



**global witness**

# Making the Forest Sector Transparent

## Annual Transparency Report

**Country:**

**Partner: Réseau Ressources Naturelles (RRN)**

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## Making the Forest Sector Transparent

*Making the Forest Sector Transparent* is a four-year programme supporting civil society groups in forest-rich countries to advocate for greater transparency and good governance. An important part of the programme is the production of annual report cards by independent NGO partners to monitor the forest sector in their countries. The number of NGO partners has increased year-on-year, starting in Cameroon, Ghana, Liberia and Peru in 2009, to including Ecuador in 2010 and Guatemala and the Democratic Republic of Congo (DRC) in 2011.

The 2011 Report Card consists of 20 key indicators on important provisions of the legal and regulatory framework that applies to the forest sector governance. The partners collected data between July 2011 and August 2011. Each indicator includes an 'objective' assessment of whether clear provisions exist and information on them is publicly available, resulting in a 'yes', 'partial', or 'no' overall. This is combined with a more 'subjective' assessment of whether there is evidence of change in the last year (where a report card was produced in 2010) and analysis of whether the provision enables transparent access to information and/or decision-making. Data collection was largely carried out through office-based research, for example by searching the websites of government institutions and other official sources of information, supplemented where appropriate by contacting key informants and requesting specific information. The data presented on each indicator is organised as shown in the Table below.

### Indicator assessment

Does it exist?	Is it available?	Indicator	
<b>Yes</b> – specific provision in current laws and norms that have been passed by state and applies to the forest sector	<b>Yes</b> – available to public from official sources (websites, publications, media)	Yes	
	<b>Partial</b> – some information provided but not complete (e.g. only parts of manuals)	Partial	
	<b>No</b> – although evidence that exists, it is not available (includes when only unofficial sources)	No	
<b>Partial</b> – process underway to develop it, but not yet established in law; or limited provision or relevance to forest sector	<b>Partial</b> – some information provided but not complete (e.g. only parts of manuals)	Yes	
	<b>Partial</b> – some information provided but not complete (e.g. only parts of manuals)	Partial	
	<b>No</b> – although evidence that exists, it is not available (includes when only unofficial sources)	No	
<b>No</b> – no current provision or plans to establish (even though needed)		No	
<b>Not applicable</b> - not relevant to the country-specific context		N/A	

Specific questions guided the determination of the existence and availability of the provisions for each indicator. In order to receive a 'yes', the provision needed to both exist in the legal and regulatory framework and information needs to be publicly available on it, whereas a 'partial' or 'no' indicator reflected that either one or the other criteria (or both) was partially or not met.

The change in the last year was assessed against the following scale:

-  Significantly Improved - major development such as new law or information system
-  Improved - steps forward such as initiatives with potential to improve transparency
-  No Change - no evidence of major change in the conditions for transparency
-  Worsened - steps backward such as activities taking place without transparent processes
-  Significantly Worsened - major deterioration such as termination of laws or systems

Specific information was provided on the full titles of the applicable laws or other norms, the names of the authorities or institutions responsible for them, the dates when they were passed, and the website or other official sources where they can be accessed.

For further information please go to [www.foresttransparency.info](http://www.foresttransparency.info).

## Freedom of Information Legislation

 Is there Freedom of Information legislation in the public domain?

Article 24 sub-paragraph 1 of the Constitution of the DRC of 18 February 2006 states that “All persons have the right to information”. However, there is still no particular law on access to public information. To date, the government has not shown any political will to move forward on this issue, even though civil society tabled a bill to the Senate before the general elections in November 2011. Since then, civil society stakeholders have opted to adapt the proposal to the “Model Bill for the Member States of the African Union on Access to Information”, drawn up under the auspices of the special rapporteur on freedom of expression and access to information in Africa. Civil society stakeholders, set up under the “Collectif 24” platform, have formed a roundtable to take the proposal to the National Assembly on this occasion. Collectif 24 held a two-day workshop in April 2012 to mobilise civil society around the right to information and to consolidate the Bill, which was immediately endorsed by a member of the National Assembly.

