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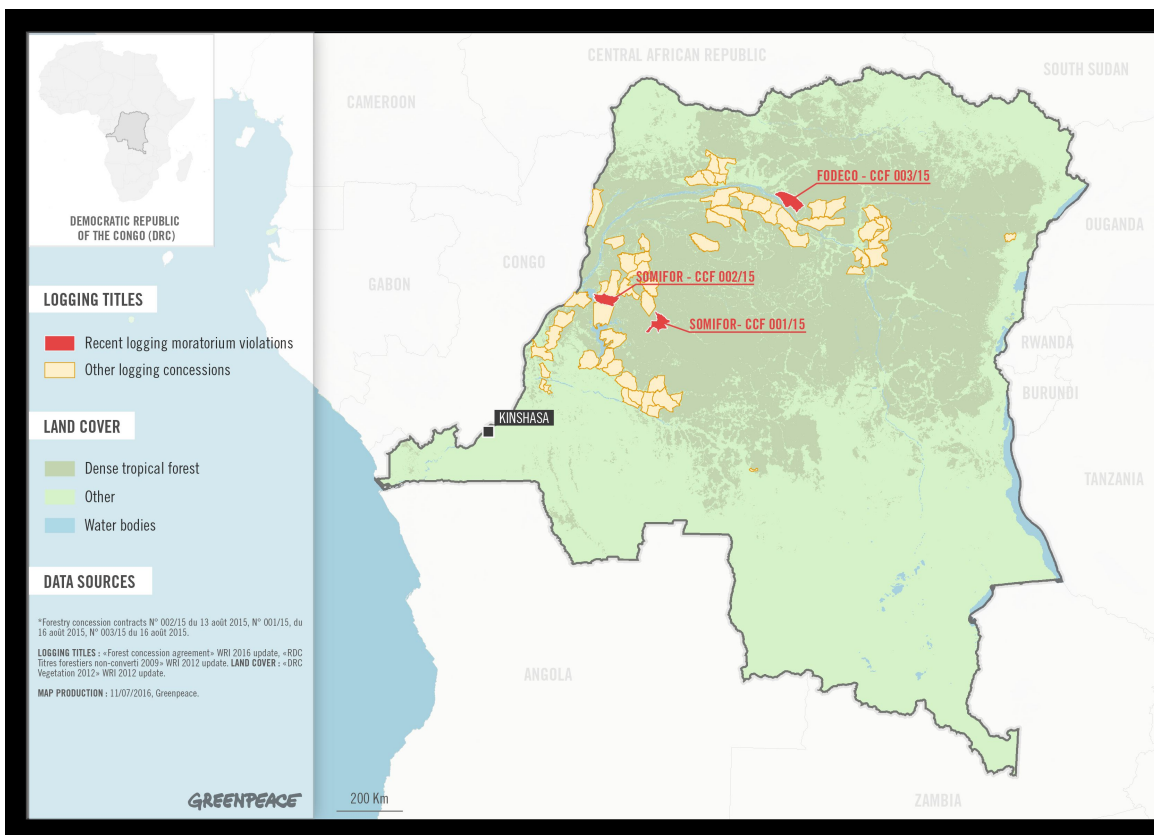
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The background of the entire image is a dense, lush green forest. A large, thick log lies horizontally across the center of the frame, partially covered by various green plants and vines. The log's surface is rough and textured, showing signs of being cut. The surrounding vegetation is vibrant and diverse, with many different leaf shapes and sizes.

**How The DRC
Government Has
Secretly Breached
its Own Logging
Moratorium**

Three logging titles illegally awarded

In a snub to international donors, the DRC government has violated a moratorium on the allocation of new industrial logging concessions in place since 2002 [1]. On the 13th and 16th of August 2015, then Minister of Environment and Sustainable Development Bienvenu Liyota Ndjoli awarded three concessions covering a surface of almost 650,000 ha. Two of them were allocated to Société La Millénaire Forestière SARL (SOMIFOR) : one of 186,602 ha in Equateur Province, the second of 201,564 ha in Tshuapa province. The third one, of 260,041 ha, was granted to the company La Forestière pour le Développement du Congo SARL (FODECO) in Tsopho Province [2]. Both of these companies have their headquarters registered at the same address in Limete [3], Kinshasa, and were created by Chinese investors [4].



