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**To Mrs. Eva Bazaiba,
Deputy Prime Minister and Minister of
Environment and Sustainable Development**
2895 Boulevard du Palais de la Nation, Gombe,
Kinshasa, Democratic Republic of Congo

Subject: Putting an end to the illegal activities of the KMS company, and its violations of local communities and indigenous peoples' rights in the DRC

Your Excellency the Deputy Prime Minister,

We hereby request your immediate intervention regarding the illegal actions of Kanaka Management Services Private Limited (KMS), an Indian company implementing a REDD+ project in six provinces of the DRC. The KMS project was designed to enrich this foreign company through carbon credits, but led to the dispossession of thousands of people, and it is also generating conflicts and depriving the country of a major development opportunity.

A well-documented scam

In January 2022, we were alerted by local and indigenous communities from the Equateur Province, after they had been victims of a scam. In December 2021, KMS used deception and other malicious methods to force these communities, who hold Local Community Forest Concession (CFCL) titles, to sign exploitation contracts, which grant KMS exclusive rights to carbon credits and other forest resources, for a period of one hundred (100) years.

With false promises of significant profits that could result from the sale of carbon credits, KMS travelled throughout the CFCLs of the province of Equateur, spending *less than an hour* per village and sometimes even at night. KMS exerted pressure on some village representatives they met to sign these contracts, without having time to read or discuss their content, especially since these contracts were written only in French and English. This is contrary to the principles enshrined in particular by *Ministerial Order No. 026 of 08 November 2017 setting the framework of national directives on Free, Prior and Informed Consent (FPIC) in the context of REDD+ implementation in the DRC*, and its Annex, "Harmonised Methodological Guide for the Implementation of FPIC".

In some communities, KMS also falsely claimed to represent the organisation GASHE, the Congolese NGO that has supported these communities for many years in their efforts to apply for CFCLs and who continue to support them in the management phase. When the communities had an established Local Management Committee, KMS also encouraged the representatives present to imitate the signature of the absentees, which constitutes a forgery in writing and use of forgery. In at least one documented case, the company also

signed with one village representative they met in a surrounding town without ever having visited the village in question.

In Equateur, KMS is believed to have succeeded in getting 25 out of the 29 communities with CFCLs in the province to sign such contracts. *Annex 1* provides further details on all the misconduct committed by KMS and documented by the GASHE and APEM organisations in the Equateur province in February and March 2022.

A considerable threat to community forestry in the DRC

Our partner organisations have so far only been able to document the misconduct of KMS committed in the Equateur province, however everything suggests that the company's strategy is to reproduce the same pattern in the other provinces – Tshuapa Tshopo, Maniema, Sankuru and Bas-Uélé – where it holds approval certificates that have been signed, between May 25 and June 18, 2018, by the Ministry of Environment and Sustainable Development. These certificates cover 218 sectors, i.e. a third of Congolese territory. This would be a large-scale scam.

The content of these contracts signed between KMS and certain communities seems to be in the exclusive interest of the company. Indeed, KMS would hold 40% of the profits from the sale of carbon credits, against only 10% for communities - even though certain sums, corresponding to taxes, various costs induced by KMS, or 'sanctions' imposed on communities, could be deducted from this 10%, under unknown terms and at KMS' discretion. Contracts also trap communities by setting a six (6) year notice period for termination.

Under these contracts, the communities also appear to be ceding to KMS all exploitation and management rights over their forests, and they would be forced to devote the entire area of their CFCL to environmental services, which is in contradiction with the fundamental principles of community forestry, namely the sovereign, participatory and inclusive management of the various forest resources and the "multi-use" vocation. These provisions also leave communities uncertain about the activities they will be allowed to undertake to ensure their livelihoods and the sustainable development of the local economy.

Such contractual conditions could easily lead to (1) the impoverishment of these communities, and reduce their food security; and (2) lasting inter-communal conflicts, including between signatories and the wider majority of inhabitants, as already observed in most of the villages affected by the KMS contracts.

