



Comparative analysis of forest laws in the Republic of Congo:

Former law (16-2000 of 20 November 2000)
vs new law (33-2020 of 8 July 2020)

Study report

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INTRODUCTION

Context of the projects

Since 2014, ATIBT has been awarded an EU-funded project entitled "*Improving the involvement of private timber sector stakeholders in the FLEGT VPA negotiation and implementation processes in a selection of African producer countries*".

In July 2018, ATIBT and PPECF-COMIFAC signed a grant contract that defines joint action with the FLEGT-IP project, namely "*Improving the integration of third party verified certification into FLEGT-REDD processes*".

This joint action aims in particular to improve the legal standing of companies through the professional associations, who are partners in the project, and through the promotion of third party verified certification, to prepare them for the implementation of the FLEGT VPAs.

It is within this framework that this study is being carried out, in order to support the appeals of the private forestry sector within the framework of the implementation of the Republic of Congo's new forestry code.

General context of the new forestry code in Congo

In 2014, the AFD (*Agence Française d'aide au Développement* – French Development Agency) funded a process to draft a new forestry law to update the current 2000 law by integrating new concepts in forest management such as the VPA/FLEGT, forest certification, combating forest damage in the context of climate change, and community forestry. This process resulted in a draft forest regime law that was shared with stakeholders in September 2017.

From September 2017 on, this draft law was subject to an inter-ministerial review. In November 2018, this draft text was also subject to an impact study by the World Bank and another one by the AFD to assess whether its contents are consistent with international practices and standards, for example with the FLEGT VPA signed between Congo and the European Union.

Under the coordination of ATIBT, which is leading the consultation process with forestry and industrial companies, both the UNIBOIS and UNICONGO unions and ATIBT also contributed in 2018 and 2019 - through advocacy and through individual and joint approaches to both parliamentary chambers and the economic and social council - to improving the draft law.

It was first the National Assembly (in the December 2019 session) that adopted the bill, followed by the upper house of parliament (Senate) in the April 2020 session. Law no. 33-2020 on the Forest Code was finally promulgated on 8 July 2020.

It is within this framework, and in order to know the extent of the impact of the current law in the short and medium term for forestry and industrial companies, as well as for the forest economy, that two studies are under consideration: a comparative study and an analytical study, through the ATIBT Action funded by grants from both KFW and the EU.

The present study covers the comparative study. It therefore compares the former law (16-2000 of 20 November 2000) and the new law (33-2020 of 8 July 2020).

The methodology used is based, on the one hand, on a documentary review, and on the other hand, on interviews and discussions with resource persons. The gathered data was then consolidated within analytical tables comparing the two laws.

The structure of this report exclusively follows the various points of the terms of reference and consists of two chapters:

- **Chapter 1 analyses the new law.** It aims to identify the most impacting articles and provisions of the new law;
- **Chapter 2 analyses both laws** (former and new) in order to identify non-changing items, amendments, new items, items requiring additional application texts and items that pose interpretation problems.

1. ANALYSIS OF THE NEW FORESTRY CODE

1.1. Overview of the new law

The Forestry Law is intended to reflect Congolese forestry policy, the aim of which is as follows: "*Congolese forests, managed sustainably, contribute to the emergence of the green economy, to the reduction of poverty, to the well-being of the country's present and future generations, and to the fight against climate change*".

Based on this vision, a new forestry code was promulgated on 8 July 2020. The legal framework for forestry in Congo is now set out in law no. 33-2020 of 8 July 2020 on the forestry code. It consists of 260 articles, organised into thirteen (13) sections, which are themselves structured into chapters. It does not yet have any implementing texts.

The general provisions of **section I** first indicate the purpose of the law, which is to establish the fundamental principles of organisation and management of the national forest domain as well as the rules relating to harvesting and trade as they apply to forest products. They also clarify certain expressions by means of definitions.

Section II raises a fundamental issue: the national forest domain, which consists of natural forests, planted forests and land used for forestry, which falls into either the State forest domain or the private forest domain. The State forest domain consists of the permanent forest domain and the non-permanent forest domain.

Section III (management of the national forest domain) deals with the classification and downgrading of forests, followed by the use of the State forest domain, inventories of forest and wildlife resources and the management of forest concessions.

Section IV (the economic use of the State forest domain and timber processing) sets out the general conditions for logging and processing, presents the titles and regimes for logging on the State's private domain, specifies the rights associated with the logging titles and describes the measures relating to forest harvesting in three cases: industrial, domestic and artisanal purposes.

Section V deals with the commercialisation of forest products through provisions relating to the export of forest products and the selling prices of plantation timber.

Section VI on local content raises the issue of the employment and training of Congolese employees and the promotion and use of local goods and services.

Section VII relates to access to forest genetic resources and the sharing of benefits arising from their use.

Section VIII specifically deals with deforestation or afforestation while **section IX** deals with afforestation and reforestation.

Section X explores the current context in depth, through efforts against climate change and payment for environmental services.

Section XI covers the ensemble of forest administration agents, which is paramilitary in nature.

Section XII deals with offences and penalties.

Lastly, **section XIII** presents the varied, transitional and final provisions for forestry activities to adapt to the new law.

1.2. Key items impacting the forest-timber sector

The new forestry code introduces important innovations. Some may say they represent progress or advances, while others will say they include constraints that need to be lifted by means of implementing legislation.

Generally speaking, and compared to the former law, there are many new concepts and more definitions of existing concepts (PES, certification, legality, consideration of neighbouring communities, deforestation, climate change, carbon credits, occupation taxes, residue taxes, forest and wildlife inventories, FPIC, Congolese society, forestry sub-contracting, etc.).