On 2nd March 2016 a coalition of environmental and anti-corruption organizations called on the DRC government to maintain the moratorium, following a 30th January announcement by current Environment Minister Robert Bopolu Mbongeza that “measures are underway” to lift it [5]. DRC’s moratorium was established by ministerial order in May 2002, and its purpose was to prevent a post-war free-for-all in the country’s huge forests. With World Bank guidance and financial support, the country was to transform logging into a sustainable industry generating billions of dollars of revenues and tens of thousands of jobs, while conserving the forest [6].

According to the coalition, lifting the moratorium and expanding industrial logging would greatly exacerbate the existing social and environmental problems caused by the logging sector. The Minister must have been aware at the time of his announcement that at least three concessions had been illegally awarded the year before.

A Letter of Intent for an ambitious USD 200 million forest conservation program, signed last 22nd April by the DRC and the Central African Forest Initiative (CAFI) [7], specified that the lifting of the moratorium will depend upon the conditions defined by law [8]. These include the preparation, in consultation with civil society, of a three-year rolling plan of concession allocations [9]. The DRC government has done nothing yet to achieve this.

Disingenuousness or poor due diligence

It is unclear whether the World Bank, a principal financier of the DRC's forestry sector, was aware of the moratorium violations. In a presentation given in Kinshasa last March, a World Bank environmental specialist speculated that the first titles to be awarded after a – hypothetical – lifting of the moratorium might be those previously surrendered to the State [10]. SOMIFOR's and FODECO's concessions are part of 15 such titles [11].

Old titles, new concessions

The titles in question were returned to the State and officially cancelled [12]. With the re-awarding of these areas, the total surface area of concessions under allocation increased by nearly 650,000 ha over the area announced by the Ministry on 26th August 2014, in the note that was officially ending the process of conversion of existing titles into the legal concessions provided for by DRC's 2002 Forestry Code [13].

The award to SOMIFOR and FODECO of new logging concessions covering the areas of cancelled logging titles is a flagrant violation of the moratorium on the allocation of new industrial logging titles, just as flagrant as if these areas were previously unallocated.

Moreover, according to the Forestry Code, concessions award is by public tender. Exceptionally, and conditional on a motivation and authorization by the Minister, it can be done directly between the parties. We are not aware of either a public tender or a motivated authorization of the Minister [14]. The SOMIFOR and FODECO awards also appear to have violated a May 2011 decree requiring publication of natural resource-extraction contracts within 60 days of contract signature.

SOMIFOR's and FODECO's contracts were signed less than two months after SOMIFOR received authorization to conduct a forest prospection and inventory of the former GA 027/03 from the interim Governor of Equateur Province, Sébastien Impeto Pengo [15]. Curiously, SOMIFOR's and FODECO's contracts indicate that the firms attest having made a USD 50,000 security deposit at the Banque

Gabonaise et Française Internationale (BGFI) in Kinshasa [16]. All of DRC's other logging concessionaires appear to have been explicitly exempted from this legal requirement [17], for unknown reasons.

In March and April 2016, a series of meetings were organized in the concession areas, in order to identify and "sensitise" the villages and negotiate and sign social clauses [18]. According to the reports of these meetings, a MECNDD-expert coming from Kinshasa, and private contractors from the Congolese NGO Conseil pour la Défense Environnementale par la Légalité et la Traçabilité (CODELT) attended several of them [19]. The fact that a MECNDD-expert participated is a clear signal that the current Minister must have been aware that at least these three concessions had been illegally awarded the year before.

On the 9th of June 2016, Greenpeace wrote to the Minister about these flagrant violations of the moratorium and asked for clarification [20]. We also requested a copy of the forest concession contracts. At the time of publishing this briefing, however, we have received no response.