**Title:** Legislative proposal tabled to the Senate by civil society stakeholders on access to public information.

**Organisation:** Collectif 24, a civil society platform.

**Date:** April 2012

**Source:** <http://fr.allafrica.com/stories/201204240456.html>

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## National Forest Policy

 Is there a current national forest policy in the public domain?

The priority agenda drawn up by the World Bank in 2007 serves as a forestry policy document while awaiting the adoption of the one that is currently being prepared by the Ministry of the Environment, Conservation of Nature and Tourism (MECNT). The priority agenda describes the main themes on which the government of the DRC has been working on, as follows:

- # The cancellation of 25 million hectares of forest concessions that were invalid or expired in 2002.
- # A moratorium on open market allocations was implemented in May 2002 and confirmed by Presidential Decree in October 2005,
- # The reform of forest tax law.
- # The periodical publication of the list of forestry contracts and their tax status, to provide information to the general public on the management of the country’s natural resources.
- # A legal review of forest concessions with the participation of an independent consultant.
- # Recruitment of an independent observer to support forestry supervision work.
- # The preparation of the main texts to apply the Forest Code.

Since 2011, the FAO has worked on a forest policy draft involving the different stakeholders including civil society organisations. The document was not well received by the MECNT, which considers that the text as presented does not provide sufficient detail for a forest policy (the agreement with FAO was also not wide-ranging enough to cover the level of districts and territories). Although the draft forest policy document does integrate questions of forest governance and REDD+, it does not formulate clearly the future direction of the forest sector in the DRC. In general, the document is too vague. MECNT considers the draft to be a guidance paper rather than a policy in the true sense of the term.

**Title:** a. Forests in the Democratic Republic of the Congo following the conflict: Analysis of a priority agenda, CIFOR, commissioned by the World Bank, 2007  
b. Draft Document on forestry policy in the Democratic Republic of the Congo, Bill TCP/DRC/3203, with the support of the FAO

**Organisation:** a. CIFOR  
b. Ministry of the Environment, Conservation of Nature and Tourism

**Date:** a. November 2007  
b. November 2011

**Source:** a. [http://www.cifor.org/publications/pdf\\_files/Books/BCIFOR0701F.pdf](http://www.cifor.org/publications/pdf_files/Books/BCIFOR0701F.pdf)  
b. [http://www.rnrndc.org/IMG/pdf/Politique\\_forestiere\\_canevas\\_commente\\_par\\_la\\_societe\\_civile\\_fin\\_mai\\_2011.pdf](http://www.rnrndc.org/IMG/pdf/Politique_forestiere_canevas_commente_par_la_societe_civile_fin_mai_2011.pdf)

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### **Codified Forest Law and Supporting Norms**

 Is there a codified forest law with supporting norms to fully implement it?

There is a Forest Code and 37 regulatory measures of the 45 initially envisaged, plus around 20 operational guides for forestry management, but the lack of measures to apply this framework at the provincial and local levels means that there are always gaps or even contradictions in its application at different administrative levels. Certain supporting measures are also lacking at national level, such as the Decree on Local Community Forests. A review of the Forest Code, some ten years after its enactment in 2002, has become a necessity for initiatives such as REDD+. Furthermore, there are several contradictions between this code and legislation on oil and gas, water, mining, and agriculture.

Legal texts are rarely available at grassroots level, and they are not translated into local languages by the authorities; only by civil society organisations. At provincial and local levels, certain official documents, including the Forest Code, are often unavailable, even to civil servants.

Local authorities have a major role to play in terms of forest sector regulation, but due to conflicts of interest they are not produced at a provincial level so that it is compatible with national regulations. The weak capacity of the forest administration and the low level of financial resources allocated to the sector has propagated poor governance in the sector.

**Title:** Green Codes: Legal texts of the Democratic Republic of the Congo on issues related to the environment and natural resources. These include:

- Law no.011/2002 of 29 August 2002 on the Forest Code
- Law no.11/009 on the Basic Principles related to the Protection of the Environment.
- Law no.10/010 of 27 April 2010 on public markets (Arts. 1, 6 and 80.)
- Decree no. 08/08 of 08 April 2008 establishing the procedure for the establishment and disestablishment of forests,
- Decree no. 08/09 of 08 April 2008 establishing the procedure for the allocation of forest concessions,
- Ministerial Order no. 024 of 07 August 2008 establishing the inquiry procedure prior to the granting of a forest concession,
- Ministerial Order no. 102/ CAB/MIN/ECN-T/15/JEB/2009/ of 16 June 2009 establishing the rules and formalities for forestry supervision,
- Ministerial Order no. 090 /CAB/MIN/ECN-T/15/JEB/2009/ of 23 January 2009 on measures to implement decisions rejecting requests for conversion and termination old forest titles.

