

2nd update regarding the Republic of Congo's Revised Emission Reductions Program Document for the Emission Reductions Program in Sangha and Likouala

Prepared by the Facility Management Team (FMT) of the Forest Carbon Partnership Facility (FCPF)

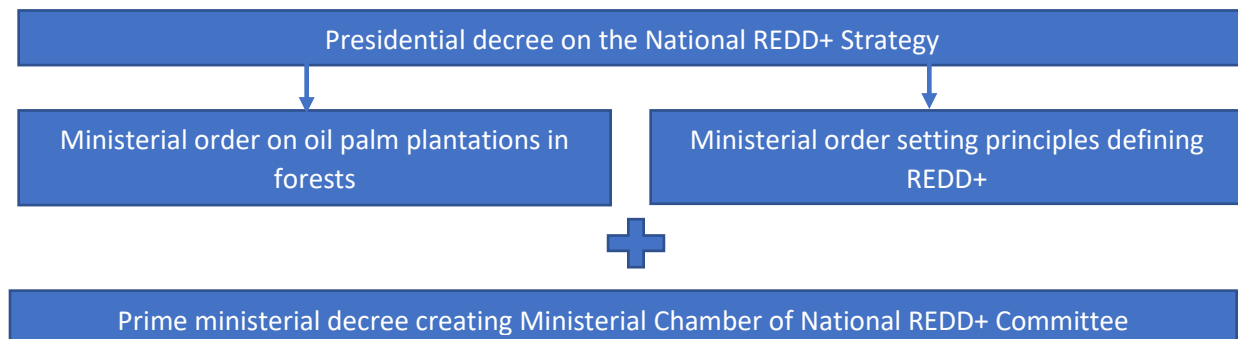
September 24, 2018

The CF-16 Meeting in June 2017 provisionally accepted Republic of Congo's (ROC) ER-Program, pending fulfillment of nine conditions.¹ As stated in the FMT's assessment note dated March 23, 2018 (FMT Assessment Note), in the FMT's opinion, ROC fulfilled six of the nine conditions. The three remaining conditions relate to the adoption of two laws and one decree. They remain outstanding to date due to the lengthy and unpredictable nature of lawmaking, and the need to hold inclusive consultations on draft legal instruments.

To move forward, the FMT proposes the below course of action based on the requests received from the government of ROC. The FMT believes that following this course provides CFPs with the assurances sought at CF-16 and expressed in the conditions of the original CF-16 resolution agreed with ROC, while maintaining the political momentum that has been built in ROC in support of the ER-Program.

Summary of proposed actions

ROC issued a Presidential Decree on June 5, 2018 giving legal force to the National REDD+ Strategy.² Based on this decree, two interim ministerial orders on forestry and agriculture, respectively, will bridge the gap until the forest and agriculture codes are submitted to parliament. In addition, a prime ministerial decree will institute a ministerial chamber of the National REDD+ Committee. The principles of these orders will be secured through ERPA effectiveness conditions and/or events of default in the ERPA.



¹ Resolution CFM/16/2017/2:

<https://www.forestcarbonpartnership.org/sites/fcp/files/2017/June/Final%20Resolution%20%20RoC%20rev2.pdf>

² See Decree in Annex 1.

Details of proposed actions:

- 1) **New condition of acceptance:** Issue a Presidential Decree formalizing the National REDD+ Strategy

On April 11, 2018, the Council of Ministers approved the National REDD+ Strategy. A Presidential Decree was issued on June 5, 2018 to provide legal status to this National REDD+ Strategy (see Annex 1). The issuance of this decree would become a new condition of selection into the portfolio of the Carbon Fund.

- 2) **Original condition of acceptance:** Adopt and publish in the official journal the new Agriculture Law, including specifications for agricultural activities in forest areas related to forest carbon
Suggested revised condition of acceptance: Issue a ministerial order banning industrial palm oil plantations in forests and formalizing the respect of REDD+ standards in agriculture

