

Timber Legality Risk Assessment

REPUBLIC OF THE CONGO

Version V2.0 | 7 December 2021



COUNTRY RISK
ASSESSMENTS



LIFE - Support EUTR II - LIFE18 GIE/DK/000763

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This report is based on the Republic of Congo Timber Legality Risk Assessment V1.2, which was partly funded by the UK aid from the UK government; however, the views expressed do not necessarily reflect the UK government's official policies.

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A. Introduction

This Timber Legality Risk Assessment for the Republic of Congo provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. Preferred by nature has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

Version history

Version 1.1: May 2017

Version 2.0: December 2021

Version 2.0 was updated based on Version 1.1 from 2017.

Overview of methodology

Preferred by Nature would like to recognise the huge contribution our consultants working in DRC have performed in connection with this report. Their involvement has been invaluable to obtain the latest information available across the broad range of timber legality issues presented in this report. Preferred by Nature's country risks assessments are by definition always evolving, and by retaining local experts are we confident the advice expressed in this report are truthful and reliable.

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and Preferred by Nature. A detailed description of the methodology can be found on the [Preferred by Nature Sourcing Hub](#).

Interviews with experts

The list of experts is not included in the risk assessment. However, all experts are known to Preferred by Nature.

Version 2.0: Discussions with various experts was conducted within the period of 14 October – 14 November 2021. The output from these discussions have contributed to the development of version 2.0 of the Timber Legality Risk Assessment for the Republic of Congo.

Public consultation

Online public consultation on the Sourcing Hub: 14 October – 14 November 2021

Overview of legality risks

This report contains an evaluation of the risk of illegality in the Republic of the Congo for six categories and 26 sub-categories of law.

Relevant for the legality of harvesting, and related trade and transport of timber in the Republic of Congo we evaluated 5 categories and 21 indicators. We found:

- **Specified risk for 17 sub-categories.**
- **Low risk for 2 sub-categories.**
- **No legal requirements for 2 sub-categories.**

For wood processing we evaluated 1 category and 5 indicators. We found:

- **Specified risk for 5 sub-categories.**

The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, taxes and fees, timber harvesting activities, third parties' rights, trade and transport and wood processing.

For **Legal Rights to Harvest**, there is a risk that:

- Corrupt practices are used in the allocation of logging titles (1.2);
- The applicable procedures for the allocation of logging titles are not respected (incomplete files, no tender procedure, breach of regulatory time frames for the opening of the tender procedure) (1.2);
- Logging operations are conducted without a forest management plan and/or in breach of the time frames stipulated for preparing the forest management plan (1.3);
- Lack of consultation of local populations, civil society organisations and NGO during the management plan development (1.3);
- Missing 5-year management programs and annual operations plan (1.3);
- The provisions of the forest management plan are not respected, which goes unnoticed by the forest administration and a penalty is therefore not issued (1.3);
- The time frames for permits/annual logging licences and/or completion licences and/or clearing licences are not respected (1.4);
- The applicable procedure for issuing the permit/annual logging licence is not respected (incomplete files, counts not checked by the administration, etc.) (1.4);
- Permits/annual logging licences/completion licences are not issued in compliance with the regulations (irregular titles, irregular validity periods, volumes and species not in compliance with management plan / agreement prescriptions, etc.) (1.4);
- Deforestation permits are issued despite not being based on an actual development project requiring deforestation (1.4);
- The applicable procedure for issuing deforestation permits is not respected (preliminary social and environmental impact assessment, area classified in the permanent forest domain not declassified beforehand, clearing licences are issued despite not being provided for by the regulations, etc.) (1.4);

For **Taxes and Fees**:

- The applicable harvesting taxes and fees are not paid (felling tax, area tax, deforestation tax) (1.5);

- Area tax is not calculated in line with the regulations (1.5);
- The total volume and exact species felled are not properly declared (non-declaration of logs or portions not evacuated from the forest) in order to reduce the amount of tax due (1.5);
- Corporate taxes are not paid (1.7);

For **Timber Harvesting Activities**, there is a risk that:

- Species are not subjected to a systematic count before harvesting and/or the count is not checked by the administration (1.8);
- Species are harvested that are not provided for in the permit/annual logging licence (1.4 and 1.8);
- The number of trees provided for in the permit/annual logging licence is exceeded (total number and/or authorised number per species) (1.4 and 1.8);
- Timber is harvested outside of the specified perimeter (1.8);
- Site log books are not filled out in compliance with the regulations (1.8);
- Stumps and logs are not marked in compliance with the regulations (1.8);
- Logging under prescribed diameters (1.8);
- Irregular abandoning of wood (1.8);
- Logging protected sites and species or lack of identification of sites and species to be protected (within forests not covered by a forest management plan) (1.9 and 1.13);
- The regulations on the fight against poaching in forests covered by an agreement are not respected (1.9);
- Hazardous waste is not disposed of properly in line with regulations (1.10);
- No environmental and social impact assessment is conducted, and/or no environmental and social management plan is implemented (1.10);
- The regulations on occupational health are not respected (no health and safety committee within the company, no personal protective equipment, non-compliant base camps, no health clinic, no occupational risk management, etc.) (1.11);
- The regulations on employment legality are not respected (no employment contracts for employees, unfair dismissals, employees not declared to social security, social security contributions not paid, no staff delegates, use of subcontracting where it does not fulfil legal employment conditions, etc.) (1.12);

Regarding **third party rights**, there is a risk that:

- User rights are affected by logging activities (1.13);
- The fee for the local development fund (CAT) is not paid and the socio-economic commitments provided for in the agreement terms and conditions are not completed (CAT and CTI) (1.5 and 1.13);
- FPIC is not implemented for land classified within the state-owned permanent forest domain after July 2019 and titles attributed after July 2019 (1.14);
- The indigenous populations' spiritual and sacred sites are not identified or restitution/compensation is not provided in the event of dispossession (administrative regions of Sangha, Likouala and Lekoumou) (1.15);

For **Trade and transport**, there is a risk that:

- False declarations are made on the timber transport documents (waybills) (1.16);

- The markings on logs stored in break bulk yards are tampered with (1.16);
- Failure to hand over field logbooks and waybills every quarter to the forest administration (1.17);
- Fake transport documents (waybills) are used by logging operators (1.17);
- Transfer prices are manipulated in order to reduce the amount of corporate income tax due in the Congo (1.18);
- The amount of export tax due is calculated unlawfully (in line with species and harvesting areas) or the regulatory export procedure is violated, for instance through the issuance of exceptional embarkation permits (AETEX), skewing the amount of taxes and fees payable (1.19);
- Logs are exported without a valid log export permit being issued (1.19);
- The log export quotas/wood processing quotas are not respected or log export quotas are transferred unlawfully (previous Forest Code) (1.19 and 1.24);

For **wood processing** activities, there is a risk that:

- Processing units are not registered with the Ministry of Industry (1.22);
- Hazardous waste is not disposed of properly in line with regulations (1.23);
- No environmental and social impact assessment is conducted, and/or no environmental and social management plan is implemented (1.23);
- Logging operators do not respect their commitments in terms of investments into the processing units (1.24);
- Failure to hand over production statements and annual statements to the forest administration (1.24);
- The regulations on occupational health are not respected (no health and safety committee within the company, no personal protective equipment, non-compliant base camps, no health clinic, no occupational risk management, etc.) (1.25);
- The regulations on employment legality are not respected (no employment contract for employees, unfair dismissals, employees not declared to social security, social security contributions not paid, no staff delegates, use of subcontracting where it does not fulfil legal employment conditions, etc.) (1.26).

Timber source types and risks

There are several timber source types in the Republic of the Congo. Knowing the source type that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation.

The majority of timber produced for the international market in the Republic of the Congo comes from the state-owned permanent forest domain (forest management units governed by an agreement between the state and a private operator).

Please see Annex I for more details on this source type classification.

Title	Description
State-owned permanent forest domain (classified domain)	
1. Industrial processing agreement (<i>Convention de transformation industrielle, CTI</i>)	Forest management units (UFA) <i>Titles to disappear by 2023</i>
2. Management and processing agreement (<i>Convention d'aménagement et de transformation, CAT</i>)	Forest management units (UFA) It can be under either: <ul style="list-style-type: none"> - a <i>concession regime</i>: set to last a maximum of 3 years following the signature of the agreement before being converted to the production sharing regime - a <i>production sharing regime</i>: newly introduced in 2020 - this regime is still very uncertain and a decree must be adopted to specify how it is implemented
3. Plantation timber promotion agreement	It can be under either: <ul style="list-style-type: none"> - a <i>concession regime</i>, set to last a maximum of 3 years following the signature of the agreement before being converted to the production sharing regime - a <i>production sharing regime</i>: newly introduced in 2020 - this regime is still very uncertain and a decree must be adopted to specify how it is implemented
4. Domestic logging permit	Domestic logging units. Dedicated to supplying the domestic market.
Permanent or non-permanent forest domain (protected forests)	
5. Plantation timber logging permit	Forest plantations of the State-owned forest domain. Wood sold by public auction. N.B. When the plantation is located on the land of a local community, it falls under the definition of community forest and the community can obtain logging permits.
6. Wood from deforestation operations	Wood from infrastructure, industrial and agricultural projects etc. requiring deforestation. The wood can be sold.
7. Special permit	Protected forests and community forests. Only concerns timber for remote areas and local supply. N.B. local communities can obtain special permits to log community forests.
8. Private land title	Private natural forests and forest plantations Source type almost non-existent currently

This table summarises the findings of the timber legality risk assessment by source type.

Legal Category	Sub-Category	1	2	3	4	5	6	7	8
Legal rights to harvest	1.1 Land tenure and management rights	Green	Green	Green	Green	Green	Green	Green	Green
	1.2 Concession licenses	Red	Red	Red	White	White	White	White	White
	1.3 Management and harvesting planning	Red	Red	Red	Red	Red	White	Red	Red
	1.4 Harvesting permits	Red	Red	Red	Red	Red	Red	Red	White
Taxes and fees	1.5 Payment of royalties and harvesting fees	Red	Red	Red	Red	Red	Red	Red	Red
	1.6 Value added taxes and other sales taxes	White	White	White	White	White	White	White	White
	1.7 Income and profit taxes	Red	Red	Red	Red	Red	Red	Red	Red
Timber harvesting activities	1.8 Timber harvesting regulations	Red	Red	Red	Red	Red	Red	Red	Red
	1.9 Protected sites and species	Red	Red	Red	Red	Red	Red	Red	Red
	1.10 Environmental requirements	Red	Red	Red	Red	Red	Red	Red	Red
	1.11 Health and safety	Red	Red	Red	Red	Red	Red	Red	Red
	1.12 Legal employment	Red	Red	Red	Red	Red	Red	Red	Red
Third parties' rights	1.13 Customary rights	Red	Red	Red	Red	Red	Red	Red	White
	1.14 Free prior and informed consent	Red	Red	Red	Red	Red	Red	Red	Red
	1.15 Indigenous/traditional peoples rights	Red	Red	Red	Red	Red	Red	Red	Red
Trade and transport	1.16 Classification of species, quantities, qualities	Red	Red	Red	Red	Red	Red	Red	Red
	1.17 Trade and transport	Red	Red	Red	Red	Red	Red	Red	Red
	1.18 Offshore trading and transfer pricing	Red	Red	Red	White	Red	Red	Red	Red
	1.19 Custom regulations	Red	Red	Red	White	Red	Red	Red	Red
	1.20 CITES	Green	Green	Green	White	Green	Green	Green	Green
	1.21 Legislation requiring due diligence/due care procedures	White	White	White	White	White	White	White	White
Processing	1.22 Legal registration of business	Red	Red	Red	Red	Red	Red	Red	Red
	1.23 Environmental requirements for processing	Red	Red	Red	Red	Red	Red	Red	Red
	1.24 Processing requirements	Red	Red	Red	Red	Red	Red	Red	Red
	1.25 Health and Safety in the processing sector	Red	Red	Red	Red	Red	Red	Red	Red
	1.26 Legal employment in the processing sector.	Red	Red	Red	Red	Red	Red	Red	Red

B. Overview of the forest sector in the Republic of the Congo

Republic of Congo's forest cover represents about 65% of the national territory and is particularly located in the North and South-West of the country (FAO, 2020). Forest exploitation contributes about 5% to the Republic of Congo's GDP (ATIBT, 2019), and is thus the second largest national source of income after the hydrocarbon sector. Most log production is destined for export markets, with Asia (and in particular China) being the primary export destination, followed by Europe (ATIBT, 2019).

There are fairly large disparities in the state of the Congolese forests: forests of the North are better preserved due to the low population and forests of the South more threatened by human activities as well as the selective and intensive exploitation of a few species (Okoumé and Limba) (ATIBT, 2019).

Forest legislation

In the Congolese Constitution of 25 October 2015, the Congolese state solemnly reaffirms its permanent right of inalienable sovereignty over all national wealth and natural resources as fundamental elements of its development.

The current Forestry Code was adopted in July 2020. The process of revising the previous Forestry Code, which dated from 2000, had started in 2014.

The Forest Code determines the overarching fundamental principles of forest management, the spatial distribution of the forest domain, the classification and declassification of forest land within the state-owned domain, the general conditions for the harvesting and processing of timber resources, the sale of timber products, reforestation, and access to forest genetic resources, etc.

The ATIBT [International Tropical Timber Technical Association] notably reports that *"the new forest code makes major breakthroughs, leading to progress or advancements in some cases, but restrictions to be lifted by implementing texts in others. In general, compared to the old legislation, the new forest code introduces several new concepts and greater definition of existing concepts (PES [payments for ecosystem services], certification, legality, factoring in of local communities, deforestation, climate change, carbon credits, occupancy tax, residue tax, forest or wild fauna inventory, FPIC, civil society, forestry subcontracting, etc.)."* (ATIBT, 2020)

The new additions to the 2020 Forest Code *"were driven by inadequacies reported during the application of the former law, and from experience acquired in sustainable forest management. They also include elements that adapt the law to the new sub-regional (Congo Basin) and international (tropical forests) context. That's why they primarily focus on new topics (climate change, deforestation, carbon credits, certification, legality and traceability, payments for environmental services, etc.), taking into consideration the requirements of all agreements, treaties and conventions signed by the Congo (VPA-FLEGT, REDD+, CDB)."* (ATIBT, 2020)

It is important to note that some new elements in the 2020 Forest Code require additional implementing texts, particularly regarding matters like FPIC, forest communities, private forests, the running of the forest classification committee, the organisation of public tender procedures, and the exercise of user rights, etc. Various regulatory texts are explicitly provided for by this new law and are therefore expected to be developed in the near future.

Furthermore, other elements could create problems in terms of legal interpretation, such as the status (applicable or obsolete) of obligations arising from Decree n°437-2002 (Decree implementing the old Forest Code), which are not contrary to the new Forest Code.

Organisation of the forest domain and logging titles

The Forest Code clearly distinguishes the state-owned forest domain from the private forest domain.

The state-owned forest domain is estimated at more than 20 million hectares, including 15 million hectares set as production forests, 3.9 million hectares for forest conservation and around 60,000 hectares for industrial plantations (FAO, 2020) (essentially made of Eucalyptus, Pine and Limba crops).

1. Private forest domain

This forest domain comprises private forests and forest plantations. Private forests are those located on land belonging to natural or legal persons of private law. Private forest plantations are acquired - for a natural person of Congolese or foreign nationality, or a legal person incorporated under Congolese law - by planting forest species on a plot of land that is part of the state-owned non-permanent forest domain. By planting trees, the interested parties therefore acquire the exclusive right to use the planted land and ownership of the trees planted there, subject to any third party rights and on the condition that the number of planted trees exceeds the number of trees naturally present, and that the planted land is properly marked out. Although the acquired rights can be transferred, they shall however be lost if the land is cleared, abandoned or subject to forest dieback.

2. State-owned forest domain

There are two types of state-owned forest domains: non-permanent and permanent. The non-permanent forest domain comprises protected forests that have not been classified and fall under the public domain. Timber in the non-permanent forest domain can only be harvested with a special permit. The permanent forest domain, on the other hand, comprises forests that have been classified. It is for the most part divided into forest management units (*Unités Forestière d'Aménagement*, UFA), which act as the base units for the purpose of development, management, protection, conservation, restoration and production. As well as these natural resources, the permanent forest domain also includes artificial and planted forests. These are primarily composed of Eucalyptus, Pine, Okoumé and Limba. Furthermore, a division not initially provided for by the legislation was introduced notably in the country's southern UFAs, which have been divided into forest exploitation units (*unités forestières d'exploitations*, UFE), primarily for the purposes of providing small- and medium-sized operators with access to them. Instead, the new Forest Code has set up Domestic Logging Units, which are aiming to fuel the domestic market needs.

Forest governance in the Congo

The forestry sector in the Congo has been the subject of major difficulties in terms of governance. Chatham House assessed Congo's legal and institutional framework and law enforcement as "weak" (2018).

Moreover, Chatham House evaluates that timber exports contain between 60% and 70% of illegal timber (2011 to 2014). In addition, artisanal or so-called "informal" logging is also fueling illegal timber logging.

Some recent progress has been made in the form of improvements to the legislative framework, traceability procedures as well as to the allocation of harvesting rights.

The elaboration of a voluntary partnership agreement (VPA) with the European Union as well as the establishment of an Independent Monitor (IM) of forest law enforcement and governance within the VPA-FLEGT process were the main drivers behind this change.

The Congo indeed signed its VPA - the first in the Congo Basin - in 2010, and it entered into force in March 2013. However, FLEGT licensing is still not operational, mainly due to difficulties in implementing the computer-based legality verification system.

An outline of the forestry sector in the Congo

Since the 2000s, State-based forest entities, which were very active between 1970 and 1980, have massively withdrawn from the forestry industry, leaving their place to private companies.

There are currently around 30 forestry operators and 60 processing units in Congo (ATIBT, 2019). These supply the export market with logs and sawnwood. Despite the strategy to increase local processing, log exports continue to increase.

The informal and artisanal sector covers most of the domestic needs for wood products.

A possible classification of logging companies (Duhesme, C., 2014; ATIBT, 2019) makes the distinction between:

1. Companies belonging to international groups and with significant resources. They have large concessions in the Likouala and Sangha departments. These concessions are largely under forest management and certified or likely to be involved in a certification process.
2. Companies with large but unmanaged concessions in the departments of Cuvette, Cuvette-Ouest and Plateaux.
3. Companies operating in the southern zone, with significant resources but more diversified capitals (particularly Chinese and Malaysian) and more diversified markets. These concessions are engaged in the forest management process.
4. Small and medium-sized enterprises with national capital operating in the southern zone and with weak resources and means and difficulties in accessing funding. They do not have direct access to the European market.

Congolese bodies involved in forest management

Institutionally, the management of the country's national forest resources is the exclusive responsibility of the Ministry of Forest Economy (MEF). The MEF is structured as follows:

- a Minister's Cabinet headed by a Director;
- four departments that report to the cabinet: Research & Planning Department (DEP), Cooperation Department (DC), Communication & Popularisation Department (DCV), Forest Fund Department (DFF);
- a General Inspectorate of Forest Economy Services (IGSEF) with three inspectorates and several divisions;
- a General Forest Economy Directorate (DGEF) with notably four central directorates and several services;
- several Departmental Forest Economy Directorates (DDEF) with numerous forest economy brigades and checkpoints in the country's main administrative centres;
- and finally, four self-managed public bodies under the supervision of the cabinet:
 - National Reforestation Service (SNR);
 - National Centre for the Inventory and Management of Forest and Fauna Resources (CNIAF);
 - Forest Products Export Control Service (SCPFE) with branches in the localities that produce timber;
 - Congolese Agency for Fauna and Protected Areas (ACFAP).

Companies with concessions and forest plantations fall under the administrative supervision of the Departmental Forest Economy Directorate in which their concessions are located.

Finally, all wood exports (logs and cut timber) are checked by the SCPFE (body operating under the administrative supervision of the MEF cabinet).

Sources of information

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C. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary land rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights.

Management rights related to other rights than land and land management is covered under 1.13 (Customary rights) and 1.15 (Indigenous/traditional people's rights).

This indicator also covers legal forest management business registration and tax registration, including relevant legal required licenses (Industrial business and tax registration are covered under 1.22). Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

1.1.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code;
- Law No. 21-2018 of June 13 2018, laying down the rules of occupation and acquisition of field and land (Art. 5, 6, 7, 8, 10, 11, 14, 15, 17, 18, 37, 42, 49, 53);
- Law n°09-2004 of 26 March 2004 on the State Domain Code (art. 1, 3, 4, 5, 6, 7, 10, 21, 23, 24, 26, 27, 28, 29, 49, 51, 52, 58, 60);
- Law n°10-2004 of 26 March 2004, establishing the general principles to be applied to the state and land regimes;
- Law n°5-2011 of 25 February 2011 on the promotion and protection of the rights of indigenous populations (Art. 31 to 42);
- Decree n°2002-437 of 31 December 2002 establishing the conditions for the management and use of forests (Art. 2, 4, 10, 15, 19, 21, 22, 23 24);
- Order n°6509/MEF/MATD of 19 August 2009 establishing the procedures for classifying and declassifying forests.

1.1.2. Legal authority

- Ministry of Forest Economy;
- Ministry of Land Affairs.

