concessions.

approval of the Sustainable Forest Management Plan to be completed by the forest concessionaires within four years of the conversion.

Approvals come from the Inter-Ministerial Commission (IMC), established by the PD (for more detail on the Committee's composition and role see Articles 9,10 and 11). The Committee reviews the results of the TWG evaluation, the report of the independent observer to the process (WRI-Agreco – more details on role below) and makes decisions to approve or reject proposed forest concession contracts.

Note: No new forested areas will be allocated during the conversion process.

Expected results of the process

- Illegally awarded titles (during the moratorium) should be cancelled, reducing the current number of concessions;
- The area of many legal old titles should be reduced during the conversion process; and
- The converted titles will be governed by the new Forest Code which notably requires the preparation and approval of a sustainable forest management plan, to be developed through public consultations.

How does the World Resources Institute contribute to this process?

WRI's involvement in the conversion process is in the context of its Forest Landscapes Objective in Central Africa, which aims to increase the amount of forest area under more sustainable management in the Congo Basin. Specifically WRI is participating in this process:

- As a partner with Agreco, in which WRI has a contract with specific terms of reference that includes providing technical assistance and acting as an independent observer; and
- As an independent research institution committed to encouraging transparency, accountability and good forest governance in Central Africa. WRI is actively seeking additional ways to support the management of DRC forests in a manner consistent with protecting community and indigenous rights, good environmental stewardship and ensuring equitable distribution of environmental services benefits.

What is WRI-Agreco's role in the conversion process?

WRI-Agreco's role, as per Articles 6 and 10 of the PD, is to provide technical support to the Technical Working Group (TWG) and act as an independent, neutral observer. Specifically, WRI-Agreco will:

- Act as the independent observer by monitoring the integrity of the process, recording progress of the conversion process and making public reports on the process;
- Build capacity in the use of GIS and database development to aid in the evaluation of conversion requests;
- Provide technical support to the TWG to produce a guide to the conversion process;
- Provide technical support to the TWG to conduct the evaluation of the requests for conversion and subsequent field verifications of the business plans (*plan de relance*) submitted for evaluation;
- Provide material support such as computer/office equipment/refurbishment of offices, etc., to support this process and future efforts; and
- Provide technical support in the development of communication and public consultation strategies to accompany the conversion process.

Which activities have not had WRI-Agreco involvement?

- Neither WRI nor Agreco have had influence on the design of the conversion process as laid out in Presidential Decree 50/116;
- WRI is not making any decisions or recommendations with regards to which old forest titles should be converted; and
- WRI has not yet had any role in setting policy in the DRC forestry sector.

What impacts does WRI-Agreco expect to have from its role?

- Increase the transparency of the conversion process;
- Improve governance;
- Build capacity of the institutions involved to conduct further work;
- Draw attention to areas in the conversion process that might need improvement; and
- Draw attention to areas where resources are needed to ensure that appropriate due diligence is performed in regard to local and indigenous peoples issues and conservation issues.

What challenges/risks exist with the conversion process?

An overarching challenge for the conversion process is to balance the need to act expeditiously in regard to canceling illegally awarded forest titles and bringing eligible existing forestry sector practices under the requirements of the new Forest Code with the need to first invest in building capacity within the government and civil society sector. Specific challenges/risks include:

1. Evaluation results could be ignored

- The Inter-Ministerial Commission (IMC) may ultimately choose to ignore the results of the evaluation of the conversion requests done by the TWG and convert titles that should not be eligible under the criteria laid out in the presidential decree. This would however be in contravention of Article 11 of the PD; and
- The transparency provided by WRI-Agreco in their role as independent observer will likely limit this, but cannot guarantee that this situation will not occur.

2. The resolution of social issues may be deferred

While the forestry code confirms that traditional users' rights should be maintained in all production forests (Article 44 of the Code), there remain several risks pertinent to the conversion process:

- The timetable for the conversion process is short and does not allow for the full identification of all possible conflicts or issues, even less to assist in the resolution of those conflicts;
- There is very limited information and resources available to identify potential community and indigenous land use and rights issues ahead of the conversion;
- Civil society groups are not well informed and have very limited capacity and resources to engage effectively in the conversion process; and
- As a result, the resolution of some social issues may be deferred to new title holders through the creation of their sustainable business plans – an obligation that forestry companies must complete within four years before being awarded full title.