- Ministerial Order no. 023/CAB/ECN-T/28 /JEB/10/ of 07 June 2010 establishing the standard contract that constitutes the social clause of the contract specifications for forest concessions.

Organisation: CODELT

Source: [www.leganet.cd/Legislation/Tables/droit\\_economique.htm](http://www.leganet.cd/Legislation/Tables/droit_economique.htm)  
[http://www.mecnt.cd/index.php?option=com\\_content&task=view&id=59&Itemid=27](http://www.mecnt.cd/index.php?option=com_content&task=view&id=59&Itemid=27)

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### Signed VPAs and Other Agreements on Forest Products

 Has the country signed an international agreement(s) that relates to forest products?

The first round of negotiations on a Voluntary Partnership Agreement (VPA) on forest law enforcement, governance and trade (FLEGT) between the European Union and the Government of the DRC took place on 15 February 2011 in Kinshasa. The main activity of the responsible committee during the subsequent six months was the preparation of a legality grid. Negotiations were suspended because of the general election and lack of finance from Belgium, the main funder of the process. Activities were relaunched in 2012 with the appointment of a new focal point in MECNT.

There has been poor participation by higher level officials of the forest administration in sub-committee meetings. Appointments and participation by members of the National Assembly are also still lacking. At present, civil society has three delegates, but the process remains on the technical level with very little communication to the rest of the population. VPA-FLEGT is a positive initiative, but it will be difficult to apply in the current situation, especially since illegal exploitation of timber has reached worrying proportions due to the uncontrolled issue of artisanal logging permits.

Title: First session of the negotiations of the Voluntary Partnership Agreement between the Democratic Republic of the Congo and the European Union.

Organisation: Technical Committee to negotiate the UE - DRC/MECNT partnership agreements.

Date: 15- 17 February 2011

Source: [http://www.euflegt.efi.int/files/attachments/euflegt/cr\\_15-17f\\_vr.pdf](http://www.euflegt.efi.int/files/attachments/euflegt/cr_15-17f_vr.pdf)

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### Provisions for Transparency in Forest Laws and Norms

 Are there any provisions in forest-specific laws and/or supporting norms that develop the right to access public information on the forest sector?

The Forest Code does not include clear provisions for transparency. Articles 83 to 86 explain the procedures for granting concessions following public tenders but do not set out further requirements for transparency. However, Article 2 of Decree no. 011/26 of 20 May 2011 requires the publication of any contract relating to natural resources signed between the State and a portfolio company and one or more domestic or foreign private partners. It requires these contracts to be published 60 days after their signature, but the decree has only been partially observed in terms of the publication of forest concession contracts.

Forest communities regularly call for forest maps and titles to be made publicly available. Civil society stakeholders have made efforts to make the information available through awareness raising campaigns. Title-holders and the forest administration have withheld key information such as the forest concession documents and industrial and artisanal logging permits, and the Ministry of the Environment, Conservation of Nature and Tourism is reluctant to publish them.

**Title:** Decree no. 011/26 of 20 May 2011 on the obligation to publish any contract affecting natural resources.

**Organisation:** Cabinet of the Prime Minister

**Source:** <http://www.leganet.cd/Legislation/Droit%20economique/Code%20Forestier/D.011.26.20.05.2011.htm>

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### **Recognition of Customary Rights in Forest Laws and Norms**

 Are customary and traditional rights recognised in codified forest law and supporting norms?

