

Methodological note for DRC Forest Concession Compliance Portal

September 2024

1. Objective and approach

This document sets out the methodological approach used to ascertain the legal compliance of industrial logging and conservation concessions in the Democratic Republic of Congo (DRC) as presented in the Forest Concession Compliance Portal.

In order to determine the compliance of the concessions against set legal criteria, Actions pour la Promotion et Protection des Peuples et Espèces Menacées (APEM) and Rainforest Foundation UK (RFUK) combined desk-based research of official documents and government and donor-commissioned reviews with semi-structured interviews with Environment Ministry (MEDD) officials and other stakeholders.

The assessment used information from several sources, including the [legal review of forest titles carried out by MEDD in February 2023](#), the [report of the General Finance Inspectorate in 2021](#), the report [“Overview of the forestry and timber industry actors in the Democratic Republic of Congo”](#), from the ERAIFT Institute, the EU-financed legal review of forest titles in January 2023 as well data from the Forest Governance Observatory, Global Witness and elsewhere. The reference documents are included in the database to corroborate the ratings.

We triangulated the various sources to ensure the quality of the information. The results were also shared with MEDD and the Federation Industrielle de Bois (FIB), who were given two weeks to contest the findings.

2. Scope of research

The criteria for assessing the legality of industrial logging and conservation concessions were chosen to reflect the following key aspects of legal compliance in the governance of forests:

1. Legality of titles (allocation)
2. Presence of a management plan
3. Terms and conditions of timber exploitation (for logging concessions)
4. Payment of taxes, and
5. Socio-economic obligations of title-holders towards local communities and Indigenous Peoples.

For each of the five criteria, the team considered various parameters described below and assigned an overall legality score, using a weighted scoring system.

In addition, the assessment also considered the size of the concessions and whether the total area held exceeded the 500,000 hectares proscribed in the DRC 2002 Forest Code.

3. Disclaimer

It should be noted that the chosen legal criteria, while indicative, is far from an exhaustive list of concession holders' legal requirements according to the 2002 Forest Code and other related legal texts. Time and resource constraints, as well as lack of publicly available data, mean that the research should only be considered a partial assessment of the concessions' legal compliance. Therefore, compliance with the chosen criteria does NOT imply the legal compliance of the concession overall. Furthermore, this categorisation is APEM and RFUK's expert opinion based on available data and knowledge of the law but does not pretend to have official or legal weight or replace the Government's faculties in any way.

In addition, whilst efforts have been made to ensure that the information is up to date and accurate, the forest governance sector and industry in the DRC is a dynamic and evolving context, and we invite all relevant stakeholders to share updated information they wish to be included in the portal.

4. Assessment of legality

The legality assessment analysed the 82 concessions (56 logging and 26 conservation) to ascertain legal compliance with current forest regulations in the DRC, in particular the 2002

Forest Code which remains the overarching piece of legislation on forestry. To do this, we developed parameters for each criterion to assess whether or not the concession was compliant.

4.1 Assessment criteria for logging concessions (CF – concession forestiere)

DRC's industrial logging concessions are concessions devoted to industrial logging exploitation where commercial timber is primarily harvested for export in the form of logs or sawn wood. The 56 concessions cover a total area of approximately 14 million hectares. In 2002, a national moratorium prohibited the allocation of new logging concessions due to widespread corruption and malpractice in the sector¹.

Criterion CF 1: Legality / Title acquisition: This criterion concerns the legislation governing the procedures for issuing forest concession licences, including the use of legal methods to obtain a concession licence, notification of the convertibility of the title, the forest concession contract decree and the provisional management plan. It is composed of the following parameters:

- **Parameter CF 1.1:** Notification of title convertibility.
- **Parameter CF 1.2:** Forest concession contract decree.
- **Parameter C.F. 1.3:** Provisional management plan.
- **Parameter C.F 1.4:** Document of social clause agreements.

Reference laws

- *Décret N° 08/09 Du 08 Avril 2008 Fixant La Procédure D'attribution Des Concessions Forestières;*
- *Decree no. 05/116 of 24 October 2005 setting out the procedures for converting old forestry titles into forestry concession contracts and extending the moratorium on granting forestry exploitation titles.*

Criterion C.F. 2: Management of concessions: this criterion concerns the legal requirements for planning the management of forest concessions, including the development of the

¹ Ministerial Order No. CAB/MIN/AF.F-E.T/194/MAS/02 of 14 May 2002

management plan and the annual operations plan, consultation with local communities, etc. It is made up of the following parameters:

- **Parameter C.F. 2.1:** Development plan document.
- **Parameter C.F. 2.2:** Notification of the validation of the management plan.
- **Parameter C.F. 2.3:** Certificate of conformity of the development plan.
- **Parameter C.F. 2.4:** management plan implementation order.