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CAFI

DRC's secret moratorium violations make a mockery of two specific clauses of the CAFI Letter of Intent. The document insists that:

"The lifting of the Moratorium will depend upon the legal conditions defined in the Presidential Decree n° 05/116 dated 24 October 2005. The technical modalities for lifting the moratorium will integrate REDD+ and sustainable development objectives -including with regard to the geographic programming of future allocations at the three year horizon defined through a consultative process and in accordance with targeted land use planning at the relevant national and/or

provincial level identifying the priority development zones of the forestry sector according ecological, geographic, economic, social and financial criteria, and taking into account climate change” [21]

No such process has even begun.

The donors go on to stipulate that:

“In the context of the allocation of new industrial forest concessions, procedures planned in the Forest Code regarding (i) tendering, (ii) preliminary public inquiry and (iii) negotiations of the social clauses to the benefit of communities in the context of the specifications, will be implemented ensuring particularly high quality and transparency standards - including a declaration by representatives of neighboring communities notifying of their agreement in principle to initiate negotiations on the social clauses [...].” [underlining by us] [22]

“Transparency standards” regarding SOMIFOR’s and FODECO’s negotiations with local communities appear to have resembled the transparency standards pertaining to the award of their contracts: i.e. there were none. The first moment local communities seem to have been contacted was during the meetings in March and April 2016, long after the contracts had already been signed.

Moratorium background

DRC’s moratorium on the award of new industrial logging permits was first established by ministerial order in May 2002 [23]. In the weeks following its signature, the moratorium was violated with the allocation of scores of illegal titles [24]. However, a Presidential Decree reinforcing the 2002 order was signed in 2005 and a legal review of all existing industrial titles carried out [25]. Unfortunately, 15 illegal titles cancelled in 2009 were reinstated by the Ministry in 2011 [26]. In the end, the legal review resulted in the cancellation of only dormant titles, entrenching the status quo ante. In September 2014, DRC had around 10.7 million hectares of logging concessions [27].

Demands to the DRC Government:

- Immediately cancel SOMIFOR's and FODECO's concessions and determine whether there have been any further breaches of the moratorium and, if so, cancel them as well.
- Order an investigation into these cases, establish the responsibilities of all involved and sanction them according to the law, ensuring accountability of all officials associated with or involved in concealing the violation.
- Maintain the moratorium on the allocation of new concessions as long as the conditions defined by law are not met, including the three-year allocation plan.
- Align the programming of future allocations with other land use planning processes.
- Cancel all concessions for which management plans have not been approved within five years of contract signature as required by the law.

Notes

[1] République Démocratique du Congo. Ministère des Affaires foncières, Environnement et Tourisme. 2002. Arrêté ministériel n°CAB/MIN/AF.F-E.T./194/MAS/02 du 14 mai 2002 portant suspension de l'octroi des allocations forestières.

[2] République Démocratique du Congo. Ministère de l'Environnement et du Développement Durable. 2015. Contrat de concession forestière n° 002/15 du 13 août 2015 issu de la reprise par l'État de la forêt autrefois couverte par la garantie d'approvisionnement n° 027/CAB/MIN/AFF-ET/03 du 04/04/2003 non convertie. République Démocratique du Congo. Ministère de l'Environnement et du Développement Durable. 2015. Contrat de concession n°001/15 du 16 août 2015 issu de la reprise par l'État de la forêt autrefois attribuée en vertu du Contrat de concession forestière n°044/11 du 24 /10/2011 résilié.

République Démocratique du Congo. Ministère de l'Environnement et du Développement Durable. 2015. Contrat de concession forestière n° 003/15 du 16 août 2015 issu de la reprise par l'État de la forêt autrefois attribuée en vertu du Contrat de concession forestière n°041/11 du 24 /10/2011 résilié.

Kinshasa-based SOMIFOR and FODECO appear to be recently-established majority Chinese-owned firms.

[3] Ibid.

[4] M'opandu, Albert Pierre. 2016. Compte rendu de la réunion de négociation de la clause sociale du cahier des charges entre la FODECO et la communauté locale de MOBANGO (Moliele. Mokula et Mandjo) et d'Ikala tenue 23 au 24 mars 2016 à Yawinawina.