1.1.3. Legally required documents or records

Legal registration

- Forest and timber professional accreditation

Land rights

For forests in the state-owned permanent domain (CTI, CAT, Plantation timber promotion agreements, Domestic logging permits, Plantation logging permits)

- Decree classifying the forest as state-owned permanent forest domain

For private forests / plantations

- Land title

Management rights

Management rights are covered in section 1.2 below.

1.1.4. Sources of information

Non-Government sources

- Lawson, S. (2014). *Illegal logging in the Republic of Congo*. Chatham House. Available at: http://indicators.chathamhouse.org/sites/files/reports/Lawson_Republic_of_Congo_PP_2014.pdf [accessed in May 2019];
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1.1.5. Risk determination

Overview of legal requirements

Forest land in the Congo is divided into state-owned permanent forests, privately owned forests and state-owned non-permanent forests.

Forests in the state-owned permanent forest domain are the state's private property. Forests are incorporated into the state-owned permanent domain by way of a classification decree (Articles 2 and 22 of Law n°33-2020) and are split into forest management units (UFA), domestic logging units or community forests. The process of classifying a forest involves several stages, notably informing the stakeholders involved, conducting a survey and study, drawing up a classification proposal, formulating requests from local and indigenous populations who may have rights over the forest to be classified, and finally, holding a classification committee meeting. The classification committee determines the limits of the forest to be classified, notes whether there are any user rights over the forest, and examines the legitimacy of the claims made. If there are existing user rights over the forest, the committee may decide to fully maintain them or confine them to a certain area. Following the classification committee meeting, the minutes are signed by the representatives of all stakeholders. The classification is ordered by a decree issued by the Council of Ministers. Only management rights are delegated to concessionaires and beneficiaries of these classified areas through logging agreements and permits.

Conversely, registered land with a land title falls under the private property of the legal or natural persons owning such title. Both natural forests and plantations may be located on this private land (Art. 31 to 33 of Law n°33-2020). Use of planted land may also be established through means other than land titling, however in this case the plantation must be recorded by the state (Art. 34 and 35 of Law n°33-2020). For reference, the number of private logging companies with land titles over plantations that could supply the international timber market is limited, if not non-existent. The state also acknowledges the existence of customary land (Art. 5 of Law n°21-2018). The customary land

acknowledged by the Congolese state is considered jointly owned land (Art. 14, paragraph 1 of Law n°21-2018). However, this customary land must be registered and a land title created over it automatically grants the owners of the land full capacity as official landowners (Art. 15 of Law n°21-2018). All titles other than the land title are considered temporary (Art. 29 of Law n°21-2018).

Any land that does not constitute state-owned permanent forests, land registered by private parties or urban areas forms the state-owned non-permanent forest domain. Forests in the non-permanent forest domain fall under the state-owned public domain. They are also qualified as protected forests. Effectively, a large proportion of this land is occupied on a long-term basis by local populations, who do not however have any land titles over their land.

In order to become legally registered, logging companies must obtain a forest and timber professional accreditation, following which they can be issued with a professional identity card.

Description of risk

The respect of land rights in the Congo is ensured by the forest land classification procedure, through which the state incorporates the land into the state-owned private forest domain. No private companies have full land rights over the forest management units, which are the primary source of timber in the Congo. Due to the slow population growth in the Congo, there is no systematic conflict in relation to the allocation and zoning of forests in the state-owned permanent forest domain (UFA).

There are no specified risks regarding the legal registration of companies that are granted management rights over state-owned forest land.

Risk Conclusion

This indicator has been evaluated as low risk for all source types. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.1.6. Risk designation and specification

All source types: Low risk

1.1.7. Control measures and verifiers

N/A.

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

1.2.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code;

- Decree n°2002-437 of 31 December 2002 establishing the conditions for the management and use of forests (Art. 60, 64, 65, 66, 148, 149, 150, 153, 154, 155, 156, 157, 160, 161, 167, 168, 170, 171, 173, 174, 175, 176, 191);
- Decree n°2009-303 of 31 August 2009 establishing the modalities for selecting bids for the allocation of logging titles (Art. 2, 3, 4, 6, 7, 9).

1.2.2. Legal authority

- Ministry of Forest Economy;
- Ministry of Land Affairs.

1.2.3. Legally required documents or records

Agreements concluded after August 2020:

- Order launching the tender procedure;
- Notification from the Director General of Forest Economy issuing the forest committee's favourable opinion;
- Order approving the management and processing agreement for the forest unit (UFA) or the plantation timber promotion agreement;
- The management and processing agreement (CAT) or the plantation timber promotion agreement (main part plus the general terms and conditions and specific terms and conditions);
- Concession contract or partnership contract.

Agreements concluded between 2002 and 2020:

Before conversion to new legal setup:

- Order launching the tender procedure;
- Notification from the Director General of Forest Economy issuing the forest committee's favourable opinion;
- Order approving the management and processing agreement (CAT) for the forest unit or the industrial processing agreement (CTI);
- Management and processing agreement (CAT) or industrial processing agreement (CTI).

NB: CTIs must have been converted after August 2023 and will no longer be valid from this date.

After conversion to new legal setup:

- Management and processing agreement (CAT) or plantation timber promotion agreement;
- Concession contract or partnership contract.

Agreements concluded before 2002:

Before conversion to new legal setup:

- Management and processing agreement (CAT) or industrial processing agreement (CTI).

NB: CTIs must have been converted after August 2023 and will no longer be valid from this date.

After conversion to new legal setup:

- Management and processing agreement (CAT) or plantation timber promotion agreement;

- Concession or partnership contract.

1.2.4. Sources of information

Government sources

- Order n°35077/MEFDD/CAB of 8 December 2015 on the tender procedure for the development of the Kola forest harvesting unit, located in the Sud 4 forest management unit (Kibangou), zone II Niari, in the southern forest sector, department of Niari;
- Order n°10888 on the approval of the management and processing agreement for the development of the Kola forest harvesting unit, located in the Sud 4 forest management unit (Kibangou), zone II Niari, in the southern forest sector in the department of Niari;
- Order n°5745/MEFE/CAB of 19 September 2005 approving the management and processing agreement for the Tala-Tala UFA;

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at: <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
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- Lawson, S. (2014). *Illegal logging in the Republic of Congo*. Chatham House. http://indicators.chathamhouse.org/sites/files/reports/Lawson_Republic_of_Congo_PP_2014.pdf [accessed in May 2019];
- Forest Legality Initiative (2014). *Risk Tool - Republic of Congo*. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in May 2019];
- IM FLEG/Resource Extraction Monitoring (2010). Summary report, December 2006 – September 2010. Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2008). Biannual report January 2008 – June 2008, pages 15-22. Available at: http://www.observation-congo.info/documents/RS01_REMOIF_Congo.pdf [accessed in May 2019].

1.2.5. Risk determination

Overview of Legal Requirements

The Forest Code identifies three types of economic regimes and five types of logging titles. The economic regimes applicable to harvesting operations are as follows: (1) concessions (based on

payment of an annual fee), (2) production sharing (based on the distribution of the production with the state) and (3) direct taxation (based on one-off payments of taxes and fees).

The logging titles that fall under the direct taxation system are: (1) domestic logging permits, (2) plantation timber logging permits and (3) special permits. The regulations for concession agreements are not applicable to these titles. See section 1.4 for details on these permits and how they are issued.

There are then two types of agreement that begin under the concession regime and must then be converted to the production sharing regime: (1) management and processing agreements (CAT) and plantation timber promotion agreements.

These agreements are initiated through tender procedures launched by order of the Ministry of Forests. The tender submission files are examined by a forest committee, which includes the main stakeholders. The socio-economic impact of the bidders' activities, the securities presented by their financial situation and their equipment, as well as their commitment to implementing a forest management plan constitute the tender assessment criteria. The forest committee meeting must take place within two months of the tender submission deadline. The management and processing agreements and plantation timber promotion agreements are then negotiated with the Ministry of Forests, and subsequently approved by the Council of Ministers. They are drawn up for a maximum of 30 years for natural forests and 20 years for plantations.

Anyone may file a request to the administration to see these forest agreements. The agreement holders must own a marking axe. No logging activities can take place until the agreement has been signed. The logging agreements include two sets of terms and conditions: the general terms and conditions, which are bilateral and determine the rights and obligations of the parties, and the specific terms and conditions, which outline the beneficiary's responsibilities and expand on the information provided in the general terms and conditions. The general terms and conditions are approved by decree. The special terms and conditions are negotiated between the forest administration, the concessionaire and the representatives of the local communities, the indigenous populations affected, and organisations from the local civil society. They are signed, made publicly available and forwarded to the leaders of the villages concerned.

Once the agreement has been signed, a concession contract is signed, followed later on by a partnership contract that establishes how the production is to be shared. These contracts are also negotiated by the Ministry of Forests, approved by the Council of Ministers and adopted by parliament. The concession regime is intended to be temporary and to be converted into a production sharing regime as soon as the necessary conditions have been met, within a maximum of 3 years from the signature of the agreement. After this point, the only way to continue managing a concession is through the production sharing regime.

All agreements and permits are strictly personal to the beneficiary and cannot be transferred or subcontracted, unless authorisation is obtained from the forest administration.

All logging titles in force on the date on which the new Forest Code was enacted (July 2020) in the state-owned forest domain must be adapted to respond to the requirements of the new Forest Code within 3 years for natural forests and one year for plantations. The following points are particularly important:

- Management and processing agreements under the concession regime already existed before the Forest Code reform;
- The production sharing scheme is a new concept that did not exist before;
- The industrial processing agreements (CTI) that were previously allocated within the UFAs in application of the old Forest Code no longer exist under the current law.

Finally, it should be noted that in exceptional cases, companies can be allocated a concession through legal rather than administrative proceedings: for example, when a company takes over the assets of another company that has gone bankrupt. If the bankrupt company has a forest concession, the court

may decide that this concession is part of the assets automatically transferred to the receiving company. Another example, based on a real-life case, is if a company takes legal action against the administration for breaching the tender procedure, and the court rules in favour of opposing the administration's final award decision. These special circumstances require a thorough legal assessment on a case-by-case basis.

Description of risk

NB. There are no concrete cases or documents relating to the implementation of the new Forest Code (2020). The risk assessment below therefore concerns the allocation of concessions in relation to the regulations in force at the time of allocation. In view of the significance of the discrepancies reported, the findings still stand.

Corruption

In light of the Republic of the Congo's corruption perceptions index (19/100 in 2018) and the documented cases of corruption within the concession allocation procedure, there is a high risk that forest concessions are allocated unlawfully.

A survey conducted by the EIA (2019) notably revealed instances of administrative managers receiving bribes from a major timber exporter in order to influence their decision regarding the allocation of at least one UFA following an invitation to tender.

Lawson also revealed in 2014 that the Congolese legislation on the allocation of concessions presented major flaws and that it was rarely observed. Concessions are supposed to be allocated in line with a competitive tender procedure, but according to Lawson, some logging contracts awarded at the time do not appear to have followed this process.

Non-compliance with procedures

Aside from corruption issues, concession applicants may submit incomplete files or follow procedures that do not fulfil the applicable transparency requirements, but still be allocated forest units.

- Incomplete files: IM-VPA FLEGT/CAGDF (2016) stated that "out of 18 forest unit allocation applications received by the DGEF on behalf of the forest committee, 12 applications were incomplete, contrary to Article 157 of Decree 2002-437 of 31 December 2002";
- Lack of tender procedure: Lawson (2014) and IM-FLEG/REM (2010) also underline the lack of compliance with allocation procedures for several agreements, where the concession has been abandoned by the initial concessionaire and reallocated to another operator without a tender procedure;
- Non-compliance with the regulatory time frame for the tender procedure: CAGDF notably documented one case where the regulatory tender procedure time frame (three months) was not respected, and the award committee assessed the files submitted and deliberated before the deadline (IM-VPA FLEGT/CAGDF, 2016).

Risk Conclusion

This indicator has been evaluated as presenting a specified risk of illegality for forests covered by an agreement (CTI and CAT). The identified laws are not always respected by all parties/are not applied by the competent authorities.

This indicator is not applicable for logging permits allocated outside of an agreement (domestic logging permit, plantation timber logging permit, special permit, private forests).

1.2.6. Risk designation and specification

Forests covered by an agreement (CTI and CAT): Specified risk

Plantation Timber Promotion Agreements: Specified risk based on a precautionary approach

Permits allocated outside of an agreement (domestic logging permit, plantation timber logging permit, special permit) and private forests: Not applicable

1.2.7. Control measures and verifiers

(1) Collect the following documents:

Agreements concluded after August 2020

- Order launching the tender procedure;
- Minutes of the award committee (ensure it is mentioning the tender procedure and indicating that the winning bidder's tender submission file is complete);
- Notification from the Director General of Forest Economy issuing the forest committee's favourable opinion (ensure it is not dated prior to the tender submission deadline);
- Order approving the management and processing agreement for the forest unit (UFA) or the plantation timber promotion agreement;
- The management and processing agreement (CAT) or the plantation timber promotion agreement (main part plus the general terms and conditions and specific terms and conditions);
- Concession contract or partnership contract.

Agreements concluded between 2002 and 2020

Before conversion to new legal setup:

- Order launching the tender procedure;
- Minutes of the award committee (ensure it is mentioning the tender procedure and indicating that the winning bidder's tender submission file is complete);
- Notification from the Director General of Forest Economy issuing the forest committee's favourable opinion (ensure it is not dated prior to the tender submission deadline);
- Order approving the management and processing agreement for the forest unit (UFA) or the industrial processing agreement (CTI);
- Management and processing agreement (CAT) or industrial processing agreement (CTI).

NB: CTIs must have been converted after August 2023 and will no longer be valid from this date.

After conversion to new legal setup:

- Management and processing agreement (CAT) or plantation timber promotion agreement;
- Concession contract or partnership contract.

Agreements concluded before 2002:

Before conversion to new legal setup:

- Management and processing agreement (CAT) or industrial processing agreement (CTI).

NB: CTIs must have been converted after August 2023 and will no longer be valid from this date.

After conversion to new legal setup:

- Management and processing agreement (CAT) or plantation timber promotion agreement;
- Concession contract or partnership contract.

(2) If applicable, where legal proceedings were instrumental in the awarding of the concession, also collect and examine all relevant legal documents (documents regarding the dispute, court decision, etc.).

(3) While corrupted practices might be very hard to detect, it is highly recommended to at least consult:

- Interested parties to obtain information on the issuance of the concerned logging titles (Mandated independent observer (CAGDF), other civil society organisations);
- Open sources and media sources for any documented information on the concerned logging enterprise

1.3. Management and harvesting planning

Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.3.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code;
- Decree n°2002-437 of 31 December 2002 establishing the conditions for the management and use of forests;
- Order n°5053 of 19 June 2007 defining the national guidelines for the sustainable management of forest concessions;
- Order n°2694 of 24 March 2006 establishing the average harvestable volumes of timber species;
- National Standards for Management Inventories of Forest Resources in the Republic of the Congo, dated December 2005 (defining the technical standards for forest management inventories, the technical standards for dendrometric analysis for the determination of "tarifs de cubage" and "coefficients de récolement" (timber scaling methods and samples for post-logging checks) and the technical standards for mapping studies).

Example texts approving forest management plans:

- Decree n°2013-74 approving the Lopola UFA forest management plan;
- Decree n°2009-298 approving the Pokola UFA forest management plan.

1.3.2. Legal authority

- Ministry of Forest Economy

1.3.3. Legally required documents or records

For CATs

- Decree classifying the forest;
- Validation reports issued by the interministerial committee relating to the technical studies carried out (inventory, environmental study, dendrometric study, socio-economic study, etc.);
- A report on the adoption of the forest management plan by the participative committee (departmental level) in the presence of the stakeholders (departmental authorities, relevant administrations - notably water and forests, prefecture, local communities and indigenous peoples, NGOs, associations and the company concerned);
- Forest management plan approval decree;
- Forest management plan (simplified or standard);
- Report on the examination and validation of the management programme;
- Approved annual operations plan.

For CATs whose forest management plan is in the process of being drawn up

- Decree classifying the forest;
- Management and processing agreement;
- Memorandum of understanding defining the general management conditions.

For plantation timber promotion agreements

- Decree classifying the forest;
- Validation reports issued by the interministerial committee relating to the technical studies carried out (inventory, environmental study, dendrometric study, socio-economic study, etc.);
- A report on the adoption of the forest management plan by the participative committee (departmental level) in the presence of the stakeholders (departmental authorities, relevant administrations notably water and forests, prefecture, local communities and indigenous peoples, NGOs, associations and the company concerned);
- Forest management plan approval decree;
- Forest management plan

For industrial processing agreements (before conversion to new legal setup by August 2023 at the latest)

- Management and processing agreement.

For community forests (logged under either a Plantation timber logging permit or a Special permit)

- Simplified management programme;
- Simplified management programme approval decision.

For private natural forests of more than 500 hectares (land title)

- Forest management plan;
- Forest management plan approval decision.

For domestic logging units

- Simplified management programme.

1.3.4. Sources of information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at: <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
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- IM-VPA FLEGT/CAGDF (2017). Etat des lieux de l'application de la loi forestière et de la gouvernance en République du Congo de 2013 à 2016. Available at: http://www.apvflegtcongo.com/images/pdf/rapport_bilan_oi_fleg.pdf [accessed in September 2021];
- Lawson, S. (2014). Illegal logging in the Republic of Congo. Chatham House. Available at: https://www.chathamhouse.org/sites/default/files/home/chatham/public_html/sites/default/files/20140400LoggingDRCLawson.pdf [accessed in September 2021];
- Nkodia A. (2013). Diagnostic du secteur forestier. FAO. Projet TCP/PRC/3402. Appui à la formulation de la politique forestière nationale;
- Granier L. (2012). Rapport d'analyse et de propositions sur la participation des communautés locales et autochtones et la gestion des concessions forestières en République du Congo. Cambridge, Resource Extraction Monitoring 2012;
- IM FLEG/Resource Extraction Monitoring (2010). Summary report, December 2006 – September 2010. Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2009). Evolution du contrôle de la mise en application de la loi forestière et de la gouvernance (OI-FLEG). Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021].

1.3.5. Risk determination

Overview of Legal Requirements

Forest management plans (responsibility)

The decrees classifying forests in the permanent forest domain generally indicate the management objectives of said forests. The permanent forest domain is divided into forest management units (*unités*)

forestières d'aménagement, UFA), which constitute the basic units for the completion of management tasks. Each UFA is covered by a forest management plan, and the management of any UFA is conditional on this management plan being drawn up.

Average-sized UFAs are subject to a simplified management plan. A regulatory text is needed to define what is considered an average surface area (Regulatory text not yet adopted as of September 2020).

It is up to the water and forest administration to pay for the forest management plans to be drawn up, unless the areas are allocated to logging companies (Decree n°2002-437, Article 31).

This is therefore the case for management and processing agreements (CAT), for which the logging operator is responsible for drawing up the forest management plan and for carrying out the silvicultural works provided for by said plan and explicitly mentioned in their agreement. For forest agreements, the forest management plan acts as a contractual document.

Furthermore, the management and processing agreement generally stipulates that the operator must start drawing up the forest management plan within three years of acquiring the concession. A memorandum of understanding, signed between the logging operator that has obtained the concession and the Ministry of Forest Economy, establishes the conditions under which the forest management plan will be drawn up (conditions for monitoring by the administration, technical protocols to be implemented, time frames applicable to the different stages, etc.).

The forest administration management branches are responsible for drawing up the forest management plans of UFAs that are not subject to a processing-management agreement. In practice, the state does not yet have the resources necessary to develop forest management plans for forests that are not managed by a private operator.

Drawing up the forest management plan

For CATs, the forest management plan is drawn up in line with an approved framework and various obligatory studies. Before it is drawn up, several studies are conducted on an ecological, economic and sociological level (Art. 24, paragraph 3 of Decree n°2002-437). Forest concession forest management plans must factor in the environmental and social impact assessment conducted beforehand. During the forest management plan development process, the inventories and additional studies are validated by an interministerial committee.

The draft forest management plan for a UFA is drawn up in collaboration with the local authorities and the representatives of the populations living within and around the forest management unit, other departmental public services, non-governmental organisations and various other associations before it is submitted to the government for approval. The forest management plan is adopted by a participative committee established within the department concerned, and is then approved by a decree of the Council of Ministers. The modalities for revising the forest management plan are determined between the forest administration and the operator.

The forest management plan for any UFA includes a section for mapping information (plant formations, populations, water resources, plots of land, management series). It notably stipulates the marking out of production, conservation, protection, and community research and development series. The instructions for the sustainable management of natural forests are stipulated in an order and serve as a basis for drawing up forest management plans for forest concessions. The purpose of the various series, as well as the information that must be determined during the development of the forest management plan is also stipulated (for example determining the maximum annual volume, the rotation period, the minimum harvestable diameters and annual allowable cuts for production series.) A forest management plan framework has also been defined by way of an order and must be followed.

Harvesting schedule

In line with the forest management plan, harvesting operations may take place across all or part of the UFA (particularly where areas are reserved for specific purposes, notably conservation). The UFA production series is the series in which harvesting can take place.