Reference laws

- *Ministerial Order n°034/CAB/MIN/EDD/03/03/BLN/2015 of 03 July 2015 laying down the procedure for drawing up, verifying, approving, implementing and monitoring the management plan of a timber production forest concession;*
- *Ministerial Order n°025/CAB/MIN/FCNDD/CJ/00/RBM/2016 of 09 February 2016 laying down specific provisions relating to the management and exploitation of local community forest concessions (art. 22, 23).*

Criterion C.F. 3 - Timber exploitation standards: concerning felling rules and marking such as the annual cutting base in a forest concession:

- **Parameter C.F. 3.1:** Permit to install the processing unit.
- **Parameter C.F. 3.2:** Annual activity report proving the functionality of the processing unit.

Reference laws

- *Ministerial Order No. 050/CAB/MIN/EDD/04/03/BLN/2015 of 11 September 2015 on timber logging.*

Criterion C.F. 4: Standards relating to social specifications: concerning the specific provisions relating to the sustainable management and exploitation of the concession. This criterion considers the companies' obligations towards the local population, such as the provision of social services, the construction of socio-economic infrastructure, the establishment of a Development Fund, etc. It is made up of the following parameters:

- **Parameter CF 4.1:** Presence of social clauses agreement document (cahier de charges).
- **Parameter CF 4.2:** Evidence of implementation of agreements (agreement implementation monitoring sheet).
- **Parameter CF 4.3:** number of local people employed

Reference laws

- *Ministerial Order n°072/CAB/MIN/EDD/DRCE/00/AAN/2018 of 12 November 2018 setting the model of the agreement constituting the social clause of the specifications of the forest concession contract;*
- *Ministerial Order n° 028/CAB/MIN/ECNT/15/JEB/08 of 07 August 2008 setting out the models for forest product exploitation concession contracts and the related specifications.*

Criterion C.F. 5 - Tax payment standards: this criterion takes into account the regulations concerning the tax on the exploitable area of the forest concession over a five-year period. Other types of tax payments could not be taken into account due to insufficient information:

- **Parameter CF 5.1:** Proof of payment of surface area charge (2018-2022 period).
- **Parameter CF 5.2:** proof of payment of the tax on the industrial timber cutting permit.

Reference laws

- *Arrêté interministériel n°CAB/MIN/EDD/2020/005 et n°CAB/MIN/FINANCES/2020/066 du 24 juillet 2020 portant fixation des taux des droits, taxes et redevances à percevoir à l'initiative du ministère de l'environnement et du développement durable en matière de gestion forestière (Art 13).*

Overall assessment of legality of logging concession

To carry out the overall assessment of legality, we began by evaluating each criterion individually according to the established parameters. We then added up the scores obtained for each criterion and converted this total into a percentage representing the overall assessment of legality. The scores awarded for each criterion are as follows:

Criterion 1: Legality of the title: 4 points = compliant, 2-3 points = partially compliant, 1 point = non-compliant

Criterion 2: Layout of concessions title 4 points = compliant, 2-3 points = partially compliant, 1 point = non-compliant

Criterion 3 : Timber harvesting standards (2 points = compliant, 1 point = partially compliant, 0 points = non-compliant)

Criterion 4: Specifications 3 points = compliant, 1-2 points = partially compliant, 0 points = non-compliant

Criterion 5: Tax payment 2 points = compliant, 1 point = partially compliant, 0 points = non-compliant.

The assessment of legality was obtained by aggregating the scores attributed to the five criteria and converting them into a percentage. A scoring grid note has been drawn up to facilitate this overall assessment.

If the total value of the criteria is 100%, the dealership is compliant.	
If the total value of the criteria is between 90-99% , the dealership is marginally compliant.	
If the total value of the criteria is between 70-89 concession is moderately compliant	
If the total value of the criteria is between 50 and 69%, the dealership is less compliant.	
If the total value of the criteria is less than 50% , either there is a lack of information or the concession is non-compliant.	

4.2 Assessment criteria for conservation concessions (CC concession de conservation)

Conservation concessions are portions of forest acquired by a company for the purpose of conservation or the generation of carbon credits (foregoing of any extractive exploitation of its resources). The 26 concessions included in the legal assessment cover a total area of approximately 1.4 million hectares and are all former logging concessions which have been converted.

Criterion CC1: Legality/Acquisition title concerns the legislation governing the procedures for issuing conservation concession licences and/or their conversion in the case of former industrial exploitation titles and has the following parameters:

- **Parameter CC1.1:** Request letter.
- **Parameter CC 1.2:** Location, identification, surface area and multi-resource inventory data of the forest to be conceded.
- **Parameter CC 1.3:** Authorisation document with terms and conditions for access to the forest for reconnaissance purposes.
- **Parameter CC 1.4:** Document setting the minimum allocation price per hectare in accordance with the regulations in force on the procedure for putting a price on forests.
- **Parameter CC 1.5:** The forest reconnaissance licence, including proof of payment of the tax due.
- **Parameter CC 1. 6:** Notification of acceptance of the technical and financial offer for payment of the fees due.
- **Parameter CC 1.7:** Notification of the conservation concession contract.
- **Parameter CC 1.8:** Conservation forest concession contract decree.
- **Parameter CC 1.9:** Registration with a relevant carbon standard.

