



To: All Parties to CITES

7 July 2014

Re: Afrormosia (*Pericopsis elata*) from the Democratic Republic of Congo

Distinguished Delegates,

We are profoundly disappointed with the apparent recent decision by CITES to eliminate *Pericopsis elata* from the Democratic Republic of Congo from the Review of Significant Trade. We would like to bring to your attention the urgent need to review the standing of the DRC with regards to trade in CITES species within the broader context of widespread corruption and illegality related to trade in both timber and animals.

DRC continues to disregard the norms established by CITES and the specific requirements of Article IV. Moreover, DRC has been disinclined to confront the direct contravention of CITES requirements by its domestic exporting industries and officials. Not only is DRC remiss in its obligations, but it flouts the efficacy of CITES, and the confidence of the Standing Committee, with its apparent lack of *bona fide* efforts to bring its trade and harvest practices into compliance.

Illegal harvesting remains widespread in DRC, and DRC has continually failed to address administrative deficiencies and corruption underlying this problem.¹ Approximately ninety percent of the timber harvested in DRC is thought to be illegal or informal, and actual log harvests are estimated at eight times the official harvest.² Existing laws are not being effectively enforced across all levels of administration.³ Likewise, “forest law enforcement structures in the DRC are fundamentally flawed in all important respects.”⁴

DRC has failed specifically in its management of *Pericopsis elata* (Afrormosia). The species was listed under CITES Appendix II in 1992, the first reviews were undertaken in 2000, and the current Review of Significant Trade in *P. elata* from DRC has been ongoing since 2008. No significant actions have been taken, although suspension of trade was recommended by the Secretariat (see attached CITES Review of Significant Trade for additional detail on all steps in the Review). In 2012, DRC failed to implement the recommendations of the Plant Committee to rectify insufficiencies in its non-detriment findings, and to establish sound quotas for harvest and export.

¹ Resource Extraction Monitoring, *Final Report: Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) on the Democratic Republic of Congo*, (2013) at 3, 11. http://www.observation-rdc.info/documents/REM_IMFLEG_2013_report_DRC.pdf.

² Sam Lawson, Chatham House, *Illegal Logging in the Democratic Republic of Congo*, (2014) at 2. http://www.illegal-logging.info/sites/default/files/Lawson_DR Congo_PP_2014.pdf

³ Resource Extraction Monitoring, *supra* note 1 at 3.

⁴ Lawson, *supra* note 2 at 2.

Based on our analysis of the May 2014 NDF on *P. elata*, DRC again failed to provide an adequate basis for its export quota.⁵

The ITTO project to assist the DRC government with the NDF and CITES procedures for trade in Afrormosia has not delivered all of the proposed results⁶ and the reasons for this failure require an urgent investigation in themselves.

As analyses of the DRC forestry laws have revealed, the effective implementation of any purported management plan for *P. elata* is highly suspect, as is the legality of other harvested timber. In spring 2013, two shipments of *P. elata* headed for Belgium were blocked at Antwerp, after authorities were alerted to anomalies in the accompanying documentation. DRC was unable to clearly explain the anomalies,⁷ but eventually credited the problem to “unaccounted for” permits. The first timber seized under the European Union Timber Regulation was Wengé (*Millettia laurentii*) from DRC.⁸ Shortly after the seizure in November 2013, German Authorities noted that for timber imports from countries with high levels of corruption official documents alone do not provide evidence of legality.⁹ Further evidence of this point was provided in April 2014 when the CITES Secretariat notified parties of a “large number of fake or falsified permits apparently issued by the Democratic Republic of the Congo,” and requested that Parties contact the Secretariat to confirm the validity of any CITES permits from DRC before acceptance.¹⁰

DRC’s efforts at forest sector reform have been lackluster. The poor state of DRC’s implementation and enforcement of its forest laws has been accredited to both weak political will, and widespread corruption.¹¹ This calls to question DRC’s good faith in meeting the Standing Committee’s latest recommendations. To this point, DRC began formal bilateral negotiations with the EU in October 2010 to establish better management practices, but “[t]here has been poor participation by higher-level officials of the forest administration in the negotiations to date, and no engagement by members of the National Assembly.”¹²

The continued and well-documented failures of DRC to confront widespread illegal logging under its domestic laws, and the inability of DRC to meet its obligations under CITES, indicate that actions taken in the Review of Significant Trade, and recent removal of *P. elata* from the review, were insufficient to elicit the changes still needed for the sustainable management of *P. elata*.

We call upon DRC immediately to suspend all cutting of *P. elata*, to cancel all authorizations for its cutting, and to take legal action against the companies DRC issued CITES permits to and then informed the CITES Secretariat the permits were “unaccounted for,” as well as against the officials that issued or facilitated the issuing of them.

This letter and attached briefers describe the issues with *P. elata* in detail, but problems with CITES compliance in DRC clearly go beyond this one species. Given widespread issues of corruption,

⁵ *Avis de Commerce Non Préjudiciable pour l'exploitation et le commerce d'Afrormosia (Pericopsis elata (Harms) Meeuwen (Fabaceae)) en République Démocratique du Congo*, 16 (May 2014).

⁶ Ministère de l'Environnement, Conservation de la Nature et Tourisme, *Proposition d'activité a l'organisation Internationale des bois Tropicaux (OIBT)/Projet Gestion Durable de l'assamela dans le Bassin du Congo*, undated, available at <http://www.itto.int/files/user/cites/republica-do-congo/DRC%202013%20Activity%20Doc%20-%20Pericopsis%20elata%20for%20web.pdf>.

