

# Timber Legality Risk Assessment Democratic Republic of the Congo

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COUNTRY  
RISK  
ASSESSMENT



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## A. Introduction

This Timber Legality Risk Assessment for the Democratic Republic of the 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 1.2: Published November 2017

Version 2.0: Published 17 November 2021

Version 2.0 was updated based on Version 1.0 from November 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 are not included in the risk assessment. However, all experts are known to Preferred by Nature.

Version 1.0: Comments received between 11-16 July 2016.

Version 2.0: Discussions with various experts was conducted within the period of 13-16 August 2019. The output from these discussion have contributed to the development of version 2.0 of the Timber Legality Risk Assessment for the Democratic Republic of Congo.

### Public consultation

Online public consultation on the Sourcing Hub: August 25 – October 25 2021

## Overview of legality risks

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

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

- **Specified risk for 18 sub-categories.**
- **No legal requirements for 3 sub-categories.**

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

- **Specified risk for 3 sub-categories.**
- **Low risk for 1 sub-categories.**
- **No legal requirements for 1 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:

- Existing land tenure rights over forest land are not identified through public inquiries (1.1, 1.2);
- Land rights and titles overlap (1.1);
- The regulatory time frames for converting old forest titles are not respected (1.2);
- New concession contracts are awarded in violation of the moratorium in force (1.2);
- Concession contracts are awarded at the discretion of the State without a reason that is compliant with the regulations (1.2);
- The specifications (*cahier des charges*) attached to the concession contract are not signed (1.2);
- There is no social clause in the specifications (*cahier des charges*) in compliance with the regulatory template, duly signed by the logging company and the local communities and/or indigenous peoples (1.2);
- Concession contracts are not terminated where a forest management plan has not been duly drawn up and approved within the 4-year period specified by law for old forest titles that have been converted into concessions (1.2);
- Community forest concessions are monopolised or manipulated (1.2);
- Corrupt practices happen during the process for allocating land/forest concessions (1.2);
- There is an absence of any participative processes and consultation meetings with local communities when drawing up the forest management plan (1.3);
- The deadlines stipulated for drawing up and validating the forest management plan are not respected (1.3);
- The provisions of the forest management plan are not implemented or are only partially implemented (1.3);
- Activities not stipulated in the forest management plan are authorised or not monitored (mining, hunting, farming, etc.) (1.3);

- There are discrepancies between the concession limits indicated in the forest management plan and those indicated in the concession contract and the official database (Forest Atlas of the Democratic Republic of Congo) (1.3);
- Non compliance with harvest permits rules in industrial concessions:
  - Logging operations are carried out without a harvest permit, before a permit is issued or after a permit has been revoked (1.4);
  - Industrial harvest permits are allocated without an annual operations plan (1.4);
  - Timber is harvested beyond the statutory period of the annual allowable cut (maximum three years) (1.4);
- Artisanal loggers are making fraudulent use of harvest permits:
  - are not registered with local authorities;
  - are entities which are not designated to be recipient of artisanal permits;
  - are granted more annual permits than the maximum legally allowed (2 permits); and / or
  - are granted harvest permits by authorities different than the ones legally authorised to (1.4);

For **Taxes and Fees**, there is a risk that:

- Amounts due are calculated based on false figures (area or volume) (1.5);
- Amounts due for area tax and logging tax are not paid due to significant administrative failures (1.5);
- Amounts due for corporate income tax are not paid (1.7);

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

- Logs and stumps are not marked (1.8);
- Wood is harvested beyond the authorised volume (1.8);
- Non-authorised species are harvested (1.8);
- Logging activities are carried out without a permit (1.8);
- Trees below the minimum felling diameter are harvested (1.8);
- Logging activities are carried out beyond the specified limits (1.8);
- Wood is abandoned (1.8);
- The soil and subsoil is damaged (1.8);
- Protected species are harvested without a special harvest permit (1.9);
- Logging activities are carried out in protected areas (1.9);
- No environmental and social impact assessment (ESIA) is conducted, no operational plan is drawn up and/or no provisions for mitigating the environmental and social impacts are implemented (1.10);
- Obligations relating to the health of the workers are not respected (lack of regulatory medical service, workers not cared for following an accident or illness, workers and accidents at work not declared to the National Social Security Institute (INSS)) (1.11);
- Obligations relating to the safety of the workers are not respected (no personal protective equipment, no access to drinking water on logging sites) (1.11);

