

Information note to the CAFI Board

Advances in Addressing Decision EB.2017.02

1. Background

Subsequent to the disclosure of new illegally attributed concessions in January 2017, the representative of the CAFI board to the FONAREDD Steering Committee (COFIL) shared with the remaining members of the committee the deep concern of the CAFI partners. Furthermore, the requisites set out in the CAFI board decision EB.2017.02 were also shared with the COFIL. In response, the COFIL reaffirmed the joint commitments, took note of the cancellation of the illegal concessions planned for by the Ministry of Environment and requested the cancellation orders be made public. Furthermore the COFIL regretted the repetitive acts breaching the presidential moratorium and mandated the Interim Executive Secretariat (the Secretariat) to consult and propose preventative measures and an early warning mechanism.

Decisions of the COFIL regarding illegal concessions

COFIL3.3.1 : Réaffirmant les engagements conjoints pris dans la Lettre d'Intention et soucieux d'une réponse politique forte, le COFIL prend note de l'annulation prévue par le Ministère de l'Environnement des octrois illégaux connus et non connus à ce jour, et demande la publication officielle et publique des instruments de cette annulation dès leur signature.

COFIL 3.3.2 Le COFIL déplore la récurrence des actes enfreignant le moratoire établi par ordonnance présidentielle. Soucieux de prévenir de tels actes à l'avenir, le COFIL mandate le Secrétariat Exécutif Intérimaire à proposer, en consultation avec les acteurs concernés, des mesures préventives et un mécanisme de veille et d'alerte.

This note was prepared by the FONAREDD Secretariat to inform the CAFI board on progress in addressing its decision EB.2017.02 concerning illegal concessions and illegal logging at large. Actions to address this matter have been undertaken at two levels, a first level by the FONAREDD institutions – namely the President of the Steering Committee and the Secretariat – and a second level in the context of the broader work to manage risks associated with the realization of the milestones of the letter of intent.

A third, longer term type of actions, will be undertaken by different Programmes supported through CAFI financing, such as the Programme to strengthen Civil Society, the Programme targeting Indigenous Peoples and the Sustainable Forest Management Programme which will lay lasting foundations, mechanisms and structures to address illegal logging. This latter aspect is not addressed in this note. Whilst the first two programmes are already approved and operational, some of the mitigation measures identified in the risk management matrix will only be possible if and once the financing for the Sustainable Forest Management Programme is secured.

2. Status

The decision adopted by the CAFI board comprised three elements, each of which is addressed below individually.

a. Illegally awarded concessions are immediately cancelled and these decisions are published;

The illegally awarded concessions came to the fore at a time when the DRC had a government that had not been mandated and which did not have decision-making power. Considering this situation, no minister was in a position to issue decrees, acts, decisions or any other forms of legal document

without submitting those for review by an inter-ministerial committee, followed by a review by the Prime Minister and a final approval by the President. While the acting minister at the time had already prepared the Ministerial Decision cancelling the illegally awarded concessions one week after , the process of their signature and publication could not be concluded.

Regardless, in his capacity as President of the COPIL, the Minister of Finance had officially requested an update from his peer as to the status of the cancelation process. Considering the situation described above, there had been no follow-up to this inquiry.

It was only end of May 2017 that a functional government was put in place which was confirmed by parliament and is therefore habilitated to operate fully. Since then, the Secretariat has fully briefed in person the incoming Minister of Environment (Amy Ambatobe Nyongolo) about the situation, a briefing undertaken in the presence of a representative of CAFI donors. Furthermore a full package of information consisting of a note recapping the issue with illegal concessions, the decisions of the COPIL and CAFI board as well as the draft decision canceling not only those contracts that were unveiled but also any potential contracts that may have been awarded and have not been divulged.

It is expected that the newly appointed Minister will issue the legal text canceling the illegally attributed concessions before the end of the month of June; the president of the COPIL will follow-up personally on this and has brought it to the attention of the Prime Minister's office.

b. The Government of DRC shares a robust action plan which details the appropriate measures taken to address and prevent the lack of compliance with the legal framework in the forestry sector;

c. The Government of DRC identifies and implements sound internal oversight measures to prevent any future breach of the moratorium before a new legal framework to rule the forestry sector has been endorsed at the national level.

Compliance – or lack thereof – with the legal framework constitutes one of the key objectives of the LOI. As a matter of fact, it is the objective with the most numerous milestones for both 2018 and 2020. In order to address the process of allocating concessions and of illegal timber production and trade, reforms and capacities are needed along the whole chain of regulatory and enforcement mechanisms, notably but not limited to:

- (i) Putting in place a national forest policy that incorporates REDD+ potential as well as different forest management modalities;
- (ii) Ensuring that the allocation process is clear, transparent and understood by all;
- (iii) Strengthening the control and oversight mechanisms including by independent observers that will ascertain the reliability of government controls;
- (iv) Addressing the shift from industrial to the less regulated artisanal logging which is gaining in volume and spread across the country.

Any action plan to revise the legal framework and ensure compliance with it, would need to be fully consulted and adhered to by the broad range of stakeholders involved in the forestry sector. It is for this reason that, as part of the preparation of a risk management matrix for the LOI and its objectives, special focus was dedicated to the forest objective.

A series of workshops over 5 days bringing together 70 participants of all stakeholders including representatives of the industrial loggers, artisanal sector, indigenous peoples, local, national and international NGOs as well as Ministries took part in these workshops. They culminated in the adoption of the action plan and risk management matrix attached to this note. Notably the action plan (i) establishes a consultative platform which will oversee the reform of the Forest Policy; (ii) aims to

strengthen the function of the independent observer through the deployment of national and provincial level units that will help in identifying any breaches to the moratorium or legal texts.

3. Conclusion

There still are measures and steps to be undertaken for the signature and publication of the cancelation decrees as this is now in the hands of the Minister of Environment. In addition, while a number of recommendations and mitigation measures could be applied without additional funding, most actually require some financing to allow their initiation.

As and where measures are (i) of a political nature and (ii) can be integrated in the IP or CSO projects, they will be implemented without further delay. Where their realization is contingent upon the availability of funding notably for the SFM programme, they will only be initiated once this programme is approved and operational.

In aiming to address any further approval of illegal concessions, the SEI has furthermore incorporated into its workplan a face to face meeting with all incoming Ministers of Environment to brief them about the situation and a broad-based sensitization campaign about the moratorium so that individuals and entities seeking the allocation of a timber concession are aware that it would be illegal. This awareness and communication campaign is to be supported through the governance programme, pending its approval by the COPIL in July and the transfer of funds.

4. Annexes

- 1 – Letter from the President of the Steering Committee to the Minister of Environment
- 2 – Information note to the new Minister of Environment
- 3 – Draft decree for the cancelation of the illegal concessions
- 4 – Risk management matrix – Forest objective
- 5 – Action plan to implement risk mitigation measures – Forest objective