⁷ Greenpeace (2013), *Import of timber from the DRC: high risk business for Europe. A case study in the port of Antwerp* http://www.greenpeace.org/belgium/Global/belgium/report/2013/GP_%282013_06%29_fact-sheet_Importing-wood-from-the-DRC_Final-1.pdf

⁸ Greenpeace, *Democratic Republic of Congo: A high-risk business for Europe, Case study II: The first confiscation of illegal timber under the EU Timber Regulation*, at 1, <http://www.greenpeace.org/international/Global/international/briefings/forests/2014/Importing-timber-from-DRC-2014.pdf>.

⁹ *Id.* (citing Federal Ministry email, November 8, 2013. “Erster Fall von Beschlagnehmung nach dem Holzhandels-Sicherungs-Gesetz.”).

¹⁰ CITES Notification No. 2014/017, CONCERNING: DEMOCRATIC REPUBLIC OF THE CONGO, available at: <http://cites.org/sites/default/files/notif/E-Notif-2014-017.pdf>.

¹¹ Resource Extraction Monitoring, *Supra* note 1

¹² Lawson, *supra* note 2 at 11. from Global Witness (2012) *DRC Forest Transparency Report Card*.

illegal trade, and inability to comply with CITES requirements for wildlife species,¹³ we respectfully request that a Country-wide Review of Significant Trade for the DRC, or a comprehensive review of both plants and animals by the respective Committees be undertaken, and trade in CITES listed species from the DRC be suspended, until compliance with CITES and sustainability of DRC's Appendix II species can be guaranteed.

Yours Sincerely,

A handwritten signature in black ink that reads "Melissa Blue Sky". The signature is written in a cursive, flowing style.

Melissa Blue Sky, CIEL

Danielle van Oijen, Greenpeace

Kate Horner, EIA

Alexandra Pardal, Global Witness

¹³ See CITES *Notification to the Parties: Verification of Export Permits for African Grey Parrots*, No.2013/051 (November 15, 2013), <http://cites.org/sites/default/files/notif/E-Notif-2013-051.pdf>; For details on Decisions 14.82-14.85 on *P. erithacus* see *Decisions of the Conference of the Parties to CITES in Effect after its 16th Meeting*, CoP 16 Decisions (March 2013), <http://www.cites.org/eng/dec/valid16/E16-Dec.pdf>. CITES, *Conservation of and Trade in Great Apes*, Conf. 13.4 (Rev. CoP16) (2013), <http://www.cites.org/eng/res/13/13-04R16.php>; The Secretariat provided an update on ongoing actions and concerns, including illegal trade, in advance of the 65th Standing Committee Meeting. See, CITES, *Interpretation and Implementation of the Convention*, SC65 Doc. 37 (2014), <http://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-37.pdf>.

Briefing Note on *Pericopsis elata*: Review of Significant Trade from the Democratic Republic of the Congo

Review of *P. elata* prior to Plants Committee 17

Pericopsis elata was first selected for Review of Significant Trade following CITES CoP11, in April 2000, where a review was completed and the species was removed.¹

The Plants Committee 14, in February 2004, classified trade from DRC as “of possible concern.” Recommendations were formulated and transmitted to the DRC.² DRC was given twelve months to reply. DRC sent two letters within the time period.³ The response was deemed satisfactory.⁴

Current Review of *P. elata*⁵

P. elata was once again selected for review at PC17⁶ in April 2008.⁷ The following narrative pertains to that review process, which is governed by the provisions set forth in *Review of Significant Trade in Specimens of Appendix-II Species*, Conf. 12.8 (Rev. CoP13) *paras. a-v*.⁸

Para. a. The UNEP World Conservation Monitoring Centre (WCMC) was directed by the Secretariat to compile net exports of Annex II species (including *P. elata*) for the past five years and submit the report to the Plants Committee at PC17 in 2008.⁹

Para. b. The Plants Committee at PC17 in 2008 formed Working Group 4 (WG4) to select species of priority concern based on the WCMC data. The WG4 selected *P. elata*.¹⁰ The chairman of WG4 specified that “the decision to re-enter *Pericopsis elata* in the review was based on a substantial recent increase in reported trade.”¹¹ The case was not handled as an exceptional case, as per *para. c.*

Para. d-e. DRC was notified by the Secretariat of the Plants Committee’s decision and was given 60 days to respond. DRC did not submit a response.¹²

Para. f. The Plants Committee is required to eliminate the species from review “if satisfied that Article IV, paragraph 2 (a), 3 or 6 (a)” of the CITES Convention “is correctly implemented.”¹³ At PC 18¹⁴ in 2009, WG4 did not remove DRC’s trade in *P. elata* from review.¹⁵

Paras. g-h. The Secretariat is required to compile information on *P. elata* and engage consultants and relevant experts when necessary.¹⁶ The WCMC compiled the information and selected *P. elata* as noteworthy, because it met IUCN Endangered (EN) criteria, and had trade volumes (over the 2003-2008 period) that surpassed the predetermined threshold.¹⁷

Para i. The Secretariat and WCMC are required to summarize the data on the vulnerability of *P. elata* and any concerns over the implementation of Art IV, and preliminarily categorize the species as “species of urgent concern,” “species of possible concern,” or “species of least concern,” based on the quality of implementation Art IV.¹⁸ The Secretariat concluded *P. elata* in DRC was a “species of possible concern.”¹⁹

¹ See, CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, PC18 Doc 8.3 (March 2009), <http://www.cites.org/sites/default/files/eng/com/pc/18/E-PC18-08-03.pdf>.

² *Id.*; See also, CITES, *Review of Significant Trade, Pericopsis elata*, PC14 Doc. 9.2.2, Annex 3 (November 2003), <http://www.cites.org/sites/default/files/eng/com/pc/14/E-PC14-09-02-02-A3.pdf>.

³ Letters dated June 28, 2004 and January 22, 2005, (MECNEF 2004b, MECNEF 2005); Barney Dickson, Paul Mathew, Simon Mickleburgh, Sara Oldfield, Daniel Pouakouyou & Jamison Suter, *An Assessment of the Conservation Status, Management and Regulation of the Trade in Pericopsis elata*, 6, Fauna and Flora International, (February 2005).