- Employment regulations are not respected (lack of compliant and registered employment contract, employees not paid by way of a payslip, employer not paying social contributions, workers' pay below the minimum wage) (1.12);
- For **Third parties' rights**, there is a risk that:
  - Agreements between concession-holders and local communities or between artisanal loggers and local communities are not in place or not implemented (1.13);
  - Local funds and committees in place to deliver socio-economic development activities are manipulated and / or non-functional (1.13);
  - Local communities forest concessions are effectively controlled by loggers and / or local elites and / or non-local NGOs without the required involvement of local communities (1.13);

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

- False declarations are made in the site log books (1.16);
- False declarations are made regarding species and their volume on transport permits (1.16);
- False quarterly declarations are made or declarations are not accompanied by the secure documents used during the quarter by the forest administration to carry out the relevant checks (1.16);
- No site log book is kept (1.17);
- Fraudulent transport permits are used (i.e. they do not correspond to the concession from which the wood originates) (1.17);
- Volumes are under-billed for the purpose of manipulating transfer prices (1.18);
- The quotas for log exports are not respected (1.19);
- Volumes exported are falsified to lower export taxes payment (1.19);
- Export duties are not paid (1.19);
- CITES permits are issued where the legality of the logging activities has not been verified and/or the volumes have not been checked (1.20);
- CITES permits are issued fraudulently (1.20);
- CITES permits are replaced or renewed unlawfully (1.20);

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

- No environmental and social impact assessment is carried out by the wood processing unit (1.23);
- Obligations relating to the health of the workers are not respected (lack of regulatory medical service, workers not cared for following an accident or illness, workers and accidents at work not declared to the National Social Security Institute (INSS)) (1.25);
- Obligations relating to the safety of the workers are not respected (lack of personal protective equipment) (1.25);
- Employment regulations are not respected (lack of compliant and registered employment contract, employees not paid by way of a payslip, employer not paying social contributions, workers' pay below the minimum wage) (1.26).

Timber source types and risks

There are 4 main timber source types found in the Democratic 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. We have analysed the risks for all of these source types and found that the risk differs slightly for timber from private forests.

- |                                       |  |
|---------------------------------------|--|
| 1. Industrial forest concessions      | Forest land privately owned by the state, allocated on a long-term basis to logging operators through concession contracts. This is the main source of wood in the DRC.<br><br>Permit type: long-term concession contract and annual harvest permits |
| 2. Artisanal forest units             | Introduced in 2016 following the disclosure of illegal semi-industrial logging. Artisanal forest units can be harvested by natural or legal persons and cannot exceed 500 hectares.<br><br>Permit type: artisanal harvest permit                     |
| 3. Local community forest concessions | Local communities can apply to the state for concessions within their own forests. They cannot exceed 50,000 ha.<br><br>Permit type: local community harvest permit or artisanal harvest permit accompanied by a contract with the local community   |
| 4. Private planted or natural forests | Wood located within land concessions of private parties.<br><br>Permit type: harvest permit for private forest or declaration to the forest administration   |



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

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

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

According to the Constitution of the Democratic Republic of the Congo and land law, the state has sole ownership over all land, a principle passed down from the colonial period (Art. 9 of the Constitution, Art. 53 of Law n°73-021).

Natural and legal persons can therefore only be granted the right to use the land by way of a land concession. The law provides for two types of concessions: concessions in perpetuity, which can only be granted to natural persons of Congolese nationality (Art. 80 of Law n°73-021) and ordinary concessions, which can be granted to natural or legal persons of Congolese or foreign nationality, for a fixed period, which is normally 25 years.

A new Forest Code was adopted in 2002 with the aim of completely reforming the forest title allocation system in compliance with land law.

The Forest Code stipulates that forests are also the property of the State (Art. 7 of the Forest Code), with the exception of forests (natural or planted) located on land duly allocated in line with the legislation in force (i.e. by way of concession) (Art. 8 of the Forest Code). Therefore, granting a land concession to a private person is also granting forest management and exploitation rights.

For its part, the state forest domain is divided into classified forests (state public domain), protected forests (state private domain) and permanent production forests (state private domain).

