



global witness



Readiness Preparation Proposal (RPP) for the Republic of Congo¹

A joint statement from Rainforest Foundation UK, Greenpeace and Global Witness

24 June 2010

Rainforest Foundation UK, Greenpeace and Global Witness recommend that the Republic of Congo (RoC) RPP is not approved. The document lacks coherence and substance, and in particular it fails to propose solutions to identified problems, appears to have been overly influenced by industry with little civil society participation, and if implemented would likely lead to negative impacts on forests, indigenous peoples and local communities.

The members of the civil society *Plateforme Congolaise pour la Gestion durable des forêts* (Congolese platform for the sustainable management of forests) state that civil society and indigenous peoples in the RoC “have not been involved in the process of developing the Congo RPP. The Platform had access to this RPP on short notice; which did not allow it to make its contribution on the contents of this document”.² The lack of consultation is in breach of the FCPF charter and does not meet the minimum standard for RPP development.

Whilst we are encouraged to see statements in support of the participation of indigenous peoples and local communities and respect for the principle of “free, prior, and informed consent” (p. 16), and that the RoC “views REDD+ as a true opportunity for sustainable development” (p. 36), we are disappointed that these are not reflected in the substance of the RPP.

A summary of our main points is below followed by a more detailed analysis of the RPP.

Summary

The draft RPP includes contradictory statements and analysis and there is a lack of articulation between forests and other sectors which drive deforestation and forest degradation. The information in the document is often based on assumptions and rarely supported with citations of sources. In addition, the proposed strategic options do not adequately address key problems that the document itself identifies, such as weak forest governance and poor land tenure security of forest-dwellers.

Other weaknesses of the RPP include:

- Inadequate consultation and participation of local communities, indigenous peoples and civil society in RoC in the development of the RPP;

¹ The RoC RPP is available at <http://forestcarbonpartnership.org/fcp/node/81>. This statement is based on an analysis of the English version of the RPP from April 2010. A more recent French version was published on 14th June.

² *Plateforme Congolaise pour la Gestion durable des forêts*, Note de contribution de la société civile par rapport à la préparation du R-PP en République du Congo, 10 June 2010, our translation

- A proposal to give the rights over forest carbon to the central government or private industry without concrete proposals to secure the tenure rights of forest communities or create a benefit-sharing mechanism;
- A biased assessment of the drivers of deforestation and forest degradation that emphasizes the role of the rural poor while downplaying the role of an expanding and poorly regulated large-scale logging industry;
- Failure to include any reference to a major tar sands project that involves large-scale deforestation³;
- Inadequate analysis of the role of weak governance, particularly in the industrial logging sector, in driving deforestation and forest degradation;
- Poorly developed provisions for monitoring the benefits and impacts, including on forest governance, of the strategy.

Approval of the RPP may undermine the FLEGT-VPA between the European Union and the RoC,⁴ as well as other attempts to improve forest governance and monitoring in the RoC.

Analysis

Introduction

The RoC has well-documented, fundamental weaknesses in forest governance and law enforcement⁵ that would pose innumerable problems for a REDD programme, even if well conceived. RoC's record on environmental and human rights protection⁶ and on transparent management of natural resources is also extremely poor. The World Peace Foundation's Index of African Governance, lists Congo as one of "the worst performing ten countries".⁷

Despite earnings of 4.4 billion USD from oil exports in 2008 (IMF figures⁸), 70 % of RoC's population live under the poverty line and only about a quarter have access to electricity.⁹ Approximately 60 % of the country is covered by lowland tropical forest¹⁰, and the timber exports are second only to oil revenues. However, according to Global Timber UK, statistics of timber exports recently published by the government "are unusable and grossly misleading"¹¹.

³ Heinrich Boell Foundation, 2009. "Energy Futures? Eni's investments in tar sands and palm oil in the Congo Basin"; available at http://www.boell.de/downloads/091109_Energy_Futures_Congo_Oil.pdf

⁴ Negotiations between the EU and RoC under the EU's FLEGT initiative, resulted in the signing of a VPA (Voluntary Partnership Agreement) between the two countries on forest governance, law enforcement and trade in May 2009

⁵ These are documented in numerous reports by the Independent Forest Monitor, Resource Extraction Monitor (REM). See <http://www.rem.org.uk/Reports2.html>.