The key part of the Agriculture Law that resulted in its inclusion as a condition in the original CF-16 resolution were the provisions the law will provide to regulate agriculture in forest areas in line with the REDD+ approach. The government has drafted the new Agriculture Law but consultations are still ongoing and, to ensure adequate participation, require more time. While the law is being finalized and consulted upon, the Ministry of Agriculture will issue a ministerial order directing any future industrial palm oil plantations away from forests and making provisions for respecting REDD+ standards in agriculture. This would be in line with the national principles for sustainable palm oil that the government has already developed with TFA support. The ministerial order would have its legal basis in the abovementioned Presidential Decree. The ministerial order would become a condition of acceptance into the portfolio of the Carbon Fund, replacing the original corresponding condition. The ministerial order would remain in effect until the new Agriculture Law is adopted and supersedes the ministerial order. **Issuing a ministerial order that bases itself on the abovementioned Presidential Decree rather than on the new Agricultural Law will allow the government of ROC to achieve the same results as those sought by the original condition.** The submission to parliament of the Agriculture Law would then become a condition of effectiveness of the ERPA. To secure the principles contained in the ministerial order, the ERPA would also specify abrogation of the principle of the ministerial order as an event of default.

- 3) **Original condition of acceptance:** Adopt and publish in the official journal the new Forest Code, after consultations with relevant stakeholders
Suggested revised condition of acceptance: Issue a ministerial order instituting the principles defining REDD+

The key element in the Forest Code that led to its inclusion as a condition in the original CF-16 resolution was the creation of a legal basis for REDD+. Similar to the Agriculture Law above, while the government of ROC finalizes the new Forest Code, the Minister of Forest Economy will issue a ministerial order that defines REDD+ and allows for its operationalization. This ministerial order will mirror the regulatory text already drafted and validated for the new Forest Code, and will remain in effect until the new Forest Code is adopted and supersedes the ministerial order.

Issuing a ministerial order that is based on the abovementioned Presidential Decree rather than on the new Forest Code will allow the government of ROC to achieve the same results as those sought by the original condition. The publication of the ministerial order would be a condition of selection into the portfolio of the Carbon Fund. The submission of the Forest Code to parliament would then become a condition of effectiveness of the ERPA. Additionally, the ERPA would also specify that any abrogation of the key principles contained in the ministerial order would constitute an event of default.

- 4) **Original condition of acceptance:** Adopt and publish in the official journal the decree establishing in the National REDD+ Committee the Ministerial Chamber, chaired by the Prime Minister, and the Technical Chamber

Suggested revised condition of acceptance: Issue a prime ministerial decree instituting the Ministerial Chamber of the National REDD+ Committee

This condition was included in the original CF-16 resolution to codify the government's stated wish to ensure higher-level ownership and cross-sectoral coordination of REDD+. As explained in the FMT Assessment Note, the adoption of new regulatory texts depends on the adoption by parliament of the corresponding law, in this case the new Forest Code (see condition above). To advance the fulfillment of this condition while the adoption of the Forest Code runs its course, the government of ROC will issue a prime ministerial decree that reforms the National REDD+ Committee along the lines of the condition. The government of ROC has already drafted the relevant provisions and a national workshop validated them.

Conclusion

The FMT believes that the above proposals for a revised resolution for the selection of ROC's ER-Program into the portfolio of the Carbon Fund (replacing the original CF-16 resolution) are viable solutions to attain the same results sought by CFPs in the original CF-16 resolution, and that they are equivalent expressions of the government's commitment to the principles underlying its REDD+ agenda. They would enable the finalization of an ER-Program that has a strong basis in the multiple and substantial funding streams that have been aligned in its support, donor alignment in support of the ER-Program, strong private sector interest, and attainability of its emission reductions goals.

Hence, the FMT would like to propose a new resolution for the selection of ROC's ER-Program into the portfolio of the Carbon Fund (Resolution CFM/Electronic/2018/1) that would replace the original CF-16 resolution (Resolution CFM/16/2017/2) for CFP approval through a three-week no-objection process. This proposal would allow CFPs to have their requirements complied with while allowing ROC to move towards on the implementation of REDD+ in general and the ER-Program in particular.

In addition, upon fulfillment of the remaining (revised) conditions, the ROC will revise the ER-PD summarizing the fulfillment of the (revised) conditions. The FMT (in its role as Trustee) will review the revised ER-PD and, if deemed satisfactory, will seek the consent of CFPs on a three-week no-objection basis, in accordance with the new Resolution CFM/Electronic/2018/1.