- 1) Classified forests are subject to a restrictive legal regime in terms of user and exploitation rights, and include all areas with a specific protection status (natural reserves, national parks, wildlife reserves, etc.) and the forests necessary for the protection of soil, waterways, biodiversity, etc. (Art. 10 to 13 of the Forest Code).
- 2) Permanent production forests are designated for the allocation of industrial logging concessions. They are established by ministerial order once they have been subjected to a public survey process, the aim being to determine any existing rights and to agree on compensation to rights' holders if applicable (the law stipulates that payment of compensation ceases the existence of previous rights) (Art. 23 and 84 of the Forest Code).
- 3) Protected forests can be granted to local communities as concessions and/or dedicated to artisanal logging.

### Overview of forest resources

The DRC is part of the Congo Basin, with Cameroon, the Central African Republic, the Republic of the Congo, Gabon and Equatorial Guinea. Congolese forests are composed of thick tropical forests, open forests and savanna woodlands.

According to the FAO (2020), the DRC has around 126 million hectares of forest coverage, which makes up around 54% of the country's surface area. Almost all of these forests are primary or naturally regenerated forests. Planted forests only account for 58,000 hectares.

Around 8% of this forest area is allocated to logging operations (FERN, 2006, ATIBT, 2019). Most (70%) of the industrial forest concessions are located in the 3 Provinces of Tshopo, Equator and Maï-Ndombe (ATIBT, 2019). The Congo's forest land has remained relatively unharmed, due to years of political instability following the collapse of Mobutu's regime (FERN, 2006). Its deforestation rate is around 0.8% per year over the last 10 years (FAO, 2020). This represents a figure of roughly 1 million hectares deforested year (FAO, 2020). Aside from logging operations, the main causes of loss of forest cover are slash-and-burn agriculture, bush fires, the production of charcoal for local and regional markets, and livestock rearing.

The DRC also presents some of Africa's highest levels of biodiversity, and is notably home to around 10,500 plant species (including 750 forest species), as well as around 500 mammals, 1,000 birds and

350 reptiles (FAO, 2020). A significant proportion of those are endemic species (for instance the okapi, the Congolese peafowl and the bonobo).

The DRC's forests also provide the resources for numerous semi-nomadic indigenous populations, who maintain strong cultural links with this land (Fern, 2005).

### **Forest governance**

The adoption of the most recent Forest Code in 2002 and its implementing provisions uncovered several issues and legal loopholes that the DRC is struggling to respond to.

An important process has been converting old forest titles into titles provided for by the new Forest Code. The procedures put in place for this process were poorly respected by the administrations, both in terms of the technical and administrative requirements, and the time frames stipulated.

The widespread occurrence of semi-industrial logging operations in small areas by legal persons was repeatedly opposed by civil society and international NGOs before it was regularised in 2016.

The acknowledgement of customary land rights and/or the implementation of agreements between the logging operators and the local communities (through social clauses) is also poorly respected.

The country also faces challenges in terms of ensuring the traceability of the wood and streamlining administrative procedures in order to carry out checks and ensure the implementation of the regulations, notably in terms of respecting processing quotas and payment of taxes.

### **Sources of information**

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- Fern (2006). [Forest governance in the Democratic Republic of Congo](#).

## 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

- Constitution of the Democratic Republic of the Congo, as amended by Law n°11/002 of 20 January 2011 (Art. 9);
- Law n°73-021 of 20 July 1973 on the general property regime, real estate tenure and security regime, as amended and supplemented by Law n° 80-008 of 18 July 1980;
- Law n°011/2002 of 29 August 2002 on the Forest Code;
- Decree n°08/08 of 8 April 2008 establishing the procedures for classifying and declassifying forests;
- Ministerial Order n°85/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 29 October 2016 on Artisanal Forest Units (UFA);
- Decree n°14/18 of 02 August 2014 on the modalities for allocating forest concessions to local communities.

##### 1.1.2. Legal authority

- Ministry of Environment and Sustainable Development
- Ministry of Land Affairs
- Provincial officials from the environment and land affair ministries
- Provincial governors

##### 1.1.3. Legally required documents or records

*For industrial forest concessions:*

- Forest concession contract.

*For local community concessions:*

- Order for the creation of a local community forest concession.

*For artisanal forest units ('UFA'):*

- Order for the creation of the artisanal forest unit.

*For private forests:*

- Land concession contract.

#### **1.1.4. Sources of information**

##### *Government sources*

- Kamungandu, C. (2011). Le processus du zonage forestier de la RDC : état des lieux et perspectives. Available at: <https://rightsandresources.org/wp-content/exported-pdf/prsenationdiafmusampacompatibilitymode.pdf> (accessed on 16 August 2019).