1.2.1. Progress and major issues in forest management

Some of the most important advances include:

- The **acknowledgement of the rights of local communities and indigenous peoples** and the concept of **free, informed and prior consent (FPIC)**. In the context of the classification, use and sustainable management of forest resources, local communities and indigenous peoples shall freely express their views (Articles 5,140, 42);
- The **public's right to information**. Many articles affirm this principle (articles 6, 135, 136, etc.);
- The **acknowledgement of community forestry** among forest management schemes. The community forest is no longer solely linked to community development efforts, but the initiative for its creation and its sustainable management lies within the local community (articles 10, 15);
- The acknowledgement of the **economic value of the services** provided by forests. This is still at the intent level, as payments for environmental services are not defined. Although section X of the law announces it, there is no provision for organising them with the exception of forest carbon;
- Congo's willingness to participate in the **international carbon market** (articles 179 & 180). Congo does not want to remain on the sidelines of this issue and would like to benefit from the income generated by the carbon credit market, hence its inclusion

in the new law. However, a regulatory text should describe the terms for the marketing of carbon credits (article 184), and a national body for the regulation, monitoring and control of the carbon market (article 186) should also be created;

- The introduction of a **simplified forest management scheme**. The current national forest management standards and guidelines for the preparation of management plans are suitable for large areas. As a result, a simplified management plan will be developed for medium-sized forest management units (article 77), which may reduce companies' costs and time spent developing the management plan;
- The **verification of the legality and traceability** of forest products enables Congo to comply with international timber trade agreements. A computerised legality verification system will implement tools for proper forest governance (articles 62, 63); these concepts and terms are in line with what is planned in the FLEGT VPA, and are scattered throughout the text (legality verification, legality certificate, computerised legality verification system, etc.) without ever being cited and without citing the FLEGT authorisations;
- **Forest certification and legality**: The law makes it compulsory for logging companies to "*certify the administration of their managed concessions or the legality of the products that are exploited and processed there*" (article 72). The certification obligation is formulated ambiguously and not really as a formal obligation (it can be interpreted as a possibility), to be defined in a future decree. This provision expresses the desire to have companies that act virtuously and to respond to the issue of forest governance. Both forms of certification are accepted. The law also mentions the possibility of recognising certification for verification of legality (article 65) and the establishment of a national forest certification system (article 70).

It should nevertheless be pointed out that certification is no longer a voluntary market mechanism; it is becoming a legal - if not compulsory - mechanism. The law mentions that the industrial harvesting of natural forests by holders of management and processing agreements is subject to their prior obtention of a certificate of legality and an annual allowable cut authorisation (article 130). The three-year period granted to companies to legally certify their concessions (article 257) may prove to be short when considering the investments this situation entails.

- The recognition of **independent monitoring** to further support forest harvesting verification operations (article 69). The benefit of this body is that it contributes to the credibility of forest law enforcement and the improvement of forest governance;
- Transparency in the allocation of concessions and permits **through the use of calls for tenders and auction sales** (articles 134, 141), which also promotes competition. However, the choice between auction sales and private sales of plantation timber (article 149) could be made exclusively in favour of the latter. The criteria for scoring the bids for the award of logging permits are to be established on an objective basis.
- The institutionalisation of the **local development fund**. It provides genuine support for local authorities, local communities and indigenous peoples. The law mentions the taxes that feed this fund (articles 115, 116), including the newly created **occupation tax** (article 110);
- The preservation or safeguarding of the full **traditional use rights** of local

communities and indigenous peoples within all production forests (articles 59, 61, 180). Moreover, those who violate these use rights will henceforth be punished by a fine (article 240);

- The employment and training of **Congolese personnel**. The logging company, its subcontractors, service providers and suppliers must employ Congolese personnel in priority (article 152) in order to address the problem of unemployment among young people and graduates;
- The promotion and use of **local goods and services** as stipulated in article 153 "For the execution of works required by their activities, forestry companies, their subcontractors, service providers and suppliers shall give priority to the supplies and services of Congolese companies, insofar as the technical and commercial offers of the latter are substantially equivalent to those of other companies. This obligation remains even if the commercial offers made by Congolese companies are more expensive than those of other companies, up to a maximum of ten percent (10%).

In the event that an offer made by a Congolese company is recognised as technically valid at the end of the examination in comparison with the best offers of other companies, a technical and commercial partnership must be negotiated between the Congolese company and the best bidder of the other companies, particularly foreign companies";

- The **sharing of benefits arising from the harvesting** of forest genetic resources. However, this measure remains at the level of principles, as these benefits are not clearly defined (articles 156, 157). The creation of a national body that monitors and evaluates access to forest genetic resources and the sharing of benefits arising from their use and harvesting (article 159) should make this measure possible.

1.2.2. Provisions with the greatest impact

The production sharing regime

This is established in article 104 of law 33-2020, and another law will define the terms and conditions outlining how the sharing of production will be organised.

This regime - inspired by that of oil exploitation - sets the conditions that are to be met for its implementation. If the purpose of such a regime has been to increase forest revenues, it could prove incompatible with more advanced processing, which generates added value that constitutes a company's source of profits. It could also lead to unfair competition from the State with the products of the companies. Lastly, it may not guarantee the sustainability of the forestry activity, as it would require significant investment, especially by the State.