Article 36 of the Forest Code stipulates that “forest use rights of populations living inside or near the forest domain arise from local customs and traditions, providing that they are not contrary to the law and public order. They allow for the exploitation of forest resources by these populations, with a view to satisfying their domestic, individual or community needs.” Only the right of use of communities is recognised by the Forest Code, which establishes the primacy of written law over customary law. Indeed, even though the Forest Code broadly recognises the customary and traditional use rights of local and indigenous communities, it also affirms that the forests are State property and makes no mention of customary or traditional authorities that are mentioned in the Constitution. However, the social clauses of agreements signed between forest concessionaires and local communities explicitly aim to compensate communities for the exploitation of the forests over which those communities hold customary rights.

The Draft Decree on Community Forests recognises the right of the local communities and indigenous peoples who claim ownership of the forests from the State, but the text has not been signed yet. The Minister of the Interior has previously indicated that some customary authorities are opposed to the decree due to fears that it may jeopardise their rights to exploit resources. Nevertheless, the new government seems more disposed to this decree, especially following pressure from international donors and appeals by civil society stakeholders, together with a greater awareness of customary authorities at local level.

Furthermore, the process of macro-zoning started in the DRC in 2012, but without clarifying if the communities will be consulted on land use through a process of micro-zoning that respects the notion of free, prior and informed consent that is able to identify the traditional and customary use of forests by communities. Nevertheless, civil society is more and more involved in the steering committee for the national zoning plan.

**Title:** a. Law no.011/2002 of 29 August 2002 on the Forest Code, Ministerial Order no. 023/CAB/ECN-T/28 /JEB/10/ of 07 June 2010 establishing the model for agreement constituting the social clause of the specifications of the forest concession contract.

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

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## **Formal Procedures for Consultation on New Forest Norms**

 Is there a legally recognised procedure that specifies the methodology for consultation on the development of new forest-related norms?

Some legal texts outline consultation procedures for certain activities specific to the forestry sector, for example regarding the classification of forests. Consultation has become increasingly established for the preparation of new norms, but there are no recognised procedures regarding the methods of consultation to be adopted. The points of view of forest communities are often not taken into account by the authorities during the decision-making process. Furthermore, communities do not always receive comprehensive information during the consultations.

Following the enactment of the Forest Code in 2002, the Ministry has often organised consultations to raise awareness in the communities. However, most of these exercises are carried out at the district chief level and do not reach the people directly affected by changes in forest norms. This has been evident in the processes to develop a Voluntary Partnership Agreement with the European Union and REDD+ initiatives. Consultation workshops have only taken place in Kinshasa and some main towns in the provinces. Therefore, the consultation process has only been partial.

**Title:**

- a. Law no. 011/2002 of 29 August 2002 on the Forest Code,
- b. Law 11/09 of 16 July 2011 on basic principles related to the protection of the environment.
- c. Decree no. 08/08 of 08 April 2008 establishing the procedure for the establishment and disestablishment of forests.
- d. Decree no. 08/09 of 08 April 2008 establishing the procedure for allocating forest concessions,
- e. Ministerial Order no. 024 of 07 August 2008 establishing the inquiry procedure prior to the granting of a forest concession
- f. Ministerial Order no. 102/ CAB/MIN/ECN-T/15/JEB/2009/ of 16 June 2009 establishing the rules and formalities of forestry supervision.

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

**Source:**

<http://www.leganet.cd/Legislation/Droit%20economique/Code%20Forestier/D.08.08.08.04.08.htm>  
[http://www.Ministère de l'Environnement Conservation de la Nature et Tourisme.cd/index.php?option=com\\_content&task=view&id=59&Itemid=27](http://www.Ministère de l'Environnement Conservation de la Nature et Tourisme.cd/index.php?option=com_content&task=view&id=59&Itemid=27)  
<http://leganet.cd/Legislation/Droit%20economique/Code%20Forestier/D.08.09.08.04.2008.htm>

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## **Legal Right to Free Prior and Informed Consent**

 Is the right to free prior informed consent of indigenous peoples and forest-dependent communities recognised in forest law and supporting norms?

The concept of free, prior and informed consent (FPIC) is not recognised in the Forest Code nor in the law of the DRC. The 2009 law on the basic principles regarding the environment does not mention it either. The references to consultation are insufficient to fulfil the objectives of FPIC as it is stated in the international conventions that the DRC has signed up to. Moreover, even the procedures of consultation or prior information for a project that affects forest communities are rarely observed. FPIC is increasingly recognised as an important element in new initiatives such as REDD+. Nevertheless, this has not been translated into reality. A specific law on FPIC would allow the clear and strong establishment of the rights of the communities.