⁴ PC18 Doc 8.3, *supra* note 1, at 2.

⁵ An updated list of actions taken under the current trade review can be found at: <http://sigtrade.cites.org/ProcessReview/Details/2262>.

⁶ Seventeenth Meeting of the Plants Committee, Geneva (Switzerland), 15-19 April 2008.

⁷ PC18 Doc 8.3, *supra*, note 1.

⁸ CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, Conf. 12.8 (Rev. CoP13) (February 2004), <http://cites.org/sites/default/files/document/E12-08R13.pdf>.

⁹ CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, PC17 Doc. 8.5 (April 2008), <http://www.cites.org/sites/default/files/eng/com/pc/17/E-PC17-08-05.pdf>; see also, CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, PC19 Doc. 12.4 (April 2011), <http://www.cites.org/sites/default/files/eng/com/pc/19/E19-12-04.pdf>.

¹⁰ CITES, *Review of Significant Trade*, PC17 WG4 (Rev. 1) (April 2008), <http://cites.org/sites/default/files/eng/com/pc/17/wg/E-PC17-WG04.pdf>.

¹¹ CITES, *Summary Record*, 12, PC17 Summary (April 2008), http://www.cites.org/sites/default/files/deng/com/pc/17/E-PC17_summary_record.pdf.

¹² CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, PC18 WG3 Doc. 1 (March 2009), <http://www.cites.org/sites/default/files/eng/com/pc/18/wg/E-PC18-WG03.pdf>.

¹³ CITES, art. 4, March 3, 1973, 27 UST 1087, 993 UNTS 243.

¹⁴ Eighteenth meeting of the Plants Committee, Buenos Aires (Argentina), 17-21 March 2009.

¹⁵ PC18 WG3 Doc.1, *supra* note 13.

¹⁶ PC19 Doc. 12.4, *supra*, note 9, at 31-51.

¹⁷ *Id.* at 33, (For details on the Global Threat Status (EN) criterion and the High Volume Trade criterion).

¹⁸ Conf. 12.8 (Rev. CoP13), *supra*, note 8.

¹⁹ CITES, *Review of Significant Trade: Species selected by the CITES Plants Committee following CoP14 – CITES Project No. S-346*, PC19 Doc. 12.3 Annex 3 (April 2011), <http://www.cites.org/sites/default/files/eng/com/PC/19/E19-12-03-a3.pdf>

Para. j. The Secretariat transmitted these preliminary conclusions to DRC on January 7, 2011. DRC did not reply in the 60-day response period.²⁰

Para. k-i. At PC19²¹ in 2011, Working Group 08 (WG08) received the preliminary categorization from the Secretariat for its review; it confirmed that *P. elata* was not to be removed from the review process. DRC was therefore not informed of its removal.²²

Para. m-o. WG08 then set a deadline and made two recommendations: Within 6 months DRC's Management Authority: (1) "should inform the Secretariat of the methodology currently being used for making non-detriment assessments;" and (2) "establish a conservative harvest and export quota and inform the CITES Secretariat of the quota so that it can be included in the national export quotas on the CITES website."²³

Para. p. The Secretariat informed the DRC of the Plants Committee's (WG08's) recommendations, which DRC acknowledged on June 9, 2011.²⁴

At SC62²⁵ in 2012 DRC explained to the Secretariat as per the first recommendation that "a proposal for a national project entitled *Elaboration d'un avis de commerce non préjudiciable pour P. elata en République démocratique du Congo*, was being submitted for funding under the CITES/ITTO cooperation programme on tree species," and would start implementation in July 2012. On the second recommendation, DRC submitted an export quota of 50,000 m3, but the harvest export quota was not submitted to the Secretariat.²⁶

Paras. q-r. The Secretariat and the Chair of the Plants Committee were then directed to "determine whether the recommendations referred to above have been implemented and report to the Standing Committee accordingly." Following DRC's submission, the Secretariat and the Plants Committee Chair determined that neither recommendation had been met; as to the second recommendation, they noted an absence of a non-detriment finding to justify DRC's "unconservative" 50,000 m3 export quota.²⁷ *P. elata* was not removed from the review process.

Para. s. At SC62 in 2012, the Secretariat recommended that the Standing Committee "recommend that all Parties suspend trade in specimens of *P. elata*," until DRC "demonstrates compliance with Article IV, paragraphs 2 (a) and 3," (*NDF and export limits*) and until DRC "provides full information to the Secretariat regarding compliance with the recommendations of the Plants Committee."²⁸

Para. s. Rather than following the recommendation of the Secretariat to suspend trade, the Standing Committee at SC62 instead extended DRC's compliance deadline for a non-detriment finding to May 31, 2014. The Standing Committee also set an export quota for *P. elata* at 25,000 m3 for 2012, and until a non-detriment finding was made.²⁹

Para. t. The Secretariat is directed by *para. t* to notify DRC of the Standing Committee's decision. The Secretariat notified DRC on July 23, 2012.³⁰

Para. u. DRC submitted a non-detriment finding dated May 2014 to the Secretariat³¹ and the Review of Significant Trade Management System provides a completion date of June 2, 2014, for receipt news of compliance from DRC.³² Although no suspension of trade was ever approved by the Standing Committee, *para. u* states that the "recommendation to suspend trade in the affected species with the State concerned should be withdrawn only when that State demonstrates to the satisfaction of the Standing Committee, through the Secretariat, compliance with Article IV, paragraph 2 (a), 3 or 6 (a)." For stage U, "Withdraw trade suspension." CITES' Review of Significant Trade Management System provides a start of May 8, 2014, a completed date of June 30, 2014, and a deadline of May 1, 2015.³³

In June 2014, trade in *P. elata* from DRC was eliminated from the Review of Significant Trade.