Domestic permits

This is also a new forest harvesting permit. The objective in creating these permits was to find a solution to the problem of timber shortages and supplies to the national market in order to combat illegal logging and trade. The implementing legislation must circumscribe their feasibility and prevent them from falling into the "timber cutting" category. They could also be used by industrial companies under the guise of national dummy corporations. If they aren't issued in areas that have already been developed (with a simple management plan), the three-year logging period could prove to be short and would lead to a skimming of

the forest through multiple and illegal harvests. Strong safeguards should be put into place at the implementing legislation level so that domestic permits achieve the desired objective.

100% processing of logs and ban on log exports

The law stipulates that "*products originating in natural and planted forests are primarily to be processed on the national territory. Exports are to include semi-finished or finished products and logs of heavy and hardwood species whose processing requires a specific technology. These products, as well as the species of heavy and hardwoods are determined by regulation*" (article 97).

It seems that there is a slightly greater opening in terms of the exception to the export ban on hardwood logs "*whose processing requires a specific technology*", which may possibly be subject to interpretation.

The export of a quota of logs would enable logging companies to benefit from immediate cash flow. The ban on log exports will weigh on the profitability of some companies, at least in the short term. Large and sudden investments in timber processing could come at the expense of those needed for forest management and certification.

Implantation of the primary processing plants close to the logging sites

Primary timber processing plants will be located as close as possible to the harvesting sites, if possible in the district where the concession is located, and otherwise within the territorial limits of the region where the concession is located (article 100). This provision could be in contradiction with the creation of economic zones and the production sharing regime.

Forest taxes and usage fees

We note the creation of new taxes (article 110), in particular the *tax on non-timber forest products*, the *occupation tax* and the *residue tax*, which are not clearly defined. The basis of assessment, the rate or the amount and the terms for the collection of these taxes will be determined by the finance law (article 111). No exemption from these taxes is granted although the investment charter should offer some form of relief to companies.

The residue taxation problem is a very complex one. It presupposes that the company recycles its timber scraps, which requires investments for their collection. But there is no legislation that authorises and regulates the sale of scraps such as branches or stumps.

Penalties for the late payment of forestry taxes

Delay in the payment of these taxes entails a thirty percent (30%) increase or surcharge per month of delay (article 114). The current economic and financial crisis could put a strain on the cash flow of many companies.

An increase in the number of settlements and fines

They have been increased, sometimes excessively, in order to deter offenders. However, they could give way to abuse by ill-intentioned personnel, thereby penalising the relevant companies.

2. COMPARATIVE AND CRITICAL ANALYSIS OF THE OLD AND NEW FORESTRY CODE

The legal provisions of the Republic of Congo was previously constituted by law 16-2000 of 20 November 2000 on the Forestry Code as amended by law 14-2009 of 30 December 2009 and its implementing texts. The proposed comparative analysis aims to assess the evolution of the legal framework in order to ensure that the principles of the new law are consistent with the future implementation texts. To this end, it will above all have to identify (i) the non-changing items, (ii) the changes, (iii) the new developments, (iv) the items requiring additional implementing texts and (v) the items that pose interpretation problems. These items are listed in the below tables.

2.1. Non-changing items (Table I)

Many provisions of the former forestry code have remained in the new law. They can be considered as a given within the Congolese legislative framework. They are the result of forestry experience gained over the last 12 years, especially the adoption and use of sustainable forest management. These main items are summarised in Table I.

2.2. Changes (Table II)

They relate to improvements in certain sections of the former law that posed interpretation problems. A few articles of the application texts have also been established in principle in order to provide details and a greater understanding of the regulatory texts. These modifications are outlined in Table II.

2.3. New developments (Table III)

Table III provides the main new features of law 33-2020 of 8 July 2020 on the Forestry Code.

They were inspired by the shortcomings observed in the application of the former law and the experience gained in sustainable forest management. They also cover items that adapt the law to the new sub-regional (Congo Basin) and international (tropical forests) contexts. Thus, they focus on new themes (climate change, deforestation, carbon credits, certification, legality and traceability, payments for environmental services, etc.) and take into account the requirements of the agreements, treaties and conventions signed by Congo (FLEGT-VPA, REDD+, CBD).

2.4. Items requiring additional implementing legislation (Table IV)

Table IV lists the main articles referring to the drafting of regulatory texts in order to render the law applicable. Numerous decrees have been proposed, but they could be grouped together into large sets.

2.5. Items that pose interpretation problems (Table V)

Unclearly defined items could lead to interpretation problems, resulting in opportunities for fraud, income losses and "second best" solutions. Table V lists some items that would require details or clarifications for a good understanding of the regulatory texts.

3. CONCLUSION

The new forestry code shows significant innovations compared to the sector's previous legal framework (Law 16 - 2000 and Decree 2002-437). It introduces new concepts and defines the basis for more equitable, more modern and better equipped forest management to enable the Republic of Congo to benefit from the international market for the products and services originating from Congolese forests. It also capitalises on the results of its longstanding sustainable forest management practices and adapts itself to the context while taking into account the principles of the agreements, treaties and conventions signed by the Congo. However, some provisions have an impact on forest management and require additional implementing legislation in order to eliminate the limitations that they impose. Above all, they deserve a more detailed analysis, as is the case for the production sharing regime, domestic permits, the tax on scraps and payments for environmental services.