⁶ See also: Department of State, 2009 Human Rights Report: Republic of the Congo at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135948.htm>

⁷ World Peace Foundation, 2009. "Strengthening African Governance: Index of African Governance, October 2009. See <http://www.worldpeacefoundation.org/africangovernance.html>

⁸ IMF 2009, Country Report No 09/74, Republic of Congo: Article IV consultation, February 2009

⁹ IMF 2005, Country Report No 05/39, Republic of Congo: Interim Poverty Reduction Strategy Paper Progress Report, February 2005

¹⁰ Republic of Congo 2009. Permanent Mission of the Republic of Congo to the United Nations. <http://www.un.int/wcm/content/site/congo/cache/offonce/pid/2479>

¹¹ See <http://www.globaltimber.org.uk/congo.htm>

This following analysis identifies nine areas where the RPP needs to be improved.

1. RPP developed without adequate consultation of local communities or indigenous peoples

As mentioned above, and contrary to a statement made in the RPP about stakeholder engagement¹² and assurances about the respect of 'free, prior and informed consent' (p. 16), members of civil society organisations in RoC have stated that have not been meaningfully involved in the process of developing the RPP.¹³ Meetings listed as "consultations" in the RPP have involved members of civil society organisations, however, in many cases prior information was not given and there was not adequate time for real discussions. These cannot be regarded as genuine consultations.

With regards to the participation of civil society and indigenous peoples in the design of REDD in RoC, the RPP envisages that "design of consultation plan" should begin in the "2nd semester 2011" (p. 20). This is likely to effectively exclude these groups from the decision making process, as the major studies and strategic options for REDD would already been decided. It would also violate the principle of 'free, prior and informed consent'. Furthermore, a number of studies are envisaged in the RPP to be carried out by appointed "experts", without assurance of the participation of civil society or indigenous peoples.

Whilst it should be noted that 10 of the 42 members of the REDD+ National Committee are earmarked to come from local NGOs and representatives of indigenous peoples, civil society organisations in RoC have called for this to be increased. Moreover, there are problems with the proposed architecture of REDD (see point 8 below) and the marginalisation of indigenous peoples in the process (see point 7 below).

2. Proposed actions do not adequately address problems identified in the RPP

The draft RPP fails to link a reasonable analysis of the challenges and weaknesses of capacity and legal framework necessary for a national plan to reduce deforestation with the proposed actions.

The RPP identifies the following weaknesses, *inter alia*:

- "fiscal and adjudication of concessions, biodiversity conservation, sustainable management of production forests, participation of local and indigenous populations in sustainable forestry management, efficiency of legal systems, applicable forest and environmental protection measures, and institutional sectoral capacities." (p. 27)
- "Cross-cutting reforms are also missing, such as land tenure reform and development of a land-use plan respecting all rights and preventing user conflicts." (p. 28)
- Weak forest governance by the State is noted as one of the aggravating factors to the direct causes of deforestation and forest degradation (p. 29)
- Lack of implementation of ownership rights for local collectivities and registration of customary land titles (p. 23).

However, despite this there are almost no proposals in the RPP to address these problems. The RPP proposes five underdeveloped strategic objectives and a number of studies to be carried out by experts without the guaranteed participation of civil society or indigenous peoples. As stated below

¹² "These stakeholders have been engaged in the development of the REDD+ readiness proposal, through individual discussions as well as numerous workshops held throughout the proposal development process" (p. 7)

¹³ Plateforme Congolaise pour la Gestion durable des forêts, 10 June 2010, as previously cited.

in point 6, no broad legal or institutional reform is anticipated as part of the national REDD process other than the passage of a REDD+ law that will not address many of the issues identified.

3. The proposed drivers of deforestation are not properly documented and biased against the rural poor

The draft RPP lists “traditional household farming” and the collection of wood for fuel or charcoal as the two main direct causes of deforestation in RoC (p. 28), which is surprising given that timber, along with oil, represents 70% of RoC’s GDP.

Moreover, there are no comprehensive studies on the extent of fuelwood consumption in RoC (p. 63). A highly speculative estimate for the volume of fuelwood used annually is given based on a limited survey published in 2005 (p. 29). However, no similar number is given for the estimated volume of commercial timber extracted from the forests and the volume of trees damaged by this extraction, despite the existence of detailed studies and statistics on these topics.

The document proposes four studies, one for each of the four drivers of deforestation identified, to establish the extent of their impact on the forest. Three of the four studies look at the role of poor people as the primary agents of deforestation, and only one mentions “unsustainable and illegal” logging. Similar to other proposed studies, civil society participation is not explicitly mentioned (pp. 35-36). As stated in points 4 and 5 below the impact of logging, mining and oil concessions has not been adequately considered.