²⁰ Review of Significant Trade Management System, *Pericopsis elata* (Democratic Republic of Congo,) at J, (accessed July 2, 2014.), <http://sigtrade.cites.org/ProcessReview/Details/2262>. [hereinafter Significant Trade Management System].

²¹ Nineteenth meeting of the Plants Committee, Geneva (Switzerland), 18-21 April 2011.

²² CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, 5, PC19 WG08 Doc. 1 (Rev1) (April 2001), <http://www.cites.org/sites/default/files/common/com/pc/19/wg/E19-WG08.pdf>.

²³ *Id.*

²⁴ CITES, *Implementation of Recommendations of the Animals and Plants Committees*, 46, SC62 Doc. 27.1 (Rev. 1) (July 2012), <http://www.cites.org/sites/default/files/eng/com/sc/62/E62-27-01.pdf>.

²⁵ Sixty-second meeting of the Standing Committee Geneva (Switzerland), 23-27 July 2012.

²⁶ SC62 Doc. 27.1 (Rev.1), *supra*, note 24.

²⁷ *Id.*

²⁸ *Id.*

²⁹ CITES, *Executive Summary, Afternoon*, 1, SC62 Sum. 8 (Rev. 1) (July 2012), <http://www.cites.org/sites/default/files/eng/com/sc/62/sum/E62-ExSum08.pdf>.

³⁰ Significant Trade Management System, *supra*, note 20, at T.

³¹ Institut Congolais pour la Conservation de la Nature, Secrétariat Général à l'Environnement et Conservation de la Nature, Ministère de l'Environnement, Conservation de la Nature et Tourisme, *Avis de Commerce Non Préjudiciable pour l'exploitation et le commerce d'Afromosia (Pericopsis elata) en République Démocratique du Congo*, (May 2014).

³² Significant Trade Management System, *supra*, note 20, at U.

³³ *Id.*

Briefing Note on *Pericopsis elata* and Species Exploitation
in the Democratic Republic of the Congo

Exports of Afrormosia (*Pericopsis elata*) from the Democratic Republic of the Congo were first flagged for CITES Review of Significant Trade over 12 years ago. The recently concluded Review began in 2008, but despite nearly six years of efforts, no significant improvements have been made. In DRC, inadequate enforcement of laws and widespread illegal logging mean that Afrormosia exploitation and trade occurs with very little control. Without a suspension of trade in the species, CITES is failing in its mission to protect Afrormosia against over-exploitation through international trade.

Additional evidence on the lack of proper CITES implementation in the cases of grey parrots¹ and great apes,² shows that the situation of Afrormosia is merely emblematic of much larger systemic problems resulting from widespread corruption, massive illegal trade, and the overall inability of DRC to comply with CITES requirements. Moreover a recent joint report by UNEP and INTERPOL indicates that “DRC is rated by CITES as one of the two most problematic countries in Africa for illegal exploitation of natural resources.”³ It is therefore strongly recommended that trade in all CITES species from DRC be suspended, until DRC’s compliance with CITES and sustainability of DRC’s listed species can be guaranteed.

Although the Secretariat recommended suspension of trade in Afrormosia from DRC in 2012 as part of the Review of Significant Trade, the Standing Committee instead gave DRC until May 31, 2014 to submit an NDF⁴ and comply with the Plants Committee’s 2011 recommendations to set “a conservative harvest and export quota” and provide information on the methodology for non-detriment determinations within six months.⁵ In the NDF submitted by DRC in May 2014, DRC noted that the Standing Committee would report on the progress made under the Review of Significant Trade at the July 2014 Standing Committee meeting, including the 2012 recommendations for DRC on Afrormosia and the resulting NDF,⁶ however in the Secretariat’s report on the Review of Significant Trade for the Standing Committee meeting, there is no mention of Afrormosia from DRC.⁷ Additionally, updates to two stages (T and U) in the Significant Trade Review were added in June 2014,⁸ but as of July 6, 2014, there do not appear to be any publicly available documents to indicate why or how these actions were taken. Apparently the decision has been taken in June to eliminate *P. elata* from the DRC from the Review of Significant Trade.

¹ Review of Significant Trade in *Psittacus erithacus* began in 2006 and the following notification by the Secretariat details the ongoing problems with DRC’s CITES compliance regarding *P. erithacus*. See CITES *Notification to the Parties: Verification of Export Permits for African Grey Parrots*, No.2013/051 (November 15, 2013), <http://cites.org/sites/default/files/notif/E-Notif-2013-051.pdf>; For details on Decisions 14.82-14.85 on *P. erithacus* see *Decisions of the Conference of the Parties to CITES in Effect after its 16th Meeting*, CoP 16 Decisions (March 2013), <http://www.cites.org/eng/dec/valid16/E16-Dec.pdf>.

² For an overview of the illegal international trade in bonobos see, Stiles, D., et al., UNEP Rapid Response Assessment, *Stolen Apes: The Illicit Trade in Chimpanzees, Gorillas, Bonobos and Orangutans*, 38-41 (2013); In light of concerns over the continued decline in great ape populations and the continued threat from international trade, CoP16 in 2013 recommended remedial measures for all parties, and passed specific measures for the protection of great apes to be completed by the Secretariat. See, CITES, *Conservation of and Trade in Great Apes*, Conf. 13.4 (Rev. CoP16) (2013), <http://www.cites.org/eng/res/13/13-04R16.php>; The Secretariat provided an update on ongoing actions and concerns, including illegal trade, in advance of the 65th Standing Committee Meeting. See, CITES, *Interpretation and Implementation of the Convention*, SC65 Doc. 37 (2014), <http://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-37.pdf>.

³ Nellemann, C., et al., UNEP Rapid Response Assessment, *The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*, 54 (2014)

⁴ CITES, *Executive Summary, Afternoon*, SC62 Sum. 8 (Rev. 1) (July 2012) <http://www.cites.org/sites/default/files/eng/com/sc/62/sum/E62-ExSum08.pdf>.