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#### **1.1.5. Risk determination**

##### *Overview of legal requirements*

As the state has sole ownership over the soil and forest resources, natural and legal persons can only be granted the right to use the soil by way of a land concession and/or the right to use forest resources by way of a forest concession.

The law provides for two types of land concessions: concessions in perpetuity, which can only be granted to natural persons of Congolese nationality (Art. 80 Law n°73-021) and ordinary concessions, which can be granted to natural or legal persons of Congolese or foreign nationality, for a fixed period, which is normally 25 years. Natural or planted forests located on a land concession belong to the concession holder, which therefore also has management and exploitation rights of those resources (art. 8 of the Forest Code).

The Forest Code also stipulates 3 forest categories: classified forests, protected forests and permanent production forests. Classified forests fall under the state public domain. They have an ecological purpose and must account for at least 15% of the DRC's total territory. Protected forests and permanent production forests form part of the state private domain.

Permanent production forests are designated for the allocation of logging concessions. They are established by ministerial order once they have been subjected to a public survey process, the aim

being to determine any existing rights and to agree on compensation if applicable (the law stipulates that payment of compensation renders the forest free of all rights) (Art. 23 and 84 of the Forest Code).

Rights to access forest resources can also be granted in protected forests, notably to local communities and artisanal loggers. Local community forest concessions are allocated free of charge by order of the provincial governor, following a regulated procedure (application, identification of local community making the application, preliminary inquiry, public disclosure). Artisanal forest units are created by order of the provincial governor concerned, following a public inquiry.

The management and harvesting of forests by private persons is therefore allowed by way of a forest concession (see subcategory 1.2) or aland concession.

### **Customary land rights**

Congolese law loosely recognises customary land rights (not written). The law actually stipulates that "lands occupied by local communities are those where these communities live, farm and operate in some way (individual or collective) in compliance with local customs and usage" (Art. 388 of Law n°73-021). It therefore acknowledges the customary right to live on and work the land.

Furthermore, before formal rights over any land are granted through a concession, the law stipulates that an inquiry must be carried out to determine the nature and scope of any potential third party rights over the requested land (Art. 193 of Law n°73-021).

However, the law leaves it to the regulations to define a more detailed legal framework applicable to the duly acquired tenure rights over the customary land (Art. 389 of Law n°73-021). The presidential order provided for by the law was never adopted, which created a legal loophole and land tenure insecurity for all communities occupying land under customary rights.

This means that in practice, local community land continues "to be governed by local customs and managed by customary authorities across more than 90% of the country's surface area." (Koné, 2017).

Land and forest concessions can also be formally allocated to local communities (see section 1.2).

### **Understanding and mapping of land rights**

In 2008, the DRC government began mapping out the country's forest areas. The National Steering Committee for Forest Zoning (CNPZF) was set up by way of a ministerial order. This committee is a multi-stakeholder, cross-sectoral structure that unites all players involved in the management of land and natural resources. The government put together a map for the allocation of its forest areas, which was intended as a dynamic tool to be used to initiate a dialogue between the stakeholders and to act as a vehicle for the gradual implementation of the country's new Forest Code. This zoning plan's objective is to offer a clear, negotiated framework for access to spaces and resources. As well as creating maps and databases, the operation also, and above all, involves leading a dynamic process of analyses and discussions in relation to land use planning and the allocation of resources.

#### *Description of risk*

- Absence or shortcoming of the preliminary process of identifying any existing tenure rights over the land (customary rights): the obligatory inquiry procedure in relation to existing tenure rights over the land concerned by the concession application is not or is insufficiently applied and, as a result, statutory land law grants concessions on land occupied under customary rights, and there is therefore an overlap in land use, or rather conflicts over land tenure rights. (Mpoyi, 2013, GIZ/KfW, 2016)
- No dialogue between the administrations, lack of appreciation and understanding of the legal framework: overlaps in land management rights is also the result of contradictory administrative actions conducted by the various ministries, notably the Ministry of Mining, the Ministry of Environment, and, to a lesser extent, the Ministry of Agriculture. Furthermore, the land administration and the local authorities (mayors, administrators, heads of chiefdoms, sectors,

groups, localities, villages) do not apply the provisions of land law in a uniform, consistent manner. These authorities may therefore “regularise” unlawful situations or simply unknowingly allocate rights over plots of land and issue “titles” that are not legally recognised. Populations also engage in land transactions according to procedures that are sometimes not recognised by law or tradition. (Mpoyi, 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.