The production series is generally divided into production forest units (*unités forestières de production*, UFP), which are valid for 4 to 5 years. A 25-year agreement can therefore be divided into 5 UFPs, each lasting 5 years. A management programme, outlining the forest management plan in detail, is then drawn up for each UFP. The UFPs are then themselves divided into annual felling areas, called "annual allowable cuts", for which an annual operations plan is drawn up each year. They are approved by a joint committee of the forest administration and logging company (Art. 38 of Law n°33-2020).

In the absence of a forest management plan (for industrial processing agreements allocated under the old legislation), the initial harvesting schedule is decided on by the forest administration based on existing inventory data. Provisional volumes are therefore already identified in the concession invitation to tender and are reiterated in the agreement and in the annual licences. The annual logging areas are identified by the logging operator in their annual logging licence application, which must be validated by the administration (see section 1.4).

Monitoring of forest management plan implementation

A quarterly report drawn up by the departmental directorate of water and forests on the execution of the management plans of all forest management units within the relevant department is submitted to the general directorate of water and forests and the general inspectorate of water and forests (Art. 37 and 82 of paragraph 4 of Decree n°2002-437). Based on this report, an annual forest management plan follow-up and evaluation report is produced by the central forest administration.

Poor execution of forest management plans by management and processing agreement holders is disclosed in a detailed report issued by the departmental directorate of water and forests to the general directorate of water and forests. This report suggests a series of measures, which can be as serious as the suspension or termination of the agreement (Article 39 of Decree n°2002-347).

Failure to comply with the forest management plan constitutes an offence provided for and punishable by law (Art. 232 and 233 of Law n°33-2020).

Management of community forests, private forests and domestic logging units

- Domestic forest units are subjected to a simplified management programme. The regulations do not specify the modalities for the drafting and approval of simplified management programmes for domestic logging units.
- Community forests are subjected to a simplified management programme. This simplified management programme is drawn up by the competent departments within the forest administration or a private organisation selected by the local communities and indigenous populations. It is then approved by decision of the departmental authorities of water and forests.
- Owners of private natural forests spanning an area equal to or greater than 500 hectares must draw up and implement a forest management plan. Forest management plans for private natural forests notably include the relevant management objectives, the location of the infrastructure, the silvicultural treatments and their schedule, etc. They are then approved by the forest administration. A harvesting plan must also be drawn up and submitted to the forestry administration (regardless of the size of the forest).
- Owners of private planted forests are obliged to draw up a management plan, which must be validated by the forestry administration.

Description of Risk

Some concessions do not have a forest management plan. According to the wood sector state of play conducted by the ATIBT in 2019, out of a total area of 14,950,342 hectares of forest land allocated for harvesting, 5,589,275 hectares (i.e. 37%) was still unmanaged or under elaboration of the management plan (ATIBT, 2019). These unmanaged concessions either exceeded the legal three-year time frame stipulated by the relevant agreement to start the forest management plan development process, or exceeded the time frames provided for by the memorandums of understanding signed with the forest administration in relation to the completion of these plans (IM-FLEG/REM, 2010 ; IM-VPA FLEGT/CAGDF n°12-2016, n°001-2017, 2017; AIS FLEGT/SOFRECO, 2018 and 2019).

Although the law on the Forest Code provides for penalties as serious as withdrawal of the agreement in the event that the clauses in the terms and conditions are not respected, no company has ever been subjected to the strict application of the penalties provided for by the regulations, despite the fact that several companies have failed to respect the time frames stipulated for the completion of their forest management plan (IM-FLEG/REM, 2009).

Furthermore, populations, civil societies and non-governmental organisations are generally poorly consulted or not consulted at all during the development of these forest management plans (Nkodia, 2013; Nkouka, 2013; Granier, 2012).

For concessions with a validated forest management plan, there is a risk that the 5-year management programme and the annual operations plan are not drafted and approved and that harvesting activities are carried on (IM-VPA FLEGT/CAGDF, n°11-2015, n°003-2018 ; AIS FLEGT/SOFRECO, DGEF-2019 and Sangha-2019).

The independent monitor also observed the opening of UFP before the year set up in the management plan IM-VPA FLEGT/CAGDF, n°14-2016).

In general, there is a risk of non-implementation of management prescriptions, mainly due to poor checks conducted by the forest administration to ensure their implementation. In reality, these checks are scarcely conducted (AIS FLEGT/SOFRECO, 2018, 2019; IM-VPA FLEGT/CAGDF, n°006-2019) and the penalties provided for in Articles 155 and 156 of the Forest Code are poorly imposed on companies who do not respect their forest management plans. Failure to implement forest management plans covers several different provisions (failure to respect the rules for operating within forest areas, absence of a local development fund, absence of dedicated management staff, etc.). (Expert consultation, 2019)

Risk Conclusion

This indicator has been evaluated as specified risk for forests covered by an agreement (CAT). Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

Based on a precautionary approach a specified risk is raised for forests under Plantation Timber Promotion Agreements, under Domestic logging permits, Plantation timber logging permits and special permits, as well as for private forests. There is not enough information to established that identified laws are upheld and that cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

This indicator is not applicable to CTIs before 2023 and wood from deforestation operations.

1.3.6. Risk designation and specification

Forests covered by an agreement (CAT): Specified risk

CTIs (before 2023), Forests under Plantation Timber Promotion Agreements, Domestic logging permits, Plantation timber logging permits and special permits, as well as private forests: Specified risk based on a precautionary approach

Wood from deforestation operations: Not applicable

1.3.7. Control measures and verifiers

For CATs

Collect the following documents:

- Validation reports issued by the interministerial committee relating to the technical studies carried out (inventory, environmental study, dendrometric study, socio-economic study, etc.);
- A report on the adoption of the forest management plan by the participative committee (departmental level) in the presence of the stakeholders (departmental authorities, relevant administrations notably water and forests, prefecture, local communities and indigenous peoples, NGOs, associations and the company concerned). Stakeholders may also be consulted to confirm their implication in the management plan development process;
- Forest management plan approval decree;
- Forest management plan;
- Annual forest management plan follow-up and evaluation report (produced by the central forest administration);
- If no follow-up and evaluation report is available, ensure that the prescriptions of the forest management plan (not covered in other legal categories) are being implemented. This might need onsite verification;
- Report on the examination and validation of the 5-year management programme;
- 5-year management programme;
- Approved annual operations plan (among other verifications, ensure that the yearly rotation set up in the management plan is complied with).

For CATs whose forest management plan is in the process of being drawn up

(1) Collect the following documents:

- Management and processing agreement;
- Memorandum of understanding defining the general management conditions.

(2) Ensure that the forest management plan deadline stipulated by the agreement and the memorandum of understanding has not been exceeded.

(3) Check that the annual logging areas and a volume schedule are indicated in the agreement and defined in the annual logging licence.

For plantation timber promotion agreements

Collect the following documents:

- Validation reports issued by the interministerial committee relating to the technical studies carried out (inventory, environmental study, dendrometric study, socio-economic study, etc.);
- A report on the adoption of the forest management plan by the participative committee (departmental level) in the presence of the stakeholders (departmental authorities, relevant

administrations notably water and forests, prefecture, local communities and indigenous peoples, NGOs, associations and the company concerned);

- Forest management plan approval decree;
- Forest management plan.

For community forests (logged under either a Plantation timber logging permit or a Special permit)

Collect the following documents:

- Simplified management programme;
- Decision approving the simplified management programme.

For private natural forests of more than 500 hectares (land title)

Collect the following documents:

- Forest management plan;
- Forest management plan approval decision.

For domestic logging units

Collect the following documents:

- Simplified management programme.

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 94, 96, 101, 102, 121, 122, 123, 124, 130, 140, 141, 142);
- Decree n°2002-437 of 31 December 2002 establishing the conditions for the management and use of forests. Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];
- Order n°2694 of 24 March 2006 establishing the average harvestable volumes of timber species (Art. 1);
- Order n°5052 of 19 June 2007 determining the forests subjected to timber harvesting under special permits (Art. 1 and 2).

1.4.2. Legal authority

- Ministry of Forest Economy.

1.4.3. Legally required documents or records

Forests covered by an agreement (CAT or CTI)

- If applicable, valid provisional logging licence (Article 79 of Decree n°2002-437); or
- Harvesting inventory approval notice; and
- Valid annual logging licence (Article 72 of Decree n°2002-437); and
- If applicable, valid annual logging completion licence (Article 74 of Decree n°2002-437); and
- If applicable (following the expiry of the agreement), clearing licence for felled wood (Article 101 of Decree n°2002-437).

Plantation timber promotion agreements

Mandatory documents not yet stipulated by the applicable regulations (text still to be adopted).

Domestic logging permits

- Invitation to tender;
- Domestic logging permit.

Plantation timber logging permits

- Documents relating to the public tender procedure;
- Plantation timber logging permit.

Deforestation

- Valid deforestation permit;
- Agreement for land use change;
- Environmental and social impact assessment report;
- Proof of payment of deforestation tax.

Special permits

- Special permit

Private forest

- No legally required document.

1.4.4. Sources of information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];

- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
- AIS FLEGT/SOFRECO (2019). Rapport d'audit du département Cuvette Ouest. Audit indépendant du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2014-2019). Field missions reports n°6, n°11, n°13, n°14, n°15, n°001, n°002, n°004, n°005, n°006, n°007, n°008. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
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- Client Earth (2015). The risks associated with conversion timber in the Republic of Congo. Available at: <https://www.documents.clientearth.org/wp-content/uploads/library/2015-09-29-the-risks-associated-with-conversion-timber-in-the-republic-of-congo-ce-en.pdf/> [accessed in November 2016];
- Client Earth (2015). The legal framework for forest conversion in the Republic of Congo. Available at: <https://www.documents.clientearth.org/library/download-info/the-legal-framework-for-forest-conversion-in-the-republic-of-congo/> [accessed in 10 November 2016];
- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016];
- IM FLEG/Resource Extraction Monitoring (2010). Summary report, December 2006 – September 2010. Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2009). Evolution du contrôle de la mise en application de la loi forestière et de la gouvernance (OI-FLEG). Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021].

1.4.5. Risk determination

Overview of Legal Requirements

Forests covered by a permit

Domestic logging permits are allocated in areas that are classified but that fall outside of forest management units. They are exclusively dedicated to supplying the domestic market. The timber from these permits is not authorised to be exported. Domestic logging permits are allocated following a tender procedure launched by the Ministry of Forests. The bidders' tender submission files are assessed by a forest committee based on the bidders' capacity to implement a simplified management programme, their financial securities, their available equipment and the socio-economic impacts of their activities. Only natural persons of Congolese nationality may acquire such permits. The issuance of domestic logging permits is conditional on the existence of an environmental and social impact notice and a simplified management programme. They are allocated for a maximum period of three years and specify the exact authorised harvestable volumes and species. They are issued by the Ministry of Forests.

Plantation timber logging permits are allocated following the sale of standing timber in forest plantations within the state-owned forest domain, through a public tender procedure. The sale may be concluded at the discretion of the state if the tender procedure fails (too few participants or low prices). The permit is issued by the Ministry of Forests for a precise quantity and a maximum duration of 6 months.

Special permits do not concern the production of timber, unless they are located in remote areas for sale in localities close to the harvesting areas. They are issued by the Director General of Water and Forests. They are reserved for natural persons of Congolese nationality, non-governmental organisations and associations established under Congolese law. They are valid for a maximum of one month and cover a maximum of 5 trees.

Private forests

Owners of private natural or planted forests are free to use the products of their forest stands in accordance with the management plan and the harvesting plan approved by the forest administration. They do not need to obtain permits in addition to these documents

Forests covered by an agreement (CATs and CTIs)

Agreement holders must obtain an annual logging licence (Art. 71 of Decree n°2002-437).

All agreement holders must submit an annual logging approval application by 30 September of each year (Article 69 and 71 of Decree n°2002-437). This application must include the following documents:

- the results of the count, presented on a 1:20,000 scale map;
- a 1:50,000 scale map or sketch;
- an activity report for the first eight months of the year;
- proof of payment of taxes or other fees payable;
- all site log books from the year.

The annual logging licence reiterates the area where the harvesting shall take place for the year and limits the volume of harvestable timber by species (volume defined by harvestable trees). Within the annual allowable logging area, the tree species that are authorised to be sold by the operator are systematically counted and marked with paint. The maximum annual volume is defined based on the forest's potential annual yield. The area covered by the annual logging licence must be bordered by a path. If the counts are found to be false, they must be retaken under the supervision of the forest administration and harvesting can only start in the areas subject to a new count, based on a provisional logging licence valid for a maximum of 3 months.

The annual logging licence is issued before 15 December for one calendar year. If the company has not exhausted its allowable cut by the end of the calendar year, the regulations authorise the forest administration to grant a completion licence by 2 January of the following year for a harvesting period not exceeding 6 months (Article 74 of Decree n°2002-437).

At the expiry of the agreement, a clearing licence may be granted to evacuate wood already felled. This licence shall not exceed 6 months (Article 101 of Décr   n°2002-437).

Plantation timber promotion agreement

As plantation timber promotion agreements were only introduced by the new Forest Code (2020), the law does not yet stipulate the modalities relating to obtaining potential additional permits, such as annual permits for the harvesting of forest resources.

Conversion wood (deforestation for the purpose of changing the allocation of land)

The wood circulating on the market (including the international market) may also come from lawfully conducted deforestation operations. The Forest Code allows companies other than logging companies (farming, mining, public works companies) without a forest agreement to harvest wood originating from potential deforestation operations carried out outside of classified forests for the purpose of their activities and projects, as long as they obtain a deforestation permit from the forest administration, pay the relevant taxes, and conduct the relevant social and economic impact assessments (Article 45 of Decree n°2002-437).

Description of Risk

Forests covered by an agreement (CATs and CTIs)

Significant cases of fraudulent logging constituting breaches to regulations sanctioned by the Forest Code have been documented by several bodies (IM-VPA, AIS-FLEGT, EIA, etc.):

- harvesting of species other than those specified in the logging licence. For example, in 2018 in Cuvette-Ouest, AIS-FLEGT reported that 4,300 Angueuk trees were harvested, despite the fact that the harvesting of this species was not authorised by the logging permit (AIS FLEGT/SOFRECO, Cuvette Ouest-2019 – see also IM-FLEG/REM, 2009 and 2010);
- harvesting in excess of the number of trees indicated in the logging licence (total number or per species). An EIA analysis estimated the excess volume illegally harvested by a major logging operator at around 85,000 m³ (accounting for more than 15,000 trees) (EIA, 2019 - see also IM-FLEG/REM, 2009 and 2010 ; IM-VPA FLEGT/CAGDF n°004-2018);
- Non-compliance with the time frames and validity period of annual logging licences and/or completion licences. For instance, launching of harvesting activities before the issuance and validity of the authorisation (AIS FLEGT/SOFRECO, Cuvette Ouest-2019) and felling and evacuation of wood beyond the period provided for by these licences (IM-VPA FLEGT/CAGDF n°15-2017).

Inadequacy of the field checks carried out by the forest administration was identified as being one of the problems facilitating these illegal practices by logging companies (AIS FLEGT/SOFRECO, 2018, 2019).

Numerous other risks relating to the applicable process for issuing annual licences have also been identified and documented:

- logging licences issued after the expiry of the agreement (IM-VPA FLEGT/CAGDF n°002-2018, n°006-2019, n°007-2019);
- logging licences issued based on incomplete applications, which therefore do not comply with legislation (IM-VPA FLEGT/CAGDF n°11-2015, n°001-2017, n°004-2018, n°005-2018 ; AIS FLEGT/SOFRECO, Cuvette Ouest-2019);
- logging licences issued for a volume higher than than the forest's yield potential specified in the Management plan and the agreement (IM-VPA FLEGT/CAGDF n°15-2017, n°004-2018, n°006-2019, 2017);
- logging licences issued without carrying out a check of the systematic counts and the company's harvesting capacity (IM-VPA FLEGT/CAGDF n°15-2017, n°006-2019);
- completion licences issued for a number of trees higher than the remaining authorised amount (IM-VPA FLEGT/CAGDF);
- logging licences granted in breach of the provisions of the forest management plan (for example, containing species prohibited by the forest management plan) (IM-VPA FLEGT/CAGDF);

- logging licences issued with a validity that exceeds the regulatory time frame (IM-VPA FLEGT/CAGDF n°006-2019).

Other permits

- The independent monitor also reported several instances of authorisations not specified within the applicable regulations being irregularly issued (IM-VPA FLEGT/CAGDF n°6-2014, n°15-2017, n°008-2019).
- Special permits are also susceptible to be awarded despite incomplete requests (IM-VPA FLEGT/CAGDF n°15-2017, n°005-2018).

Deforestation permits

The risks associated with deforestation permits are as follows (IM-VPA FLEGT/CAGDF, n°13-2016):

- deforestation permits are issued based on fraudulent (not real) plans to develop an activity justifying said deforestation;
- deforestation permits are issued without an environmental and social impact assessment being carried out on the area to be subjected to the deforestation;
- deforestation permits are issued for forest areas in the permanent forest domain where they have not been declassified beforehand;
- clearance licences for the wood felled in the deforestation areas are issued (not provided for by the regulations).

Risk Conclusion

This indicator has been evaluated as specified risk for all timber source types except private forests. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

The concluded specified risk extends to all types of logging permits, including the new titles introduced by the 2020 Forest Code.

This indicator is not applicable to private forests.

1.4.6. Risk designation and specification

All source types except private forests: Specified risk

Private forests (land title): Not applicable

1.4.7. Control measures and verifiers

Forests covered by an agreement (CATs and CTIs)

(1) Collect the following documents and verify their validity:

- If applicable, provisional logging licence; or
- Harvesting inventory approval notice; and
- Annual logging licence; and
- Annual operations plan; and
- If applicable, annual logging completion licence;

- If applicable (following the expiry of the agreement), clearing licence for timber felled.

(2) Carry out the following checks:

- That the annual logging licence has been issued before 15th of December of the previous year;
- If applicable, that the completion logging licence has been issued by the 2nd of January and for a harvesting period not exceeding 6 months;
- That the harvested species are those provided for in the annual logging licence;
- That the species listed in the annual logging licence are provided for by the forest management plan;
- That the volumes indicated in the annual logging licence are not higher than the volumes provided for in the agreement;
- That the volumes in the site log books and production reports are not higher (per species) than the volumes provided for by the annual logging licence;
- That the time frames provided for by the annual logging licence or completion licence are respected and comply with the applicable regulations.

Plantation timber promotion agreement

- Collect the mandatory documents provided for by the regulations (not yet adopted).

Domestic logging permit

Collect the following documents:

- Invitation to tender;
- Domestic logging permit.

Plantation timber logging permit

Collect the following documents:

- Documents relating to the public tender procedure;
- Plantation timber logging permit.

Deforestation

(1) Collect the following documents

- Deforestation permit;
- Agreement for land use change;
- Environmental and social impact assessment report;
- Proof of payment of deforestation tax.

(2) Conduct field checks on the effectiveness of the deforestation operations (conversion, change to allocation of land).

Special permits

Collect the following documents:

- Special permit (ensure that they concern 5 trees maximum for a 1-month validity period and local use).

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

1.5.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 2, 103, 104, 109, 110, 111, 112, 113, 114, 115, 116);
- Law n°14-2009 of 30 December 2009, modifying some provisions of Law 16-2000 (Art. 89, 91, 94, 98, 180 new). Available at: <http://www.documents.clientearth.org/library/download-info/loi-14-2009-modifiant-certaines-dispositions-de-la-loi-16-2000/> [accessed in September 2019];
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 41, 71, 88, 98, 135). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];
- Order n°19570/MEFDD/CAB of 10 November 2014 determining the categories of wood products in the Congo;
- Order n°19571/MEFDD/CAB of 10 November 2014 determining the wood production tax areas for the application of the Free on Truck (FOT) values;
- Order n°22717/MEFPPI/MEFDD/ of 19 December 2014 establishing the Free On Board (FOB) values for the determination of the FOT values, and for the calculation of the felling tax for logs and the wood export tax;
- Order n°22719/MEFPPI/MEFDD/ of 19 December 2014 establishing the rates for the felling tax applicable to logs from natural forests;
- Order n°23444/MEFPPI/MEFDD of 31 December 2014 establishing the FOT values for the calculation of the felling tax and wood export tax;
- Order n°6382 of 31 December 2002 establishing the modalities for calculating area tax (Art. 2 and 3). Available at: <http://www.documents.clientearth.org/library/download-info/arrete-6382-de-2002-sur-la-taxe-de-superficie/> [accessed in September 2019];
- Order n°6380 of 31 December 2002 establishing the natural forest deforestation tax (Art. 2 and 3). Available at: <http://www.documents.clientearth.org/library/download-info/arrete-6380-de-2002-sur-la-taxe-de-deboisement/> [accessed in September 2019];
- Various orders for the creation and running of the local development funds for managed concessions.

1.5.2. Legal authority

- Ministry of Forest Economy

1.5.3. Legally required documents or records

Forests covered by an agreement (CATs and CTIs)

- Specific terms and conditions of the agreement;
- If applicable, order for the creation of the local development fund (FDL).