Finally, a body of evidence tends to confirm the illegal or at least illegitimate nature of KMS actions. The certification agency VERRA confirmed that it had "rejected" the KMS REDD+ project in the DRC in September 2021, at the request of the Congolese administration, which considers that KMS did not meet the necessary conditions of the current state of the project. Despite this, KMS continues to claim to hold such certification.

It should also be noted that in the Tshuapa province, the Governor had opposed KMS' approach (see the letter in *Annex 3*). Since then, KMS has suspended its activities in this province. Meanwhile, in a recent [statement](#), a governor of Papua New Guinea described a similar KMS project implemented in his country as a "scam".

This is part of a worrying new trend in which companies are trying to sell carbon credits from forests that they should not have access to. An investigation by El Pais and Planeta Futuro revealed how logging companies in the DRC had illegally converted their concessions into conservation concessions. These illegal practices must stop if the DRC wishes to position itself as a credible "solution country" on the international arena.

Minimum recommendations to protect the rights of communities

- Facilitate the cancellation of contracts signed between KMS and local communities and indigenous peoples;
- Cancel KMS' "homologation certificates" (signed by the MEDD in 2018) and any other document that the company may use to justify its actions in violation of current regulations, local practices and customs;
- Conduct a thorough investigation into individual responsibilities within the forestry administration, in particular regarding the signing of "homologation certificates" to KMS, as well as the lack of appropriate follow-up to this day;
- Apply the rigor of the law to prevent other actors from using similar methods, as part of this rush to exploit CFCLs for payments for environmental services;
- Cancel logging concessions that have been illegally converted into conservation concessions;
- Improve and finalise regulations and tools related to REDD+ projects in the DRC.

The signatory organisations:

- APEM - Action for the Promotion and Protection of Endangered Peoples and Species
- CAGDFT - Support Centre for the Sustainable Management of Tropical Forests
- GASHE - Action Group to Save Man and his Environment
- GeoFirst Development
- RCREF - Network for the Conservation and Rehabilitation of Forest Ecosystems
- PREPPYG - Peasant Association for the Rehabilitation and Protection of Pygmies
- RFUK - Rainforest Foundation UK

Copies to:

- The Presidency of the Republic
- The Prime Minister
- The Environment and Natural Resources Committees of the National Assembly and the Senate
- The company KMS

ANNEXES:

Annex 1: Report on the actions of KMS in the DRC

Annex 2: Example of a contract signed between KMS and a community

Annex 3: Letter from the Governor of the Tshuapa Province to KMS (May 18, 2021)

Appendix 1:

Report on the actions of KMS in the DRC

1. Summary

[Kanaka Management Services Private Limited](#) is an Indian company based in Bengaluru. Its strategy in the DRC is to have contracts signed – entitled "Land leases and rights to develop REDD+, forest conservation, deforestation and reforestation project" – with local and indigenous communities, who hold a community forest or "Forest Concession of Local Communities" (CFCL).

These contracts:

- have been signed using malicious methods, without the Free Prior and Informed Consent (FPIC) of the communities, and in violation of current regulations;
- grant KMS exclusive rights over the entire surface of the CFCL, in exchange for almost no share of the benefits for the communities; on the contrary, the latter may be sanctioned by KMS in the event of non-compliance with rules that are not defined in the contract;
- say they are legally binding for a period of 100 years, with a 6 years notice period for termination.

2. KMS in DRC:

- **Headquarters in the DRC:** Lubumbashi, and a representation in Kinshasa;
- **National Representative:** Mr. Jean-Claude Mulobe;
- **Description of KMS' REDD+ project in the DRC:** available on page <http://nationalreddplusprojectdrcongo.org/wp-content/uploads/2021/10/DRC-KMS-VCS-CCB-PD.pdf>¹
- **Presence in 6 provinces:** Tshopo, Tshuapa, Equateur, Maniema, Bas-Uele, Sankuru, following the signing of 20 approval certificates by the Ministry of Environment and Sustainable Development, between May 25 and June 18, 2018 (see the project document p.71). The project aims to cover an area of 72,010,950 hectares in 218 sectors, or about **30% of the national territory**.

