

CHAPTER 2: CONFLICT, POST-CONFLICT AND FOREST EXPLOITATION

This chapter looks at the links between the timber industry and conflict, drawing on experiences in Liberia and DRC. The articles by Silas Siakor and Albert Barume describe how logging has been used to finance conflict and as one of the spoils of war in both these countries. Forest law enforcement is impossible in situations where there is a breakdown of law and order, and often results in liquidation forestry. Article 1.2 highlights the need to prohibit the sale of timber from conflict areas, and for those companies engaged in such activities to be held accountable.

The third article, by Theo Gata, focuses on the role of the timber industry in engendering conflict between the various stakeholders – local communities, logging companies and the State – a result of the unjust allocation of concessions, as well as a disregard of the legal obligations for concession management. To prevent such outcomes the key recommendation is to enable the engagement of local populations in forest management.



Conflict and forest resource exploitation are inextricably linked in many situations: this Batwa community in Eastern DRC have experienced years of both and are using theatre to try to find local solutions. Photo: Cath Long

2.1 LIBERIA: FOREST MANAGEMENT IN A CONFLICT SITUATION

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Conflicts in Africa have had disastrous impacts on forests and forest management. The Liberian experience shows how the breakdown of law and order, due to the collapse of government and weakened forest management institutions, has led to the state's inability to exercise control over forest regions. These situations make implementing and monitoring forest laws impossible.¹¹⁴

The concession¹¹⁵ system of forest management that exists in Liberia has exacerbated this situation. Under this system, the government allocates forest management responsibilities to private companies. Once concessions are issued, it is the prerogative of the company to decide when and where (within their concession) they can harvest, once their management plan, annual coupes and harvesting plans are approved by the Forestry Development Authority (FDA). The forestry law of April 2000 and subsequent concession agreements provide that a concessionaire may decide whether or not they can operate in their concession in a situation of war or conflict; otherwise they may invoke the *Force Majeure* clause in their contract.¹¹⁶ In all cases, it is the responsibility of the government to ensure that it has the monitoring and regulatory mechanisms for forest law enforcement in place, war or no war.

This system made it possible for groups such as the Maryland Logging Company (MLC), Timber Management Company (TIMCO) and other companies to continue to operate in regions outside the control of various interim governments between 1991 and 1997 during the first phase of the Liberian war. The FDA was able to continue collecting taxes and other fees from some of these companies even though they did not have access to their operation areas. During this period none of the logging companies concerned chose to declare a situation of *Force Majeure*.

Following elections in 1997, the concession system was maintained without the necessary reforms to make it responsive to present day challenges in forest management. Basic principles of good governance including broad stakeholder participation, transparency and accountability were not incorporated in forest management. This allowed for the continued massive regulatory, administrative and fiscal mismanagement in the sector by the FDA, which was uncovered by a Forest Concession Review commissioned by the government in 2004. For example, some forest areas were granted without field surveys because of insecurity in those regions, consequently leading to overlapping of concession boundaries. Overall, the FDA granted eleven million hectares of forest under concession, approximately two and a half times the total forest cover of Liberia.¹¹⁷

This level of mismanagement was possible because each concession agreement has only two parties; the government and the concessionaire. Once these parties are satisfied with the level of compliance by each other with the terms of their agreement, it is almost impossible for other stakeholders such as civil society and rural people to demand improvements of governance and management; both parties benefit from the system in which there is no transparency. The corrupt administration and the logging companies depend on each other for their own survival.

For example, President Taylor depended on logging companies for financial, human and material support to finance a patronage system and to fight insurgents. Logging companies depended on Taylor's support to flout forestry laws. Between 1999 and 2000, the Oriental Timber Company (OTC) paid over US \$7m in "taxes" to various offshore bank accounts and individuals¹¹⁸ and in return received full presidential protection; President Taylor

¹¹⁴ Conflict situations in Africa, AFLEG Thematic Working Group, June 19, 2002 ¹¹⁵ In this section a concession means a governmental permissions issued to private companies to harvest timber in designated areas under specified conditions. (Taken from the Forest Concession Review Committee reports.) ¹¹⁶ An act of God, accidents, wars, invasions, acts of public enemies, hostilities, restrictions on trade or other activities of the holder imposed by any sovereign, embargoes, blockades, revolutions riots, civil, etc. that is beyond the reasonable control of the party(s), New National Forestry Laws of Liberia (April 2000). ¹¹⁷ Forest Concession Review Committee (Liberia), May 31 2005. ¹¹⁸ OTC credit notes and invoices obtained by SDI, 2005.