Bibliography

Law 16-2000 of 20 November 2000 on the forestry code and its implementing texts

Law 33-2020 of 8 July 2020 on the forestry code in the Republic of Congo

Documents provided by ATIBT coordination (to be detailed)

Resource persons

Maximin Mboulafini, EFI consultant on law enforcement texts

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TABLE I: Identification of non-changing items

Sections	Former forestry code of 2000*	New forestry code of 2020* ¹	Observations / criticisms
General provisions	Article 105	Article 4	The role of the forest administration is immediately affirmed in the implementation of the forestry policy.
Forest domain belonging to the State	Article 8	Article 23	The private domain of the State includes the same types (regimes) of forests.
Forest domain belonging to private persons	Article 39	Articles 37 and 38	Compliance with the management plan or the simple management plan is always required.
Classification and downgrading	Article 20	Article 42	The possibility for negatively impacted parties to lodge a claim still exists.
	Article 25	Article 46	The forest's downgrading condition is maintained.
Inventories and forest layouts	Article 47	Articles 92 & 93	Existence of the structure in charge of carrying out forest inventory and layout planning works.
Rights associated with the logging permits	Article 69	Article 122	The permit is always limited to the harvesting of a limited number of trees.
	Article 76	Article 123	The process of selling standing timber remains the same.
	Article 71	Article 125	This article guarantees the smooth running of the company's operations.
Export of forest products	Article 82	Article 147	The supervisory body already exists.
Selling price of plantation timber	Article 102	Article 149	Sale of timber by public auction or by private sale.
	Article 104	Article 150	Update of the costs of setting up and maintaining plantations.
	Article 103	Article 151	Collection of revenue by the public treasury's collector.
Section VII: Access to forest genetic resources and sharing of the resulting benefits	Article 81	Article 158	Measure aimed at the protection of the national heritage.

* In the table, the content of the decree is given where necessary.

Sections	Former forestry code of 2000*	New forestry code of 2020* ¹	Observations / criticisms
Section VIII: Deforestation or land clearing	Article 31	Articles 160 & 161	Article 31 of the former code has been maintained but split into two new articles: 160 and 161.
Deforestation or land clearing	Article 32	Article 162	Payment of the land clearance tax.
	Article 32	Articles 164	Beneficiaries of the products resulting from deforestation
Section XII: Violations and penalties	Articles 114, 115, 116, 154, 122	Articles 191, 192, 193, 194, 195	Includes the same provisions.
Violations		Articles 194 & 201	The two new articles are almost identical
	Article 154, 133	Articles 201, 202	Same provisions
Settlements	Article 134, paragraph 2	Articles 204	Same provisions
Violations and sanctions	Articles 136, 137 and 138	Articles 208, 209 and 210	Same provisions and penalties
	Articles 166 & 168	Articles 249 & 250	Same provisions in both laws.
	Article 171	Article 252	Same provisions in both laws.

TABLE II: Amendments to the new law

Sections	Former forestry code of 2000*	New forestry code of 2020*	Observations / criticisms
General provisions²	First article: The <i>objectives</i> of this law are:	First article: The purpose of this law is to lay down the fundamental principles of organisation, etc.	The new forest code specifies/clarifies the purpose while the former one instead outlines objectives.
		Article 2. Forest: For the purposes of carbon credits, a forest is considered to be any natural or artificial plant formation with an area of at least 0.5 hectares, with trees higher than 3 metres and a tree cover of over 30%.	The precision is provided in the context of carbon credits. A specific definition applies to carbon credits.
	Article 14	Article 2 Classification of a forest	The scope of the classification definition is broadened from a protected forest to a forest plantation or any other land used for forestry purposes.
National forest domain	Article 6:	Article 10	- Forests belonging to public entities are replaced by those belonging to legal entities under public law; - The forests of communes and other local or territorial authorities are omitted (although they are mentioned in article 24); - Addition of community forests
	Article 11	Article 11	Forests of legal persons governed by public law replace forests of public persons.
	Article 8	Articles 22 and 23	Article 8 of the former code has been split in two. Article 22 of the new code adds and clarifies the definition of the

• The content of the article is given where necessary.

			geographical limits of the forest and the determination of its management objectives.
	Article 13	Article 29	The former article 13 has been split into two new ones: articles 28 and 29. The possibility of reclassifying the forest of the non-permanent forest domain into the permanent forest domain is specified.
	Article 36	Article 34	The new article removes the <i>exclusive use of the planted land</i> notion, but it does specify the rights of third parties, in particular <i>the customary and usage rights of the local communities and indigenous peoples</i> .
MANAGEMENT OF THE NATIONAL FOREST DOMAIN Classification and downgrading	Article 19	Article 39	The council of ministers decree replaces the order signed by the minister that oversees water and forests.
Classification and downgrading	Article 15 Article 16	Article 41	This new article, which combines articles 15 and 16 of the former code without repeating the concept of FPIC contained in the previous article, introduces the fact that local communities and indigenous peoples should <i>freely express their views</i> .
Use of the State forest domain	Article 45	Articles 49, 50, 51 Article 51, paragraph 2: Logging in these areas must comply with the reduced impact logging rules, as defined by the currently applicable standards.	The former article 45 has been split into three new articles, with the addition of <i>reduced impact logging rules</i> to Article 51, paragraph 2.
	Article 54	Article 52, paragraphs 2 & 3: The division of the State's private	The division only concerns the State's private domain and not the entire permanent forest domain and is now done