⁵ CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, 5, PC19 WG08 Doc. 1 (Rev1) (April 2001), <http://www.cites.org/sites/default/files/common/pc/19/wg/E19-WG08.pdf>

⁶ Institut Congolais pour la Conservation de la Nature & Secrétariat Général à l’Environnement et Conservation de la Nature Ministère de l’Environnement, Conservation de la Nature et Tourisme (MECNT), *Avis de Commerce Non Préjudiciable pour l’exploitation et le commerce d’Afrormosia (Pericopsis elata (Harms) Meeuwen (Fabaceae)) en République Démocratique du Congo*, 16 (May 2014) [hereinafter *Avis de Commerce Non Préjudiciable*].

⁷ CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, SC65 Doc. 26.1 (2014), http://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-26-01_0.pdf.

⁸ CITES, *Review of Significant Trade Management System, Pericopsis elata [Democratic Republic of the Congo]*, T, U, (accessed July 6, 2014), <http://sigtrade.cites.org/ProcessReview/Details/2262>.

Two themes regarding the DRC, Afrormosia, and CITES arise: first, that in spite of the Standing Committee's deadline extension and the substantial support provided to DRC to meet the Plant Committee's recommendations, DRC presently fails to protect the species, as evidenced by the mounting accounts of illegal logging in DRC and exports of illegal timber, and the insufficiency of its recently submitted NDF. Secondly, that in light of the history of noncompliance and the growing wealth of information on illegal exports, CITES itself has failed to sufficiently confront the widespread unsustainable and illegal logging of Afrormosia within the DRC.

Informal and Illegal Logging in DRC

In the DRC, illegal logging is flagrant and widespread due to lack of enforcement and corruption.⁹ DRC's forest laws are failing across all levels of administration¹⁰ and "forest law enforcement structures in the DRC are fundamentally flawed in all important respects."¹¹ As of 2013 close to "15 million hectares of forest [were] allocated to industrial logging" in DRC, but the Congolese Treasury received only 9.6 percent of the Surface Tax revenues (DRC's primary logging tax) it should have derived from these concessions.¹² DRC exercises little control over logging activities, and in some cases may even allow companies to avoid compliance with existing laws.

Outside of these concessions, illegal logging is proliferating through artisanal logging permits. Artisanal permits are intended for use by small-scale loggers in community-owned forests, but many have been misappropriated to industrial loggers. The violations are glaring: whereas DRC law limits these permits "to licensed physical persons, using a saw or chainsaw,"¹³ they are frequently issued to companies using industrial equipment; whereas the law clearly states, "an artisanal logger is entitled to no more than two permits per year,"¹⁴ there are examples of companies receiving upwards of ten permits in a year.¹⁵ Although artisanal permits were designed for use in small, community-based operations, their use by larger companies facilitates industrial-scale logging outside the required framework of DRC's industrial logging laws.

It has been estimated that approximately ninety percent of the timber harvested in DRC is illegal or informal, and actual log harvests are estimated at eight times the official harvest.¹⁶

Since the beginning of World Bank-sponsored "forestry-sector reform" over ten years ago, the DRC Ministry has undertaken no sustained monitoring of industrial logging activity in the country.¹⁷ The small number of isolated field missions that have resulted in the issuing of infractions have produced no sanctions of any consequence. For example, the EU-financed Independent Observer's recommendation in August 2012 that the Ministry immediately cancel the logging contract of one firm, Bakri Bois Corporation, appears to have been ignored.¹⁸

⁹ Resource Extraction Monitoring (REM), *Final Report: Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) in the Democratic Republic of Congo*, 3 (2013), available at http://www.observation-rdc.info/documents/REM_IMFLEG_2013_report_DRC.pdf.

¹⁰ *Id.*, at 2.

¹¹ Sam Lawson, Chatham House, *Illegal Logging in the Democratic Republic of Congo*, 2 (2014), available at http://www.illegal-logging.info/sites/default/files/Lawson_DRCongo_PP_2014.pdf.

¹² Based on the area of granted concessions (14,941,935 *ha*) and the Surface Tax rate (US\$ 0.5 per *ha*), the Treasury should have collected US\$ 7,470,967.50 for 2012. Figures released by DRC's Ministry of Finance show that US\$ 777,908 was actually received—about 9.6 percent. See, Global Witness, *The Cut-price Sale of DRC's Forests*, 2, (2013), available at http://www.globalwitness.org/sites/default/files/The_cut-price_sale_of_DRC_forestsWEB.pdf.

¹³ Order 035/CAB/MIN/ENVEF/2006 (Oct 2006), art. 8 al. 1.

¹⁴ Order 035/CAB/MIN/ENVEF/2006 (Oct 2006), art. 8 al. 2.

¹⁵ Greenpeace Africa, *Artisanal Logging = Industrial Logging in Disguise*, 6-8 (May 2012), available at http://www.greenpeace.org/africa/Global/africa/publications/forests/Logging_Illegal_EnglishA4.pdf.

¹⁶ Lawson, *supra* note 11, at 2.

¹⁷ Greenpeace Africa, *Cut it Out: Illegal Logging in the Democratic Republic of Congo (DRC)*, 10 (March 2013), available at https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/20130504-report-cut-it-out-abholzung-kongo_0.pdf.

¹⁸ Resource Extraction Monitoring, *Observation Indépendante de la mise en Application de la loi forestière et de la gouvernance (OI-FLEG)*, 5, (Nov. 23rd, 2012), available at http://www.observation-rdc.info/documents/Rapport_REM_004_OIFLEG_RDC.pdf.