referred to OTC as his “pepper bush”.¹¹⁹ This highlights the controversial dimension of the widely used definition of conflict timber: “timber that has been traded at some point in the chain of custody by armed groups, be they rebel factions or regular soldiers, or by a civilian administration, or its representatives, involved in armed conflict either to perpetuate conflict or take advantage of conflict situations for personal gains”¹²⁰ (emphasis added).

However, this situation had additional impacts. Ironically, conflict prevented widespread deforestation, especially compared to regional neighbours. But now that the conflict has ended, the vacuum left by the lack of enforcement of forest regulations risks allowing unrestrained destruction of Liberia’s forests and its resources.

Despite the constitutional guarantee of local people’s participation in the decision-making process about forests, central government provided no political arena for civil society in the designation, design or allocation of concessions contracts, thus allowing President Taylor’s excessive discretionary authority over forests. This had dire consequences for forest governance and management as illegal logging and other illegal forest activities flourished. These include the bushmeat trade that went unreported because forest officers had little or no access to remote areas and local people had no incentive or means to report them.

Since the 2003 UN-brokered peace and the end of Taylor’s regime, the international community, at the request of civil society, demanded that the interim government review all forest concessions. The review assessed which concessionaires met the minimum legal standard to operate, i.e. business licence, articles of incorporation, contract, and performance bond. Of the forty-seven concessionaires that submitted documents, not one could meet this minimum standard.

Therefore, the committee recommended that every concession be cancelled. This does not even consider the widespread tax evasion and violations of laws, regulations, and human rights abuse, including the massacre of civilians by the militias of some logging companies. The committee further recommended reform of the FDA and forest management regulations before any new concessions are awarded.

These reforms provide a window for the Liberian people including the government, civil society, the private sector and local people to radically overhaul the system. The international financial and technical support being channelled through the Liberian Forest Initiative, if well coordinated, could promote reforms that are robust and operate with maximum efficiency and benefit to the various stakeholders.

This will however, only be possible if the institutional, legal and management arrangements adopted are in compliance with the basic principles of good governance and provide for adequate stakeholder participation in forest related decision-making and management; even if the concession system is maintained. The laws should be appropriate and just, including legal requirements for regular, verifiable reporting and audit by both private sector and forestry agencies, as well as participatory arrangements so that civil society and local populations are truly involved, both at the decision-making and management levels.

Conclusions

Forest law enforcement in armed conflicts becomes virtually impossible, especially in cases where there is a breakdown of the rule of law or the state loses control of forest regions to armed non-state actors. This should be acknowledged in the new forestry laws and

¹¹⁹ SAMFU (2002) Pepperbush: A Liberian parlance for a treasured possession. ¹²⁰ Global Witness (2002) The Logs of War. The Timber Trade and Armed Conflict.

provisions incorporated to safeguard against forest exploitation in conflict situations but this has not been done. As the Liberian experience demonstrates, the application of basic policy principles such as transparency and local peoples' participation in forest management give way to liquidation forestry under the pretext of addressing security issues. This is particularly important because the political and business elites often seek to take advantage of the conflict for personal gain.

In Liberia, rural populations in forest communities and civil society are the two national stakeholder groups that have demonstrated a strong commitment to promoting sustainable forest management. This is understandable as rural people need the forest for their long-term survival and development and Liberian civil society has treated the myriad of problems in the forest sector as issues of environmental and social justice as well as challenges to good governance and the rule of law.