**Title:** a. Law no.011/2002 of 29 August 2002 on the Forest Code,  
b. Law no.011/09 of 19 July 2011 on basic principles related to the protection of the environment.

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

**Date:**

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### **National Land Tenure Policy**

 Is the national policy on land tenure, including forest tenure, set out in a current document?

There is no national land tenure policy. A general law on land and property dates from 1973 and was amended in 1980, but has not been reviewed since.

In the area of natural resources, several different laws are currently in force including the Forest Code, the Mining Code, general legislation on mines and hydrocarbons (i.e. oil and gas) and the law on conservation of nature. All of these laws contradict each other depending on whether they are granting rights to mining, forestry, oil and gas, agriculture, or protected areas. Conflicts have often arisen, for example in the granting of prospecting rights in oil blocks in Virunga National Park, mining plots in Protected Reserves, and hunting grounds throughout the provinces of the DRC. Experience confirms that these laws do not tie in together and they need to be urgently reviewed. A review committee for the land and property law exists on paper but does not function in practice.

The Forest Code divides the forests into three main categories: established, permanent production, and protected. This division poses a number of problems, notably because it involves a certain confusion between the concept of zoning and the adjudication of forests. The Congolese authorities and some international partners (including the World Bank, GIZ and US Forest Service) are in the process of finalising the terms of reference and the details of the implementation of the process of macro-zoning, and of preparing a guide on micro-zoning. It is essential that land and property planning and zoning processes take into account the customary uses of forests as well as the traditional systems of access, property and control that are still in force today in the Congo's forests.

**Title:** Law no.73-021 of 20 July 1973 on the general regime of property, land and property law and special security regime, as modified and completed by Law no. 80-008 of 18 July 1980.

Terms of reference of the process of macro-zoning of forests in the three forest provinces (Bandende, Equateur, Orientale), Ministry of the Environment, Conservation and Tourism.

**Organisation:** Ministry of Land and Property of the Democratic Republic of the Congo

**Date:** Published in the official gazette in 2004

**Source:** Official Gazette of the Democratic Republic of the Congo.

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### **Consultation before Commercial Logging Allocation**



Is there a legal requirement for stakeholder consultation to take place prior to the allocation of commercial forestry operations?

The Forest Code and its implementing decrees include provisions for consultation prior to the classification of forests and in the preparation of management plans. However the authorisation for logging activities is a purely administrative procedure, which does not envisage consultation with local and indigenous communities.

Even though forest concessions can be granted without any prior consultation, the contracts are meant to only be signed following the negotiation of social agreements ('cahier des charges' in French) with local communities. In practice, the government has signed contracts that do not fulfil the required conditions, and without checking to ensure that the agreements have been satisfactorily negotiated in consultation with local communities. Furthermore, a circular issued by the Minister in August 2011 stated that the operators can sign their contract before having presented their management plan; that is, without consulting local communities on these plans.

An additional problem is that artisanal logging permits, whose number has increased spectacularly in recent years, are not subject to the same procedures and can be granted without any real consultation.

**Title:**

- Law 011/2002 of 29 August 2002 on the Forest Code in the Democratic Republic of the Congo.
- Decree no. 08/08 of 08 April 2008 establishing the procedure for the establishment and disestablishment of forests
- Decree no. 08/09 of 08 April 2008 establishing the procedure for adjudicating forest concessions,
- Ministerial Order no. 024 of 07 August 2008 establishing the inquiry procedure prior to the granting of a forest concession,
- Circular Note no. 005/CAB/MIN/ECN-T/15/JEB/2011 of 15 aout 2011

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

**Source:** [www.mecnt.cd/index.php?option=com\\_content&task=view&id=59&Itemid=27](http://www.mecnt.cd/index.php?option=com_content&task=view&id=59&Itemid=27)

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### Regulation of Environmental Services



Are there national laws and other norms that regulate the use of key environmental services of forests?