Recent examples of export of illegal timber include the seizure of timber from the DRC under the European Union Timber Regulation in November 2013.¹⁹ Shortly after the seizure, German authorities noted that for timber imports from countries with high levels of corruption, official documents alone do not provide evidence of legality.²⁰

Furthermore, in spring 2013, two shipments of DRC Afrormosia for leading Belgian importers Vandecasteele and Denderwood were briefly blocked at Antwerp, after Greenpeace alerted Belgian CITES authorities to flagrant anomalies in the accompanying documentation. In its summary of the case, Greenpeace describes DRC officials' "three different, mutually exclusive attempts to account for the origin" of the wood. And Greenpeace notes:

"The two Antwerp shipments were covered by two CITES export permits dated March 27, 2013. Each clearly indicates that it cancels and replaces a CITES export permit issued on February 21, 2013. The replacement permits were issued one day before the Congolese Ministry assured Belgian CITES authorities by email that [the exporter] Tala Tina is "in conformity with CITES."²¹

In a June 7, 2013 meeting of Belgium's CITES unit, the Federation of Belgian Wood Importers, and Greenpeace, regarding the legality problems with Afrormosia exports from DRC to Belgium, the then-director of the DRC Ministry's Nature Conservation Department proposed that DRC henceforth issue export permits only after an import permit is delivered by the Belgian CITES authorities, the opposite of what is legally required.

DRC's actions regarding Afrormosia under CITES

Review of Significant Trade in Afrormosia from DRC was first initiated following CoP11 in 2000, prompted by concerns of trade threatening the survival of the species. In 2008, the second significant review of Afrormosia was triggered by WCMC data revealing an alarming increase in trade. The Plants Committee again included DRC in the review, and in 2011 it recommended that DRC set "conservative" export and harvest quotas and provide an NDF to the Secretariat.²²

In 2012 at SC62, the Secretariat and Plants Committee reviewed DRC's submissions and determined the recommendations had not been met.²³ Consequently, the Secretariat recommended that the Standing Committee "recommend that all Parties suspend trade in specimens of *P. elata*," until DRC "demonstrates compliance with Article IV, paragraphs 2 (a) and 3," (i.e., *NDF and export limits*), and until DRC "provides full information to the Secretariat regarding compliance with the recommendations of the Plants Committee."²⁴ The Standing Committee declined to adopt the Secretariat's recommendation, and instead extended DRC's deadline for compliance with the 2011 recommendations to May 31, 2014.²⁵ Additionally, the Standing Committee's documents from the 2012 meeting did not acknowledge or address the issue of illegal logging in DRC "despite the reports of civil-society and formally recognized independent observers detailing relatively widespread illegality."²⁶

¹⁹ Greenpeace International, *Democratic Republic of Congo: A High-risk Business for Europe*, 1 (February, 4 2014), available at <http://www.greenpeace.org/international/Global/international/briefings/forests/2014/Importing-timber-from-DRC-2014.pdf>.

²⁰ *Id.* (citing Federal Ministry email, November 8, 2013. "Erster Fall von Beschlagnahmung nach dem Holzhandels-Sicherungs-Gesetz.").

²¹ Greenpeace International, *Import of Timber from the DRC: High Risk Business for Europe*, (June 13, 2013), available at [http://www.greenpeace.org/belgium/Global/belgium/report/2013/GP_\(2013_06\)_fact-sheet_Importing-wood-from-the-DRC_Final-1.pdf](http://www.greenpeace.org/belgium/Global/belgium/report/2013/GP_(2013_06)_fact-sheet_Importing-wood-from-the-DRC_Final-1.pdf).

²² CITES, *Review of Significant Trade in Specimens of Appendix-II Species*, 5, PC19 WG08 Doc. 1 (Rev1) (April 2011), <http://www.cites.org/sites/default/files/common/com/pc/19/wg/E19-WG08.pdf>.

²³ CITES, *Implementation of Recommendations of the Animals and Plants Committees*, 46, SC62 Doc.27.1 (Rev. 1) (July 2012), <http://www.cites.org/sites/default/files/eng/com/sc/62/E62-27-01.pdf>.

²⁴ *Id.*

²⁵ CITES, *Executive Summary, Afternoon*, SC62 Sum. 8 (Rev. 1) (July 2012), <http://www.cites.org/sites/default/files/eng/com/sc/62/sum/E62-ExSum08.pdf>.

²⁶ Jade Saunders, Rosalind Reeve, Chatham House, *The EU Timber Regulation and CITES*, (April 2014), available at <http://www.chathamhouse.org/publications/papers/view/199158>.

In April 2014 the CITES Secretariat notified parties of a “large number of fake or falsified permits apparently issued by the Democratic Republic of the Congo,” and requested that Parties contact the Secretariat to confirm the validity of any CITES permits from DRC before acceptance, and provided a long list of “permits... that are unaccounted for.”²⁷ The Notification goes on to state that DRC “is taking measures to ensure that the issuance of CITES permits is correctly regulated.”²⁸

Despite these measures, there is concern over the seriousness of the Secretariat’s notification. Whereas the Notification states that CITES permits numbered 4948 through 4974 are “unaccounted for,” the DRC informed CITES in its 2012 annual CITES report that ten of these permits had been used to export Afrormosia to China, Belgium, Singapore and Malaysia.²⁹ Likewise, while the Notification states that permits numbered 4976 through 4994 are “unaccounted for,” DRC informed CITES in its 2012 annual report that nine of these permits had been used to export Afrormosia to China, Portugal, Turkey and Belgium.³⁰

Most of these shipments, totaling nearly 4,500 cubic meters,³¹ concerned logging companies who claim to practice “sustainable forest management.”³² These confused circumstances evidence, at best, the severe inefficacy of DRC’s management regime, and at worst, the vast scope of DRC’s disregard for CITES requirements.