1.5.4. Sources of information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- ATIBT (2020). Guide de lecture du nouveau Code forestier de la République du Congo à destination du secteur privé, p.28. Available at: <https://www.atibt.org/fr/news/12901/code-forestier-en-republique-du-congo-guides-de-lecture> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2015-2020). Field missions reports n°11, n°12, n°13, n°14, n°15, n°004, n°005, n°006, n°007, n°008, n°009. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- AIS FLEGT/SOFRECO (2019). Rapports d'audit des départements Lekoumou, Cuvette Ouest et Sangha. Audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2017). Etat des lieux de l'application de la loi forestière et de la gouvernance en République du Congo de 2013 à 2016. Available at: http://www.apvflegtcongo.com/images/pdf/rapport_bilan_oi_fleg.pdf [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2015). Analytical note n°04. Analyse des dispositions légales et réglementaires en vigueur fixant les modalités de calcul de la taxe de superficie et de leur application par l'administration forestière : besoin d'amélioration et de réajustement. Available at: <http://cagdf.org/wp-content/uploads/2019/02/NOTE-DANALYSE-N%C2%B04-OI-APV-FLEGT.pdf> [accessed in September 2021];
- Lawson, S. (2014). Illegal logging in the Republic of Congo . Chatham House. Available at: http://indicators.chathamhouse.org/sites/files/reports/Lawson_Republic_of_Congo_PP_2014.pdf [accessed in December 2016];
- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016];
- Wafwana, E.M., Matschinga, S.L., 2013. Forest legislation in the Republic of the Congo. Available at: <https://www.lexology.com/library/detail.aspx?g=89e1d7c4-97fa-4c53-ad9c-418607c94226> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2010). Summary report, December 2006 – September 2010. Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021].

1.5.5. Risk determination

Overview of Legal Requirements

The law stipulates three logging regimes, each subject to a set of taxes:

- The concession regime, which is transitory and cannot exceed 3 years from the date on which the agreement is signed. The applicable taxes are the annual area tax and the felling tax.
- The production sharing regime applicable to harvested logs: in this instance, the operator is exempt from all taxes relating to logging operations that are not earmarked for local authorities, local communities and indigenous populations. The only applicable payment is therefore a proportion of the area tax (share for local authorities, local communities and indigenous populations).
- The direct tax regime applicable to holders of domestic logging permits and special permits. The applicable tax is the felling tax.

The 2020 Forest Code also provides for a state-owned domain occupancy tax, however does not specify to whom and under what conditions it applies (regulatory texts not yet adopted).

Felling tax

The felling tax is determined based on the actual amount of wood produced and declared to the forest administration, in line with the FOB (Free on Board) and FOT (Free on Truck) values established by the regulations in force in accordance with the area from which the wood originates (the further away from the port used for the export, the lower the tax in order to compensate for the additional costs related to transporting the wood from remote areas). The volume used for the calculation is the number declared by the logging operator based on its site log books and production reports summarising the volumes produced. The site log books and production reports must be communicated to the forest administration every month. The volume declared must correspond to the volume of the entire tree felled, from the end of the buttress roots to the first main branch, even if the wood cannot be marketed, presents imperfections and/or is not evacuated from the forest. The felling tax has been fixed at between 5% and 7% since 2017 (rate determined by administrative circulars).

Area tax

The area tax is collected annually by the forest administration from the agreement holder. To do this, the administration jointly establishes with the agreement holder a payment plan of instalments staggered across each year. For managed concessions, the area tax is calculated based on the production series. For non-managed concessions, this tax is calculated based on the total concession area. The area tax varies from 250 to 500 CFA francs per hectare, depending on how far the concession is from the port of shipment.

Responsibilities stipulated by the terms and conditions

The terms and conditions of the agreements signed by the companies include a list of social responsibilities, often in the form of works or infrastructure (drilling of wells, restoration of roads, construction or restoration of schools and health centres, supply of medication, etc.), that the signatory company must fulfil over a given number of years. In general, these activities and infrastructure are financed by a local development fund (FDL) maintained by the forest concessionaire. The standard amount paid by companies into the FDL is 200 CFA/m³ of marketable timber. It could therefore be considered a form of indirect taxation. Is it worthy of note that the orders for the creation and running of the development funds for managed concessions stipulate that the issuance of the annual logging licence is conditional on payment of 50% of the FDL payment for that year.

Deforestation tax

Logging companies must pay deforestation tax on deforestation activities conducted for the purpose of constructing roads, timber yards, quarries and base camps. The deforestation tax is calculated based on the deforested areas and the type of activity (Order n°6380 of 31 December 2002). Issuance of the deforestation permit is conditional on payment of this tax.

Description of risks

The independent monitor and independent auditor have regularly described the importance of unpaid forestry taxes (IM-FLEG/REM, 2010 ; IM-VPA FLEGT/CAGDF, reports n°1 to n°009; AIS FLEGT/SOFRECO Sangha-2019, Cuvette Ouest-2019, Lekoumou-2019). Data collected by the independent monitor demonstrates that the collection rate for felling tax (around 71%) is better than the collection rate for area tax (around 46%) and deforestation tax (around 44%).

The strategy employed by the Republic of the Congo to monitor the collection of taxes and intercept corruption along the logistical supply chain is still ineffective. On top of that, the country also lacks the skills and equipment required to properly carry out the necessary checks and collect the amounts due (Wafwana and Matschinga, 2013).

If companies fail to pay their area and felling taxes, the forest administration often unlawfully gives them the option to offset the amounts through the construction of infrastructure and other works. As such, the independent monitor indicates that the MEF had works completed totalling 405,590,000 CFA francs (€618,318) at the expense of a company, to offset the taxes this company owed to the state (IM-VPA FLEGT/CAGDF, n°11-2016). The risk is therefore that companies do not pay their taxes to the tax collector, i.e. the public purse, and complete construction works instead. Furthermore, in the event that a company has outstanding payments, the late penalty charges imposed by the applicable regulations are not added to the amounts due under this tax offset system. In fact, these tax offset measures are the equivalent of debt laundering.

Felling tax

Felling tax is calculated based on the species actually felled and declared to the forest administration. According to the independent monitor, some companies use fraudulent means to avoid paying their taxes (IM-VPA FLEGT/CAGDF, n°14-2016, n°15-2017, n°004-2018, n°005-2018, n°008-2019, n°009-2019). The risk is that the company under-estimates the volume produced by not declaring the logs or log portions that have not been evacuated from the forest (to which the tax still applies), not declaring some felled trees at all, or declaring volumes in their site log books that are lower than the under-bark measurements laid down by the regulations (Article 89 of Decree n°2002-437) (also see section 1.16). Some species with a low FOT value are sometimes declared instead of those with a high FOT value, in order to reduce the payable tax amount (see section 1.16). The risk is particularly high for some species such as Padauk, Iroko, Ebiara, Doussié, Sifou-Sifou, and Essia, etc.

Furthermore, where breaches are reported based on hard facts, the applicable penalties provided for (Article 149 of Law 16-200) are not rigorously applied so as to dissuade offenders (fines, confiscation of products, without prejudice to damages) (AIS FLEGT/SOFRECO Sangha-2019).

Area tax

The independent monitor raised that the forest administration often calculates the tax based on the harvestable area, whilst the law states that area tax must be calculated based on the total area if the concession does not yet have a forest management plan (Article 91 (new) of Law n°14-2009) (IM-VPA FLEGT/CAGDF, 2015, n°11-2015, n°12-2015, n°14-2016, n°006-2019). Failure to apply the provisions of this article would have resulted in a loss to the public purse in the region of €4,138,973 in 2015. The new Forest Code stipulates that the area tax base, rate and payment modalities are determined by the Finance Law (Art. 103 of Law n°33-2020). The risk is deemed applicable until the appropriate expertise

and documentation relating to payment of the area tax in application of the new Forest Code can be proven.

Taxes dedicated to local communities (responsibilities stipulated by the terms and conditions and FDL)

There is a high risk that forest concessionaires do not pay the amounts stipulated for the local development fund and that the infrastructure or works provided for by the terms and conditions are not completed. *See section 1.13 for details.*

Deforestation tax

The administration sometimes issues deforestation permits despite not yet having received the deforestation tax, as required by the regulations (Article 162 of Law n°33-2020) (IM-VPA FLEGT/CAGDF, n°13-2016).

Risk Conclusion

This indicator has been evaluated as specified risk for all timber source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.5.6. Risk designation and specification

All source types: Specified risk

1.5.7. Control measures and verifiers

Forests covered by an agreement and under the concession regime (CTIs, CATs, Plantation timber promotion agreement)

(1) Collect the following documents:

- Proof of payment of felling tax and area tax;
- If applicable, proof of payment into the local development fund (FDL) in line with the conditions established by the order for the creation of the fund and the concessionaire's specific terms and conditions.

(2) Carry out the following checks:

- Check that the company's waybills and site log books (recording both the quantity and quality of the logs harvested on each site) have been submitted to the forest administration within the time frames indicated (quarterly);
- Realise sample checks between physical logs (species and volumes) and matching declarations logged in field logbooks and/or waybills;
- Ensure that the prescriptions of the current applicable Finance Law are implemented to determine the amount of the area tax.

Forests covered by an agreement and under the production sharing regime (CATs, Plantation timber promotion agreement)

Collect the following documents:

- Proof of payment of the portion of area tax designated to local communities and indigenous populations;

- Ensure that the prescriptions of the current applicable Finance Law are implemented to determine the amount of the area tax.

Domestic logging permits, plantation timber logging permits, special permits

Collect the following documents:

- Proof of payment of felling tax.

Deforestation

Collect the following documents:

- Proof of payment of deforestation tax (minimum of 30% upon issuance of the deforestation permit).

1.6. Value added taxes and other sales taxes

Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.6.1. Applicable laws and regulations

N/A.

1.6.2. Legal authority

N/A.

1.6.3. Legally required documents or records

N/A.

1.6.4. Sources of information

N/A.

1.6.5. Risk determination

Overview of Legal Requirements

Given that property rights over timber are rarely transferred before export, the VAT regulations in the Republic of the Congo are not applicable to the forestry sector. In fact, there is currently almost no national timber trade between separate legal entities. A logging operator is any entity conducting felling activities, and in theory the initial processing and export operations.

The taxes applicable to felling are covered in section 1.5 above, and the taxes applicable to exports are covered in section 1.19.

Description of Risk

N/A.

Risk Conclusion

N/A.

1.6.6. Risk designation and specification

N/A.

1.6.7. Control measures and verifiers

N/A.

1.7. Income and profit taxes

Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.

1.7.1. Applicable laws and regulations

- General Tax Code (Articles 14, 15, 106, 107, 107A, 108, 277 and 314 of 2012 version). Available at: <http://admin.theiguides.org/Media/Documents/CGI-2012.pdf> [accessed in September 2019];
- Law n°40-2018 on the Finance Law for 2019, Article 31 (new). Available at: <https://economie.gouv.cg/sites/default/files/Documentation/Lois/2018/Loi%20n%C2%B040-2018%20du%2028%20d%C3%A9cembre%202018%20portant%20loi%20de%20finances%20pour%20l%27ann%C3%A9e%202019-1.pdf> [accessed in September 2019].

1.7.2. Legal authority

- Ministry of Finance

1.7.3. Legally required documents or records

- Business tax (*patente*) certificate;
- *Certificat de moralité fiscale* (certificate of "taxpayer morality") for a yearly duration or *attestation de moralité fiscale* (declaration of "taxpayer morality") for a quarterly duration, issued if the company is up to date with all their tax payments;
- Payment receipts issued by the administration.

1.7.4. Sources of information

Non-Government sources

- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
- AIS FLEGT (2017). Cartographie des risques - Diagnostic de la filière bois en République du Congo;

- Wafwana, E.M., Matschinga, S.L., 2013. Forest legislation in the Republic of the Congo. Available at: <https://www.lexology.com/library/detail.aspx?g=89e1d7c4-97fa-4c53-ad9c-418607c94226> [accessed in September 2021].

1.7.5. Risk determination

Overview of Legal Requirements

Any individual liable for tax on their income or profits is required to submit a declaration of existence to the divisional inspectorate of direct and indirect contributions (*inspection divisionnaire des contributions directes et indirectes*) (2012 General Tax Code, Art. 46).

A certificate or declaration of "taxpayer morality" that demonstrates that the company is up to date with all taxes due is issued to all natural and legal persons domiciled or habitually resident in the Republic of the Congo, valid for one year (General Tax Code). Once it has been stamped by the public purse, this certificate is issued by the competent tax administration authority of the district in which the company's headquarters or principle place of business, or the taxpayer's residence is located. In order to obtain this certificate, the logging company must provide their tax declarations or balance sheet.

Taxes applicable to the forest sector

All companies that generate income from their activities conducted in the Congo, including logging companies, are notably liable for payment of corporate income tax (*impôt sur les bénéfices des sociétés*, IS), which is fixed at 33% in the Congo. Corporate income tax is only applicable to income that has not been injected into the company's capital but distributed to its shareholders. Nevertheless, eligible companies under the Investment Charter may benefit from tax breaks, such as exemption or a 50% reduction of the total amount (Wafwana and Matschinga, 2013).

Some types of companies (*sociétés anonymes, sociétés à responsabilité limitée, sociétés en commandite par actions, sociétés civiles* in the form of *sociétés par actions* or *sociétés à responsabilité limitée*, etc.) must also pay a yearly special company tax (*taxe spéciale sur les sociétés*) (Art. 168 of the 2012 Tax Code). This special company tax (TSS) is fixed at 1% of total turnover VAT included and all other income and profits. It is increased to 3% for companies that make a loss for two consecutive years.

The General Tax Code (Book 3, Ch. 1, Section 1, Art. 1) also stipulates a tax on income from securities (*Impôt sur le Revenu des Valeurs Mobilières*, IRVM), which applies when profits that have not been reinjected into the company's capital but have been distributed amongst its shareholders.

All natural and legal persons who carry out a commercial activity, industrial activity, or any other professional activity not included in the exemptions determined by the Tax Code are liable for payment of a business tax (*patente*) calculated pro-rata to the company's turnover (Art. 277 of the 2012 General Tax Code). This business tax is collected for decentralised communities (communes, regions, districts).

Description of Risk

The large companies active in the Congolese timber industry primarily constitute upstream producers and downstream exporters of almost all wood and cut timber produced in the Congo.

High risks of tax evasion through manipulation of the transfer prices between the exporter located in the Congo and the subsidiaries established in countries with low income tax rates have been highlighted and documented by the EIA (2019). These practices are covered in greater detail in section 1.18 below.

Intermediate parties

Another source of risk is that no checks are conducted on the intermediate parties between the small and medium-sized operators that do not have direct access to the international market and the

intermediaries (international brokers, forwarding agents and merchants) selling the wood in the foreign markets. The declaration and payment of corporate income tax is poorly managed, as are the responsibilities of the state actors in charge of monitoring this (AIS FLEGT, 2017).

Risk Conclusion

This indicator has been evaluated as specified risk for all timber source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.7.6. Risk designation and specification

All source types: Specified risk

1.7.7. Control measures and verifiers

Aside from the control measures stipulated in section 1.18, the following documents must be collected:

- *Certificat de moralité fiscale* or *attestation de moralité fiscale* (certificate or declaration of “taxpayer morality”) to ensure that all direct and indirect taxes due have been paid;
- acknowledgement of receipt of statistical and tax declarations or balance sheet for the year underway before 15 May;
- copy of the declaration of existence submitted to the divisional inspectorate of direct and indirect contributions.

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.

1.8.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 95);
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 59, 69, 70, 73, 76, 77, 80, 81, 86, 87, 88, 89, 91, 92, 93, 94, 100, 102, 112, 113). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];
- Order n°6515 of 18 June 2020 defining the standards for reduced impact logging in the Republic of the Congo.

1.8.2. Legal authority

- Ministry of Forest Economy

1.8.3. Legally required documents or records

Forests covered by an agreement (CTIs, CATs)

- Annual operations plan;
- Harvesting inventory data;
- Annual logging licence (or provisional logging licence if applicable);
- Site log books.

1.8.4. Sources of Information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- Environmental Investigation Agency (EIA) 2019. Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
- IM-VPA FLEGT/CAGDF (2015-2020). Field missions reports n°6, n°11, n°14, n°15, n°001, n°004, n°005, n°006, n°008, n°009. Available at:

<http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];

- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2017). Etat des lieux de l'application de la loi forestière et de la gouvernance en République du Congo de 2013 à 2016. Available at: http://www.apvflegtcongo.com/images/pdf/rapport_bilan_oi_fleg.pdf [accessed in September 2021];
- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016];
- IM FLEG/Resource Extraction Monitoring (2010). Summary report, December 2006 – September 2010. Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2009). Evolution du contrôle de la mise en application de la loi forestière et de la gouvernance (OI-FLEG). Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021].

1.8.5. Risk determination

Overview of Legal Requirements

Forests covered by an agreement

Harvesting can only be permitted on plots of land that have been subject to a systematic count, also referred to as a harvesting inventory (Art. 73 and 76 of Decree n°2002-437). The area covered by the annual logging licence must be bordered by a path. The logging operator is only authorised to harvest the species and quantities defined in the annual logging licence. If the counts are found to be false, they must be retaken under the supervision of the forest administration and harvesting can only start in the areas subject to a new count, based on a provisional logging licence valid for a maximum of 3 months.

All forests

The regulations stipulate certain rules on diameters, felling damage, markings, etc. These regulations are applicable to all logging operators, including for private natural forests and domestic and special logging permits.

Felling is only permitted for trees of a certain minimum diameter established by the regulations for concessions whose management plan is in the process of being drawn up, or in compliance with the provisions of the forest management plan and in a way that results in as little damage as possible (Art. 91 and 92 of Decree n°2002-437).

Once it has been felled, the wood must be marked on the stump with the logger's axe and with a serial number, respecting an uninterrupted series from 1 to 99,999. The number is repeated on the various logs produced from the felled tree with a denominator indicating the log block number, starting from the stump (Art. 86 of Decree n°2002-437). The felled trees are then recorded in a site log book (Art. 87 of Decree n°2002-437), containing pre-defined fields established by the regulations. Log books must be stamped by the administration and include several carbon copies for the various departments concerned.

The logging operator must respect the reduced impact logging standards, which are to be defined by the applicable regulations (text not yet adopted). The felling operations must result in as little damage as possible to the neighbouring trees. All trees broken or discarded during the felling operations, as well as all trees used for the construction of bridges and other infrastructure must be mentioned in the site log book.

The construction of service roads must be compliant with the national standards, which stipulate that the width of the main road must not exceed 33 metres (Art. 99 of Decree n°2002-437).

In order to ensure that the logging operator respects the logging standards, as well as the provisions stipulated in their logging licence and forest management plan, the departmental directorate of water and forests (DDEF) must conduct a quarterly production check based on the site log books and road maps used to evacuate the wood (Art. 88 of Decree n°2002-437) and the site visits (Art. 81 and 113 of Decree n°2002-437).

Description of Risk

Due to the absence or inadequacy of forest-based checks conducted on companies' activities by DDEFs, compliance with harvesting regulations is still extremely poor in the Congo (AIS FLEGT/SOFRECO, 2018, 2019). Forest concessions that are not yet managed, as well as those that are managed but not certified, are not subjected to rigorous and regular checks by the administration.

The poor checks conducted by the competent administration and the level of corruption within the process mean that companies do not carry out an accurate identification or count (systematic count) before felling the species they intend to harvest. Logging operators may make false count declarations, which are not reported or penalised by the forest administration officers (IM-VPA FLEGT/CAGDF n°15-2017, n°006-2019).

There is also a high risk that unauthorised species are harvested, that wood is harvested beyond the allocated quantities, or that wood is harvested outside of the allocated perimeter (EIA, 2019 ; AIS FLEGT/SOFRECO, Cuvette Ouest-2019 ; IM FLEG/REM, 2009 et 2010 ; IM-VPA FLEGT/CAGDF n°11-2015, n°14-2016, n°001-2017, n°004-2018, n°008-2019). For example, in 2018 in Cuvette-Ouest, AIS-FLEGT reported that a logging company had harvested 4,300 Angueuk trees, despite the fact that its logging permit did not authorise the harvesting of this species (AIS FLEGT/SOFRECO, 2019).

Furthermore, the site documents (site log books and waybills) are sometimes not filled out correctly or in line with the applicable regulations (erasures, overloading, available information not recorded), which means that some felled trees are lost track of. In the forests, stumps are sometimes not numbered, which can lead to numbers being duplicated or unauthorised harvesting being concealed (IM-VPA FLEGT/CAGDF, n°006-2019, n°009-2020).

Absent or incorrect markings on stumps and logs are indeed regularly reported on (IM FLEG/REM, 2009; IM-VPA FLEGT/CAGDF, n°14-2017, n°15-2017, n°004-2018, n°005-2018, n°009-2020; AIS FLEGT/SOFRECO, Lekoumou-2019), as well as logging under prescribed diameters (IM FLEG/REM, 2009; IM-VPA FLEGT/CAGDF, 2017) and irregular abandoning of wood (IM FLEG/REM, 2009; IM-VPA FLEGT/CAGDF, n°14-2017).

Risk Conclusion

This indicator has been evaluated as specified risk for all timber source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.8.6. Risk designation and specification

All source types: Specified risk

1.8.7. Control measures and verifiers

(1) Collect the following documents and verify their validity and the coherence of all information:

- For forests covered by an agreement (CTIs and CATs): Harvesting inventory approval notice;
- Valid logging licence or permit specifying the species that the company is authorised to fell;
- Site log books and waybills (samples);
- If applicable, field check reports by the relevant departmental directorate of water and forests.