Recommendations

To address the problem of forest management in armed conflicts, we recommend:

1. The concession system be reformed to adapt the basic principles of good governance, for example to provide for third party, including civil society and rural populations, involvement in the governance and management of forests. This should include but not be limited to clearly defined roles in: land use planning; the concession definition and allocation processes; development of management plans by concessionaires and their approval - or not - by civil society; independent monitoring of timber extraction and law enforcement, adjudicatory processes and benefit sharing arrangements.
2. The development of an appropriate forest management system that would be responsive to the challenges of managing forests in a conflict situation. For example, this should incorporate a provision that allows for third party stakeholders such as civil society or third party monitors to declare *Force Majeure* in the event that it can no longer perform its oversight or monitoring responsibilities effectively. This will guarantee that logging in areas made inaccessible due to armed conflict can be shut down by a third party independent monitor once they can show that it is no longer able to operate in such areas.
3. Establishing an internationally agreed standard for what constitutes a loss of state control over forest regions, a breakdown of the rule of law, or when the timber trade is considered to be fuelling conflicts. Also, defining in a fully consultative manner what constitutes conflict timber.
4. Once achieved, timber identified as "conflict timber" should be automatically banned from entering regional and international markets.
5. An international framework for enforcement, such as trade bans, must be negotiated amongst states, with the involvement of civil society, to compel compliance.

2.2 FOREST EXPLOITATION AND ARMED CONFLICT IN CENTRAL AFRICA: THE CASE OF THE EASTERN DEMOCRATIC REPUBLIC OF CONGO

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Timber extraction has played a decisive role in the armed conflict which has led to the deaths of more than 3 million civilians in the Democratic Republic of Congo (DRC) since 1998. Just as with diamonds, gold, coltan, cassiterite and various other natural resources, the forests have not only served as sources of revenue for the armed factions but also as the spoils of war for foreign armies, which have done battle on Congolese soil for more than six years.



Hiding behind the various rebel factions, logging companies have extracted thousands of cubic metres of timber, some of which has been exported to various countries, in particular China and the USA. Ugandan, Rwandan and Burundian players have all been active in this operation. In return for the military protection provided by the armed groups, the logging companies provided money and various services, in particular the transportation of troops and arms.

The individual case of DARA-Forest, a Ugandan-Thai company, is just one of many cases illustrating the joint criminal actions and complicity which have existed between logging

companies and various Congolese armed factions. DARA-Forest is a subsidiary of DARA Great Lakes Industries (DGLI), as is also the Ugandan logging company Nyota Wood Industries.¹²¹ DARA-Forest moved into eastern DRC in 1998, although it was not until 2000 that it received its own forest concession of 100,000 hectares from the *Rassemblement Congolais pour la Démocratie-Mouvement de Libération* (or RCD ML).¹²² It is important to note that it was with the death of the former President Désiré Laurent Kabila that the second phase of DRC's war began in 1998. Before it obtained its concession, DARA-Forest's main activity was the purchase of lumber from local operators.

DARA-Forest was based in Mangina in the Beni Territory of the North Kivu Province, where it owns an industrial sawmill. Its operations covered several other areas including Djugu, Mambassa, and Komanda. Its annual exports were valued at more than 45,000 cubic metres of timber.

With just a telephone call from a RCD-ML or Ugandan military commander, DARA-Forest's lorries could cross Congolese customs posts without paying a penny. At other times, when it was impossible for the company to get a senior military official to intervene, the vehicles carrying the timber were escorted by military personnel from either the Ugandan army or the RCD-ML, as necessary. The DRC's tax legislation and customs regulations were not the only areas for which DARA-Forest had little regard.

The Report of the United Nations' Panel of Experts on the exploitation of natural resources of the DRC confirms that most of the timber logged fraudulently was exported via the Kenyan port of Mombassa.¹²²

DARA-Forest has therefore acted in complete

¹²¹ Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo. (S/2001/357) Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N01/323/54/IMG/N0132354.pdf?OpenElement> ¹²² Ibid.

disregard to the standards relating to social and environmental rights. Worse still, it has actively supported the RCD-ML both financially and logistically. The consequence of this has been for it to attract the enmity of armed factions opposed to the rebel movement protecting it, resulting in fighting and an escalation of rivalry between various militants.