Reference laws

- *Decree no. 011/27 of 20 May 2011 laying down specific rules for the allocation of conservation forest concessions;*
- *ARRÊTÉ MINISTÉRIEL n° 047/CAB/MIN/EDD/AAN/MML/05/2018 setting the approval procedure for REDD+ investments in the Democratic Republic of Congo;*
- *Code forestier, art. 82.*

Criterion CC 2. Concession management: this criterion concerns the legal requirements for planning the management of forest concessions, including the development of the management plan and the annual operations plan, consultation with local communities, etc. It is made up of the following parameters:

- **Parameter CC 1:** Development plan document.
- **Parameter CC 2:** Notification of the validation of the management plan.
- **Parameter CC 3:** Certificate of conformity of the development plan.

- **Parameter CC 4:** management plan implementation order.

Reference laws

- *Ministerial Order 083 of 30 September and 034 of 03 July 2015.*

Criterion CC 3: Free, Prior and Informed Consent, has the following parameters:

- **Parameter CC 1:** Presence of the document for obtaining the free and informed prior consent of the local communities.

Reference laws

- *2017 Ministerial Order n° 026/ CAB/ MIN/EDD/AAN/KTT/0412017 setting the framework for national guidelines on Free, Prior and Informed Consent for REDD projects;*
- *Law no. 22/030 of 15 July 2022 on the protection and promotion of the rights of Indigenous Pygmy peoples.*

Criterion CC 4: Standards relating to the specifications concerning the specific provisions relating to the sustainable management and exploitation of the local community forest concession. This criterion considers the companies' obligations towards the local population, such as the provision of social services, the construction of socio-economic infrastructure, etc. It is made up of the following parameters:

- **Parameter CC 1:** Document for social clause agreements in specifications.
- **Parameter CC 2:** Evidence of implementation of agreements (agreement implementation monitoring sheet).
- **Parameter CC 3:** Document summarising previous social clauses.

Reference laws

- *Ministerial Decree 083 of 30 September 2013 and 034 of 30 July 2015.*

Criterion CC 5 - Taxes: this criterion takes into account the regulations concerning the tax on the exploitable area of the forest concession and other types of tax obligations, in particular:

- **Parameter CC 1:** proof of payment of the bond.
- **Parameter CC 2:** Proof of payment of surface area tax.
- **Parameter CC 3:** Document of the project's financial package determining the benefit-sharing key.
- **Parameter CC 4:** Proof of payment for registration certificate, if applicable.
- **Parameter CC 5:** Proof of payment of the probate decree.

Reference laws

- *ARRÊTÉ MINISTÉRIEL n° 047/CAB/MIN/EDD/AAN/MML/05/2018 setting the approval procedure for REDD+ investments in the Democratic Republic of Congo*

Overall assessment of legality of conservation concessions

As for the industrial exploitation concessions, to carry out the overall assessment of legality, we began by evaluating each criterion individually according to the established parameters. We then added up the scores obtained for each criterion and converted this total into a percentage representing the overall assessment of legality. The scores awarded for each criterion are as follows:

Criterion 1: Legality of the title (9 points = compliant, 6-8 points = partially compliant, 0-5 points = less compliant).

Criterion 2: Layout of concessions title (4 points = compliant, 2-3 points = partially compliant, 1 point = non-compliant).

Criterion 3: Presence of FPIC award document (1 pts = compliant, 0 pts = non-compliant).

Criterion 4: Specifications/ Chaier des charges (3 points = compliant, 1-2 points = partially compliant, 0 points = non-compliant).

Criterion 5: Tax (5 points = compliant, 3-4 points = partially compliant 0-2 points = non-compliant).

As with industrial operations, the overall assessment of legality is carried out by evaluating each criterion according to specific parameters, then weighting them as a percentage.

If the total value of the criteria is 100% , the dealership is compliant.	
If the total value of the criteria is between 90-99% , the dealership is marginally compliant.	
If the total value of the criteria is between 70-89% the dealership is moderately compliant	
If the total value of the criteria is between 50 and 69% , the dealership is less compliant.	
If the total value of the criteria is less than 50% , either there is a lack of information or the concession is non-compliant.	

5. Other legal considerations

In addition to the evaluation based on the above-mentioned criteria, this analysis of legality also takes into account changes in the surface area of concessions that have been reallocated in breach of the law, according to the information provided in the IGF report.

Finally, the legality analysis looks at the total area of concessions (logging and conservation) in order to identify concessions held by a single individual or legal entity whose combined area exceeds 500,000 hectares, in violation of Article 92 of the Forest Code.