(2) Carry out the following checks on the ground:

- That all stumps and wood logs are marked in compliance with the regulations in force;
- That volumes in the site log books and production reports are not higher (per species) than the volumes provided for by the logging licence;
- That the harvesting operations are compliant with the species and diameters authorised in the legally required documents (forest management plan and annual logging licence or permit), as well as the specified quantities and perimeter.

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- Law n°37-2008 of 28 November 2008 on protected fauna and areas (Art. 1, 4 to 6, 8 to 16, 24, 44 to 54, 67 to 72). Available at: <http://www.documents.clientearth.org/download/9435/> [accessed in September 2019];
- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 89, 90);
- Law n°003/91 of 23 April 1991 on environmental protection (art. 18, 19, 20).

1.9.2. Legal authority

- Ministry of Forest Economy.

1.9.3. Legally required documents or records

In all cases (excluding CTIs)

- Forest management plan (simplified or normal); or
- Simplified management programme.

In addition, for forests covered by an agreement (CTIs and CATs)

- Annual operations plan;
- Annual logging licence.

1.9.4. Sources of Information

Non-Government sources

- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2016). Field missions report n°14. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- UICN (2013). Les grands singes et le FSC: Mise en œuvre de pratiques d'exploitation favorables aux grands singes dans les concessions forestières en Afrique centrale. N° 49. Available at: http://static1.1.sqspcdn.com/static/f/1200343/22446330/1365956628193/Grands_singes_et_FSC.pdf?token=aAE4b0UNEgW5CGeoiDmGZ4PPIWQ%3D [accessed in September 2019];
- Nkodia, A. (2013). Diagnostic du secteur forestier. FAO. Projet TCP/PRC/3402. Appui à la formulation de la politique forestière nationale;
- Loumeto, J., Kami, E., Yoka, J., Mombeki, S., Imbounou, A., Samba, J.L., ossebi-Mbila, S., Banzouzi, J.C. (2011). Avis de Commerce Non Préjudiciable sur le Pericopsis Elata au Congo . Available at: https://cites.org/sites/default/files/ndf_material/Non-detriment%20findings%20on%20Pericopsis%20elata.pdf [accessed in March 2017];
- Mengue-Medou, C. (2002). Les aires protégées en Afrique : perspectives pour leur conservation. Available at: <https://vertigo.revues.org/4126> [accessed in November 2016].

1.9.5. Risk determination

Overview of Legal Requirements

Wood harvesting in protected areas (national parks) is strictly prohibited in the Republic of the Congo. All forms of exploitation of the soil, sub-soil and natural resources, as well as all works and constructions are prohibited inside national parks, with the exception of those provided for by the instrument establishing the park or the park's management plan, and those necessary for its management and surveillance (Art. 12 to 14 of Law n°37-2008).

The decrees implementing certain national parks, such as the Nouabalé Ndoki park, provide for the establishment of a buffer zone (5km for the Conkouati-Douli) by order of the Ministry of Water and Forests, and prohibit the allocation of all forms of logging titles within these parks. When a park is adjacent to a forest concession, the buffer zone is established within the concession.

There are no bans on harvesting specific forest species at a national level.

Within UFAs covered by an agreement, the sites to be respected and the rare or endangered species to be protected are identified by the ecological studies conducted during the forest management plan development phase. These sites and species are included in the forest management plan and must be subjected to specific measures whenever the company is working in the forest.

The forest management plan determines the measures that the company is required to take in order to respect the protected sites and species. It notably identifies protection and conservation series.

Harvesting operations are banned within conservation series. The forest management plan also identifies the species that are poorly represented within the forest and that must not be harvested.

Furthermore, the concession agreements require the concession holders to establish surveillance and anti-poaching units (USLAB). These anti-poaching units are responsible, amongst other things, for preventing the development of illegal hunting by company workers and populations in the areas within and around the concession.

Description of Risk

Illegal wood harvesting for export in protected areas is very low in the Congo. It is primarily conducted by local populations for domestic use.

Forests covered by an agreement (CTIs and CATs)

Some UFAs are not yet managed and do not possess management documents (forest management plan, five-year management programme and annual operations plan). The absence of these documents governing the sustainable management of forest resources is a legal issue in itself (covered in section 1.4 above), but also leads to sites and species that would otherwise be identified as protected, either because they are rare or cannot be easily replenished, not being protected.

The harvesting of protected species not permitted by annual logging licences represents a high risk, which has been documented in several reports by the Independent Monitor and reiterated in the EIA report (2019).

Regarding the fight against poaching, companies do not always respect the commitments they make in the agreements they sign with the Congolese government. Indeed, some companies operate within their concessions without a surveillance and anti-poaching unit (USLAB) to manage hunting and illegal poaching activities, of which there is a significant amount (IM-VPA FLEGT/CAGDF, n°14-2016; AIS FLEGT/SOFRECO, Niari-2018, Cuvette Ouest-2019, Lekoumou-2019).

Risk Conclusion

Regarding protected areas, this indicator has been evaluated as presenting a low risk illegal wood harvesting.

This indicator has been evaluated as specified risk for Forests covered by an agreement (CAT and CTI). Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as specified risk for Plantation Timber Promotion Agreement and Permits allocated outside of an agreement (domestic logging permit, plantation timber logging permit, special permit and private forests), based on a precautionary approach.

1.9.6. Risk designation and specification

Protected areas (national parks and reserves): Low risk

Forests covered by an agreement (CTIs and CATs): Specified risk

Plantation Timber Promotion Agreements, Permits allocated outside of an agreement (domestic logging permit, plantation timber logging permit, special permit) and private forests (land title): Specified risk based on a precautionary approach

1.9.7 Control measures and verifiers

Forests covered by an agreement (CTIs and CATs)

(1) Collect the following documents:

- Forest management plan in force;
- Annual logging licence;
- Site log books and waybills (samples);
- Documents relating to the implementation and running of the anti-poaching unit (USLAB).

(2) Ensure that:

- The species prohibited from being harvested at forest level (forest management plan and annual logging licence) are not being felled and sold.

(3) Carry out the following checks on the ground:

- That the felled wood does not come from buffer zones bordering a park or a reserve, or a protection/conservation series.

Other source types (Plantation timber promotion agreements, Domestic logging permits, Plantation timber logging permits, Wood from deforestation operations, Special permits, Private forests):

Consult stakeholders to ensure that important sites and resources for local communities are not affected by logging activities conducted.

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 50, 51, 55, 56, 57, 94, 169, 170, 171, 174);
- Law n°003/91 of 23 April 1991 on environmental protection (Art. 28, 33, 34, 35, 36, 38). Available at: <http://faolex.fao.org/docs/texts/con5810.doc> [accessed in September 2019];
- Law n°13-2003 of 10 April 2003 on the water code (Art. 21, 22);
- Decree n°2002-437 of 31 December 2002 establishing the conditions for the management and use of forests (Art. 71, 96, 97, 99, 140, 172, 196, 197);
- Decree n°2009-415 of 20 November 2009 establishing the field of application, the content and the procedures for the environmental and social impact assessment and notice (Art. 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 39, 40, 41, 42, 48, 52, Annex). Available at: <https://www.documents.clientearth.org/wp-content/uploads/library/2009-11-20-decret-2009-415-%E2%80%93-sur-le-champ-d%E2%80%99application-contenu-et-procedures->

[de-l%E2%80%99etude-et-de-la-notice-d%E2%80%99impact-environnemental-et-social-ext-fr.pdf](#)
[accessed in September 2019];

- Order n°3196 of 14 July 2008 providing a nomenclature of the installations classified by Law n°003-91 of 23 April 1991 on environmental protection (annex);
- Order n°1450 MIME DGE of 1999 on the application of certain provisions on the installations classified by Law n°003-91 on environmental protection (Art. 3, 4, 5, 9, 10, 11, 12);
- Circular n°301 of 13 February 2018 for the attention of managing directors of logging companies;
- Circular n°613 of 24 April 2017 establishing the conditions for managing all types of waste within national territory;
- Circular letter n°332/MEF/DGEF/DF of 13 March 2009.

1.10.2. Legal authority

- Ministry of the Environment

1.10.3. Legally required documents or records

- Contract with a processing centre approved by the Ministry of the Environment for the processing of dangerous waste (if applicable);
- Public inquiry report relating to the environmental and social impact assessment;
- Terms of reference (TOR) of the environmental and social impact assessment;
- Environmental and social impact assessment report;
- Environmental and social management plan;
- Licences for the creation of forest tracks;
- Declarations relating to the creation of timber yards;
- If applicable, a licence for the creation of industrial sites, base camps and roads upon the opening of the concession area.

1.10.4. Sources of information

Government sources

- Ministère de l'économie forestière et du développement durable (2015). Projet de réduction des émissions liées à la déforestation et à la dégradation des forêts. Evaluation environnementale et sociale stratégique du processus REDD+ en République du Congo. Cadre de Réinstallation Involontaire (CRI). Available at: https://forestcarbonpartnership.org/sites/fcp/files/fcp-docs/2016/Aug/SESA%20draft%20report%20Aug%202015_0.pdf [accessed in September 2021];

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];

- Wafwana, E.M., Matschinga, S.L., 2013. Forest legislation in the Republic of the Congo. Available at: <https://www.lexology.com/library/detail.aspx?g=89e1d7c4-97fa-4c53-ad9c-418607c94226> [accessed in September 2021].

1.10.5. Risk determination

Overview of Legal Requirements

Environmental and social impact assessments

All activities within the forest domain must be subjected to a preliminary environmental and social impact assessment. The environmental and social impact assessment notably includes an analysis of the site's initial state, a detailed description of the planned activities, a prospective analysis of likely incidents, particularly involving the site's natural resources, an indication of any uncertainties and knowledge gaps, as well as a presentation of the environmental, social and health management plan, specifying the measures provided for to eliminate, reduce and offset the consequences of the project.

The impact assessment procedure starts with outlining a framework and obtaining the relevant permit to carry out the assessment. A public inquiry is then carried out and the assessment report is drawn up so that it can be validated by the environment administration. This validation process is split into two phases: a public hearing or consultation and a technical analysis. The assessment must be carried out by a specialist consultant, a non-governmental organisation or an association, and this body must be approved by the Minister of Environment. The assessment must be extensive, selective, comparative and objective. A standard outline for an impact assessment report is provided by the regulations.

Forest management plans must take into account the environmental and social impact assessment. Once the agreement has been signed, the initiation of any activities for the construction of infrastructure by logging operators is conditional on them obtaining an environmental conformity certificate (also called an "environmental feasibility notice") following validation of the environmental and social impact assessment report. An implementing text (not yet adopted), will likely stipulate the specific measures related to environmental assessments in the forest sector.

Authorisations and declarations

According to the applicable regulations (annex of Order n°3196), forest tracks (roads and tracks used for skidding operations) are classified as category 1 installations and are therefore subject to authorisation from the environment administration (Order n°1450/MIME/DGE). The regulations specify which documents must be attached to the request for authorisation. Timber yards are classified as category 2 installations and are subject to a declaration to the environment administration (Order n°1450/MIME/DGE).

The construction of dykes in harvesting areas is conditional on a notice from the forest administration, and must respect best industry practices.

Other environmental protection measures

The construction of industrial sites, base camps and roads within forest concessions is subject to the logging operator obtaining an installation licence once the agreement comes into force for a maximum period of 2 years (Art. 172 of Decree n°2002-437). Based on this licence, the operator may conduct felling operations within the limit of 10% of the maximum annual volume during the first year, 20% during the second year, and 30% during the third year. The specific conditions for these felling operations will be specified in the licence.

The main evacuation roads must not exceed 33 metres in width, including 8 metres of carriageway (Art. 99 of Decree n°2002-437).

The boundaries between two forest management units (UFAs) and between the different series within the UFAs are established in line with the process outlined by the applicable regulations (man-made boundaries in the form of paths, numbering of trees or posts along the edge, painting different colours on each side, etc.) (Art. 83 of Decree n°2002-437).

The environmental protection measures imposed on logging companies by Law n°003/91 concern the protection of fauna and flora, the atmosphere, water and the soil.

Furthermore, the law notably requires anyone who produces or possesses waste to dispose of it appropriately so as not to endanger human health or the environment (Art. 49 of Law n°003/91). All dangerous industrial waste or similar must be disposed of accordingly at sites or facilities approved by the Environment Administration (Art. 54 of Law n°003/91). Circular n°613 lists all waste deemed dangerous in annex 1.

Dumping, draining or releasing substances that could damage the quality of the water is prohibited.

The use of pesticides is subject to authorisation from the Ministry of Environment (the list of substances concerned is established by the administration). Releasing any polluting substances or substances that present a danger to human health into the water (or into the soil in such a way that could affect the composition of the surface or ground water) is subject to a prior administrative authorisation or declaration.

Lighting a fire or abandoning a fire that has not been extinguished in the national forest domain is prohibited (Art. 57 of Law n°33-2020).

Finally, other provisions relating to the identification and protection of environmental resources may be included in the general terms and conditions of the forest concessionaire's agreement.

Description of Risk

Appropriate waste processing

During its legal conformity on-site audits in 2018 and 2019, the independent auditor (AIS) reported that non-certified logging companies were managing their dangerous waste (used batteries, engine oil following oil changes, used tyres, etc.) in ways that were not compliant with the applicable regulations. It reported oil being changed on the ground, streaming into nearby waterways, and used tires being piled up, posing a clear fire hazard. (AIS FLEGT/SOFRECO, 2018, 2019)

The risk of illegality in terms of suitable waste processing is higher amongst logging companies that are not part of a forest management certification system, which reinforces the likelihood that operators have implemented suitable waste management methods, factoring in collection, sorting, storage, transport and processing, and even transit to processing centres approved by the Ministry of the Environment.

Environmental and social impact assessments

Impact assessments are not widespread in the forest sector, neither amongst managed nor non-managed concessions, due to a historic lack of clarity in the legal framework. In fact, the requirement for companies to carry out an impact assessment was not initially clearly formulated as being applicable to logging companies. The 2018 ministerial circular and the new Forest Code recently confirmed that logging operators must indeed conduct an environmental and social impact assessment when drawing up their forest management plan. The independent auditor (AIS) has raised within its report the issue of absence of impact assessment and the lack of control and sanction from the forest administration on this issue (AIS FLEGT/SOFRECO, Sangha-2019, Cuvette Ouest-2019).

Risk Conclusion

This indicator has been evaluated as specified risk for all source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.10.6. Risk designation and specification

All source types: Specified risk

1.10.7. Control measures and verifiers

(1) Collect the following documents:

- Environmental and social impact assessment report, accompanied by an environmental and social management plan;
- Approval of the environmental and social impact assessment (certificate of environmental conformity, also known as the "environmental feasibility notice");
- Reports or documents relating to the implementation of the environmental and social management plan;
- Any document relating to the logging operator's internal procedures regarding the waste management system (collection, sorting, storage, transport, processing) in place.

(2) Carry out the following checks on the ground:

- That the logging operator has implemented a regulatory waste management system (collection, sorting, storage, transport, processing);
- That the environmental and social management plan is being implemented.

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- Law n°6-96 of 6 March 1996 amending and supplementing some provisions of Law n°45/75 of 15 March 1975 establishing a Labour Code for the People's Republic of the Congo (Art. 117, 131 to 148). Available at: <http://www.droit-afrique.com/upload/doc/congo/Congo-Code-1975-du-travail.pdf> [accessed in September 2019];
- Order n°9030/MTERFPPS/ DGT/DSSHST of 10 December 1986, establishing company health and safety committees (Art. 1 to 7);
- Order n°9036/MTERFPPS/ DGT/DSSHST of 10 December 1986 on the general health and safety measures applicable within industrial, commercial, agricultural and forestry companies and similar administrative bodies (Art. 13 to 17);
- Collective bargaining agreement for the forestry industry dated 5 June 2014 (Art. 87).

1.11.2. Legal authority

- Ministry of Labour and Social Security

1.11.3. Legally required documents or records

- Record of accidents at work, occupational illnesses and illnesses of an occupational nature;
- Instructions relating to the prevention of occupational risks for each workstation;
- Documents relating to health and safety at work within the company.

1.11.4. Sources of information

Non-Government sources

- IM-VPA FLEGT/CAGDF (2014-2020). Field missions reports n°1, n°6, n°002, n°007. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- Nkodia, A. (2013). Diagnostic du secteur forestier. FAO. Projet TCP/PRC/3402. Appui à la formulation de la politique forestière nationale.

1.11.5. Risk determination

Overview of Legal Requirements

The legal requirements in terms of health and safety regarding forest operations are as follows:

- the creation of company health and safety committees, the composition and size of which is dependent on the company's workforce (Art. 1 and 2 of Order n°9030);
- the implementation of general hygiene measures (Chapter 1 of Order n°9036);
- the prevention of occupational accidents and illnesses, notably by setting up an occupational health service (Chapter 2 of Order n°9036) and displaying instructions for each workstation (Art. 132.4 of Law n°6-69);
- the implementation of fire prevention measures (Chapter 3 of Order n°9036);
- the keeping of records of all accidents at work, occupational illnesses and illnesses of an occupational nature, as well as a safety record (Art. 141-2 of new Law n°6-96);
- the provision of personal protective equipment for workstations that require it (Art. 87 of the collective bargaining agreement for the forestry industry of 5 June 2014), including hearing protection (Art. 13 to 17 of Order n°9036).

Description of Risk

Companies whose concessions are not managed or certified generally show poor attention to their employees' health and safety. Few adopt an occupational risk prevention policy.

The base camps established in the forests are obligations from the agreements signed by operators. They are often missing or are severely dilapidated (IM-VPA FLEGT/CAGDF, n°1-2014, n°6-2014, n°002-2018, n°007-2019; AIS FLEGT/SOFRECO Cuvette Ouest-2019).

The wearing of personal protective equipment is often poorly respected on-site and the safety instructions for each workstation are not clearly displayed, contrary to the applicable regulations (AIS FLEGT/SOFRECO Cuvette Ouest-2019, Sangha-2019).

Clinics are often non-existent, led by unqualified staff or have no equipment (AIS FLEGT/SOFRECO Cuvette Ouest-2019). The checks carried out by the labour administration are also often not compliant with the applicable regulations (Nkodia, 2013; AIS FLEGT/SOFRECO DGEF-2019).

Only certified companies better apply safety measures for felling and transport, establish protection zones around their operating sites, and impose safety requirements for machinery.

Risk Conclusion

This indicator has been evaluated as specified risk for all source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.11.6. Risk designation and specification

All source types: Specified risk

1.11.7. Control measures and verifiers

(1) Collect the following documents:

- Any document relating to the creation and running of the health and safety committee;
- Instructions relating to the prevention of occupational risks for each workstation regarding the activities conducted in the forest;
- Record of accidents at work, occupational illnesses and illnesses of an occupational nature.

(2) Carry out the following checks on the ground:

- That the health and safety committee is fully operational;
- That the employees have been provided with personal protective equipment and are using it;
- That the employees are familiar with the instructions relating to the prevention of occupational risks.

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- Law n°6-96 of 6 March 1996 amending and supplementing some provisions of Law n°45/75 of 15 March 1975 establishing a Labour Code for the People's Republic of the Congo. Available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/43085/64990/F96COG> and <http://www.droit-afrique.com/upload/doc/congo/Congo-Code-1975-du-travail.pdf> [accessed in September 2019];
- Law n°004-86 of 25 February 1986 establishing the social security code in the People's Republic of the Congo (Art. 172) Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/40948/60758/F-441822345/COG-40948.pdf> [accessed in September 2019];
- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 152 and 153);
- Law n°22-88 of 17 September 1988 modifying Law n°01/86 of 22 February 1986 replacing and supplementing Law n°03-85 of 14 February 1985 on the creation of the ONEMO Law n°3-2000 of 1 February 2000 defining the notion of subcontracting and establishing the conditions for the exercise thereof (Art. 5 and 8). Available at: <http://www.droit-afrique.com/upload/doc/congo/Congo-Loi-2000-03-sous-traitance.pdf> [accessed in September 2019];
- Decree n°2008/942 of 31 December 2008 establishing the guaranteed interprofessional minimum wage (SMIG);
- Collective bargaining agreement for the forestry industry of 5 June 2014.

1.12.2. Legal authority

- Ministry of Labour and Social Security;
- Ministry of Forest Economy.

1.12.3. Legally required documents or records

- Declaration of the existence of the company to the Labour Inspectorate;
- Certificate of registration with the national social security fund (CNSS);
- Employer's log;
- Employment contracts;
- Payslips.

1.12.4. Sources of information

Non-Government sources

- IM-VPA FLEGT/CAGDF (2016-2020). Field missions reports n°12, n°001, n°002, n°007. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM FLEG/REM-CAGDF (2011). Field mission report n°002. Available at: http://www.rem.org.uk/documents/OI_II_Rapport_002.pdf [Accessed in September 2021];

- Nkodia A. (2013). Diagnostic du secteur forestier. FAO. Projet TCP/PRC/3402. Appui à la formulation de la politique forestière nationale.

1.12.5. Risk determination

Overview of Legal Requirements

Forced or obligatory labour is strictly prohibited and children below the age of 16 are prohibited from being employed, even as apprentices.