4. Expansion of industrial logging in spite of major governance issues

The RPP appears to support a ‘business-as-usual’ approach to extracting forest resources, and in particular industrial logging¹⁴, without proposing convincing measures to address widespread illegality facilitated by weak law enforcement capacity and corruption, or accurately representing the potential carbon emissions from this approach.

While forest sector governance problems are acknowledged, there is no substantive discussion of the underlying issues or what measures will be taken to address them. Given the presence of an Independent Forest Monitor and the lengthy FLEGT VPA process, much more information can and should be provided on the subject of illegality in the forestry sector. The continued use of an Independent Forest Monitor (the Forest Observatory) is welcomed, but the Forest Observatory cannot do the work of law enforcement agencies. The proposal needs to explain how the VPA and Forest Observatory, which are cited frequently in the proposal but not elaborated on, will help address the underlying drivers of illegality in the sector, including weak enforcement capacity and corruption. For example, what measures have been taken to address issues raised by the VPA process and IFM to date? How will the results of the monitoring processes feed into the design and implementation of the REDD+ strategy?

The RPP fails to discuss carbon emissions and other risks related to putting the vast majority of the accessible forests under logging regimes.¹⁵ Extremely optimistic assumptions are made about the number of logging concessions to be brought under forest management plans by 2012, despite the fact that only three out of 52 FMUs (Forest Management Units) were brought under management

¹⁴ Page 31 says it is likely that the “total logged surface [in RoC] increases”

¹⁵ About 13.4 million ha is described as “production forest” – an area the size of Greece or the U.S. state of Alabama.

plans by 2008 – eight years after the Forestry Code was passed (p. 26). The proposal nonetheless suggests that around 10 million ha of forest in total will be brought under approved management plans by 2012¹⁶. Since management plans are already required by law in RoC, it is unclear what additionality the RPP will bring.

Even with management plans, emissions from logging are likely to be significant, as such plans were not designed to prevent carbon emissions. This is particularly true in intact forests that have not already been depleted of their natural carbon stocks by previous logging. Highly unrealistic numbers are suggested with no citations regarding the reductions in carbon emissions promised by “low impact logging” or management plans. It is erroneously stated, for example, that emissions will be reduced by a “factor of 4”, or 75% (p. 41) by so-called low impact logging when the actual reduction is likely to be significantly less. Moreover, any plan to provide REDD payments to, or to subsidise the logging industry in RoC, could have the perverse impact of opening up new areas to logging which were previously not cost-effective.

The proposal states that 8.5 million ha of forests are inaccessible flooded forests (p. 22), while the donor-supported State of the Forests of the Congo Basin report released in 2009 states that the size of swamp forests is less half of that.¹⁷ This discrepancy needs to be clarified, and may mean that a lot less forest is protected by permanent flooding than the RPP suggests.

5. Impact of large-scale infrastructure projects such as mining and oil not adequately considered

The RPP does not adequately consider the impact of large scale mining and oil projects currently underway or planned. Failure to mention projects of this magnitude and their potential impacts on forest resources is a serious omission.

For example, a multi-billion-dollar project by the Italian energy company Eni to exploit 1,790 square km of tar sands and to establish 70,000 hectares of palm oil plantations is not mentioned¹⁸. According to Eni’s own studies, the tar sands exploration zone comprises 50–70% primary forest and other highly bio-diverse areas.¹⁹ It also includes human settlements, yet there was no meaningful consultation with the communities who will be impacted – the deal was negotiated without their input.²⁰ No environmental or social impact studies on the tar sands or the palm oil project have been made available to our knowledge, more than two years after the agreement was signed.

Yet regarding oil exploration, the RPP merely states that “inland exploration is ongoing and should potentially lead to extraction. To date, there is no more to be said on this subject” (p. 28). Nor is the project mentioned in the Section 3.5 on mining infrastructure, where it is stated that “with the exception of oil, which is currently exploited offshore, mining explorations...did not entail permits

¹⁶ The recent announcement by DLH, a Danish logging company that is the largest holder of certified concessions in the country, to sell all of its forestry operations calls into question the ability of voluntary certification to provide long-term assurances regarding standards of operation.

