

**Promoting Conservation
Concessions and Environmental
Services in D.R.Congo.
Some Legal & Institutional Challenges**

By

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Conservation Concession (CC): A Relatively Old Concept

- USA: Conservation Reserve Program established in the 70's and has more than 12 Millions Ha funded through a US \$ 1,5 Bln/Year
- Costa Rica: Forest Law 7575 served as legal ground for the FESP (1996) under which more than 250,000 ha are under conservation at a cost of \$57m
- Other interesting cases include: Peru, Sierra Leone, Guyana

CC: An Evolving Content

- Conservation concession was modeled after existing logging concession ;
- Search for and discussion of a genuine model agreement
- Genuine model agreement shall take into account the very specificities of biological diversity conservation, environmental services and sustainable development of forest-rich countries.
- CI and other organizations and academic efforts are worth mentioning here.

New Generation of Legal Instruments for Environmental Services (ES)

- Developed mainly to address carbon market needs
- modeled after private sector transaction-type of contract:
 - seller and a buyer
 - service and payment
 - certification
- A “trusted” intermediary or “honest broker”
- Gaps in domestic legal framework filled through contractual provisions

The sophistication and the fast growing CC and ES markets impose tailor-made approaches to contractual relationships between the CC and/or other ES buyers and providers including better definition of roles and responsibilities of “brokers” and “intermediaries”.

CC and other ES providers must do their share towards the development of a legal and institutional framework conducive to a sound CC & other ES markets.

General Aspects to Consider While Drafting a Model Contract for CC & ES

- Roles, status, rights and obligations of the parties;
- Community involvement including benefits sharing aspects;
- Role of intermediary or broker;
- Transparency of the contracting process & disclosure of transaction documentation; Implementation, enforcement and sustainability aspects, and
- Contract stability and dispute resolution mechanisms

Specific Content of CC and/or Other ES Contract

- Scope and area to be covered by the contract
- Payments: who pays to who, how and how much ?
 - Taxes and fees
 - Conservation & other investments: (i) capacity building, (ii) social development, (iii) scientific research, (iv) supervision and monitoring, and (v) any other agreed upon action
- Liability, dispute resolution and grievance processes.

C C & Other ES Contracting Issues Under the DRC Current Legal Framework

- Rule of law and development of a supporting legal and institutional framework applied to land and forest
- The 2002 Forestry Code unfinished agenda
- Need for institutional strengthening

Rule of law and development of a supporting legal and institutional framework

- Improvement of the overall business environment
- contract & property rights
- Enforcement and judicial system strengthening

The 2002 Forestry Code unfinished agenda

- Implementing decrees & regulations yet to be adopted some of which are of critical interest, i.e; Articles 16, 22,29,30,31.....
- Legal review of concessions yet to be completed
- Biological diversity and conservation law to complete the overall forest management and conservation agenda has been drafted but is yet to be discussed with stakeholders and adopted

Need for institutional strengthening

- Local communities and Civil Society Organizations (CSO)
- Indigenous people
- Local and central government