The legal requirements for the employment of staff and the working conditions for staff involved in forest activities are as follows:

- a declaration of the existence of the company must be made to the Labour and Social Laws Inspectorate or the competent labour inspection office (Art. 181 of Law n° 6-96);
- a certificate must be obtained attesting that the company has been registered with the General Directorate of the national social security fund (CNSS) (Art 172 of Law n°004-86);
- the company must keep an up-to-date record at the logging site entitled "*registre d'employeur*" (employer's log) (Art. 182 of Law n°6-96);
- individual employment contracts must be drawn up (Art. 26 of Law n°6-96);
- the guaranteed interprofessional minimum wage (SMIG) must be respected (50,400 CFA francs per month since 2008) (Decree n°2008-942);
- statutory working time must be respected (2,400 hours a year for logging companies);
- weekly rest periods and paid leave must be respected;
- staff delegate elections must be held for companies with more than 7 employees (Art. 173 of Law n°6-96);
- trade unions must be able to exercise their activities freely (Art. 184 to 210 of Law n°6-96), which includes the employer providing the trade union representatives and staff delegates with a shared space (Art. 50 of the collective agreement);
- workers relocated from their place of origin to areas where there is not easy access to food must be provided with support (provision of housing or compensatory allowance, establishment of a store, etc.);
- priority must be given to the employment of Congolese staff (Art. 152 of Law n°33-2020);
- training and promotion programmes must be set up (Art. 152 of Law n°33-2020).

Description of Risk

Logging companies often resort to cheap labour by hiring "temporary" workers. Some do not have employment contracts and are paid below the minimum wage. Unfair dismissals are common in the forestry sector. It is common for companies to not pay their social security contributions and the employees are therefore not protected in the event of illness, accidents, death or retirement (Experts consultation, 2019).

Forest operators often fail to implement training programs for their workers, as they should based on the obligations contained in their logging agreement (IM-FLEGT/CAGDF, n°12-2016, n°001-2017, n°002-2018, n°007-2019).

Not all companies have staff delegates elected by the workers (AIS FLEGT/SOFRECO, 2018, 2019).

Some companies outsource work to companies that do not fulfil the legal employment conditions (IM FLEG/REM-CAGDF, 2011).

The level of monitoring by the competent authorities over the implementation of the regulations in relation to labour rights is fairly weak, primarily due to the distance between the production sites and the authorities' lack of capacity (AIS FLEGT/SOFRECO, 2018, 2019).

Risk Conclusion

This indicator has been evaluated as specified risk for all source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.12.6. Risk designation and specification

All source types: Specified risk

1.12.7. Control measures and verifiers

(1) Collect the following documents, including for the subcontractors used, if applicable:

- Declaration of the existence of the company to the Labour Inspectorate;
- Certificate of registration with the national social security fund (CNSS);
- Employee employment contracts (samples);
- Payslips (samples);
- Documents relating to staff delegates (for companies with more than 7 employees).

(2) Carry out the following checks on the ground and/or through consultation with the employees:

- That there are no non-declared employees and/or employees below the age of 16 and/or forced labour;
- That the company is complying with the minimum wage (SMIG), statutory annual working hours, paid leave and weekly rest periods;
- That the company is respecting the free exercise of trade union activities.

THIRD PARTY RIGHTS

1.13 Customary rights

Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights. The indicator is relevant to customary rights other than land and land management rights. Customary land and land management rights are covered under 1.1.

1.13.1. Applicable laws and regulations

- Law n°5-2011 of 25 February 2011 on the promotion and protection of indigenous populations (Art. 31, 32, 33, 34, 35, 42). Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=88187&p_country=COG&p_count=264 [accessed in September 2019];

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 2, 12, 15, 16, 17, 18, 19, 20, 59, 60, 61, 88, 115, 116, 137);
- Law n°10-2004 of 26 March 2004 establishing the general principles applicable to the state and land regimes (Art. 31);
- Law n°21-2018 of 13 June 2018 establishing the rules for occupying and acquiring land (Art. 5, 7, 8, 10, 11, 14, 15, 53);
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 24, 168). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];
- Order n°5053/MEF/CAB of 19 June 2007 defining the national guidelines for the sustainable management of forest concessions (Art. 8, 18, 19, 20);
- Order n°6509/MEF/MATD of 19 August 2009 laying down the modalities for classifying and declassifying forests (Art. 10, 15).

1.13.2. Legal authority

- Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples;
- Ministry of Forest Economy.

1.13.3. Legally required documents or records

Forests covered by an agreement (CTIs and CATs)

- Classification decree;
- Agreement and notably the related specific terms and conditions;
- If applicable, Forest management plan;
- If applicable, order for the creation of the local development fund (FDL).

1.13.4. Sources of information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2015-2020). Field missions reports n°11, n°14, n°15, n°001, n°002, n°005, n°006, n°008, n°009. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2010). Summary report, December 2006 – September 2010. Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021];
- FGDH (2010). Etudes locales sur les droits fonciers des populations forestières au Congo.

1.13.5. Risk determination

Overview of Legal Requirements

User rights

The regulations govern the exercising of user rights in protected forests and classified forests subject to industrial concessions. In protected forests, the local populations enjoy the user rights listed in the Forest Code (collection of wood, hunting, fishing, establishing crops, etc.). These rights may be limited or governed (place, time, quantities or methods) by the Ministry of Forests. In classified forests, the classification decrees and forest management plans detail the acknowledged user rights and the terms under which these rights may be exercised. User rights may only be exercised to satisfy the personal needs of their beneficiaries. These rights are free to exercise. The products arising from the exercise of these rights may be sold on the local retail market.

During the classification procedure, an assessment report is drawn up for the forest to be classified, outlining the rights and duties of the populations, the traditional uses of the forest by the populations, and the impact of the classification on their living conditions. The representatives of the populations and the forest administration identify any potential sacred sites and trees. The classification committee reports the absence or existence of user rights over the forest, and can decide to fully maintain them or confine them to a specific area.

Community development series in UFAs and community forests

Within these managed classified forests, several series may also be defined by the forest management plan, normally including a community development series, dedicated to meeting the needs of local populations in terms of forest products and improving their income. The guidelines for community development series are outlined by the regulations in force, and include, for example, management programmes for wildlife, fish and forestry resources, raising awareness amongst stakeholders and training populations, organising local series management structures, scheduling micro-projects, determining schemes for using the profits, etc.

Forests located in community development series are considered community forests. Three other types of forest form part of the community forest category: plantations located on land owned by a local community or indigenous population, forests created and managed by a local community, and classified forests dedicated to local communities and indigenous populations. Community forests must have a simplified management programme approved by the forest administration. The implementation of this management programme is monitored by an organisation under the authority of the president of the departmental or municipal council concerned, and the stakeholders (civil society organisations, representatives of local authorities, local communities, indigenous populations, administrative departments). An order shall lay down the modalities for allocating the community forest and for creating, organising and running the monitoring body (text not yet adopted as of September 2020). Harvesting wood on a for-profit basis from community forests is conditional on the issuance of a special permit or plantation timber logging permit (subject to the exercise of user rights).

Profit sharing and socio-economic development

In the Congo, the effects of customary rights also extend to requirements regarding the sharing of profits from logging activities and financial contribution to the local development fund.

Profit sharing requirements are established by the agreements that the logging companies sign with the Congolese government. In its specific terms and conditions, each agreement includes an obligation to contribute to the socio-economic development of the department (Article 168 of Decree n°2002-437

and Article 137 of Law n°33-2020). These contributions are often translated into the completion of works or projects by the logging operator for the benefit of the department or communities.

Furthermore, the concession forest management plan, approved by a decree of the Council of Ministers, requires the logging company to pay an amount into the local development fund (FDL), in application of the Forest Code (Art. 116 of Law n°33-2020). The individual orders creating each FDL specify the applicable regulations for this. They normally stipulate a standard amount of 200 CFA francs per m³ of marketable harvested wood, allocated to the communities located around each concession.

Description of Risk

Forests covered by an agreement (CTIs and CATs)

Certified companies present the lowest risk in terms of local populations' rights and social clauses not being respected, systematically drawing up participative maps of harvesting areas that identify and protect local populations' sites of socio-cultural interest. (Experts consultation, 2019)

Managed concessions also offer more guarantees in terms of respecting customary rights, notably with the establishment of community development series (CDS) assigned to these customary uses. (Experts consultation, 2019)

In contrast, for non-managed concessions (forest management plan not drawn up or in the process of being drawn up) or concessions not subject to a management requirement (former industrial processing agreements valid until August 2023 at the latest), the risk of customary rights not being respected is higher, due to the lack of prior identification of important sites and resources for the exercise of user rights. Companies with non-managed concessions have neither the teams nor the staff to identify and protect local populations' socio-cultural sites, nor do they have the dialogue mechanisms in place to involve local communities in the management of the forest resources within their concessions. (Experts consultation, 2019)

Furthermore, even when they do have a forest management plan, some companies:

- do not respect the obligations stipulated by the terms and conditions of the agreements in favour of the local communities (IM FLEG/REM, 2010, IM-VPA FLEGT/CAGDF, n°11-2015, n°14-2016, n°15-2017, n°001-2017, n°002-2018, n°005-2018, n°006-2019, n°008-2019, n°009-2020 ; AIS FLEGT/SOFRECO, 2018, 2019). The independent auditor even reported a case where obligations toward populations were not implemented on the field but had been recorded as implemented by the forest administration (AIS FLEGT/SOFRECO, Lekoumou-2019). Operators also sometimes entrust the relevant funds with the local authorities, who keep these amounts and do not actually use them for their intended purpose, with no follow-up on the part of the logging operator;
- do not pay into the local development fund, either because the order creating said fund has not yet been published, or because the penalties provided for by the regulations if they do not contribute to the fund are not applied by the forest administration (IM-VPA FLEGT/CAGDF, n°11-2015, n°005-2018 ; AIS FLEGT/SOFRECO, Niari-2018, Lekoumou-2019, DGEF-2019).

Risk Conclusion

This indicator has been evaluated as specified risk for Forests covered by an agreement (CAT and CTI). Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as specified risk for Plantation Timber Promotion Agreement and Permits allocated outside of an agreement (domestic logging permit, plantation timber logging permit, special permit), based on a precautionary approach.

This indicator is not applicable to permits allocated to a local community (Plantation timber logging permit or Special permits) as well as to private forests.

1.13.6. Risk designation and specification

Forests covered by an agreement (CTIs and CATs): Specified risk

Plantation Timber Promotion Agreements and Permits allocated outside of an agreement (domestic logging permit, plantation timber logging permits, special permits): Specified risk based on a precautionary approach

Permits allocated to a local community (Plantation timber logging permits or Special permits) as well as private forests (land title): Not applicable

1.13.7. Control measures and verifiers

Forests covered by an agreement (CTIs and CATs)

(1) Collect the following documents:

- Decree classifying the forest;
- Agreement outlining the socio-economic obligations to be respected for the benefit of the local populations (notably see the specific terms and conditions);
- Documents relating to the implementation of the socio-economic obligations for local development, as provided for in the specific terms and conditions of the agreement;
- If applicable, an order for the creation of the local development fund (FDL) and documents relating to the logging operator's payments into this fund.

(2) Carry out the following checks with the local populations concerned:

- As a precautionary measure, check that the user rights provided for by the regulations, the forest management plan and the decree classifying the forest are freely exercised and that sites and resources of special interest to local communities are not affected by logging;
- That the activities and infrastructure works are properly carried out by the logging operator for the benefit of the communities and/or through the FDL.

Plantation Timber Promotion Agreements and Permits allocated outside of an agreement (domestic logging permit, plantation timber logging permits, special permits)

- Collect and consult the management plan, simplified management plan or simplified management programme depending on the case;
- Verify that customary rights are being respected amongst the local populations concerned.

1.14. Free prior and informed consent

Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 2, 5, 40, 54, 77);

- Law n°5 of 25 February 2011 on the promotion and protection of indigenous populations (Art. 36, 38, 39); Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=88187&p_country=COG&p_count=264 [accessed in September 2019];
- Decree n°6509 of 19 August 2009 laying down the modalities for classifying and declassifying forests;
- Decree n°2019-201 of 12 July 2019 establishing the procedures for the consultation and participation of indigenous populations in socio-economic development projects and programmes.

1.14.2. Legal authority

- Ministry of Forest Economy;
- Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples.

1.14.3. Legally required documents or records

Where indigenous populations are concerned:

- Map of the land and resources of the indigenous populations concerned;
- Report of the consultation procedure carried out with the indigenous populations with a view to obtaining their free, informed and prior consent.

1.14.4. Sources of information

Non-Government sources

- Client Earth (2014). Droit à la participation des communautés locales et populations autochtones à la prise de décisions (République du Congo).

1.14.5. Risk determination

Overview of Legal Requirements

In its definition of joint and participative management, the Forest Code includes the principle of Free, Prior and Informed Consent (FPIC). The forest administration is required to make adequate provisions to ensure participative management of the forests.

In general, local authorities, local communities and indigenous populations must express their free, prior and informed consent to the development, implementation and monitoring of any actions or decisions that affect them in terms of the exploitation and sustainable management of forest resources. In particular, forests can only be classified if consent from the populations concerned is obtained. The modalities for exercising this consent must be detailed by decree of the Council of Ministers (text not yet adopted as of September 2020). The drawing up of forest management plans must also obey the principles of participative management, which therefore includes the notion of FPIC.

Furthermore, the 2011 law on the protection of indigenous populations stipulates that indigenous populations must be properly consulted and that an implementing decree must establish the applicable modalities for consulting and involving said indigenous populations.

This decree was adopted in 2019 and stipulates that indigenous populations must be consulted with a view to obtaining their free and prior consent (Art. 6), led by a consultation committee established by the Ministry of Human Rights for all programmes and projects that could affect the quality of life of the indigenous populations. The decree stipulates the modalities for such consultation (Art. 7 to 9), as well as its various stages, including the creation of a map of all land and resources by the relevant

governmental technical departments (Art. 12). The consultation procedure is validated by way of a report signed by all stakeholders, including the representatives of the indigenous populations (Art. 14).

Description of Risk

The legal framework governing the procedure for obtaining the local population's consent to the allocation of the land and resources within the state-owned permanent forest domain is still very new (texts adopted in 2019 and 2020) and incomplete (implementing texts anticipated but not yet adopted). Consequently, no cases of illegality have been detected or documented. In view of the complexity of effectively implementing the principles of FPIC and the poor forest governance in the Congo, a precautionary approach will be adopted for all classified land within the state-owned permanent forest domain, as well as for forest title granted after July 2019.

Risk Conclusion

This indicator has been evaluated as specified risk for all land classified within the state-owned permanent forest domain after July 2019 and / or all forest titles granted after July 2019 based on a precautionary approach.

1.14.6. Risk designation and specification

Forests under an agreement (CTIs, CATs, Plantation timber promotion agreements) and Domestic logging permits, when the land has been classified within the state-owned permanent forest domain after July 2019 and / or the title has been granted after July 2019: Specified risk based on a precautionary approach.

Plantation timber logging permits, Wood from deforestation operations, Special permits and Private land titles when they have been granted after July 2019: Specified risk based on a precautionary approach.

1.14.7. Control measures and verifiers

(1) Collect the following documents where indigenous populations are concerned:

- Map of the land and resources of the indigenous populations concerned;
- Report of the consultation procedure carried out with the indigenous populations with a view to obtaining their free, informed and prior consent.

(2) Consult the civil society players involved in the protection of the rights of the local communities and indigenous populations on the consent obtainment procedure implemented.

1.15. Indigenous/traditional peoples' rights

Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are right to use certain forest related resources or practice traditional activities, as well as benefit sharing, which may involve forest lands. Land and land management rights related to indigenous/traditional peoples' rights are covered under 1.1.

1.15.1. Applicable laws and regulations

- Law n°21-2018 of 13 June 2018 establishing the rules for occupying and acquiring land (Art. 7 to 16 and 29). Available at: <https://economie.gouv.cg/sites/default/files/L%20n%C2%B021-2018%20du%2013%20juin%202018.pdf> [accessed in September 2019];
- Law n°5-2011 of 25 February 2011 on the promotion and protection of indigenous populations (Art. 2, 3, 7, 9, 10, 13-16, 21, 26, 31-42).

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=88187&p_country=COG&p_count=264 [accessed in September 2019];

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 2, 5, 54, 59, 77, 85, 112);
- Decree n° 2019-200 of 12 July 2019 determining the modalities for protecting the cultural assets, sacred sites and spiritual sites of indigenous populations. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=108797&p_country=COG [accessed in September 2019];
- Decree n°2019-201 of 12 July 2019 establishing the procedures for the consultation and participation of indigenous populations in socio-economic development projects and programmes. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=es&p_isn=108798&p_country=COG [accessed in September 2019].

1.15.2. Legal authority

- Ministry for the promotion of indigenous peoples;
- Ministry of Land Affairs;
- Ministry of Forest Economy.

1.15.3. Legally required documents or records

- Forest management plan;
- Map of the sacred and spiritual sites of the indigenous populations concerned.

1.15.4. Sources of information

Non-Government sources

- FSC (2021). Comment le peuple autochtone BaAka sauve les forêts en République du Congo. Disponible sur : <https://fr.fsc.org/en/node/29105> [accessed in September 2021] ;
- Kistimbou, X. (2020). Evaluation de la situation des populations autochtones au Congo Brazzaville ;
- OCDH (2011). Les peuples autochtones de la République du Congo : discrimination et esclavage ;
- FGDH (2010). Etudes locales sur les droits fonciers des populations forestières au Congo.

1.15.5. Risk determination

Overview of Legal Requirements

The Forest Code gives indigenous populations the same level of protection as local communities affected by the management of forests, notably in their right to manage community forests, exercise their user rights, and to take part in land classification and forest management plan drafting procedures, etc. (see section 1.13).

However, Law n°5-2011 on the promotion and protection of indigenous populations stipulates that the formulation or implementation of legislative or administrative measures, or development programmes/plans that could directly or indirectly affect them require the indigenous populations to be consulted (Art. 3). Their customs and traditional institutions are guaranteed (Art. 13), as are their intellectual property rights over their traditional knowledge (Art. 15). Indigenous populations may

exercise their customary rights and claim compensation for any damages related to the violation of their rights over the land and natural resources (Art. 42). They have a collective and individual right to the ownership, possession, access and use of the land or natural resources that they traditionally occupy or use (Art. 31).

The state facilitates the marking of indigenous peoples' land on the basis of their customary land rights, in order to ensure everyone is aware of it. In the absence of land titles, the indigenous populations retain their pre-existing customary land rights. The indigenous populations' rights over their land are imprescriptible and inalienable, unless they are expropriated in the public interest (Art. 32). In this way, they have the right to define their priorities and strategies for developing, using and controlling their land and other resources (Art. 36).

The indigenous populations must be consulted before any project that has an impact on their land and the resources they traditionally own or use is rolled out (Art. 38). This was translated in July 2019 by the obligation to consult indigenous populations with a view to obtaining their free, informed and prior consent to any project or programme that could affect them (Decree n°2019-201) (see section 1.14).

Furthermore, all projects involving the exploration, exploitation or conservation of the natural resources on their traditional land must be subjected to a prior socio-economic and environmental impact assessment (Art. 35).

Another decree adopted in July 2019 determines the modalities for the protection of the cultural assets and sacred and spiritual sites of indigenous populations (Decree n°2019-200). This decree stipulates that activities involving the exploitation of ecosystems must respect indigenous populations' rights to exercise their rites and customs and to enter their sacred and spiritual sites (Art. 6). After obtaining the indigenous peoples' free, informed and prior consent, (see section 1.14), companies must put together a map of their spiritual and sacred sites (Art. 7).

Measures to provide dispossessed indigenous populations with some form of restitution or compensation are provided for and must be respected by the competent authorities.

It is important to note that indigenous populations are present in the following administrative regions in the Republic of the Congo: Sangha, Likouala and Lekoumou.

Description of Risk

Regarding indigenous populations' consent to the classification and incorporation of the land they use into the state-owned permanent forest domain, there has only been a risk of illegality since the adoption of Decree n°201-2019 (see section 1.14).

Indigenous populations' user rights are guaranteed by the law in the same way as local communities' user rights (see section 1.13) are. The risk that customarily used sites and resources are not identified and preserved is particularly high for unmanaged UFAs (no forest management plan or forest management plan in the process of being drawn up). The environmental and social impact assessments are also often not carried out, making identification of the land and resources mobilised through the exercise of user rights even weaker (see section 1.10). This risk has been even higher since the adoption of Decree n°200-2019, which reinforces the obligation for logging companies to identify indigenous populations' sacred and spiritual sites in order to protect them. The regulations appear to have already stipulated measures to provide dispossessed indigenous populations with some form of restitution or compensation prior to the adoption of this decree. In view of the sensitivity and complex nature of implementing such measures, and the poor level of forest governance in the Congo, a precautionary approach is adopted for the protection of spiritual and sacred sites and restitution or compensation in the event of dispossession.

Risk Conclusion

This indicator has been evaluated as specified risk for all source types, based on a precautionary approach.

1.15.6. Risk designation and specification

All source types: Specified risk based on a precautionary approach

1.15.7. Control measures and verifiers

Free, informed and prior consent to the allocation of land for forest use: see section 1.14.