		<p>domain into forest management units is done by decree during the council of ministers, according to forest characteristics, natural boundaries and administrative districts.</p> <p>The actual division of the State's private domain into forest management units is based on the classification principle.</p>	<p>by decree in the council of ministers (and not by ministerial order). It also complies with the classification principle.</p>
Usage rights	Article 40	Article 59	Addition of the last two bullet points dealing with the exercise of worship and rites as well as access to watercourses and springs.
	Article 42	Article 61, paragraph 2:	The possibility of retail sales at the local level
Inventories	Article 46	Article 73	Clarification regarding the types of inventories.
Management of forest concessions	Article 56	Article 77	Addition of the participatory forest management principle. The notion of a simplified management plan for FMUs having an average surface area.
	Article 25 of decree 2002-437	Article 80	The consultation committee is instituted by law and the related decree will determine its composition, its attributions and how it operates.
	Article 60	Article 81	This is about the planted forest and no longer an FMU as a whole. It deals with the domestic logging permit and the simple management plan that is associated with it.
General terms and conditions of use	Article 63	Article 96	Logging permits are no longer issued by the water and forestry administration but by decree issued by the council of ministers, which reflects a determination for control and proper governance.
Logging permits and regimes	Article 65	Article 101	Elimination of the industrial transformation agreement (CTI - <i>convention de transformation industrielle</i>) and creation of two new permits: the convention for the use

			of plantation timber and the domestic logging permit.
	Article 88	Article 110	Three new taxes are created: the tax on non-timber forest products, the occupancy tax and the scrap tax.
	Articles 89, 91, 94, 95, 96, 97, 98 and 101	Article 111	Change in the taxation method and the collection procedures, which are now governed by the finance act.
Logging permits and regimes	Article 91	Article 112	This article defines the taxes that are to benefit local communities, however the distribution of the surface area tax is governed by the finance act.
		Article 113	Two new taxes for the benefit of the forestry fund: the felling tax on special and domestic permits and the scrap tax.
	Article 90	Article 114	Taxes are not exempted. An excessive increase in the penalty for late payment. It increases from 3% per quarter overdue to 30% per month overdue.
Rights linked to logging permits	Article 67	Article 117	Addition of the special economic zone for the location of the processing plant; The maximum duration of the development and conversion agreement (CAT - <i>convention d'aménagement et de transformation</i>) increases from 25 to 30 years.
	Article 77	Article 124, paragraph 3: the special permit is issued by the general director of water and forests following the proposal of the departmental director.	This permit was issued directly by the manager of the district. This permit, which is "local" in landlocked areas, is intended to be close to the consumer. Difficulties can be observed among holders of special permits.
	Article 75, paragraph 2: A decree issued by the council of ministers shall define the inscriptions that appear	Article 126, paragraph 2: A joint order issued by the minister in charge of forests and the minister in charge of justice shall define the inscriptions on this hammer and how it is attributed.	The order replaces the decree.

	on this hammer.		
Logging for industrial purposes	Article 67	Article 127	The term of the development and conversion agreement is <i>extended from 25 years to a maximum of 30 years</i> .
	Article 74	Article 135	The agreements are now primarily approved by the council of ministers; In addition to the administration of the domains, the prefecture, the departmental council, the sub-prefecture and the municipality also become holders of a copy of each agreement.
		Article 136 & 137	This article covers and clarifies the detailed specifications.
		Article 138	The same provisions apply to both natural forests and plantations.
Logging for domestic purposes		Article 139 à 142	This permit aims to ensure a regular and sustainable supply of quality timber products to the national market.
	Article 77	Article 144	The special permit is no longer issued by the district manager but by the general director of water and forests.
Export of forest products	Article 83	Article 146	The international standards of a few bodies are cited as references.
Access to forest genetic resources and benefit sharing	Article 52	Article 154	This article introduces section VII on access to forest genetic resources and benefit sharing as it relates to the Convention on Biological Diversity (CBD). It starts with the affirmation of state sovereignty over genetic resources and the need to protect them.
Section VIII: Deforestation or land clearing	Article 31	Article 160	In addition to the downgrading, a social and <i>environmental impact assessment</i> is required.

	Article 32:	Article 166, paragraph 2: The above donations shall be documented in accordance with national timber traceability requirements.	In the event of abandonment, timber is no longer sold for the benefit of the State. The new law allows for donations for the benefit of local communities, etc., on a <i>case-by-case</i> basis. This can also be a source of fraud or embezzlement. - Addition of the traceability requirement.
	Article 62	Article 167	Clarification made in the case of the non-permanent forest domain.
	Article 106	Article 187	No reference is made to the institutionalisation of the forest administration staff. This body therefore already exists (in accordance with the former law, decree 2002-433 of 31/12/2002). Clarification of the body's missions.
	Article 112	Article 188	Oath taking; The formula is shortened and better structured. However, officers from other bodies with forestry skills are no longer subject to the same formalities for the taking of the oath.
Section XII: Violations and penalties	Article 111	Article 189	A two-week limit to draw up the violation notice after having had the offender sign the official statement of offence form.
	Article 113, paragraph 5: They may not enter a home before 5:00 and after 19:00.	Article 190, paragraph 3: However, they can only enter houses, courtyards and enclosures <i>before 6:00 and after 18:00 if they are caught in the act and in the presence of an officer of the judicial police or of a local authority.</i>	The police search time window is shortened to 6:00 to 18:00 instead of 5:00 to 19:00, and to cases where the offender has been caught in the act, and must include the presence of a judicial police officer or a local authority.
Legal actions and prosecutions	Article 127	Article 199	The prosecution of violations is initiated by the public prosecutor at the territorial jurisdiction level.