¹⁷ “Swamp forests” make up 4.1 million ha of RoC land surface according to *State of the Forests of the Congo Basin: State of the Forests 2008*, available at: <http://carpe.umd.edu/resources/sof/>

¹⁸ “Eni and the Republic of Congo launch a new integrated model of cooperation”, March 2008

http://www.eni.com/en_IT/media/press-releases/2008/05/19-05-2008-integrated-model-congo.shtml

¹⁹ As quoted in Heinrich Boell Foundation, 2009, previously cited.

²⁰ According to the Heinrich Boell Foundation, this “raises wider issues about the social and environmental costs of supporting such high-carbon, export-driven energy investments in ecologically high-risk areas with minimal transparency and human rights protection.” See <http://www.boell.de/ecology/climate-energy-7775.html>

that were significant enough to have an important impact on deforestation and forest degradation.” (p. 30)

The RPP proposes a study on mining and oil (p. 33) to be carried out by national and international consultants in mining/oil, economics and sociology, based on a literature review and overseen by ‘experts’ without any participation of civil society. Terms of reference for the study are not provided.

Strategic objective 5 (“Horizontal integration of REDD+ in other relevant sectors of public policy”), mentions actions to “reduce or compensate the impacts of the mining and petrol industries” but with no more information on what this might mean, how it would be implemented or to whom compensation would be paid (p.48-50).

The construction of hydroelectric dams and road expansion are considered “not yet a source of severe deforestation in the country, with the exception of areas near cities” (p. 30), implying that such projects are currently causing some deforestation and are expected to continue to do so. However, with the exception of four road projects named on page 31, no further information is given about future projects that may result in additional deforestation and forest degradation.

6. Inequitable, unsecure land tenure system not adequately addressed

As the RPP acknowledges, the land tenure system in RoC is far from equitable and secure and, despite recognition in the proposal that customary community land rights should be respected, the State *de facto* still controls the forest.²¹

The current land tenure problems such as overlapping customary and statutory rights, multiple barriers to access for local people to register land rights, conflict and weak governance (p. 49) are proposed to be remedied by the passing of a new ‘Bill under Review to Promote Recognition of Customary Rights’. However, the bill referred to is in fact the Proposed Law on the Promotion and Protection of the Rights of Indigenous Peoples²², which has been in development since 2007, and if implemented would only strengthen the rights of a small percentage of the rural population.

The RPP acknowledges that land tenure security needs to be improved and that this would be an important action to reduce deforestation and forest degradation. However, it is a concern that one of the options on enhancing tenure security suggests strengthening existing protected areas and identifying new areas (p. 38, 42) without clear provisions for participatory planning. The protected area system in RoC was created without consultation or respect of local communities’ rights, and there are frequent conflicts between traditional inhabitants of these lands and territories and the “eco-guards” assigned to prohibit access to protected areas.²³ The RPP states that local communities

²¹ “This recognition should have been formalized through a legal bill to provide for a registration procedure of customary tenure rights. Although the principle of ownership rights for local collectivities is in effect, the transfer has not been implemented. As for individuals, registration of customary titles remains an issue. Presumption of ownership remains in the benefit of the State, still the main owner and manager of Congolese forests.” (p. 23)

²² The *Projet de loi portant promotion et protection des droits des populations autochtones* was adopted by the Council of Ministers in RoC in January 2010, it is expected to be submitted to the next session of the National Assembly this year.

²³ Observatoire Congolais des Droits de l’Homme (OCDH) and Rainforest Foundation UK, 2006, “The rights of Indigenous Peoples in the Republic of Congo”, available at:

<http://www2.ohchr.org/english/bodies/cerd/docs/ngos/OCDH3.pdf>

and indigenous peoples should be involved in this process, but there are no detailed proposals to demonstrate that this is a genuine commitment.

A second sub-option, a proposal for a national land-use plan (PNAT) process, does not include information on the procedure and timeframe, terms of reference, consultation and participatory planning processes, or related legal frameworks.

More progressive suggestions in the RPP such as to, “transfer management responsibilities from the government to... local communities, and indigenous peoples” (p. 38) are positive but receive no further development.

In sum, the legal and institutional reform envisaged as a part of the REDD process in RoC is limited to the proposed REDD+ law (pp. 51-53) to create the institutions to implement REDD. It does not address broader governance or land tenure issues, or other concrete measures to ensure that the customary tenure rights of local communities are formally recognized and made the basis for distribution of benefits from REDD. This is in stark contrast to the VPA with the European Union which was signed on May 2009 with the full support of civil society and addresses the need for extensive legal reforms in land tenure and the role of communities in forest management.