#### **1.1.6. Risk designation and specification**

All source types: Specified risk

#### **1.1.7. Control measures and verifiers**

(1) Collect the following documents:

*For industrial forest concessions:*

- Forest concession contract;
- All documents regarding the completion of the inquiry into third party rights.

*For local community concessions:*

- Order for the creation of a local community forest concession.

*For artisanal forest units (UFA):*

- Order for the creation of the artisanal forest unit;
- Documents relating to the completion of the public inquiry prior to the creation of the artisanal forest unit.

*For private forests:*

- Land concession contract.

(2) Where possible, consult the following resources and parties to obtain information on the forest area and ensure that the procedures in force are respected/that there are no land-related conflicts:

- [Forest atlas of the Democratic Republic of the Congo](#) developed by the Ministry of Environment and Sustainable Development (MEDD) and the World Resources Institute (WRI);
- Mapping department at the Ministry of Environment and Sustainable Development (MEDD);
- Local communities of the forest concerned;
- Mandated independent observer (OGF);
- Societal players involved in land-related issues (WWF, RRN, etc.).

## 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°011/2002 of 29 August 2002 on the Forest Code (explanatory statement, Art. 21, 22 and 82 to 116);
- Decree n°05/116 of 24 October 2005 laying down the procedures for converting old forest titles into forest concession contracts and extending the moratorium on new logging titles;
- Decree n°08/02 of 21 January 2008 modifying Decree n°05/116 of 24 October 2005;
- Decree n°08/09 of 8 April 2008 establishing the procedure for assigning forest concessions;
- Decree n°011/25 of 20 May 2011 modifying Decree n°08/09 of 8 April 2008 establishing the procedure for assigning forest concessions;
- Decree n°011/25 of 20 May 2011 modifying Decree n°08/09 of 8 April 2008 establishing the procedure for assigning forest concessions;
- Decree n°011/26 of 20 May 2011 on the obligation to publish all contracts relating to natural resources;
- Ministerial Order n°CAB/MIN/AF.F.ET/194/MAS/02 of 14 May 2002 suspending the granting of forest allocations;
- Ministerial Order n°037/CAB/MIN/ECNTI151JEB/ 2008 of 18 September 2008 establishing the selection criteria for forest concession bidders;
- Ministerial Order n°028/CAB/MIN/ECN-TI 27/JEB/08 of 7 August 2008 establishing model concession contracts for the harvesting of forest products and the related specifications (*cahier des charges*);
- Ministerial Order n°072/CAB/MIN/EDD/DRCE/00/AAN/2018 of 12 November 2018 establishing a model agreement constituting the social clause of the forest concession contract's specifications (*cahier des charges*);
- Ministerial Order n°85/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 29 October 2016 on artisanal forest units (UFA) (Art. 3, 5, 8, 14, 15, 18);
- Ministerial Order n°022/CAB/MIN/ECN-T/15/JEB/2008 of 7 August 2008 establishing the procedure for the authorisation of the sale, rental, exchange or donation of a forest concession;
- Ministerial Order n°083 /CAB/MIN/ECN-T/11/BNME/2013 of 30 September 2013 modifying and supplementing Ministerial Order n°022/CAB/MIN/ECN-T/15/JEB/2008 of 7 August 2008;
- Technical note n°2056/CAB/MIN/ECN-T/05/11/BNME/2014 of 26 August 2014 for the attention of the Prime Minister, head of the government. Regarding: Completing the conversion of old forest titles into forest concessions contracts.