	Article 128: Official violation reports drawn up in forestry matters, shall be transmitted <i>as soon as possible</i> to the regional director of water and forestry of the district in which the violation was committed.	Article 200: Official violation reports, drawn up in forestry matters, shall be transmitted <i>within one week</i> to the regional director of water and forestry of the district where the offence was committed.	Clarification of the deadline for transmitting the violation report to the district's manager of water and forests.
Settlements	Article 134, paragraph 1: The perpetrator of a violation of the provisions of this law (or its subsequent texts) and against whom a report is drawn up, may request the benefit of a settlement from the water and forests administration.	Article 203: The perpetrator of a violation against the provisions of this law or subsequent texts and against whom an official report is drawn up may - except in the case of a repeat offence within a period not exceeding 7 days after receipt of the official report - request a settlement in writing from the forest administration.	Clarification of the <i>seven-day time limit</i> after receipt of the violation report to request a settlement.
Violations and penalties	Article 139, paragraph 3: If need be, these works are carried out by the water and forests administration at the expense of the involved companies, upon the decision of	Article 211	The new article does not take this paragraph into account.

	the minister in charge of water and forests.		
	Articles 140, 141, 142, 143, 158 and 156,	Articles 212, 213, 214, 215, 216 and 217	Increase of the penalty
	Articles 146, 147	Article 218, 219	Increase of the penalties
	Articles 148, 149, 150, 151 and 152	Articles 225, 226, 227, 228 and 229	Increase of the fine
	Article 156	Article 233	There is no longer a time limit on the suspension on the obtaining of new rights. This varied from one to five years under the former law.
	Articles 157, 159, 160, 161, 162, 163, 164, 165, 166 and 168	Articles 236, 237, 238, 239, 241, 242, 243, 248, 249 and 250	Increased penalties for the same provisions in the new law.
	Articles 170 & 172	Article 251	The collection and recovery of proceeds from litigation is done by the <i>public accountant</i> and not the forest administration.

TABLE III: New features in the new law

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
General provisions Definitions		Article 2: For the purposes of this law, the following expressions are defined as follows:	This new article brings together and clarifies the main basic expressions used in the law, which makes it easier to understand the texts of the law.
		Article 3:	This article affirms - from the outset - the State's authority and sovereignty.
		Article 5:	The acknowledgement of local authorities, local communities and indigenous peoples in the participatory management of natural resources. It is backed by the well-expressed FPIC notion .
		Article 6:	Citizen's rights to be informed.
National forest domain		Article 7	Clarification is given on the nature of the forest or land that is likely to shelter the forest.
		Article 13	This article eliminates any ambiguity regarding the ownership of forest products produced by the forest.
		Article 14	An affirmation of the non-alienation of the property of legal persons governed by public law.
Community forests		Article 15	Broadening of what can be considered a community forest beyond the community development series. Clarification regarding the attribution of the simple management plan and the administrative authority in charge of its approval.

• In the table, the content of the article is given where necessary.

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
The State's forest domain		Article 16	Recognition by law of the community forest management body.
		Article 17	Regulation of the management of this forest.
		Article 19	Affirmation of the ownership of the revenues by the relevant local communities and/or indigenous peoples.
		Article 20	Requirement of a logging permit (special permit or cutting permit) for plantation timber, in accordance with the requirements of the simple management plan.
		Article 21	The need to guarantee the sustainability of forest and wildlife resources.
		Article 22	This article describes the characteristics of the forests of the State's private domain.
The non-permanent forest domain		Article 30	This article announces the harvesting of protected forests, which was not previously indicated.
Management of the national forest domain Classification and downgrading		Article 40	An affirmation of the FPIC principle in the classification process
		Article 54	An affirmation of participatory forest management. <i>Local elected officials</i> are among the stakeholders.
		Article 55	The status of the environmental assessment is included in the legislative text for any project in the forestry field and the elaboration of management plans.
Legality and traceability		Articles 62 to 68	Implementation of the system that verifies the legality of forestry operations and products.
		Article 68	The independent observer produces reports, but there is no explicit mention of their publication, which could diminish its effectiveness.

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
Certification		Article 70	The government facilitates the establishment of an independent certification structure.
		Article 72	Forest certification becomes a legal measure, whether it pertains to forest management or is a legality measure.
Inventories		Article 74	Clarification regarding the financing of inventories.
Forest layout planning		Article 75	An affirmation of the establishment of a management plan or a simple management plan in order to guarantee the sustainability of forest resources. The management guidelines and national standards are of particular importance.
	Article 27 of decree 2002-437	Article 76	This implementing text of the former law is enacted as a principle of the new law.
		Article 79	Indicates/covers the limits of the various forest management series.
		Article 85	A reaffirmation of the notion of participatory forest management.
		Articles 86 & 87	Creation of an <i>ad hoc committee</i> to evaluate the forest series management assessments and the forest management plan.
		Article 88	The simple management plan conditions the management of community forests.
		Articles 89 and 90	Establishment of a public-private partnership and institutionalisation of the structure in charge of surveillance and of efforts to combat poaching.
		Article 91	Compliance with the law on wildlife and protected areas in relation to the sustainable management of forest concessions.
ECONOMIC		Article 94	The obtaining of an <i>authorisation</i> for the exercise of logging

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
DEVELOPMENT OF THE STATE'S FOREST DOMAIN AND ITS TIMBER-PROCESSING SECTOR General conditions for logging and processing operations			and timber-related activities; The obtaining of the <i>environmental compliance certificate</i> .
General conditions for logging and processing operations		Article 95	The requirement to comply with reduced impact logging standards, conditions for sustainable forest management.
		Article 97	The requirement for processing at the national level; Ban on the export of raw products.
		Article 98	Reflects the desire to process timber on the national territory.
		Article 99	An affirmation of more advanced processing of timber.
		Article 100	A confirmation of the installation of processing plants close to the tree cutting sites.
Logging permits and regimes		Article 102 (production sharing regime)	Innovation in forestry law, with the aim of increasing the economic value of forests.
		Articles 103 to 107	An assessment of the impact of the measures enacted by the economic regimes would assist in the development of legislation for their implementation.
		Article 115	The local development fund is funded by fees and taxes, for the benefit of local communities and indigenous peoples.
		Article 116	Societal responsibility requires that everyone contribute.
Rights associated with logging permits		Order 118	Plantation timber is in everyone's interest; the obligation to replenish the plantation aims to ensure the sustainability of