For example, on 15 May 2001 twenty or so DARA-Forest employees – including Thai, Kenyan and Swedish citizens – were kidnapped by elements of the Mai-Mai militia group,¹²³ who demanded that both DARA-Forest and Ugandan troops leave the country in exchange for freeing the hostages.¹²⁴

It is crucial to note that the acts of cannibalism, assumed to have been committed by soldiers of the *Mouvement de Liberation du Congo* (MLC) and the *Rassemblement Congolais pour la Démocratie-Nationale* (RCD-N) in Mambassa and surrounding areas, took place at around the same time as DARA-Forest was engaged in logging operations in this part of the Beni territory. A report by the international Human Rights Watch organisation confirmed that “in the last three months of 2002, MLC and RCD-N troops raped, killed and cannibalised Pygmies, hunters and gatherers who live in the forest. They sought thus to terrorize the Pygmies into helping them as guides through the dense forest so that they could avoid travel on the main roads where they would be subject to attack. Some of the combatants who engaged in this practice may have hoped to acquire strength from their victims.”¹²⁵

This increasingly disturbing link between serious international crimes and the exploitation of natural resources was, in July 2003, underlined by the Chief Prosecutor of the International Criminal Court in relation to the crimes committed in eastern DRC, and more accurately in Ituri. The court’s Chief

Prosecutor, Moreno Ocampo affirmed that “...companies doing business and financing crimes must now know we will follow them”.¹²⁶

Is one justified in drawing a link between DARA-Forest’s logging activities and these atrocities? In supplying the means and providing assistance to armed groups and forces which committed war crimes, crimes against humanity and other atrocities, how is it possible that DARA-Forest did not have any knowledge of the criminal use to which were put the means and assistance it provided?

This question is highly relevant legally. Assuming possession of at least a passive knowledge of the serious violations committed by Burmese soldiers in Myanmar, a Californian District judge in the USA was led to find that the multinational gas and petroleum operator, UNOCAL, for whom the Burmese military forces were providing security, was accountable for civil liabilities.¹²⁷ Similar principles were used to force certain German commercial and industrial companies to make compensation payments for having received free labour under Hitler’s Nazi regime.¹²⁸

More recently in December 2005, the International Court of Justice accepted a direct link between the armed conflict which was rampant in eastern DRC, and the exploitation of this country’s natural resources by a neighbouring country, the Republic of Uganda. The Court affirmed that “...by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, [the Republic of Uganda] violated obligations owed to the Democratic Republic of the Congo under international law”.¹²⁹

¹²³ The Mai-Mai group was one of the armed factions in the DRC conflict. ¹²⁴ Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2001/357). *Op.cit.* ¹²⁵ Human Rights Watch (2003) Ituri: Covered in blood. Report Vol. 15, No. 11(A), July 2003. ¹²⁶ Simons, M. (2003) Court likely to take up Congo first. *New York Times*, 17 July 2003. ¹²⁷ *J. Doe et al. v. Unocal et al.* (2000) U.S. Dist. LEXIS 13327, No. CV 96-6959 RSWL (BQRx) ¹²⁸ S. Jonathan Wiesen, *West German Industry and the Challenge of the Nazi Past, 1945-1955*, UNC Press. ¹²⁹ International Court of Justice, Press Release (2006/26). 19 December 2005

Conclusions

Allegedly set up to bolster the States' treasury finances, the forest concessions system introduced in the Congo Basin in general and in the DRC in particular, legitimises the annual export of millions of cubic metres of timber to the rest of the world. Depressingly, a proportion of this volume has been produced through the commitment of serious violations of human rights, war crimes and crimes against humanity.

In addition to the link which exists between logging and international crimes, it is regrettable that the current system of forest concessions has never been capable of curbing the poverty which virtually all the forest reforms undertaken in the Congo Basin were allegedly intended to address. In fact, in several countries in this part of Africa where the drafting of new forest laws have been justified on the grounds of a willingness to fight poverty, the majority of the population live either below the poverty line or in extreme poverty, as the most recent statistics released by the UNDP show.¹³⁰

The fact that the human rights dimension has never been included within the legal arrangements of the Congo Basin's current system of forest concessions is one of the major reasons behind this system's present inability to bring about development, social justice and well-being for all. Yet the belief persists that logging is legal so long as it is carried out in accordance with forest laws. This partial perception of the legality does not take into account the frequently ratified Conventions and Treaties including those concerning human rights, which automatically form part of the domestic rights of the majority of the Congo Basin countries. In other words, the law of one country is a coherent corpus made up of both domestic rules and regulations and those issued by international bodies through

periodically ratified international treaties and conventions.