Environmental and social impact assessment: see section 1.10.

Protection of spiritual and sacred sites and restitution or compensation in the event of deposal :

For forests covered by an agreement allocated after 12 July 2019:

- Obtain the map of spiritual and sacred sites put together by the logging operator;
- Consult the indigenous populations affected on how their spiritual and sacred sites have been respected by the logging operator.

For forests covered by an agreement allocated before 12 July 2019:

- Consult the indigenous populations affected on how their spiritual and sacred sites have been respected;
- If applicable, collect any documents and attestations regarding restitution or compensation received for deposal.

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 69, 86, 87, 90, 121, 130). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];

- Order n°19570/MEFDD/CAB of 10 November 2014 determining the categories of wood products in the Congo.

1.16.2. Legal authority

- Ministry of Forest Economy.

1.16.3. Legally required documents or records

- Annual logging licence;
- Site log books;
- Waybills;
- Monthly and annual production reports.

1.16.4. Sources of information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- IM-VPA FLEGT/CAGDF (2016-2020). Field missions reports n°14, n°15, n°004, n°005, n°008, n°009. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM-FLEG/REM-CAGDF (2013). Field mission report n°010. Analyse du dispositif de contrôle le long des parcours d'évacuation des produits ligneux et du système de gestion des feuilles de route. Available at: http://www.rem.org.uk/documents/OI_II_Rapport_010.pdf [accessed in September 2021] ;
- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016].

1.16.5. Risk determination

Overview of Legal Requirements

The annual logging licence specifies the species and provisional volume that a logging operator has the right to harvest (for example, 5 Okoumé trees at a volume of 5m³ per tree, i.e. 25m³ in total) (Decree n°2002-437, Art. 69). For each allowable cut, the logger records the information for each tree felled in a site log book, including the name of the species and its dimensions (Decree n°2002-437, Art. 87). The volume of each log produced from the tree is calculated, to ensure that the authorised quantities are respected (Decree n°2002-437, Art. 69).

When the wood is transported from the logging area to the processing unit or export location, it is accompanied by a waybill that contains information on: number of logs, species, volumes and quality of the products. The waybill must have no deletions or alterations, and must be finalised and signed by the shipper of the products (Art. 121). It also mentions: the logging title details, the origin and destination of the products, the shipping date, the names and surnames of the driver, the details of the vehicle, and the nature, numbers, species, unit volumes and quality of the products.

The logging operator is obliged to provide the departmental directorate of the district in which the concession is located with a monthly production statement for the month just ended, and, at the end of

the year (before 15 January), an annual summary statement, indicating the volume of boles, the volume of logs, the volume of stock and the volume delivered for each species, in line with its destination (processing plant or export) (Decree n°2002-437, Art. 90).

Forest plantation owners must also submit a monthly report of harvested products to the forest administration, in line with the form provided for by the applicable regulations.

Furthermore, wood processing companies must also keep records of wood coming into the plant, as well as the volumes produced and in stock. They must produce monthly and annual summaries, which are sent to the administration.

Finally, the regulations define three categories of wood - heavy, medium and light - in line with the species and its green wood density. These categories are referred to when calculating felling and export taxes (see sections 1.5 and 1.19).

Description of Risk

The risk of false declarations being made on waybills (concerning the origin of the wood, the species or the diameters and volumes) is high (IM-VPA FLEGT/CAGDF, n°14-2016, n°15-2017, n°004-2018, n°005-2018, n°008-2019, n°009-2019).

The volumes produced and the area from which the wood originates has an effect on the felling tax: the smaller the volume and the further away the logging site, the lower the tax (see section 1.5). Failure to respect the forest management plan and the annual logging licence may also be concealed by false declarations made on the wood transportation documents (notably concerning species). The risk is particularly high for some species such as Padauk, Iroko, Ebiara, Doussié, Sifou-Sifou and Essia, etc. (Experts consultation, 2019)

This risk is also linked to the lack of coordination between the various services established along the route that the timber takes from where it is harvested to the export location. The Congolese administration is indeed decentralised, but its departments are still compartmentalised. The wood can pass through several regions whose authorities do not have real-time access to all the data collected by the departments in which the wood has been felled. In other words, if the wood is felled fraudulently or not declared to the local department where it was felled (to avoid paying tax, for example), no other department along the route will be able to discover this information instantly. Furthermore, during its field mission, the Independent Monitor noted the absence of on-site logging company checks conducted by the Ministry of Forest Economy officers due to a lack of resources (IM-VPA FLEGT/CAGDF).

In addition to making false declarations on their wood transport documents, companies have also been found to make alterations to the markings made on the transported logs, notably when the wood is unloaded and stored in break bulk yards located along the trade route. For example, when exporting timber, a company could claim that wood harvested in a forest unit in Lékoumou comes from a different logging zone located in Niari by falsifying the marks of one of its axes and the tax area marked on the logs in order to pay less felling tax (IM-FLEG/REM-CAGDF, n°10-2013).

Risk Conclusion

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.16.6. Risk designation and specification

All source types: Specified risk

1.16.7. Control measures and verifiers

(1) Collect the following documents and verify their coherence:

- Site log books;
- Waybills;
- Production reports;
- Specification sheets.

(2) Carry out the following field checks:

- That all logs produced from one single tree are correctly marked;
- That the markings have not been altered during transport.

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- Law n°011/-2020 of 8 July 2020 on the Forest Code (Art. 2, 62, 63, 64 and 67) ;
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 121-123, 127, 134). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019].

1.17.2. Legal authority

- Ministry of Forest Economy;
- Ministry of Trade.

1.17.3. Legally required documents or records

- Waybills;
- Specifications.

1.17.4. Sources of information

Non-Government sources

- IM-VPA FLEGT/CAGDF (2016-2020). Field missions reports n°14, n°15, n°001, n°003, n°004, n°006, n°007, n°008, n°009. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- AIS FLEGT/SOFRECO (2019). Rapports d'audit des départements Lekoumou, Cuvette Ouest et Sangha. Audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at:

<http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];

- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016];
- IM-FLEG/REM-CAGDF (2013). Field mission report n°010. Analyse du dispositif de contrôle le long des parcours d'évacuation des produits ligneux et du système de gestion des feuilles de route. Available at: http://www.rem.org.uk/documents/OI_II_Rapport_010.pdf [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2009). Evolution du contrôle de la mise en application de la loi forestière et de la gouvernance (OI-FLEG). Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021].

1.17.5. Risk determination

Overview of Legal Requirements

In natural forests, the operators keep a field logbook which must contain information on each tree felled, the date of felling, the number, the species and the dimensions. In addition, stumps and logs are also marked with the operator's hammer.

Every movement of forest products (including plantation timber) is accompanied by a numbered waybill produced in four copies. The waybill must not contain any erasures or overwriting and must be signed by the sender. The waybill must be presented to the station or port master for any transport by rail or waterway. Night transport of logs and sawn timber by road is prohibited. For special permits, however, the allocation decision is used instead of the waybill: it is used to record information on the back about the transport of forest products.

The field logbooks and the stubs of the waybill books are submitted to the forest administration at the end of each quarter for verification.

Every operator must provide, each month, a production statement for the past month indicating by species the volume of trees felled, the volume of logs, stocks and volumes delivered, indicating their destination. At the end of the year, an annual summary is provided. Forest plantation owners must also submit a monthly statement of harvested products to the forestry administration, in accordance with the form provided for in the regulations. In addition, wood processing companies also keep records of factory inputs and volumes produced and in stock. They produce monthly and annual summaries, which are transmitted to the administration.

In addition, the Forest Code provides for the implementation of a system to verify the legality of forest operators and forest products to ensure compliance with forest legality and the monitoring of timber and forest product supply chains from the forest to the point of export, as well as compliance with procedures for issuing and issuing permits. This system includes a computerised component to track timber from its origin of harvest to its export or sale at national level. Also, every forest product is recorded at each stage of its control in the computerised legality verification system.

Finally, anyone purchasing wood must ensure that their supplier has a valid logging title. They may be declared jointly and severally liable in the event that the timber is discovered to have been harvested fraudulently.

Description of Risk

The Independent Monitor has regularly reported on inadequate keeping of field logbooks (IM FLEG/REM, 2009 ; IM-VPA FLEGT/CAGDF, n°14-2016, n°15-2017, n°001-2017, n°003-2018, n°004-2018) as well

as on the failure to hand over field logbooks and waybills to the forest administration in time every quarter (IM FLEG/REM, 2009 ; IM-VPA FLEGT/CAGDF, n°006-2019, n°007-2019, n°008-2019, n°009-2020 ; AIS FLEGT/SOFRECO Lekoumou-2019).

There is also a risk that logging companies use irregular waybills or transport timber without waybills (IM FLEG/REM, 2009).

Very few data analyses are conducted on the waybills after they have been used. This is caused in particular by persistent weaknesses in the process used by companies to hand over waybills to the administration, as well as by archiving issues when waybills are effectively handed over to the administration (IM FLEG/REM-CAGDF, 2013).

Risk Conclusion

This indicator has been evaluated as specified risk for all source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.17.6. Risk designation and specification

All source types: Specified risk

1.17.7. Control measures and verifiers

Collect any document (letter, email, receipt...) showing that field log books and waybills are handed over to the forest administration.

Collect the waybills related to the purchased wood, ensure coherence between the information contained therein with the purchased wood, and ensure authenticity of the information with the forest administration.

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.

1.18.1. Applicable laws and regulations

- Ordinance-Law n°69/009 of 10 February 1969 on schedular taxes on income as amended by subsequent texts (General Tax Code);
- Law n°6-2003 of 18 January 2003 on the investment charter (art.3);
- Regulation n°02/18/CEMAC/UMAC/CM on exchange control in the CEMAC (Art. 55, 56);
- Interministerial Order n°461 of 19 February 2003 on the use of the national monitoring system for forest products for export (Art. 15).

1.18.2. Legal authority

- Ministry of Finance.

1.18.3. Legally required documents or records

- The company's tax and statistical declarations;
- Record of financial transactions.

1.18.4. Sources of information

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at: <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019].
- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016];
- Greenpeace (2008). Arnaque au Congo. Available at: https://cdn.greenpeace.fr/site/uploads/2017/02/arnaques-au-congo.pdf?_ga=2.121217416.1821169055.1493725511-1269991556.1493725511 [accessed in January 2017];
- Smith, W. (2002). Le problème mondial de l'exploitation forestière illégale. ITTO – OIBT. Actualités des forêts tropicales 10/1. Available at: http://www.itto.int/direct/topics/topics_pdf_download/topics_id=1570000&no=2 [accessed in September 2019].

1.18.5. Risk determination

Overview of Legal Requirements

Corporate income tax in the Congo stands at 30%.

All profits indirectly transferred by increasing or decreasing the purchase or sale price must be taken into consideration in the company's balance sheet for the purpose of calculating corporate income tax for companies controlled by other companies located outside of the Congo, that own companies outside of the Congo, or that are controlled by a group that owns other companies abroad. The law provides precise details of all actions that constitute "abnormal management" or *actes anormaux de gestion*: the amounts corresponding to these actions must be factored into the company's corporate income tax calculation.

Where the transfer is conducted with companies established in a territory that offers preferential tax treatment or in a country that is non-cooperative on a tax level, the above applies even if there is no relationship of dependency or control. Benefits or support allocated to companies belonging to the same group are only deemed to fall under "normal management" if the company granting them demonstrates that doing so is in its own interest. The general interest of the group is not sufficient by itself to justify such practices.

Description of Risk

The vast majority of logging companies in the Congo are foreign-owned, which exacerbates the risk of tax evasion.

A major case of transfer price manipulation (or mispricing) was highlighted in 2019 by NGO EIA on transactions completed between 2013 and 2016 by one timber exporter (EIA, 2019).

The procedure involves Congolese companies under-billing the value of the wood and derived products that they sell to subsidiaries located abroad, particularly in countries with low corporate tax rates (in the case of the investigation conducted by EIA, the offshore subsidiaries were located in Hong Kong). This leads to a seemingly low sales price and therefore low profits, and consequently lower corporate tax in the Congo (where corporate income tax stands at 30%). The subsidiaries then resell the same products to the end consumers at the market price. The majority of apparent profits are therefore generated by subsidiaries located abroad, despite these companies only acting as a transactional intermediary, since products are generally shipped directly from the Congo Basin to the end customer.

Through this financial operation, a large proportion of the company's profits are therefore diverted away from its home tax jurisdiction, and the amount of tax that it would have had to pay in this country is fraudulently expatriated. EAI estimated the loss for Congolese and Gabonese governments at between 3 and 6.7 million dollars between 2013 and 2016, and this only takes into consideration the case on which it conducted an in-depth investigation.

Risk Conclusion

This indicator has been evaluated as specified risk for all source types where timber can be exported. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator is not applicable to timber from Domestic logging permits and Special permits as it cannot be exported.

1.18.6. Risk designation and specification

All source types (except Domestic logging permits and Special permits): Specified risk

Domestic logging permits and Special permits: Not applicable

1.18.7. Control measures and verifiers

(1) Collect the following documents:

- *Attestation de moralité fiscale* (declaration of "taxpayer morality") issued by the tax administration

(2) Carry out the following checks:

- The precise identity of the entity declared as the exporter of the wood coming from the Congo (the entity must actually be registered in the Congo);
- The geographical location of the first importer of the wood coming from the Congo (special attention should be paid to countries that are considered tax havens or that have very low income tax rates), as well as whether it is a subsidiary of the exporter;
- The prices stated on the invoice issued between the exporter and importer (they must correspond to market prices).

1.19. Custom regulations

Custom legislation covering areas such as export/import licenses, export bans, product classification (codes, quantities, qualities and species).

1.19.1. Applicable laws and regulations

- Ordinance-Law n°10/002 of 20 August 2010 on the Customs Code (Art. 111, 112, 113, 129, 133, 138, 140, 141);
- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 2, 97, 145, 146, 147, 148);
- Law n°3-2007 of 24 January 2007 regulating imports, exports and re-exports (Art. 5, 6, 7, 10, 13, 14, 15, 16, 18, 19, 20);
- Law n°16-2013 on the creation of a single window for transborder transactions (Art. 1 and 4), available at:
<https://economie.gouv.cg/sites/default/files/Documentation/Lois/2013/L%20n%C2%AF16-2013%20du%2019%20juillet%202013.pdf> [accessed in September 2019];
- CEMAC Code (Section 2, Art. 112). Available at: https://www.a-mla.org/images/acts/Code_Douanes_CEMAC.pdf.pdf [accessed in September 2019];
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 127, 128, 129, 135). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];
- Order n°461 of 19 February 2003 on the creation of the national monitoring system for forest products for export;
- Order n°5845 of 4 August 2010 introducing a verification declaration for forest product exports;
- Order n°23444/MEFPPI/MEFDD of 31 December 2014 establishing the FOT values for the calculation of the felling tax and wood export tax.

1.19.2. Legal authority

- Customs administration;
- Forest products export control service (SCPFE).

1.19.3. Legally required documents or records

- Logger, forest industry company or exporter professional accreditation;
- Specification sheets stamped by the forest administration;
- Export verification declaration;
- Document certifying payment of export taxes;
- Certificate of origin;
- Phytosanitary certificate;
- Export declaration;
- Bon à enlever or bon à embarquer (clearance document).

1.19.4. Sources of information

Government sources

- Reports from the commercial operations and surveillance departments;
- Reports from the forest products export control service (SCPFE).

Non-Government sources

- FAO database. Timber-Lex - Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed in September 2021];
- Mabilia, L. (2020). Analytical note – L’empire de la loi n°33-2020 du 8 juillet 2020 portant Code forestier et ses implications – Le nouveau régime d’exportation des produits forestier en République du Congo;
- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at: <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
- IM-VPA FLEGT/ CAGDF (2017). Etat des lieux de l'application de la loi forestière et de la gouvernance en République du Congo de 2013 à 2016. Available at: http://www.apvflegtcongo.com/images/pdf/rapport_bilan_oi_fleg.pdf [accessed in September 2021] ;
- IM-VPA FLEGT/CAGDF (2016). Analytical Note n°10/CAGDF. Analyse sur l’exportation des bois en grumes en République du Congo. Available at: <http://loggingoff.info/wp-content/uploads/2016/12/Note-danalyse-n10-CAGDF-bois-grume-Congo.pdf> [accessed in September 2021];
- Lawson, S. (2014). Illegal logging in the Republic of Congo. Chatham House. Available at: http://indicators.chathamhouse.org/sites/files/reports/Lawson_Republic_of_Congo_PP_2014.pdf [Accessed in December 2016];
- Wafwana, E.M., Matschinga, S.L. (2013). Forest legislation in the Republic of the Congo. Available at: <https://www.lexology.com/library/detail.aspx?g=89e1d7c4-97fa-4c53-ad9c-418607c94226> [accessed in September 2021].

1.19.5. Risk determination

Overview of Legal Requirements

Exporter accreditation

To conduct activities as an exporter and/or importer of wood and derived products and other forest products, all natural or legal persons must first obtain an accreditation from the Ministry of Trade, subject to approval from the Ministry of Forest Economy. Note: forest concessionaires are automatically registered as exporters (Decree n°2002-437, Art. 127).

Export procedure

In general, all export operations must be declared and monitored by the competent departments. The single window for cross-border operations is the public institution responsible for facilitating all administrative, commercial and customs procedures.

The exporter initially prepares a specification sheet detailing the product references, the name of the permit holder and their tax category (Decree n°2002-437, Art. 135). This is stamped by the decentralised administration of water and forests, and is then submitted to the SCPFE, which reports to the Ministry of Forests.

The SCPFE conducts physical checks on the products for export and compares them with the information on the specification sheet, the relevant logging title, the FOB prices, and the quantities of wood produced by the logging operator (notably for wood exported in logs). Based on these checks, the SCPFE issues the export verification declaration (*attestation de vérification à l'export*, AVE). This document is mandatory (Order n°461, Art. 2 and 12) and also determines the amount of export tax due.

At the same time, the exporter must obtain a certificate of origin from the chamber of commerce and industry and a phytosanitary certificate from the agriculture administration.

The freight forwarder, which must be approved by the CEMAC, then provides the customs authorities with a set of documents, notably including the specification sheet, the AVE, the certificate of origin, the phytosanitary certificate and the commercial invoice. Proof that the customs taxes have been safely received by a banking institution must also be provided. A clearance document (*bon à enlever* or *bon à embarquer*) is then issued by the customs authority.

At the end of the procedure, the foreign trade administration issues a certificate of conformity that authorises the wood for embarkation (Law n°40-2018, Art. 42).

Export taxes

Wood exported from the Congo is not subject to value added tax (VAT).

However, an export tax must be paid. This is calculated based on the information provided on the AVE by the SCPFE (Art. 89 (new) of Law n°14-2009 and Order n°23444/MEFPPPI/MEFDD). The amount due in export tax depends on the quantities exported, the production areas and the FOT value of the exported wood (Art. 98 (new) of Law n°14-2009). Export tax is between 9% and 10% for logs and 0% and 4% for processed products.

The SCPFE also takes a fee equal to 1% of the FOB value of the exported forest products to fund its own work (Art. 18 of Decree n°2002-436 and Art. 135, paragraph 2 of Decree n°2002-437).

The export declaration and certificate of conformity are also subject to payment of administrative fees in application of the laws on fees for administrative and commercial services and formalities.

Exporting wood in logs

As of 2020, the Forest Code stipulates that exports primarily concern processed wood and heavy hardwood logs that require specific technology to be machined.

Between 2009 and 2020 (under the previous Forest Code), companies were permitted to export up to 15% of their production in the form of logs upon authorisation from the forest administration, and were therefore required to process 85% of their wood locally. Companies who had not processed 85% of their wood locally could purchase quotas from companies who had processed more than 85%. The 15% export limit was verified at national level.

Description of Risk

Export procedures and taxes

Poor application of FOB and FOT values in the calculation of export taxes and fees is a risk (IM-VPA FLEGT/CAGDF, 2017). Indeed, in line with the species and tax areas established by the applicable

regulations, poor indexation of FOB and FOT values can lead to a shortfall in the collection of payable taxes and fees.

Furthermore, for various different reasons, the customs authority may authorise embarkation in exceptional circumstances (*Autorisation d'Enlèvement à titre Exceptionnel*, AETEX) without the regulatory procedure in terms of the applicable formalities for exporting forest products having been respected. The actual taxes and fees payable are therefore skewed. Some companies also obtain waivers from the customs authorities for payment of forest product export taxes. These waivers are illegal, unless they are stipulated in advance in the establishing agreements between said companies and the Ministry of Finance, which may provide these benefits in order to facilitate the establishment of companies in the Congo. (Experts consultation, 2019)

Exporting wood in logs

The Independent Monitor has reported on several occasions on (IM-VPA FLEGT/CAGDF, 2016, 2017):

- the issuance of log export permits by the Director General of Water and Forests, despite the fact that the law stipulates that only the Ministry is authorised to issue them;
- cases of AVEs being issued without a log export permit having been issued;
- the issuance of log export permits with a higher volume than the actual yearly production capacity.

Furthermore, numerous cases of illegality have been documented in terms of lack of compliance with the former regulations on log export quotas (IM-VPA FLEGT/CAGDF, 2016).