3. Documentation of KMS actions in Equateur:

In January 2022, communities informed the GASHE organisation of KMS passing through their villages after the contracts were signed. In February and March 2022, GASHE and APEM collected information during a documentation mission within 10 CFCLs, as well as in Mbandaka and in the capitals of the sectors concerned in the territories of Ingende, Bikoro and Lukolela.

According Mr. Ledoux Bondele, KMS Focal Point in Equateur, he signed in December 2021 identical contracts with all the communities holding a CFCL in the province of Equateur, with the exception of four communities that were not visited or refused to sign. It would then be 25 signatory communities.²

¹ KMS project website: <http://nationalreddplusprojectdrcongo.org/>

² La [Community Forestry Database](#) lists 29 CFCL in Equateur Province.

Before taking these steps, KMS reportedly obtained the signature of documents by the sector heads in 2018, but then no longer interacted with local and provincial authorities, with the exception of the Focal Point of the Community Forestry Division (DFC) in Equateur. However, the latter says it has never been aware of the contract template developed by KMS.

Out the 7 CFCLs visited by GASHE and APEM, all expressly requested legal and judicial assistance to cancel the contracts they signed with KMS.

Further information is available on request on the specific actions of KMS within each of these communities, but the summary table below gives an overview of the documentation work carried out.

Table: CFCL visited during the documentation mission to the Equateur Province in February and March 2022

Territories	Name of CFCL (and sector)	Accompaniator	Established management bodies?	PSG validated?	KMS contract signed?	Are they asking for the contract to be cancelled?	Other comment
Ingende	Inganda (Dwali)	GASHE	Not	Not	Yes	Yes	Committee set up under pressure for the signing of the contract
	Bofekalasumba (Dwali)	GASHE	Not	Not	Yes	Yes	Committee set up under pressure for the signing of the contract
Bikoro	Ekele (Elanga)	WWF	Not	Not	Yes	Yes	Committee set up under pressure for the signing of the contract
	Lokolama (Elanga)	Greenpeace	Not	Not	Not	-	KMS did not visit this village because they were informed of a conflict within this community.
Lukolela	Bosende (Lusankani)	GASHE	Yes	Not	Not	-	Bosende representatives met with KMS in Irebu and told them that a community meeting should be held before the contract was signed, so KMS did not go to Bosende.
	Illinga (Lusankani)	GASHE	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> - KMS said it was coming on behalf of the GASHE facilitators; - KMS asked the members of the Local Management Committee to imitate the signature of the absent members; - The contract covers the entire area of the CFCL, while the PSG has a zoning plan, including areas dedicated to artisanal logging, etc.
	Irebu (Lusankani)	GASHE	Yes	Not	Yes	Yes	KMS showed the contracts signed by the other neighboring CFLCs, but said it no longer had time to discuss the content in Irebu.
	Mibenga (Mpama)	GASHE	Yes	Not	Yes	Yes	<ul style="list-style-type: none"> - KMS said it was coming on behalf of the GASHE facilitators; - KMS asked the members of the Local Management Committee to imitate the signature of the absent members;
	Ilebo (Mpama)	GASHE	Yes	Not	Yes	Yes	<ul style="list-style-type: none"> - KMS did not go to Ilebo, but had one notable sign in Lukolela city; - This notable may have imitated the signatures of the members of the Local Management Committee.
	Nzondo (Mpama)	GASHE	Yes	Not	Not	-	KMS was unable to reach the village (transport problem).
			6 yes	1 yes	7 yes	7 yes	10 CFCL visited out of the 29 CFCL allocated in Equateur Province

4. Summary of the facts alleged against KMS:

A long list of infringements can motivate the cancellation of all contracts signed between KMS and the communities of the province of Equateur:

a. Content of the contract: a fraud

In remote forest areas where the state is almost absent, and where funding opportunities are scarce, KMS only argued to people met in the villages that carbon credits could generate significant profits, and be a boon for local development.