For all these reasons and in view of the fact that certain logging companies are supporting the armed conflicts which rage throughout these regions, it is recommended that:

- The concession system for the logging of Congolese forests is reviewed with a view to incorporating safeguards to prevent organised crime and to protect the rights of local communities;
- The timber from conflict areas is declared illegal and unfit for export in any form; but more than this, any form of international trade in this timber needs to be prohibited and made illegal;
- A process similar to the Kimberley Process is put in place for the forest sector;
- Logging companies which have participated in war crimes, crimes against humanity and other atrocities are excluded from any future allocation of forest licences.

¹³⁰ http://hdr.undp.org/statistics/data/hdi_rank_map.cfm

2.3 CONFLICTS ASSOCIATED WITH INDUSTRIAL LOGGING IN KONGO CENTRAL PROVINCE, DRC

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There is an estimated 135 million hectares of forests in the Democratic Republic of Congo (DRC) – approximately 50% of all of Africa’s rainforests and about 10% of the World’s tropical rainforests.¹³¹ They are teeming with biological diversity. However, without a strict management framework in place, the country – and more especially the Congolese people – is unable to gain any real benefits from the forests, despite the reforms initiated under the Forestry Law of August 2002.¹³²

Kongo Central¹³³ is a province located in the south-west of DRC, providing the country with access to the Atlantic Ocean. Logging in this province is restricted to the Bas-Fleuve district which contains the Mayumbe forest ecosystem. This ecosystem is unique to DRC and very important in terms of the region’s climate and its rich biological diversity.¹³⁴

The Mayumbe forest is, however, being over-exploited and is in a state of advanced degradation. The main reasons are the increased pressure from local communities looking to improve their livelihoods, together with an ever-growing number of industrial logging companies in the area.

Industrial logging in Kongo Central

The industrial logging operations in Kongo Central and more especially in the Bas-Fleuve district, date back to the days of colonialism. This fact explains the over-exploitation of the Mayumbe forest. Near to the coast and rich in commercially valuable species, this area is a favourite with DRC’s timber companies for logging operations.

Several companies have logged and/or continue to log the timber in this region. Currently there are sixteen logging companies, namely Agrifor, APC/Tembo, Exforma, Forabola, Mbanda, Safeco, Socofor, Soforma, PSL, CFT, SCAM,

Sodafmir, Socema, SCAEL, Extrabois and Agriumbe. Of these, the first eight are still in business while the last eight are bankrupt.¹³⁵ The forest concessions allocated by the State to these sixteen companies provide a guaranteed volume covering a total area of 960,025 hectares.

According to Swedi,¹³⁶ the many uses of, and riches contained in, the forest have always meant it was much coveted by many types of stakeholder. These include the decision-makers and managers (forestry authorities, local political and military authorities), logging companies, craftsmen and the people who live in and around the forest. From such a multitude of players springs forth a diverse range of perceptions and interests which inevitably give rise to various conflicts.

Types of conflict associated with logging in Kongo Central

The sustainable management of forests in the DRC, especially those in the Kongo Central, is related to: national zoning; the development of the national forest territory; the recognition of customs, traditions and practices of the forest communities; and especially to the settlement of conflicts over land use and ownership.

In the Kongo Central province, a region subject to significant land development pressures, forest resource management is based on traditional rights. The report by Yamba Yamba¹³⁷ exposes the impacts of forest concessions on the economy, and the conflicts that have arisen concerning land use and ownership. For example, invoking traditional rights is said to have heightened forest resource logging conflicts in concessions that have not been logged because the concession holders went bankrupt.