The Forest Code mentions environmental services as a guiding factor for management of the sector, but there are no further details or supporting regulations. It is paradoxical that the forests are crucial to the livelihoods of a large part of the population but the regulatory framework does not take this into account at all.

The issue of the ownership of carbon is now being discussed within the framework of REDD+ but implementation of a law or other norm to clarify it remains a distant prospect. Under the Forest Investment Programme, US million was awarded to the DRC for REDD+. Considerable international donor funding has also gone into conservation programmes in the country. However this has not contributed to the development of a framework for sharing the benefits from environmental services or disseminating information at local level. The REDD+ strategy may be an opportunity to start addressing these problems.

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### Strategic Environmental Assessment



Is there a formal strategic environmental assessment and planning process to determine the priorities for land use between forests, mining, large-scale agriculture, infrastructure development and other demands?

The law on basic principles related to the protection of the environment approved in July 2011 included legal requirements to carry out environmental impact studies before any development project, but there is no implementing text related to this provision. The framework for planning and decision-making on development priorities also does not set out a process for strategic environmental assessment. An impact study is underway in the case of oil exploitation in the Lake Albert area, including part of the Virunga National Park of Virunga, but it seemed to have been slowed down by political factors.

To date there has been no progress on the development of an inter-sectorial territorial management plan at the micro level, nor at the macro level. This is a requirement for the REDD+ process, and the Climate Working Group (a civil society group) that monitors it is has called for such micro-zoning, but there is a lack of resources to support it.

**Title:** Law no. 11/009 of 09 July 2011 on basic principles related to the protection of the environment

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism



### Forest Ownership and Resource Use Maps



Are there publicly available official maps showing current types of forest ownership and forest resource use?

Official national maps are available to the public showing the general areas of existing forest concessions and other permits or authorisations; however maps of artisanal logging permits are not available. A map with details of forest concessions has also been produced by the World Resources Institute. More detailed maps that identify local villages are held in management plans produced by the concessionaires, but these documents are difficult to obtain.

What maps are produced are usually only distributed in hard copy in only small quantities by MECNT and other authorities due to a lack of financial resources. Nonetheless, the Forest Inventories Department could easily reproduce them when contracts are signed.

Maps showing customary use of forest resources are produced for the benefit of local communities by national and international environmental civil society organisations, but there are very few of them.

**Title:**

- Forest estate of the DRC, situation at 31 December 2009,
- Forest estate of the DRC, situation at 31 July 2011

**Source:**

- Directorate-General of Forestry Inventories and Management / Ministry of the Environment, Conservation of Nature and Tourism.
- <http://www.wri.org/tools/atlas/map.php?maptheme=drcforest>



### Legal Documents for Commercial Logging Operations



Are legal documents for commercial logging operations regularly published?

Within the framework of the conversion of old forest titles into new forest concession contracts (together with a moratorium on the granting of new concessions), the MECNT started to publish signed contracts in February 2012. The World Bank has also required the publication of all contracts related to natural resources as part of the reform process. Of the 80 forest concessions in the course of conversion, only 24 contracts have been published to date. The actual number of signed contracts is still unknown to the public, but it appears that about half have had their contracts signed, which means that several signed contracts have not yet been published.

The granting of artisanal logging permits has been frequently criticised by civil society stakeholders and the private sector in the DRC. There are disputes between the central and provincial authorities over their respective responsibilities. The central forest administration has issued a large number of artisanal permits without observing all of the applicable legal provisions. This has violated the moratorium on new forest allocations, thus opening the door to the large-scale exploitation of forests under the guise of artisanal permits, and undermining ten years work to clean up the forestry sector. Following the revelation of this problem by civil society stakeholders, the new government has started to take charge of the problem and has cancelled some illegally granted artisanal permits.