3. The technical and management capacity within the government might not be adequate to support the evaluation of conversion requests and related Business Plans (Plans de relance, Article 7)

- The short time frame of the overall process (further shortened by the PD) will not allow the full deployment of the project-related GIS capacity. It will hence not be possible to have up-to-date, fully geo-referenced and validated concessions maps to accompany the forest concession contracts to be signed for those titles that are deemed valid for conversion;
- The staff of the TWG has limited capabilities to properly assess all of the technical, financial, business, social and environmental issues covered by the conversion request, notably as regards to the Business Plan; and
- The members of the IMC may not have the knowledge or capabilities to properly assess all of the legal, technical, financial, business, social and environmental issues covered by the conversion requests.

4. Risks subsequent to the completion of the conversion process

- With the issuance of the presidential decree, the conversion process became one of three elements that would trigger the lifting of the moratorium on the issuance of new forest concessions (the conversion process only pertains to existing forest titles). It is WRI's view that the moratorium should not be lifted until a) sufficient government capacity exists to properly assess, evaluate,

approve and monitor the implementation of the required Sustainable Forest Management Plans under the new Forest Code and control illegal logging; and b) some minimum forest zoning is completed;

- There may not be sufficient capacity to properly implement the competitive bidding process for the allocation of new forest concessions under the new Forestry Code; and
- There may not be sufficient capacity within the forest administration to properly assess, approve and monitor sustainable forest management plans as required under the Forest Code.

What is WRI doing to strengthen safeguards that seek to protect community and indigenous rights in the conversion process?

1. WRI is taking specific steps that are currently in process or are planned

WRI-Agreco will:

- Design a public consultation strategy and methodology to do a preliminary screening and assessment of social issues (to be incorporated in the guide for the evaluation of the conversion requests);
- Design a communication strategy, and support its implementation by the government of DRC; and
- Conduct its own field verifications of the business plans, by accompanying the TWG in their field verifications, of the business plans (plans de relance) during which it will try to identify the most important social/environmental problems through meetings with local authorities, civil society representatives and interviews with company staff and the local population. These plans are an integral part of the request for conversion (see Articles 2, 4 and 7).

2. WRI has made recommendations to the World Bank as well as other international donors

WRI has recommended that additional resources be invested in safeguarding the rights of indigenous and local people. Specifically, WRI recommended additional resources to:

- Reinforce the initial screening efforts by WRI-Agreco to identify and address any competing indigenous/community claims to existing forest titles; and
- Increase the participation of indigenous, community and environmental groups in the IMC by allowing the addition of local people representatives to the Commission (under the PD only one representative of the local populations will be acting as a member in the IMC) and by providing financial support for their out-of-pocket costs of their participation.

Our concerns have been acknowledged and shared, resulting in commitments from the World Bank and other donors responding to these recommendations with some specific measures to address these issues.

3. WRI has made recommendations to the government of DRC

WRI has also recommended to the government of DRC that if there are conflicts or serious problems with the social aspects attached to the titles that can not be resolved within the four month period prescribed in the decree for the evaluation of the conversion requests, then the process of conversion of the concession area should be suspended until these issues are resolved. If the conflict is limited to a small geographic area of the concession, then in certain cases it may be possible to proceed with the conversion, but exploitation in the area that is in dispute must be prohibited until the dispute has been resolved.

What additional support is needed?

There is a significant amount of work needed to improve the management of DRC's forests and ensure that the benefits of the forest sector are shared fairly among the citizens of the DRC. Specifically in regard to the conversion process, international and national NGOs are needed to:

- Disseminate information about the conversion and sustainable forest management (SFM) process to local communities in DRC, to ensure that they are aware of the process and that their voices are heard;

- Organize and select representatives of local populations to be more actively involved in the process;
- Participate in the negotiation and resolution of conflicts within potentially viable forest concessions;
- Keep the spotlight on the conversion process and SFM development process to reduce the likelihood of inappropriate decision-making; and
- Play an active role supporting local community participation in the development of SFM plans.

The World Resources Institute is committed to seeking the best possible outcome from this process and is committed to working in the Democratic of Congo for the foreseeable future in order to support the creation of an equitable and sustainable forest sector that balances the needs of people and ecosystems.

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