¹³¹ FAO (2002) <http://www.fao.org/forestry/site/23747/en/cod/page.jsp> ¹³² Law n° 011/2002 dated 29 August 2002 concerning the Forestry Code, In: *Journal Officiel de la République Démocratique du Congo* 43rd year, Cabinet of the President of the Republic, Kinshasa, 31 August 2002. ¹³³ Formerly Bas-Congo, this province was renamed Kongo Central in February 2006, when the Congolese Constitution of 2005 came into effect. ¹³⁴ Gata, D. (2001) *Participation de la population locale à la gestion des ressources naturelles dans la Réserve de biosphère de Luki (RDC) : Contraintes et perspectives pour un développement durable. Cas de l'enclave de Tsumba Kituti*. DESS unedited paper, ERAIFT. ¹³⁵ DGF (2003) Annual Report. MECNEF, Kinshasa. ¹³⁶ Swedi, E. (1998) *Gestion durable et participative des ressources forestières de la République Démocratique du Congo*. In: *Le Bassin du Congo, Ressources humaines et naturelles*. IUCN, May 1998, pp 177-186. ¹³⁷ Yamba Yamba, S.N. (2003) *Les pratiques des populations riveraines par rapport aux innovations du Code Forestier congolais et normes d'applications*. In: *Rapport de l'atelier sur le processus de mise en -œuvre du code forestier congolais et normes d'application*. Groupe de Travail Forêts, November 2003. Pp. 126-158

The way the guaranteed volumes for the logging companies in the Bas-Fleuve district have been allocated does not allow sufficient land for the activities of rural populations. As such, most of the conflicts relate to land use and ownership and arise from the need of these populations to do whatever they have to do simply to survive. A survey carried out in 2003 showed five types of conflicts were present in the Bas Fleuve district:

- Conflicts between rural communities or intra-community conflicts;
- Conflicts between logging companies;
- Conflicts between the logging companies and the rural communities;
- Conflicts between the rural communities and the State;
- Conflicts between the logging companies and individual concession holders.

The various stakeholders have put forward many reasons for these.

Regarding intra-community conflicts, these include:

- The traditional management of forest resources in the area which excludes incomers who do not belong to the region or its tribes;
- The dissatisfaction of certain tribe members with the distribution of revenues paid by the developers (logging companies and craftsmen).

With respect to the conflicts between the logging companies, these are often related to:

- The concession boundaries not being clearly marked, resulting in a reduction in guaranteed volumes.

In 2002, as part of the war effort, the Mbanda company was authorised to fell timber in Sumbi. The guaranteed volume granted to CFT by the technical services of the Ministry for the Environment and the Protection of Nature, Water and Forests (SPIAF), included the area being logged by Mbanda. CFT was therefore compelled to seize and sell all the timber felled by Mbanda. This affair went to Court and in 2005, CFT was ordered to refund Mbanda as SPIAF admitted its error in the allocation of guaranteed volume.

As part of the war effort, the government's requisitioning of logs arriving at the ports of Matadi and Boma also generated a large number of conflicts between logging companies. Such was the case between Soforma, owner of the requisitioned logs, and Mbanda, a logging company used by the government to sell these logs.

- The violation by pit sawyers of the guaranteed volumes granted to the industrial logging companies holding concessions.

For example, in 2004 Roger, a pit sawyer, cut up logs in Kinzambi and Kota (in the Seke Banza territory), which made up the guaranteed volumes of parliamentarian Mbenza Tubi's company, Exforma. Exforma then confiscated the timber cut by Roger. Following a hearing by the public prosecutor's department, Exforma won the case.

The conflicts between the logging companies and rural communities cover several categories:

- Non-payment for the damage caused to crops in the fields of farmers during logging operations, and the lack of revenue for the local communities from logging their clan forests.

In Tshela, in 2005 a conflict arose between a local community and Senior Judge Gabi, President of the Tribunal de Grand Instance – or District Court – of Tshela and the owner of a woodcutting firm. Following an agreement with the legal titleholder of a forest, Judge Gabi felled the trees on the land in question, but without the knowledge of the traditional authorities of the village. The village elders formally complained to the urban co-ordinator of the Ministry for the Environment and the case is currently being heard by the public prosecutor’s office in Matadi.

- Clearing of forest concessions following agricultural activities (slash & burn farming) and the production of wood charcoal by communities;
- The lack of funding by logging operators for alternative projects aimed at local community development;
- The felling of valuable forest species and the sawing of wood in operators’ concessions;
- Customary heirs to concessions who challenge the agreements signed by their deceased parents;
- Non-observance by the logging companies of the specifications favouring local communities or non-compliance with forest legislation.

With regard to conflicts between rural communities and the State:

- The non-involvement of communities in forest management;
- The exploitation of public sector agents by logging companies, and laxity in the application of forestry law and its application measures;

- Lack of respect for customary usage rights, since the existing forestry legislation in the DRC is based on the supremacy of the State in the management of the forests.