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
			harvests.
		Article 119	The same management requirements for plantations as for natural forests, the management plan and the involvement of the ad hoc approval and evaluation committee.
		Article 121	Domestic operating permit: new logging permit valid for a maximum duration of three (3) years.
Logging for industrial purposes		Article 128	The goal is to optimise timber processing and the reuse of timber scraps.
		Article 130	The obtaining of a certificate of legality and a cutting permit is a prerequisite for industrial logging.
COMMERCIALISATION OF FOREST PRODUCTS Export of forest products		Article 145	A description of the logging permits related to the export of their products.
LOCAL CONTENT Employment and training of Congolese staff		Article 152	"Congolisation of employment".
Promotion and use of local goods and services		Article 153	Support for the national economy
ACCESS TO FOREST GENETIC RESOURCES AND BENEFIT SHARING	Articles 52 and 81	Articles 155 to 157	These new articles complete articles 52 and 81 of the former law. They include the CBD (Convention on Biological Diversity) principles on access to genetic resources and the sharing of benefits arising from their use.
		Article 159	This complies with the biological diversity agreement.
Section VIII:		Article 163	Traceability requirement

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
Deforestation or land clearing			
Deforestation or land clearing		Article 165	This article settles a case not referred to in the former code (article 32).
		Article 168	Issuance of the occupancy permit and payment of the relevant fee.
Section IX: Afforestation and reforestation		Article 169	Acknowledgement of the importance of these two activities for ecological balance.
		Article 170	The affirmed role of the forest administration in the creation and restoration of forests.
		Article 172	A significant article reflecting the government's commitment to creating and restoring the forest domain.
		Article 173	This commitment also manifests itself through the State's establishment of planting programmes.
		Article 175	Covers the fundamental issue of property/ownership of products from afforestation or reforestation activities.
		Article 176	Creation of a public body.
Section X: Combating climate change and the PES		Articles 177 to 186	Inclusion of the fight against climate change in policies, strategies and action plans for the sustainable management of natural or planted forests within the State's domain. The carbon credits issue is also a legal one.
		Article 185	A tax is established on the sale of forest carbon credits.
Section XII: Violations and penalties		Article 196	The transfer of illegal products and seized materials to the judicial authority.
Penalties		Article 197	Seized products become part of the State's patrimony.
		Article 198	Acquittal situation

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
Settlements		Article 205	Details on the amount of the settlement
		Article 206	Document on the settlement record
Violations and sanctions		Article 207	The distinction between forestry fines and forest crimes
Violations and sanctions		Article 220	Fine for the abandoning of timber for over six (6) months.
Violations and sanctions		Article 221	Fine relating to the harvesting of timber falling under the allowable cutting diameters
Violations and sanctions		Article 222	The requirement to hold a certificate of accreditation to pursue a forestry profession
Violations and sanctions		Article 223	Fine for the failure to comply with the regulatory deadlines related to cutting applications.
Violations and sanctions		Article 224	Fine for the non-opening of boundary forestry tracks (dirt roads)
Violations and sanctions		Article 230	Fine for the exploitation of the forest on a leasehold basis. A very high fine
Violations and sanctions		Article 231	Fine for failure to comply with the deadlines for drawing up the development plan or the simple management plan for agreements or permits.
Violations and sanctions		Article 232	Fine for failure to comply with the implementation of the management plan or the simple management plan for agreements or permits. Fine also for non-compliance with the obligations of the general or particular specifications.
		Article 234	Fine relating to the export beyond the export quota.
		Article 235	Fine relating to the absence of an export licence
		Article 240	Fine relating to violations of the use rights of local communities and indigenous peoples.

Sections	Former forestry code of 2000*	New forestry code of 2020* ³	Observations / criticisms
		Article 244	Fine relating to the absence of an authorisation for the export or import of forest products other than lumber.
		Article 246	Fine relating to the lack of an authorisation for the use or exploitation of forest genetic resources.
		Article 247	Fine relating to the lack of an authorisation for the utilisation of biological research results.

TABLE IV: Items requiring additional implementing legislation

Sections	Former forestry code of 2000	New forestry code of 2020 (Reference article)	Observations / criticisms
General provisions		Article 4. Decree pertaining to the forest administration's organisation and operating methods	Already exists but could be improved in order to take into account the forest administration's new missions (PES, carbon credits, certification, legality, etc.).
		Article 6. Decree determining the terms of access to information relating to forest logging operations and management	
		Article 17. Article specifying the terms of the community forest's attribution and delimitation, and the organisation and functioning of the community forest's monitoring and evaluation body	
		Article 38, paragraph 2. A decree issued by the council of ministers shall determine the terms for the management of private persons' natural forests and forest plantations.	
		Article 39: Decree outlining the organisation and the operating procedures of the inter-ministerial commission for classification and downgrading	
		Article 40: Decree outlining how FPIC is applied	This FPIC should involve the classification and downgrading of forests, as well as actions and decisions relating to the sustainable use and management of forest and wildlife resources.
Use of the State's forest domain		Article 50: Decree outlining the division of the State's private domain into FMUs	An update or review of the current division is needed.