**Title:** a. Publication of forest concession contracts, 9 February 2012  
b. List of artisanal logging permits, 2010

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

**Source:** a. [http://www.mecnt.cd/index.php?option=com\\_content&view=article&id=271:un-nouveau-cap-franchi-dans-lamelioration-de-la-gouvernance-forestiere-en-DRC-avec-la-signature-des-premiers-contrats-de-concession-forestiere&catid=30:foret&Itemid=300057](http://www.mecnt.cd/index.php?option=com_content&view=article&id=271:un-nouveau-cap-franchi-dans-lamelioration-de-la-gouvernance-forestiere-en-DRC-avec-la-signature-des-premiers-contrats-de-concession-forestiere&catid=30:foret&Itemid=300057)  
b. <http://www.mecnt.cd/images/DOWN/liste%20pcab10.pdf>

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### **Reports on the Verification Process of Eligibility of Commercial Operators**

 Are the reports published from a formal “due diligence” process on the eligibility, suitability and capability of applicants for contracts or licences to conduct commercial forestry operations?

An inter-ministerial committee published the results in 2008 of the legal review to convert old forest titles into concession contracts. A moratorium on new concessions continues to apply, but there has been a large increase in artisanal logging permits, which are being exploited at an industrial scale. The Forest Code and supporting norms do not require any due diligence process for artisanal permits.

**Title:** The Interministerial Committee on the Conversion of Old Forest Titles after examining Appeals

**Organisation:** Ministry of the Environment, Conservation of Nature

**Date:** 2008

**Source:** <http://www.mecnt.cd/images/DOWN/cim2.pdf>

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### **Forest Management Plans**



## Are forest management plans published?

According to the Forest Code, concession holders must produce a 25-year forest management plan and a 5-year operations plan. The preparation of a forest management plan requires socio-economic surveys, participative zoning and other studies – as well as negotiations on the social agreements – that need to involve the local communities. Forest management plans were published online in 2012 for 12 of the signed concessions contracts, which represents an improvement. Operations plans provide information about the valid periods, places and authorised volumes of tree felling, but they are rarely made available to the local communities affected by the planned operations. According to the Forest Code they should be provided, but they are either not published or not put at the disposal of the affected communities.

Furthermore, a circular from the Minister of the Environment in August 2011 stated that the operations plan is simply a preliminary step in the conversion of an old forest concession title and seems to respond to the concerns of the concessionaires regarding the cost of producing a full forest management plan.

**Title:**

- a. Ministerial Order no. 036/CAB MIN/NO. 036/CAB/MIN/ECN-EF/2006 of 05/10/2006 on management plans for forest concessions
- b. Circular Note no. 005/CAB/MIN/ECN-T/JEB/2011 of 15 August 2011 to forestry companies that hold titles considered convertible and civil society organisations in the environmental sector in the DRC.
- c. Publication of forest concession contracts.

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

**Source:**

- a. [http://www.mecnt.cd/Download/Signes/pdf\\_Arret\\_ministriel\\_36\\_MECNEF\\_du\\_05\\_10\\_06.pdf](http://www.mecnt.cd/Download/Signes/pdf_Arret_ministriel_36_MECNEF_du_05_10_06.pdf)
- b. MECNT
- c. [http://www.mecnt.cd/index.php?option=com\\_content&view=article&id=271:un-nouveau-cap-franchi-dans-lamelioration-de-la-gouvernance-forestiere-en-DRC-avec-la-signature-des-premiers-contrats-de-concession-forestiere&catid=30:foret&Itemid=300057](http://www.mecnt.cd/index.php?option=com_content&view=article&id=271:un-nouveau-cap-franchi-dans-lamelioration-de-la-gouvernance-forestiere-en-DRC-avec-la-signature-des-premiers-contrats-de-concession-forestiere&catid=30:foret&Itemid=300057)



## Reports from Independent Forest Monitoring



### Are reports by an independent forest monitor published?

Resource Extraction Monitoring (REM) was appointed as the Independent Observer (IO) in the DRC to contribute to the application of principles of good governance in the forestry sector. After opening an office in Kinshasa, observation missions started in the province of Equateur, mainly at Bumba. The IO works with civil society stakeholders, the forest administration and the private sector to check on infringements of forest law. According to the terms, they must publish their reports, but they can do so after the reports have been approved by a review committee that includes representatives of the government. The Ministerial Order granting the constitution of this committee was signed in October 2012, and the first reports are expected soon. REM also published its first annual report covering the December 2010–November 2011 period.