The 2019 EIA survey notably revealed that several companies part of a major group have exported more than 100,000 logs from the Republic of the Congo, exceeding their log export quota by 80 million dollars between 2013 and 2016. These companies almost inverted the processing quota, exporting almost 90% of their production in the form of logs, firstly benefiting from a waiver from the Ministry of Water and Forests on up to 40% of their production (the legality of which is questionable), and also likely benefiting from special favours from the customs authorities and the forest administration (including the SCPFE, which is responsible for ensuring that the log export quotas are respected).

The new system, which is no longer based on processing quotas, but on a distinction between whether the machinery required to carry out the initial processing of the wood is located in the Congo or not, has not yet been proven or documented. In view of the gravity of the illegality documented in relation to the old regulation, a cautious approach will be adopted.

Risk Conclusion

This indicator has been evaluated as specified risk for all source types where timber can be exported. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator is not applicable to timber from Domestic logging permits and Special permits as it cannot be exported.

1.19.6. Risk designation and specification

All source types (except Domestic logging permits and Special permits): Specified risk

Domestic logging permits and Special permits: Not applicable

1.19.7. Control measures and verifiers

(1) Collect the following documents:

- Logger, forest industry company or exporter professional accreditation;
- Specification sheets stamped by the forest administration;
- Export verification declaration (AVE);
- Document certifying payment of export taxes;
- Certificate of origin;
- Phytosanitary certificate;
- Export declaration.

(2) Carry out the following checks:

- That the FOB and FOT values indicated in the specifications are compliant with those in the export verification declaration (AVE);
- That the characteristics of the forest products stated on the export declarations are coherent with those stated in the specifications, AVEs and sales documents;
- If applicable, that the exported logs are heavy hardwood species that require specific technology to be machined.

(3) If applicable, consult the forest administration to verify that current log export requirements are complied with.

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- Law n°3-2007 of 24 January 2007 regulating imports, exports and re-exports (Art. 12, 14, 15, 16, 18, 20). Available at: <https://economie.gouv.cg/sites/default/files/Documentation/Lois/2007/Loi%20n%C2%AF%203-2007%20du%2024%20janvier%202007.pdf> [accessed in September 2019];
- Law n°34-82 of 7 July 1982 authorising the ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- Law n°3-2007 of 24 January 2007 regulating imports, exports and re-exports.

1.20.2. Legal authority

- Ministry of Forest Economy (competent CITES authority);
- Ministry of Trade;
- Ministry of Finance (customs).

1.20.3. Legally required documents or records

- Forest management plan;
- Annual logging licence;
- CITES export permit.

1.20.4. Sources of information

Non-Government sources

- Ministère du Développement Durable de l'Economie Forestière et de l'Environnement (2010). Projet OIBT/CITES/UE « Inventaire de *Pericopsis elata* (Afromosia) dans une forêt de production au Congo en vue de sa gestion durable ». Rapport sur le dispositif réglementaire. Available at: https://cites.org/sites/default/files/ndf_material/Compliance%20gaps%20between%20the%20CITES%20and%20the%20national%20policy%20on%20Pericopsis%20elata.pdf [accessed in September 2021] ;
- Ministère du Développement Durable de l'Economie Forestière et de l'Environnement (2010). Projet OIBT/CITES/UE « Inventaire de *Pericopsis elata* (Afromosia) dans une forêt de production au Congo en vue de sa gestion durable ». Avis de commerce non préjudiciable de *Pericopsis elata*. Available at: https://cites.org/sites/default/files/ndf_material/Rapport%20du%20Congo-Projet%20Afromosia%20Avis%20de%20Commerce%20Non%20Pr%C3%A9judiciable.pdf [accessed in September 2021].

Non-Government sources

- IM-VPA FLEGT/CAGDF (2017). Field mission report n°001. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021] ;
- Forest Legality Initiative (2014). Risk Tool - Republic of Congo. Available at: <http://www.forestlegality.org/risk-tool/country/republic-congo#tab-management> [accessed in December 2016].

1.20.5. Risk determination

Overview of Legal Requirements

The Congo is a party to the CITES Convention. The Forest Code stipulates that products for export must comply with the CITES standards in force.

The harvesting of CITES species is not prohibited in itself. However, like for all felled species, they must be defined as harvestable in the forest management plan and must be stated on the annual logging licence drawn up in line with the harvesting inventory data.

On the other hand, Law n°3-2007 of 24 January 2007 regulating imports, exports and re-exports stipulates that goods and services subject to a duly substantiated restriction must obtain a special export permit (Art. 15 of Law n°3-2007).

The regulations do not provide any more details on the procedure for obtaining the CITES export permit from the management body, as the Convention so requires (these procedures only exist at an administrative level).

Description of Risk

Two timber species in the Congo are included in the CITES annexes:

- *Pericopsis elata* (commonly known as Yellow Satinwood, African teak, Assamela or Afromosia), which has been severely over-harvested (Annex II, containing a list of all products including sawn wood, veneer sheets, plywood and extracts);
- *Prunus africana* (African plum, red stinkwood or kanda stick) (Annex II).

The Independent Monitor has reported on Afrormosia logging when the species was not mentioned on the logging licence (IM-VPA FLEGT/CAGDF, n°001-2017).

However, experts agree to consider that illegal trade in plant species included in the CITES annexes is rare since the export control body (SCPFE) possesses the annual logging licences of all companies. Any CITES species that does not have a permit and/or is declared under another name would be easily recognised (Experts consultation, 2019).

Risk Conclusion

This indicator has been evaluated as low risk for all source types. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.20.6. Risk designation and specification

All source types: Low risk

1.20.7. Control measures and verifiers

Collect the CITES permit if applicable.

1.21. Legislation requiring due diligence/due care procedures

Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.

1.21.1. Applicable laws and regulations

N/A. There is no legislative framework relating to due diligence.

1.21.2. Legal authority

N/A.

1.21.3. Legally required documents or records

N/A.

1.21.4. Sources of information

N/A.

1.21.5. Risk determination

N/A.

1.21.6. Risk designation and specification

N/A.

1.21.7. Control measures and verifiers

N/A.

1.22. Legal Registration of business

Legislation regulating the registration of business and approval of scope of business and processing. The risk is that companies are operating without being in conformance with legal requirements with regards to legal obligations on business registration (business/sawmill license, operation visas, tax payment cards, approvals, etc.).

1.22.1. Applicable laws and regulations

- Law n°003/91 of 23 April 1991 on environmental protection (Art. 39, 40, 41, 42, 43, 144, 46, 47);
- Law n°9-2015 of 18 July 2015 on the organisation of industrial activities (Art. 1 to 14). Available at: <https://economie.gouv.cg/sites/default/files/Documentation/Lois/2015/L%20n%C2%AF9-2015%20du%2018%20juillet%202015.pdf> [accessed in September 2019];
- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 99);
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 114 and 115). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019];
- Order n°1450 MIME DGE of 1999 on the application of certain provisions on the installations classified by Law n°003-91 on environmental protection.

1.22.2. Legal authority

- Ministry of Industry;
- Ministry of Forest Economy.

1.22.3. Legally required documents or records

- Licence to carry out industrial activities;
- Industrial operator professional identity card;
- If applicable, an accreditation from the Ministry of Forest Economy.

1.22.4. Sources of information

Non-Government sources

- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021].

1.22.5. Risk determination

Overview of Legal Requirements

Wood processing installations are subject to the legislation on industrial units and the legislation regulating forestry professions.

The conditions under which a wood processing plant is set up must be compliant with the regulatory provisions on industrial activities. As such, plants and workshops that may present dangers or disadvantages to health and safety are split into two categories: category 1 installations, which present serious dangers or disadvantages and are subject to an installation licence, issued only if measures to prevent such dangers or disadvantages are taken (the licence may establish special requirements relating to the management and exploitation of the installation), and category 2 installations, which do not present any serious dangers or disadvantages and are subject to a written declaration approved by the Ministry of Environment.

Installations in the forest sector that fall under category 1 are:

- wood peeling plants;
- industrial joineries;
- pulp manufacturing units;
- sawmills.

Installations that fall under category 2 are:

- wood charcoal production units;
- wood impregnation plants;
- mechanical joineries;
- timber yards;
- warehouses storing planks and other sawn wood products.

In contrast, setting up a timber processing industry that is not integrated into forestry practice requires prior approval from the Ministry of Forest Economy (Art. 114 and 115 of Decree n°2002-437).

Description of Risk

The level of monitoring exercised by the industry administration over the processing units is weak, primarily due to the distance between the processing sites and the authorities' lack of capacity.

The risk is that logging companies set up their processing units without obtaining the necessary licences from the Ministry of Industry. The Independent Auditor (AIS) notably mentioned a report from the forest administration not mentioning significant recent installations (AIS FLEGT/SOFRECO, DGEF-2019).

Risk Conclusion

This indicator has been evaluated as Specified risk for all source types, based on a precautionary approach.

1.22.6. Risk designation and specification

All source types: Specified risk based on a precautionary approach

1.22.7. Control measures and verifiers

Collect the following documents:

- Licence to carry out industrial activities issued by the Ministry of Industry or an approved written declaration, depending on the case.

1.23. Environmental requirements for processing

Legislation regulating environmental requirements for the timber processing industry, such as air quality, water and waste-water management, use of chemicals, and other requirements relevant for the environment and eco-system services.

1.23.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 99);
- Law n°003/91 of 23 April 1991 on environmental protection (Art. 2, 6, 10, 11, 15, 18, 19, 21-24, 27-29, 32, 34-38, 41, 49). Available at: http://www.polymtl.ca/pub/sites/eie/docs/documents/Congobrazzaville_fin.pdf [accessed in September 2019];
- Decree n°2009-415 of 20 November 2009 establishing the scope of application, the content and the procedures for the environmental and social impact assessment and notice (Art. 2 to 5, 7 to 12 and 20 to 21). Available at: <https://www.documents.clientearth.org/wp-content/uploads/library/2009-11-20-decret-2009-415-%E2%80%93-sur-le-champ-d%E2%80%99application-contenu-et-procedures-de-l%E2%80%99etude-et-de-la-notice-d%E2%80%99impact-environnemental-et-social-ext-fr.pdf> [accessed in September 2019];
- Order n°835/MIME/DGE of 6 September 1999 establishing the accreditation conditions for the performance of environmental impact assessments or evaluations in the Republic of the Congo, Articles 2-5;
- Order n°3196 of 14 July 2008 providing a nomenclature of the installations classified by Law n°003-91 of 23 April 1991 on environmental protection, annex;
- Circular n°301 of 13 February 2018 for the attention of managing directors of logging companies;
- Circular n°613 of 24 April 2017 establishing the conditions for managing all types of waste within national territory.

1.23.2. Legal authority

- Ministry of the Environment

1.23.3. Legally required documents or records

- If applicable, environmental and social impact assessment report and its environmental and social management plan.

1.23.4. Sources of information

Non-Government sources

- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- Wafwana, E.M., Matschinga, S.L. (2013). Forest legislation in the Republic of the Congo. Available at: <https://www.lexology.com/library/detail.aspx?g=89e1d7c4-97fa-4c53-ad9c-418607c94226> [accessed in September 2021].

1.23.5. Risk determination

Overview of Legal Requirements

Wood processing plants must respect the environmental protection measures imposed by Law n°003/91, which concern the protection of fauna and flora (Art. 11-20), the atmosphere (Art. 21-27), water (Art. 28-33) and soil (Art. 34-38).

Law n°003/91 notably requires anyone who produces or possesses waste under conditions that could harm human health or the environment to dispose of such waste (Art. 49). All dangerous industrial waste or similar must be disposed of accordingly at sites or facilities approved by the environment administration (Art. 54). Circular n°613 lists all waste deemed dangerous in annex 1.

Furthermore, all economic development projects in the Republic of the Congo are subjected to an environmental impact assessment (Art. 2 of Law n°003/91), which gives rise to an environmental and social management plan. Decree n°2009-415 of 20 November 2009 establishes the scope of application (Art. 7-9), the content (Art. 10-13) and the procedures for the environmental and social impact assessment (Art. 14-22). It notably divides activities into three categories (A, B and C), each subject to a different regime, and subjects the reports and notices produced to validation by a technical committee established by Order of the Ministry of Environment (Art. 39). The environmental and social management plan is followed up during the environment administration's inspections, or by a competent department enlisted by said administration (Art. 44-46). For category A installations, the impact assessment is preceded by a public inquiry (Art. 16).

Industrial peeling installations and installations that include a thermal power plant (for example to dry out the wood) with a capacity greater than 32.5 MW are explicitly listed in the annex of Order n°3190 as category A installations. They are therefore subjected to an environmental and social impact assessment. However, there is a legal grey area in terms of the obligations of sawmills, mechanical workshops, dryers, etc. that are not explicitly listed.

Circular note n°301 issued by the Ministry of Forest Economy in February 2019 reminds managing directors of logging companies of the need for installations in the process of being established to be subjected to an environmental and social impact assessment or notice, and for those that are already up and running to be subjected to an environmental audit. However, this note does not explicitly state which operations are subject to this requirement.

Description of Risk

Waste management

The Independent Auditor (AIS) reported poor implementation of the regulatory requirements regarding waste management by companies in the forestry sector (AIS FLEGT/SOFRECO, 2018, 2019).

Environmental and social impact assessments

For timber peeling units and those with powerful thermal power stations, there is a risk that the obligatory environmental and social impact assessment is not conducted (Experts consultation, 2019).

For other processing units, the risk lies in the lack of clarity of the applicable legal texts.

Risk Conclusion

This indicator has been evaluated as specified risk for all source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.23.6. Risk designation and specification

All source types: Specified risk

1.23.7. Control measures and verifiers

(1) Collect the following documents:

- Any document relating to the processing units' internal procedures regarding the waste management system (collection, sorting, storage, transport, processing) in place;
- For peeling units and units that contain wood kilns: the environmental and social impact assessment approved by the competent authority and accompanied by the environmental and social impact plan.

(2) Carry out the following checks on the ground:

- That the logging operator is effectively implementing a waste management system (collection, sorting, storage, transport, processing);
- If applicable, that the environmental and social management plan is being implemented.

1.24. Processing requirements

Legislation regulation processing of the timber processing industry, such as transformation process thresholds, location of processing, conformance of processing equipment, processing quota, etc).

1.24.1. Applicable laws and regulations

- Law n°33-2020 of 8 July 2020 on the Forest Code (Art. 97, 98, 99, 100, 128, 258);
- Decree n°2002-437 establishing the conditions for the management and use of forests (Art. 114, 115, 116, 117, 118, 119, 120). Available at: <http://www.documents.clientearth.org/library/download-info/decret-2002-437-conditions-de-gestion-et-dutilisation-des-forets/> [accessed in September 2019].

1.24.2. Legal authority

- Ministry of Forest Economy.

1.24.3. Legally required documents or records

- Management and processing agreement and the related terms and conditions.

1.24.4. Sources of information

Non-Government sources

- Environmental Investigation Agency (EIA) (2019). Toxic Trade: Forest Crime in Gabon and the Republic of Congo and Contamination of the US Market. Available at <https://eia-global.org/reports/20190325-toxic-trade> [accessed in July 2019];
- AIS FLEGT/SOFRECO (2018, 2019). Rapports d'audits indépendants du système de vérification de la légalité du système FLEGT en République du Congo. Available at:

<http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];

- IM-VPA FLEGT/CAGDF (2017-2019). Field mission reports n°005, n°007. Available at: <http://www.apvflegtcongo.com/index.php/telechargements?showall=1> [accessed in September 2021];
- IM FLEG/Resource Extraction Monitoring (2009). Evolution du contrôle de la mise en application de la loi forestière et de la gouvernance (OI-FLEG). Available at: <https://rem.org.uk/report/brazza/> [accessed in September 2021].

1.24.5. Risk determination

Overview of Legal Requirements

The 2020 Forest Code stipulates that forest products originating from natural or planted forests are predominantly processed within national territory. Only heavy hardwood that requires specific technology to be machined may be exported.

Logging titles therefore cover both the felling and processing of the wood produced (management and processing agreement). Logging companies are required to set up a processing unit within a maximum of 3 years from the adoption of the Forest Code (i.e. by 2023) or following their creation. During this period, the logs shall be processed at their on-site sawmills or sold to local timber processing companies. The plants carrying out the initial processing of the wood must be located as close to the logging site as possible, and the wood processing units must be set up for both horizontal and vertical use. Companies must keep records of all wood entering the plants, alongside production records in accordance with the templates provided for by the applicable regulations. They must draw up monthly and annual summaries. Logging companies must optimise their wood processing processes and recycle wood residue, and the categories and volumes of residue must be communicated to the forest administration.

These requirements are stipulated in the terms and conditions of the agreements concluded between the operators and the state and approved by ministerial orders, which describe in detail the investments that the company must make, including into the processing units.

Description of Risk

Processing unit investment requirements

There is a high risk that the companies do not respect their commitments regarding the processing unit investments stipulated by the law and by their respective agreements. The Independent Monitor and Independent Auditor (AIS) notably documented failure to meet obligations of industrial transformation units by forest operators and the lack of monitoring of these questions by the forest administration (IM-VPA FLEGT/CAGDF, n°007-2019 ; AIS FLEGT/SOFRECO, Niari-2019).

On the other hand, there is also a systematic failure to send summaries of production statements and annual statements to the forestry administration (IM FLEG/REM, 2009, IM-VPA FLEGT/CAGDF, n°005-2017, AIS FLEGT/SOFRECO DGEF-2019).

Risk Conclusion

This indicator has been evaluated as specified risk for all source types. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.24.6. Risk designation and specification

All source types: Specified risk

1.24.7. Control measures and verifiers

Collect the following documents:

- If applicable, the Management and processing agreement or the Industrial processing agreement and the related terms and conditions;
- Documents relating to the concerned processing unit;
- Any document (letter, email, receipt...) showing that field log books and waybills are handed over to the forest administration.

Carry out the following checks at the processing sites:

- Compare the contractual obligations presented in the agreement and their actual implementation on the ground.

1.25. Health and Safety in the timber processing sector

Legally required personnel protection equipment for persons involved in the timber processing sector.

The health and safety requirements that shall be considered relating to the processing/factory (not office work, or other activities less related to the actual processing). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of workers at significant risk at any step of the primary and secondary processing.

Please see indicator 1.11 Health and Safety. Legislation and risks related to the processing sector are similar to what has been identified for the forest level in indicator 1.11.

1.26. Legal employment in the timber processing sector

Legal requirements for employment of personnel involved in the timber processing sector including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale non-compliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

Please see indicator 1.12 Legal employment. Legislation and risks related to the processing sector are similar to what has been identified for the forest level in indicator 1.12.

Annex I. Timber source types

The table **Timber Source Types in the Republic of the Congo** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

TIMBER SOURCE TYPES IN THE REPUBLIC OF THE CONGO

Forest Type	Legal Land Classification	Ownership	Management Regime	License/Permit Type	Description of Source Type
Forest management unit (UFA) within a natural forest.	State-owned permanent forest domain	State property (private domain)	Concession regime (maximum 3 years) then production sharing regime	Management and processing agreement (CAT)	<p>Natural wood harvested within a UFA under a management and processing agreement of a maximum duration of 30 years.</p> <p>The operator conducts the harvesting operations within the production series, which itself is divided into forest production units (UFP), which are valid for 4 to 5 years. Each UFP is itself divided into annual felling areas, for which an annual operations plan is drawn up in line with the UFP's management programme.</p>
				Industrial processing agreement (CTI)	<p>The operations conducted by the concession holder under this type of agreement are subject to annual allowable cuts established in line with a harvesting schedule. CTIs last a maximum of 15 years. CTIs are expected to disappear within the next 3 years following the adoption of the new Forest Code (i.e. by 2023).</p>
Plantations in the classified domain	State-owned permanent forest domain	State property (private domain)	Concession regime (maximum 3 years) then production sharing regime	Plantation timber promotion agreement	Newly introduced by the 2020 Forest Code.
Domestic Logging Units (classified)	State-owned permanent forest domain	State property	Direct taxation system	Domestic logging permit	Newly introduced by the 2020 Forest Code.

natural forests not included in UFAs)		(private domain)			
Forest plantations of the State-owned forest domain	State-owned forest domain	State property (private domain)	Direct taxation system	Plantation timber logging permit	Permit granted in line with the quantity of standing trees to be harvested within a period not exceeding 6 months.
Wood from deforestation operations (for the purpose of changing the allocation of land)	Non-permanent forest domain	Property of the state or a legal person	State/private legal person	Deforestation permit	Whilst this is not a sustainable wood source type, companies rolling out farming, industrial and infrastructure construction projects, etc. requiring deforestation may sell the wood arising from the completion of the project.
Protected forests and community forests	Non-permanent forest domain or community development series within a UFA	Property of the Congolese state	Direct taxation system	Special permit	This source type is reserved for populations facing machined product supply difficulties in remote areas. The authorised number of trees is limited to a maximum of three for domestic needs and five for commercial purposes.
Private forests and plantations	Non-permanent forest domain	Property of a private natural person	Private	Not applicable	Natural or planted forests located on land belonging to natural or legal persons of private law.

About

LIFE Legal Wood

[LIFE Legal Wood](#) is an initiative that aims at supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The initiative is funded by the LIFE Programme of the European Union.



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FSCTM A000535 | PEFC/09-44-02 |