### **1.2.2. Legal authority**

- Ministry of Environment and Sustainable Development
- Interministerial commission for the allocation of titles
- Provincial officials from the Ministry of Environment
- Provincial governors
- Parliament
- President of the Republic

### **1.2.3. Legally required documents or records**

*For community forest concessions:*

- An order granting the forest concession to the local community;
- If applicable, a written agreement (*Convention d'exploitation*) between the local community and a category 1 artisanal operator (see 1.2.5 below);

*For industrial concessions and artisanal forest units:*

- An order for the publication and approval of the public inquiry conducted prior to the allocation of the concession;
- Documentation relating to the compensation of local communities who have rights over the land concerned, if applicable;
- Concession contract and its specifications (cahier des charges) containing the general and specific provisions, including the social clauses signed by the local communities and/or indigenous people affected;
- For concessions covering between 300,000 and 400,000 hectares, the presidential decree approving the concession contract;
- For concessions covering more than 400,000 hectares, the law approving the concession contract;

#### **In addition:**

*For concessions awarded through public tender:*

- Concession tender notice;
- Contract award report;
- Report from the independent observer of the tender process;

*For concessions awarded through private arrangements:*

- Official document establishing the exceptional reasons justifying the award through private arrangements;

*For transferred, rented or exchanged concessions:*

- The agreement of the Minister (for concessions covering areas under 400,000 hectares) or the President (for concessions greater than 400,000 hectares);

*For old forest titles converted into forest concessions:*

- Verification report approved by the interministerial commission;
- Approved forest management plan if the concession contract dates back more than 4 years.

#### 1.2.4. Sources of information

##### *Government sources*

- [Forest atlas of the Democratic Republic of the Congo](#) developed by the Ministry of Environment and Sustainable Development (MEDD) and the World Resources Institute (WRI);

##### *Non-Government sources*

- FAO database. Timber-Lex - Democratic Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed on 16 August 2021];
- Groupe de Travail Climat REDD Rénové (GTCRR) (2021). Note de position des organisations de la société civile environnementale sur l’attribution de 4 concessions forestières et la réhabilitation de 4 autres;
- Greenpeace Africa (2019). Industrial logging in the DRC: 24 null and void concessions need to be immediately returned to the state. Available at: <https://storage.googleapis.com/planet4-africa-stateless/2019/04/bc1196f4-briefer-final-english-v3.pdf> [accessed on 22 October 2019];
- Global Witness (2018). Total systems failure. Exposing the global secrecy destroying forests in the Democratic Republic of Congo;
- Comptoir Juridique Junior and Client Earth (2017). Cadres juridiques relatifs à la gestion communautaire des forêts dans cinq pays du bassin du Congo Available at: <https://www.documents.clientearth.org/wp-content/uploads/library/2017-12-11-cadres-juridiques-relatifs-a-la-gestion-communautaire-des-forets-dans-cinq-pays-du-bassin-du-congo-ce-fr.pdf> (accessed on 18 August 2019);
- Greenpeace Africa (2016). Comment la RDC a secrètement violé le moratoire sur l’attribution de nouvelles concessions forestières;
- SODEFOR (2016). Forests in the DRC Congo. Available at: <http://sodefor.net/en/forets/> [accessed on 20 October 2019];
- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international. Available at: [https://www.globalwitness.org/documents/18007/Exporting\\_impunity\\_French.pdf](https://www.globalwitness.org/documents/18007/Exporting_impunity_French.pdf) [accessed on 20 October 2019];
- OI-FLEG/OGF (2014). Rapport de mission de terrain n°2 (2014). Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance];
- OI-FLEG/Resource Extraction Monitoring (2013). Rapport final – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo (2010-2013);
- OI-FLEG/Resource Extraction Monitoring (2011). Mise en application de la loi forestière et de la gouvernance. Analyse de la législation forestière de la RDC. Available at: [http://observation-rdc.info/documents/REM\\_RDC\\_legislation.pdf](http://observation-rdc.info/documents/REM_RDC_legislation.pdf) [accessed on 10 October 2019];
- Global Witness (2007). Forêts de RDC : « Vers des normes satisfaisantes de gestion et de gouvernance » ? Available at: <https://www.globalwitness.org/sites/default/files/library/policybrieffinalfr.pdf> [accessed on 20 October 2019].

### 1.2.5. Risk determination

#### *Overview of Legal Requirements*

The Forest Code primarily provides for the allocation of industrial forest concessions and local community forest concessions. A subsequent order also provides for the creation and allocation of artisanal forest units (*unités forestières artisanales* – 'UFA'). Another order also provides for the possibility of harvesting natural or planted wood located on land concessions belonging to private individuals.

#### **Conversion of old forest titles**

The Forest Code granted holders of old forest titles (referred to as supply guarantees or letters of intent) one year to convert them into forest concessions (Art. 155 of the Forest Code), with effect from the Code's entry into force in 2002. This time frame was then extended, and in 2005, a decree was issued stipulating the modalities for converting these old forest titles. The applicable procedure includes the submission of a request, followed by a verification of the application and the legal validity of the titles. A verification report is drawn up by the forest administration and approved by an interministerial commission (Art. 9 and 10 of Decree n°05/116).