With respect to the conflicts between operators and individual concession holders, these are mainly due to the mutual or reciprocal encroachment of concessions during felling operations, linked to the poor demarcation of concession boundaries. In the Bas-Fleuve district, concessions held by private individuals holding long lease certificates cover a total surface area of 63,763.05 hectares.

In 2003, Mr Koyi Tafiki felled trees in his private concession located in a rich corridor of valuable forest species. The company Forabola obtained a guaranteed volume in Kinshasa that covered a part of Nkoy’s private concession and thus helped itself to the timber felled by the latter. Following legal proceedings at the *Tribunal de Paix* Court at Lukula and following technical advice from the Environmental Committee of the District of Tshela, Mr Nkoy won the case. Unhappy with the judgement handed down, Forabola appealed to Boma’s Tribunal de Grande Instance (or District Court) where it lost its appeal.

As regards the conflict settlement mechanisms available to these various users of the Kongo Central province forests, the people and the operators have recourse to:

- Customary regulations (reconciliation);
- Local courts (public prosecutor’s office, tribunals);
- The forestry authorities.

Recommendations

In view of the specificity of the Kongo Central province and the diversity of conflicting situations, the resolution of timber logging conflicts should first and foremost attempt to meet the essential needs of its growing population.

Given that currently almost all the Bas-Fleuve forest land has been allocated as guaranteed volume to the logging companies, and on the basis of Article 155 of the Forestry Code pertaining to the conversion of these guaranteed volumes into forestry concession contracts, we recommend:

To the Congolese Government:

- To take account of the interests of the rural populations through the effective decentralisation of the legal and financial management of the forest;
- To adopt clear laws which guarantee rural populations the ability to exercise their usage rights in areas affected by the industrial logging of the forests;
- To reduce the area of forest concessions already allocated to industrial logging operators in order to free up sufficient forest to allow local communities the possibility of claiming their community forests in accordance with Articles 22 and 44 of the new Forestry Law;
- To improve the working conditions of forest authority technicians to reduce their vulnerability when confronting industrial logging operators.¹³⁸

To the donors (World Bank and FAO):

- To assist the Congolese government in accelerating the community forestry reform process (Article 22 of the Forestry Code);

- To promote and fund projects other than those pertaining to the industrial logging of the forests.

Conclusion

Currently, almost all of the forest-covered lands in the Bas-Fleuve district provide guaranteed volumes to logging companies, regardless of whether they are trading or bankrupt. To meet their basic needs for land, wood and other forest products, the local population is required to operate within the confines of the remaining forest corridors, which usually suffer from low soil fertility combined with a limited number of tree and animal species.

We believe that there is a pressing need to reduce the surface area of the existing concessions through the conversion of these guarantees into forest concessions (Article 155 of the Forestry Code). This will then allow enough space to be freed up for community forests in accordance with Articles 22 and 44 of the new Forestry Law.¹³⁹ For this reason we believe that the provisions of Decree n° 5/116¹⁴⁰ should be strictly applied.

The traditional land management system, which forms the basis for the existence of the landless peoples in this part of the country, does not guarantee all farmers enjoyment of the lands and the forests. A community forest domain should therefore be created and placed under the responsibility of local civil society and/or customary institutions with regard to regulation of usage rights and forest products exploitation.

The sustainability of the Kongo Central's Mayumbe forest – which is highly important for the region's climate¹⁴¹ – is dependent on the suspension of the allocation of timber permits to logging companies, in order to rebuild this unique forest ecosystem. It is also dependent on the strict regulation of logging and support for alternatives to this type of use.

¹³⁸ Bakulu, M.J. (2004) *Rapport de l'atelier sur le code forestier et sa mise en ?uvre tenu à Matadi du 10 au 14 mai 2004, Bas-Congo Province*. CEPECO – CENADEP (Development NGOs). Pp. 20-21 ¹³⁹ Bakulu (2004) *op.cit.* ¹⁴⁰ Decree n° 05/116, dated 24 October 2005, setting out the terms for converting old forestry titles into forest concession contracts and extending the moratorium for the granting of logging titles. ¹⁴¹ Gata (2001) *op.cit.* pp. 9-10 & 58-69.