Sections	Former forestry code of 2000	New forestry code of 2020 (Reference article)	Observations / criticisms
		Article 56: Joint order of the ministers in charge of forests and the environment supplementing the specific measures related to environmental assessments in the forest sector.	
		Article 58, paragraph 4: Order defining forest fire prevention and combating measures and intervention plans.	
		Article 59, paragraph 3: Order regulating use rights	
		Article 61, paragraph 3: Order regulating forest fires and vegetation fires	
		Article 64: Order defining the procedures for legality verification	
		Article 74: Order defining how inventories are to be carried out	
		Article 80: Council of ministers decree that defines the consultation committee's composition, duties and operating methods	
		Article 84: Council of ministers decree that organises the inter-ministerial commission for the establishment of forest management plans	It is now created by decree.
		Article 104: law relating to how production sharing is organised, negotiated by the minister in charge of forests, approved by the council of ministers and adopted by the parliament	
		Article 133: Council of ministers decree that defines the general specifications	
		Article 134: Council of ministers decree that	

Sections	Former forestry code of 2000	New forestry code of 2020 (Reference article)	Observations / criticisms
		establishes the forestry commission's composition and operating methods	
		Article 149: Council of ministers decree that determines how public calls for tenders are organised	
Section VII: Access to forest genetic resources and benefit sharing		Article 159, paragraph 2	The creation of this body would fill the institutional void in terms of access to genetic resources and the sharing of the benefits resulting from their use.
Section VIII: Deforestation or land clearing		Article 161, paragraph 2	Decree outlining the deforestation or land clearing conditions of a forest
		Article 173: Council of ministers decree that outlines the standards and defines the terms for the establishment of plantations	
Section X: Combating climate change and the PES (payments for ecosystem services)		Article 186, paragraph 2	Decree that establishes the organisation of the regulatory body and how it operates, as well as monitoring and enforcement of the carbon market.
		Article 186: Decree that creates the national body for the regulation, monitoring and enforcement of the carbon market.	

TABLE V: Items that may pose interpretation problems

Sections	Former forestry code of 2000*4	New forestry code of 2020*	Observations / criticisms
General provisions / definitions		Article 6	Establishing a borderline between the right to information and the industrial and commercial secrecy of companies
		Articles 40 and 41	A question of consistency between FPIC (Article 40) and freely expressed opinion (Article 41).
		Article 69	Does the regular production of reports and recommendations on compliance with the law also include their publication? The absence of publication would reduce the effectiveness of IO.
		Article 72 on certification	The certification obligation is formulated ambiguously and not really as a formal obligation (can be interpreted as a possibility), to be defined in a future decree.
Inventories		Article 74, paragraph 2: inventory reports are available for public consultation, at the institutions that produce them, and in the forest administration's offices.	Companies may refer to confidential clauses or industrial secrecy. This article should refer/comply with article 6 of the law.
		Articles 77 and 83	The conditions for drawing up the management plan refers both to a decree (article 77) and the stages of its development into a decree (article 83). The distinction must be well established in the two application texts.
		Article 81	There is a lack of precision regarding the authority of the forest administration in charge of approving the drafted or revised simple management plan.
General conditions for logging and processing		Article 97: Heavy timber and hardwoods whose machining	The specific technology can be interpreted differently.

- In the table, the content of the article is given where necessary.

operations		requires a <i>specific technology</i>	
		Article 100	Does not take into account factors that put strain on production costs and the companies' economic environment. The creation of a special economic zone would lead to the creation of timber processing plants. How would they be supplied?
Permits and logging regimes		Article 106	How are the conditions for the transition from the concession regime to the production sharing regime determined? The latter does not appear to be the advanced processing system that is sought.
		Article 107	The timeframe for switching from one regime to the other may be insufficient or too short for investments whose profitability is generated over the medium- to long-term.
Use of the forest for industrial purposes		Article 134, paragraph 5: Criteria for assessing bids include the socio-economic impact of the bidders' activities, the guarantees offered by their financial situation and their equipment, as well as their commitment to implement a management plan.	The criteria for assessing bids may include subjective elements that are open to different interpretations.
Use of the forest for domestic purposes		Article 142: The criteria for the evaluation of bids are: - the commitment to implement a simple management plan - the guarantees offered by their financial situation and their equipment, - the socio-economic impact of the bidders' activities.	Same
Section IX: Afforestation		Article 176: A public body ensures	No details regarding the public body: is it to be created by

and reforestation		the funding of sustainable forest management operations, afforestation programmes, the promotion and industrialisation of the timber sector, the preservation and protection of the forest and its products.	law or by decree? Does it already exist or should it be integrated into the ministry's current organisational chart?
Section X: Combating climate change and the PES		Article 185: The sale of carbon credits belonging to natural or legal persons is subject to a tax on the sale of forest carbon credits, which are collected by the public treasury's collection agent.	No details have been given yet as to how this tax is to be set or calculated or how it is to be distributed.
Section XII: Violations and penalties Violations and sanctions		Article 234	The log export quota has no place in the 100% processing requirement imposed by this law.
		Articles 233 & 248	The two articles deal with cases of re-offending, leading in one case to the withdrawal of the permit or the termination of the agreement, and in the other case to the doubling of penalties and fines.
Section XIII: Miscellaneous, transitional and final provisions		Articles 254, 255 257 and 258	The three-year deadline for forestry companies to adapt to new legislation could depend on the investments to be made and the international economic situation, especially that of the international timber market.