[5] Rainforest Foundation UK, et al. 2016. Civil Society briefing on the threat of lifting the logging moratorium in DRC. Available at:

<http://www.greenpeace.org/africa/Global/africa/publications/forests/2016/2016%2003%2001%20Policy%20Brief%20on%20DRC%20logging%20moratorium%20FINAL%20ENG.pdf>

”Address of Monsieur le Ministre de l'Environnement, Conservation de la nature et Développement durable”, at the 2016 New Year's celebration with MECNDD staff, Kinshasa, 30th January 2016, available at:

<http://www.greenpeace.org/africa/Global/africa/French/Forets/publications/Minister%20speech%2030%20January%202016.pdf>

[6] The World Bank. 2002. République Démocratique du Congo. Secteur forestier. Mission de prise de contact (17 février – 7 mars 2002). Aide mémoire.

[7] According to CAFI's website, « CAFI is a coalition of willing donors together with Central African Partner Countries and Brazil as South-South partner – working in a collaborative partnership with as a goal to recognize and preserve the value of the forests in the region to mitigate climate change, reduce poverty, and contribute to sustainable development. » <http://www.cafi.org/>

[8] Central African Forest Initiative (CAFI) and Democratic Republic of the Congo. 2016. Letter of Intent for the establishment of a partnership between the Government of the Democratic Republic of the Congo (DRC) and the Central African Forest Initiative (CAFI) on the implementation of the national REDD+ framework strategy and investment plan of the DRC. Available at: https://www.regjeringen.no/globalassets/departementene/kld/kos/drc/letterofintent_drc_cafi.pdf.

[9] Art. 23 in République Démocratique du Congo. Présidence de la République. 2005. Décret n° 05/116 du 24 octobre 2005 fixant les modalités de conversion des anciens titres forestiers en contrats de concession forestière et portant extension du moratoire en matière d'octroi des titres d'exploitation forestière.

[10] Lee, J. & Lescuyer, G. 2016. La gestion d'une ressource précieuse : Des notes politiques pour améliorer la durabilité la production forestière de la RDC. («Le moratoire: Lever ou non? [...] Commencer par concessions rétrocedées?»)

[11] République Démocratique du Congo. Ministère de l'Environnement, Conservation de la Nature et Tourisme. 2014. Note technique [n°2056/CAB/MIN/ECN-T/05/11/BNME/2014] à l'attention de son Excellence Monsieur le Premier Ministre, chef du gouvernement. Concerne: Clôture du processus de conversion des anciens titres forestiers en contrats de concession forestière.

[12] Ibid.

Société de développement forestier (Sodefor). 2013. Letter to Ministre de l'Environnement, Conservation de la nature, et Tourisme (MECNT) with subject: « Rétrocession des Garanties d'Approvisionnement et Dispense de la Taxe de Superficie »

République Démocratique du Congo. Ministère de l'Environnement, Conservation de la Nature et Tourisme. 2014. Arrêté ministériel n°030/CAB/MIN/ECN-T/05/27/BNME/2014 du 28 avril 2014 portant résiliation de la convention n°027/003 du 4 avril 2003 portant octroi d'une garantie d'approvisionnement en matière ligneuse attribuée à la société de développement [sic] forestier (Sodefor). It thus differs from the several contracts awarded in 2014 to companies having acquired concessions transferred to them by previous title holders. Cf. for example:

République Démocratique du Congo. Ministère de l'Environnement, Conservation de la Nature et Tourisme. Contrat de Concession Forestière N° 057/14 du 10 juillet 2014 issue de la Conversion de la Garantie d'approvisionnement n°007/CAB/MIN/AFF-ET/03 du 25/03/2003 jugée convertible suivant la notification n°161/CAB/MIN/ECN-T/15/JEB/2009 du 21 janvier 2009

[13] République Démocratique du Congo. Ministère de l'Environnement, Conservation de la Nature et Tourisme. 2014. op. cit.

[14] Art. 83 & art. 86 in République Démocratique du Congo. 2002. Loi N° 011/2002 du 29 août 2002 portant Code Forestier.