7. Indigenous peoples risk being further marginalised

RoC’s indigenous peoples²⁴ live in “campements” that are considered only as attachments to, and often the property of, the majority Bantu villages. They, therefore, rarely have any formal representation of their own nor do they have a role in local decision-making.²⁵ It is therefore likely that indigenous peoples would not receive REDD payments, even if a mechanism was set up to ensure benefits go through local chiefs to communities. To remedy the situation, indigenous peoples’ settlements should be recognised in their own right and be able to handle these processes themselves as separate entities. However, little attention is given to the plight of RoC’s indigenous peoples in the RPP.

The passing of the proposed law on the promotion and protection of the rights of indigenous peoples (wrongly referred to as a ‘Bill under Review to Promote Recognition of Customary Rights’, as discussed, p. 49), would be a positive initial step. The proposed law has been in the process of elaboration since 2007, and after many delays it is hoped that the National Assembly will pass the legislation this year. However, there would need to be follow-up to ensure that the law is implemented and that indigenous peoples are consulted in the development of application texts.

As noted in point 8 below, there are inadequate plans for benefit-sharing of REDD revenues. It is far from clear how the participation of indigenous peoples and local communities in the funding mechanism of REDD, will be insured through “Cooperation between the REDD+ Fund and the Development Community Funds” as stated on page 53.

These elements thus marginalise the role of indigenous peoples, and violate the right to ‘free, prior and informed consent’ (FPIC) as included in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

²⁴ The term ‘pygmies’, used in the RPP, is considered derogatory in some areas of the Congo Basin, and the RPP should refer to indigenous peoples (*peuples autochones*)

²⁵ Observatoire Congolais des Droits de l’Homme (OCDH) and Rainforest Foundation UK, 2006, as previously cited.

8. Centralisation of carbon rights, lack of financial transparency and absence of benefit-sharing mechanism

Both options set out for the ownership of carbon are, under current circumstances, regressive and unsatisfactory. In option 1, all carbon is the property of the State, which would result in the government gaining most if not all of the revenues from REDD. In option 2, carbon is treated as an Intangible Movable Asset, and “ownership of carbon credits will be granted to the entity able to prove ownership” (p. 52). Due to the land tenure system in RoC, this would mean that in reality large logging, mining and agribusinesses may be able to own and benefit from carbon credits, whereas local communities and indigenous peoples, who are not legal entities and have no recognised and registered rights to the land or community forests by law, would not.

Improvements also need to be made in the proposed governance structure of the REDD+ institutions. First, according to the organigram on p. 10, the REDD+ National Committee has an executive function in the design of the REDD strategy and vision and at the same time is mediator of conflicts between stakeholders. There needs to be an independent, impartial grievance mechanism in place. Second, the REDD+ National Fund, managed by the Congolese Public Treasury, lacks a democratic governance structure. Oversight of the fund, through the presentation of budgets at periodical REDD+ National Committee meetings is not adequate.

In addition, the RoC lacks clear legislation on benefit-sharing of logging revenues, and the RPP does not fill that gap by making concrete proposals for establishing a viable benefit-sharing mechanisms. Experience of revenues from logging does not promote confidence that REDD monies would reach communities. And the proposed study on “Governance of the REDD+ Fund” (p. 104) needs more detailed and with a specific focus on benefit-sharing.

9. Lack of adequate monitoring of social, environmental and governance impacts

There is insufficient information on how the environmental and social impacts and overall implementation of REDD will be monitored and assessed, or by whom. The system needs to be elaborated in more depth. While the involvement of the Forest Observatory in monitoring logging activities is welcome, monitoring of all aspects of REDD+ implementation using a similar type of monitoring system will necessary. This may be best be done by expanding the mandate of the Forest Observatory,²⁶ subject to consultation with relevant stakeholders and rights holders. We note that this essential component is allotted less than one page (Component 4b, p. 79), whereas nine pages are devoted to a carbon MRV system.

Towards a better national plan to reduce deforestation and forest degradation in RoC

In conclusion, we recommend that the RoC RPP is not approved at this time in order to allow further dialogue between government, representatives of civil society and indigenous peoples and other stakeholders. A genuine consultation process, building on the VPA negotiation under the FLEGT initiative, is a necessary to allow for realistic and workable set of recommendations, with broad in-country support, to be developed.

²⁶ In its Design Document, the World Bank Forest Investment Programme recommends that independent monitoring systems for REDD should build on existing systems for independent forest monitoring where they exist.

Yours sincerely,



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