Concerns with DRC’s NDF:

In May 2014 DRC submitted its NDF to the Secretariat for review.³³ Our examination of DRC’s compliance with the Standing Committee’s recommendations finds that DRC has not provided sufficient information in its NDF to justify continued exports of Afrormosia. The DRC’s NDF proposal document promised that the NDF team’s first goal was to evaluate the status of “control and follow-up” of logging in concessions where Afrormosia is logged,³⁴ but the NDF does not clearly address this issue of control. One of the concessions that was inventoried for the NDF was visited October 2013 by the current IM-FLEG (OGF) and government officials. Many illegalities were documented including logging without authorization (including Afrormosia without special permit).³⁵ Inventories were completed for only six of the 23 logging titles with Afrormosia³⁶ before submission of the NDF in May 2014, and these inventories have not been independently verified. Additionally, the Ministry website contains no current list of valid logging titles.³⁷

DRC provided insufficient evidence of the sustainability of its export quota and no information on a harvest quota. Harvest quotas are relevant to an NDF because they are central in proving the overall

²⁷ CITES, *Missing Permits and Verification of Permits*, No. 2014/017 (April 2, 2104), <http://cites.org/sites/default/files/notif/E-Notif-2014-017.pdf>.

²⁸ *Id.*

²⁹ Ministère de l’Environnement, Conservation de la Nature et Tourisme, *Direction de la Conservation de la Nature, Organe de Gestion CITES/RDC, Rapport annuel. Convention sur le commerce international des espèces de faune et de flore sauvages menacées d’extinction CITES*, undated; Ministère de l’Environnement, Conservation de la Nature et Tourisme, Organe de Gestion CITES/RDC, *Letter n°269 DCN/SG/ECN/2013 to the CITES Secretary General “Transmission Rapports CITES 2011 et 2012,”* (15 December 2013); The permits in question are, in order of appearance: #4949 Tala Tina, #4951 CFT, #4953 Forabola, #4952 Sodefor, #4958 Cotrefor, #4961 Bois Tropicaux, #4960 Cotrefor, #4959 Cotrefor, #4968 Cotrefor, #4967 Cotrefor.

³⁰ *Id.* Permits #4986 Cotrefor, #4983 Cotrefor, #4987 Sodefor, #4988 CFT, #4989 Sodefor, #4990 CFT, #4991 Forabola, #4984 Siforco, #4985 Siforco.

³¹ *Id.*

³² For a list of companies, see FRM, Clients / Partenaires, <http://www.frm-france.com/index.php?page=clients-partenaires>.

³³ *Avis de Commerce Non Préjudiciable*, *supra* note 6.

³⁴ Ministère de l’Environnement, Conservation de la Nature et Tourisme, *Proposition d’activité a l’organisation Internationale des bois Tropicaux (OIBT)/Projet Gestion Durable de l’assamela dans le Bassin du Congo*, undated, available at <http://www.itto.int/files/user/cites/republica-do-congo/DRC%202013%20Activity%20Doc%20-%20Pericosis%20elata%20for%20web.pdf>.

³⁵ OGF (2014) *Rapport de mission de terrain n1*. We refer to concession contract 018/11 from Cotrefor in Oriental province that is also part of the first 6 inventoried concessions according to the Afrormosia NDF filed in May 2014 by DRC.

³⁶ Additionally 5 logging titles have not been converted officially into concession contract. See *Avis de Commerce Non Préjudiciable*, *supra* note 6 at 31.

³⁷ Le Ministère de l’Environnement, Conservation de la Nature et Tourisme, (accessed July 2, 2014) <http://www.mecnt.gouv.cd/v2/>.

sustainability of the export quota.³⁸ However, neither the export quotas of 25,000 m3 nor the amount harvested for 2012-2013 were based on an NDF. Through May 2014, DRC had authorized cutting permits of 55,373 m3 and has an export quota of 25,000 m3 for 2014.³⁹ Although, the 2014 authorized cutting permits' volume is 30,373 m3 greater than the 2012-2014 export quota could be attributed to the fact CITES listing for Afrormosia applies only to logs, sawn wood, and veneer sheets,⁴⁰ DRC has little, if any, capability for manufacturing finished products falling outside those categories and exported only logs and sawn wood in 2011 and 2012.⁴¹ DRC is the world's largest supplier of Afrormosia, by a large margin,⁴² and due to the high value of the wood, it is unlikely that more Afrormosia is being used within DRC than is being exported. Hence, the discrepancy of much higher harvesting authorizations than the export quota, could be attributed to the Afrormosia beyond the quota being exported as different species, which would also allow exporters to avoid paying the higher export taxes for Afrormosia.

The European Union has independently sought DRC's information on Afrormosia. On September 30, 2013 the EC's Scientific Review Group (SRG) wrote to the Ministry requesting, before October 25, 2013, all pertinent information regarding the status of Afrormosia – the “scientific basis” of DRC's annual quota of 25,000 m3 – as well information regarding “control procedures” of its harvesting, processing, transport and export.⁴³

It appears that only shortly thereafter, the Ministry authorized industrial loggers to log at least 55,373 m3 of Afrormosia in 2014.⁴⁴ Of this volume, nearly half (21,245 m3) was authorized for the Lebanese-owned firm Cotrefor.⁴⁵ Nonetheless, Cotrefor's 2014 Afrormosia authorizations to date for its logging concession #18/11 exceeds the “sustainable” annual Afrormosia volume (16,298 m3), as determined by FRM, by nearly 5,000 m3.⁴⁶ The accuracy of these inventories prepared for Cotrefor by the French consultancy Forêt Ressources Management (FRM) should be reviewed in light of FRM's extensive engagement with the logging industry throughout the Congo Basin,⁴⁷ which has been plagued with problems related to overharvesting and legality, as well as the apparent conflict of interest in the preparation of inventories by non-independent entities.