[15] République Démocratique du Congo. Province de l'Equateur. Le Gouverneur. 2015. Arrêté provincial N°2010/059/CAB/PROGOU/EQ/CJ/MB/2015 du 18 juin 2015 accordant l'autorisation d'inventaire forestier à la Société la Millénaire Forestière, "SOMIFOR" SARL sur l'ancienne Garantie d'Approvisionnement N°27/11 dans le territoire de Bikoro. Note the mistaken reference to GA 027/03 as GA "027/11." The authorization appears to have been issued less than three weeks after it was requested. ("Requête n°002/SMF/DRC/03/015 du 1er juin 2015" mentioned in Ibid.).

[16] République Démocratique du Congo. Ministère de l'Environnement et du Développement Durable. 2015. op. cit.

[17] All 57 other current forestry concession contracts state in Art. 18 that the concessionaire is not concerned by the dispositions of Art. 82 of the Forestry Code regarding the security deposit. For an example see: République Démocratique du Congo. Ministère de l'Environnement, Conservation de la Nature et Tourisme. 2014. Contrat de Concession Forestière N° 056/14 du 2 Juillet 2014 issue de la Conversion de la Garantie d'approvisionnement n° 46/CAB/ECN-EF/04 du 26/11/2004 jugée convertible suivant la notification n° 4834/CAB/MIN/ECN-T/15/JEB/2008 du 06 octobre 2008. Available at:

<http://www.medd.gouv.cd/v2/index.php/mecnt3/textes-legaux/hygiene-et-securite-publiques?download=53:contrats>

[18] Ministère de l'Environnement, Conservation de la Nature et Développement Durable. 2016. Accord constituant la clause sociale du cahier des charges du contrat de concession forestière N° 001/15 entre la Société la Millénaire Forestière SARL "SOMIFOR SARL" et la communauté locale et le peuple autochtone du groupement Ntomba.

s.a. 2016. Accord constituant la clause sociale du cahier des charges du contrat de concession forestière SOMIFOR 02/15, 2016.

s.a. 2016. Accord constituant la clause sociale du cahier des charges du contrat de concession forestière: titre FODECO 003/15: AAC 1, 2, 3&4 Moliele, Mondja , Mokula,

[19] s.a. 2016. Accord constituant la clause sociale du cahier des charges du contrat de concession forestière: titre FODECO 003/15: AAC 1, 2, 3&4 Moliele, Mondja , Mokula,

M'opandu, Albert Pierre. 2016. Ibid.

s.a. 2016. Procès Verbal synthese de réunion publique de sensibilisation et de Choix des projets communautaires [18-30 mars 2016].

[20] Greenpeace. 2016. Letter to Monsieur le Ministre de l'Environnement, Conservation de la Nature et Développement Durable. Objet: Publication d'un rapport sur un cas de violation du moratoire. Kinshasa, 9 June 2016.

[21] Central African Forest Initiative (CAFI) and Democratic Republic of Congo. 2016. op. cit. p. 15.

[22] Ibid.

[23] République Démocratique du Congo. Ministère des Affaires foncières, Environnement et Tourisme. 2002. op. cit.

[24] Greenpeace International. 2008. Logging sector briefing for the Democratic Republic of Congo. DRC logging review: the carving up of the Congo continues. Available at:

<http://www.greenpeace.org/international/Global/international/planet-2/report/2008/10/DRC-logging-sector-briefing.pdf>

[25] République Démocratique du Congo. Présidence de la République. 2005. op. cit.

[26] République Démocratique du Congo. Ministère de l'Environnement, Conservation de la nature, et Tourisme (MECNT). 2011. Point de Presse du 29 janvier 2011 sur la Clôture du Processus de Conversion des Anciens Titres Forestiers et Perspectives dans le Secteur de l'Exploitation Forestière en RDC.

[27] République Démocratique du Congo. Ministère de l'Environnement, Conservation de la Nature et Tourisme. 2014. op. cit.

In South Africa:
293 Kent Avenue, Randburg,
South Africa

In the Democratic Republic of Congo:
9, avenue du Port, Commune de la
Gombe, Kinshasa,
République Démocratique du Congo

iafrica@greenpeace.org
www.greenpeaceafrica.org