ANNEX 1 – Presidential Decree on the REDD+ National Strategy (June 5, 2018)

PRESIDENCE DE LA REPUBLIQUE

SECRETARIAT GÉNÉRAL
DU GOUVERNEMENT

REPUBLIQUE DU CONGO

Unité*Travail*Progrès

Décret n° 2018 - 223 du 5 juin 2018

portant approbation de la stratégie nationale de réduction des émissions de gaz à effet de serre liées à la déforestation, à la dégradation des forêts avec inclusion de la gestion forestière durable, de la conservation de la biodiversité et de l'accroissement des stocks de carbone

LE PRESIDENT DE LA REPUBLIQUE,

Vu la Constitution ;
Vu la loi n° 003-91 du 23 avril 1991 sur la protection de l'environnement ;
Vu la loi n° 26-96 du 25 juin 1996 portant ratification de la convention cadre des Nations Unies sur les changements climatiques ;
Vu la loi n° 16-2000 du 20 novembre 2000 portant code forestier ;
Vu la loi n° 24-2006 du 12 septembre 2006 portant ratification du protocole de Kyoto relatif à la convention cadre des Nations Unies sur les changements climatiques ;
Vu la loi n° 35-2006 du 26 octobre 2006 autorisant la ratification du traité relatif à la conservation et à la gestion durable des écosystèmes forestiers d'Afrique centrale et instituant la commission des forêts d'Afrique centrale ;
Vu l'accord de Paris sur le climat ;
Vu la loi n° 30-2016 du 1^{er} décembre 2016 autorisant la ratification de l'accord de Paris sur le climat ;
Vu le décret n° 2015-260 du 27 février 2015 portant création, organisation, attributions et fonctionnement des organes de gestion de la mise en œuvre du processus de réduction des émissions de gaz à effet de serre liées à la déforestation, à la dégradation des forêts avec inclusion de la gestion forestière durable, de la conservation de la biodiversité et de l'accroissement des stocks de carbone ;
Vu le décret n° 2017-371 du 21 août 2017 portant nomination du Premier ministre, chef du Gouvernement ;
Vu le décret n° 2017-373 du 22 août 2017 portant nomination des membres du Gouvernement ;
Vu le décret n° 2017-409 du 10 octobre 2017 relatif aux attributions du ministre de l'économie forestière.

En Conseil des ministres,

DECRETE :

Article premier : Est approuvée, la stratégie nationale de réduction des émissions de gaz à effet de serre liées à la déforestation, à la dégradation des forêts avec inclusion de la gestion forestière durable, de la conservation de la biodiversité et de l'accroissement des stocks de carbone, dont le texte est annexé au présent décret

Article 2 : Le présent décret sera enregistré et publié au Journal officiel de la République du Congo./-

2018 - 223 Fait à Brazzaville le 5 juin 2018

Denis SASSOU-N'GUESSO.-

Par le Président de la République,

Le Premier ministre, chef du Gouvernement,



Clément MOUAMBA.-

Le ministre de l'aménagement, de l'équipement
du territoire, des grands travaux,



Jean-Jacques BOUYA.-

Le ministre du plan, de la statistique et
de l'intégration régionale,



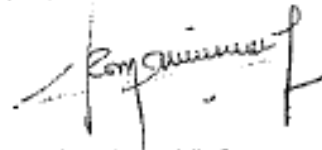
Ingrid Olga Ghislaine EBOUKA-BABACKAS.-

Le ministre des affaires foncières et du
domaine public, chargé des relations avec le
Parlement,



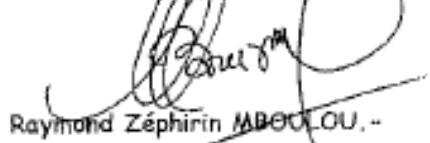
Pierre MABIALA.-

La ministre de l'économie forestière,



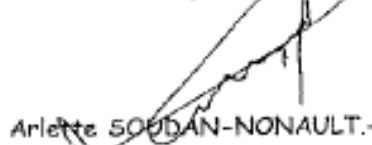
Rosalie MATONDO.-

Le ministre de l'intérieur et de la
décentralisation,



Raymond Zéphirin ABOULOU.-

La ministre du tourisme et de
l'environnement,



Arlette SOUDAN-NONAUT.-

Le ministre des finances et du budget,



Calixte NGANONGO.-