Finally, the NDF appears to have been financed in large part under the project “Elaboration d'un avis de commerce non préjudiciable pour *Pericopsis elata* en République Démocratique du Congo.”⁴⁸ CITES indicates that International Tropical Timber Organization (ITTO) financing of this 12-month project totaled USD 264,200,⁴⁹ and that the ultimate source of funding for it was the European Union.⁵⁰ Aside from the NDF and few inventories completed, it is unclear what project outcomes for the two year project have

³⁸ CITES, *Non-detriment Findings*, Res. Conf. 16.7 (March 2013), <http://www.cites.org/eng/res/16/16-07.php>

³⁹ *Avis de Commerce Non Préjudiciable*, *supra* note 6, at 16; CITES, *CITES National Export Quotas for 2014 (excluding quotas for Acipenseriformes)*, 8, (June 20, 2014), <http://cites.org/sites/default/files/common/quotas/2014/ExportQuotas2014.pdf>.

⁴⁰ Species+, *Pericopsis elata*, (accessed July 2, 2014), http://www.speciesplus.net/#/taxon_concepts/18339/legal.

⁴¹ *Avis de Commerce Non Préjudiciable*, *supra* note 6, at 40.

⁴² See CITES, *Net Exports of Appendix-II Plant Species, 2007-2012 Raw Data*, PC21 Inf. 2 (Rev.1) (May 2014).

<http://cites.org/sites/default/files/common/com/pc/21/E-PC21-Inf-02.pdf>.

⁴³ Emmanuel Heuse, *L'actualité du dossier Afrormosia*, May 2014.

⁴⁴ *Id.*, at 17.

⁴⁵ *Id.*

⁴⁶ In 2013, the volume of Cotrefor's Afrormosia cutting permits (20,730 m3) appeared to exceed the annual “sustainable” rate of 16,298 m3 by roughly the same amount. See FRM, *Plan de Gestion Couvrant la Période de Préparation du Plan d'Amenagement (4 ans)*, (April 2011), available at <http://www.mecnt.gouv.cd/v2/index.php/mecnt3/le-ministere2/textes-legaux/category/81-plan-de-gestion>.

⁴⁷ Greenpeace International, *Stolen future Conflicts and logging in Congo's rainforests – the case of Danzer*, undated, available at <http://www.greenpeace.org/international/Global/international/publications/forests/2011/stolen%20future.pdf>. See also, FRM, *Clients / Partenaires*, *supra* note 32.

⁴⁸ CITES, *Progress Report on the ITTO-CITES Tree Species Programme (Resolution Conf. 14.4)*, PC21 Doc. 18.1 (May 2014), <http://www.cites.org/sites/default/files/eng/com/pc/21/E-PC21-18-01.pdf>; See also *Avis de Commerce Non Préjudiciable*, *supra* note 6 at 2. (“Ce document a été élaboré avec l'appui de l'activité “Elaboration d'un Avis de Commerce Non Préjudiciable pour *Pericopsis elata* en République Démocratique du Congo” mise en oeuvre par le programme OIBT CITES et du projet “Formalisation du suivi des prélèvements et exportations de bois d'Afrormosia dans le cadre de la CITES comme phase préparatoire du SVL de l'APV en cours de négociation entre la RD Congo et l'UE,” mis en oeuvre avec le Laboratoire de Biologie du Bois du Musée Royal de l'Afrique Centrale de Tervuren dans le cadre du programme EU FAO FLEGT (PO309012).”)

⁴⁹ CITES, PC21 Doc. 18.1 *supra* note 48 at 4.

⁵⁰ *Id.*, at 4. (“EU “contributeur financier principal des programmes OIBT CITES” in DRC.”)

been achieved. As such, an external audit is of utmost importance for this project, and should be made public on the ITTO and MECNT websites immediately upon completion.

Insufficiency of CITES Measures Heretofore

In its recent NDF, DRC failed to adequately support its claimed export quota and authorized harvest volumes. The Afrormosia inventories in the logging concessions have not been independently assessed. In addition, much evidence confirms that illegal logging continues to go unaddressed in DRC. Together, these facts suggest that no export quota can be relied upon with any confidence at present.

The efficacy of CITES is crucial. Internationally, it is relied upon as the preeminent multilateral treaty for the protection of endangered species. In addition, the quality and efficacy of CITES is relied upon in elements of regional and national management schemes, such as the EUTR's "green lane" for timber imports. In that case, the simple existence of a CITES export permit satisfies operator due diligence requirements under EU law, exposing EU regulators to further risks of forged or otherwise unwarranted CITES permits, and facilitating illegal exports of Afrormosia and disguised non-Afrormosia exports into the EU.⁵¹ From 1992 – 2012, at least 261,217 m³ of Afrormosia was exported to the EU from Cameroon, DRC, and the Republic of Congo "accompanied by CITES permits."⁵² These volumes speak to the urgent need of the CITES Standing Committee to bring DRC into compliance, and to suspend trade in Afrormosia from DRC until such compliance can be guaranteed. On the contrary, the recent decision to eliminate DRC Afrormosia from the Significant Trade Review may further endanger the survival of the species. This step should be accompanied by conditions to ensure improvements on the ground in DRC, including strong measures to ensure compliance and a robust assessment of the quality of the NDF, which must both take into account the rampant illegal logging and trade.

⁵¹ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010, Laying Down the Obligations of Operators who Place Timber and Timber Products on the Market, §10 *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R0995>. ("(T)imber of species listed in Annex A, B or C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (2) should be considered to have been legally harvested provided it complies with that Regulation and any implementing provisions."). Recall that, under the EUTR, when importers of wood do not themselves introduce it on to the EU market, they are exempt from the Regulation's due diligence requirement.

⁵² Saunders, *supra* note 26; See also Sarah Ferriss, Chatham House/TRAFFIC, *An Analysis of Trade in Five CITES-listed Taxa*, (May 2014), *available at* <http://www.chathamhouse.org/publications/papers/view/199351>.