So far, the IO has:

- documented forest resources exploitation practices in three joint control missions (MECNT and IO-FLEG) covering 15 of the 28 industrial logging sites operating in 2011, and also artisanal and informal operations. This type of on-site supervision was almost non-existent before its arrival.
- developed essential tools for the improvement of forest sector control and analysis of forest law, including setting out the legal basis for resource exploitation and the provisions that still to be developed; a proposal for the use

of checklists for forest sector supervision; a draft procedures manual for use by government agents following the observations made, and briefing notes on the areas of forest control that need to be improved (supervision tools to be provided, mission preparation, checklist of points, inter-ministerial relations, tax payments, etc.)

- highlighted the legal grey areas around the conversion of forest titles in concessions granted to date

One of the persistent problems affecting the IO's activities is the lack of access to around 150 litigation casefiles held by MECNT.

REM's contract terminates at the end of 2012 and it remains to be seen if its work in the DRC will continue.

Title: Order no. 032/CAB/MIN/ECN-T/15/JEB/09 of 16 October 2012.

Organisation: Resource Extraction Monitoring

Source: <http://www.observation-rdc.info/>

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### Data on the Distribution of Forestry Royalties and Incentives



Is data regularly published on the distribution of forestry royalties and/or incentives to stakeholders?

Following pressure from civil society stakeholders through the Extractive Industries Transparency Initiative and the Publish What You Pay initiative, and the demands of the World Bank and the IMF for the economic governance matrix, in 2011 the government published for the first time the revenues arising from natural resources exploitation. This data was very rudimentary and had no supporting explanation. Furthermore, the government seemed to have stopped this publication in 2012, which was a step backwards. This has not elicited a reaction from the international donors that previously demanded the publication of this information.

The Forest Code requires the transfer of 40% of forest sector revenues to the provincial level, of which 15% is for decentralised administrative bodies at the territorial level, but no detailed figures on this redistribution have been published.

Title: Monthly State of the collection of Tax Revenue from the Natural Resources sector

Organisation: The Directorate-General of Administrative and Federal Revenues (DGRAD)  
Customs and Excise Office (Ofida), Directorate-General for Taxation (DGI)

Date: Fourth quarter 2011

Source: [http://www.minfinDRC.com/images/pdf/Etat\\_mensuel\\_de\\_recouvrement\\_des\\_recettes\\_des\\_secteurs\\_des\\_ressources\\_naturelles.pdf](http://www.minfinDRC.com/images/pdf/Etat_mensuel_de_recouvrement_des_recettes_des_secteurs_des_ressources_naturelles.pdf)

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### Information on Forest Law Infractions



Is information regularly published on infractions of forest law?

The Forest Inspections Unit under of the Department of Supervision and Verification in MECNT is the charged with detecting forest infractions and communicating its finding to the appropriate ministry official. However, this service is under-equipped and no information on infractions and the sanctions applied is published.

The Société Générale de Surveillance (SGS) has been contracted to develop the timber traceability system, and has passed on several complaints to MECNT about infractions committed by the operating companies. MECNT has not shown any transparency in dealing with these cases - there have been no prosecutions or any explanations on the follow-up of these complaints.

The independent observer carries out its site visits with the inspectors to help them compile records and undertake prosecutions, but there is still no information about these cases.

**Title:** Directorate-General for Control and Verification (DCVI)

**Organisation:** Ministry of the Environment, Conservation of Nature and Tourism

**Date:** 20 March 2009

**Source:** [http://www.mecnt.cd/index.php?option=com\\_content&view=article&id=146&Itemid=300074](http://www.mecnt.cd/index.php?option=com_content&view=article&id=146&Itemid=300074)

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### **Annual Forest Authority Report**

 Are annual reports published by the forest authority?

An annual report on the forest sector is not published nor it is required by the government. However, the authorities should provide information to the public on the exploitation of the forests and the measures they have taken over a period of time. This report could include information such as the different types of permits granted, the annual volume of timber production, the revenues generated by the services, a list of infractions and contraventions of the legislation, agreements signed between forest concessionaries and local/indigenous communities, the different management plans drawn up, detailed maps of forest concessions, impact studies in the environmental, social, economic and biological areas related to the forest concessions and other legal or regulatory requirements that help to improve forestry governance in the DRC.

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