However, KMS never mentioned the provisions of the contract that state that communities:

- **Cede to KMS all exploitation and management rights over their forests (point 4. of the contract) and will be forced to devote the entire area of their CFCL to environmental services (points 2 and 3.)** : this is in contradiction with the fundamental principles of community forestry, namely the sovereign, participatory and inclusive management of different types of forest resources (multi-use vocation). These provisions leave communities uncertain about the activities they will be allowed to undertake to ensure their livelihoods and the sustainable development of the local economy;
- **Will only receive 10% of the profits generated by carbon credits, less taxes and other charges incurred by KMS (point 8.)** : even under the best conditions, such a small percentage does not seem fair (considering that KMS reserves 40%) nor sufficient to contribute to local development;
- **Could be penalised for non-compliance with certain rules (points 3., 6. and 8.)** , without specifying the content of these rules defined by KMS (on deforestation and biodiversity conservation), nor the modalities of these sanctions; which could open the way to unilateral and arbitrary decisions on the part of KMS;
- **Commit for a period of 100 years, with 6 years' notice**, which is unusual and fundamentally unreasonable under private law.

Without appropriate negotiations on the content of these imprecise clauses, the risk is immense for communities that could find themselves subject to the opaque management of KMS. Such contractual conditions could easily lead to:

- the impoverishment of these communities, including by reducing their food security;
- lasting inter-communal conflicts, especially between the signatories and the largest number of inhabitants, as already observed in most of the signatory villages.

b. Non-compliance with FPIC:

The KMS methods violate Ministerial Order No. 026 of 8 November 2017 setting the framework for national guidelines on free and prior informed consent (FPIC) in the context of REDD+ implementation in the DRC.

KMS did not respect the 9 steps of the methodological guide for the implementation of FPIC in the context of REDD+ projects in the DRC and in particular the following principles:

- Principle 1: "The REDD+ programme/project/initiative bearer should refrain from using pressure, manipulation, intimidation or force to gain acceptance among local communities and indigenous peoples";
- Principle 6: "assistance to communities during negotiations";
- Principle 8: "the agreement must be concluded on the basis of the FPIC of the community and the consent is formalised and documented".

Therefore, KMS has not complied with the legal requirements, and no consent can be freely given under the following conditions:

- **Information:** KMS agents stayed only **45 minutes maximum per village**, without explaining the content or implications of the contract, and without giving the signatories time to read the document;
- **Language:** the contract was provided in English and French only, languages that are generally not read or understood locally;
- **Community institutions:** KMS did not in any way ensure that the decision to sign the contract would be taken by representative and legitimate bodies; on the contrary, in the absence of existing bodies, committees were created under pressure in a few minutes with those present;
- **Support/advice:** communities did not have the opportunity to call on a facilitator (NGO or lawyer, etc.);
- **Negotiation:** The communities had no opportunity to change the provisions of the contract, as KMS said it did not have time to discuss. Either community representatives signed immediately, or they "missed the opportunity" to generate profits for their community;
- **Participation:** no community consultation or signing ceremony took place to guarantee the consent of as many people as possible.

c. Opacity / concealment of identity:

The communities visited stated that no name or address in the DRC had been provided to them in order to contact KMS after the agents had left.

This is in violation of indicator 1.1 of Order 026: *"The project leader [...] is well known and accepted by local communities and indigenous peoples."*

d. Untruths:

The contracts stipulate in the preamble:

In the past with free prior informed full approval of all the community members the Chief of Sector/Chiefdom has entered into an agreement with KMS for implementing REDD+ project. Since then conservation of forest area is ongoing. We the communities are fully aware of the KMS REDD+ project within our area and we honor and support. Effective patrolling is conducted since the beginning of the REDD+ project implementation to protect our forest area and biodiversity. We confirm that community patrolling of the forest area is conducted twice a year starting from

However, all the communities visited confirmed during our mission said that:

- KMS had never visited their village before December 2021 (the date of signature of the contracts);
- They have never committed to the implementation of REDD+ projects supported by KMS, nor have they undertaken patrols to this end.

e. Quality usurpation :

KMS agents mentioned the names of the facilitators of GASHE (the NGO accompanying 8 CFCL in the province) and claimed to come as a partner of GASHE.

f. Forgery in writing and use of forgery:

KMS agents encouraged community members to imitate the signatures of absent people. This is particularly the case for the community of Ilebo (Lukolela territory, Mpama sector), which is linked

to KMS under a contract signed by only one notable, who allegedly imitated the signatures of other members of his community. KMS did not go to Ilebo, and was content to deal with this notable met in another city.

g. Conditions of validity of a CFCL operating contract

According to **Order 025 of 9 February 2016** laying down specific provisions relating to the management and operation of CFCL, a community awarded a CFCL may operate it itself or by means of an operating contract signed with a third party. There are, however, cumulative formal and substantive conditions for such contracts to be valid.

- **Formal requirements** for the validity of operating contracts with third parties:
 - **Use of the contract template published by the administration** : any exploitation contract must comply with the model developed and published by the central forestry administration (according to Article 38 of Order 025). However, KMS did not use the existing approved model to develop the standard contract to be signed by the communities.
 - **Validation of the contract by a community council** : the contract must be validated by the entire community (according to Article 36 of Order 025). However, no community meeting was organised to validate KMS' contracts.
 - **Approval of the contract by the competent administration**: the exploitation contract enters into force only after its approval by the local forestry administration (according to Article 38 of Order 025). However, all the representatives of the local administration contacted – heads of sectors, heads of environmental posts, territories administrators, decentralised agents of the MEDD – confirmed that they had neither validated these contracts nor been aware of their existence.
- **Substantive requirements** : communities that sign contracts with third parties must:
 - **Have community management bodies established and approved by the entire community.** However, KMS signed with several unstructured communities, after having asked them to urgently set up a Local Management Committee (CLG) with 7 members; while Order 025 requires such Committee to be composed of 9 members and while these members were not appointed in a participatory manner. Therefore, contracts that have been signed by unauthorised persons cannot be valid.
 - **Have a Simple Management Plan (PSG) developed in a participatory manner, validated by the Community Assembly, then approved by the administration.** However, most of the signatory CFCL do not have an approved PSG.

5. Conclusion :

The community forestry process is a major innovation that can promote the sustainable management of forest resources in the DRC, by empowering customary users and owners of forest land. However, under conditions that are not conducive to participatory, inclusive and transparent management of resources, these initiatives are unlikely to benefit communities, the state, or even the environment.

On the contrary, in the situation described above, where the CFCLs are monopolised for the sole benefit of a foreign company, there is an immense risk of observing the emergence of major socio-economic and environmental problems, and thus wasting years of intense and permanent efforts, made by communities, the government, civil society, international donors, etc., i.e. all actors who continue to support community forestry in the DRC.

A project such as KMS' is therefore fundamentally incompatible with the government's vision and objectives, both in terms of fighting poverty, and protecting the climate and biodiversity.

6. Recommendations:

To the VPM-MEDD and the forestry administration (DGF/DFC):

- Cancel KMS' homologation certificates and any other document that the company may hold up to justify actions that violate current regulations, local practices and customs;
- Apply the rigor of the law to prevent other actors from using similar methods, as part of this rush to exploit CFCL for payments for environmental services;
- Cancel logging concessions that have been illegally converted into conservation concessions
- Improve and finalise regulations and tools related to REDD+ projects in the DRC.

To local and provincial governments:

- Not to approve contracts concluded as a result of fraudulent maneuvers;
- Facilitate the cancellation of contracts signed between KMS and local communities and indigenous peoples;
- Cancel the contracts signed between KMS by the sector chiefs in 2018.

To KMS:

- Cooperate with a view to the cancellation of all contracts signed under conditions that do not respect the principle of FPIC and the regulations in force;
- Refrain from having any other contract signed under these unlawful conditions.