Following a favourable recommendation from the commission, the minister and applicant sign the forest concession contract for a fixed duration of 25 years. The concessionaire then has four years to draw up a forest management plan and have it approved. If the concessionaire fails to do so, the contract is automatically terminated (Art. 19 of Decree n°05/116).

Initiated back in 2002, the process of converting old forest titles fell way behind schedule. It appears that it was finally concluded in 2014, recognised by way of a technical note confirming the completion of the process of converting old forest titles into forest concession contracts by the Congolese government.

#### **Moratorium on new (industrial) forest concessions**

The allocation of new industrial forest concessions was suspended by ministerial order in 2002 (Order n°CAB/MIN/AF.F-E.T./194/MAS/02). This decision was extended in 2005 (Decree n°05/116 of 24 October 2005). Three conditions must be met before this moratorium can be lifted: (1) the new forest allocation tender procedures are published, (2) the final results of the conversion process are published and all non-converted titles are terminated and (3) a three-year geographical plan for future allocations is drawn up based on a consultation process.

The moratorium must also be lifted by way of a decree (Art. 23 of Decree n°05/116).

It appears that:

- the third condition has still not been met as of January 2021 (see the website of the [Forest Atlas of the Democratic Republic of Congo](#)), and
- no legal text has yet lifted the moratorium currently in place.

Consequently, it is illegal for any new forest concessions to be allocated outside of the old forest title conversion process.

#### **Allocation procedure**

Despite the moratorium on new concessions, legislation provides a detailed explanation of the normal procedure for allocating forest concessions, which is executed by way of a tender procedure (Art. 83 of the Forest Code). In exceptional cases, the law allows for the allocation of forests at the discretion of the State, however this does not apply to forests intended for logging operations, valid reasons being the promotion of environmental services against payment, the promotion of eco-tourism or bio-prospecting objectives, and the conservation of biological diversity (Art. 38 of Decree n°08/09, as amended by Art. 1 of Decree n°011/25).

Furthermore, in order to obtain a forest concession, natural persons must be domiciled in the DRC and legal persons must have their head office in the DRC. The entity must also post a bond or obtain a guarantee from a financial institution, the value of which is based on the value or area of the forest concession (Art. 82 of the Forest Code).

#### *Preliminary public inquiry*

Before a concession can be allocated, a public inquiry must be carried out with the aim of determining “the nature and scope of any rights that third parties might have over the forest to be granted for the purposes of compensation, if any” (Art. 84 of the Forest Code). The key stages are as follows:

- The proposal is communicated to the relevant stakeholders with a view to carrying out a joint audit on the ground for the purpose of collecting any relevant information;
- The project proponent submits the request for a public inquiry to the provincial governor;
- An inquiry committee is set up or a private expert is appointed by the provincial governor;
- The inquiry is conducted by the committee created especially for this purpose;
- The public inquiry report is drawn up;
- The report is approved and published by the governor (by way of an order);
- If applicable, the compensation amount for removal of third party rights is established amicably or through the courts.

#### *Public tender procedure*

The forest administration then carries out a valuation of the forest concession and sets the reserve price before putting it out to public tender (Art. 85 of the Forest Code). A tender submission file is drawn up and approved by ministerial order. It specifies the tender conditions and the operating rules. The tender procedure must be carried out in compliance with the formalities stipulated by the regulations (Decree n°08/09). The key stages are as follows:

- The concession submission file is drawn up;
- An invitation to tender is launched, specifying the deadline for submissions (minimum of 3 months);
- The tenders are submitted (technical and financial) in line with the conditions specified by the regulations and the administration;
- An interministerial tender committee is formed to examine the applications in line with the composition provided for by the regulations (Art. 19 of Decree n°08/09);
- The tenders are opened during a duly organised public session;
- The committee examines the proposals in line with the regulatory criteria;
- The scores and final rankings of the bidders are established during a duly organised public session. The highest ranked bidder is selected;
- The committee prepares a tender report indicating the selected bidder and the independent tender observer also prepares their own report. The two reports are made public;
- The successful bidder has 30 days to provide the security deposit;
- The administration draws up the concession specifications (*cahier des charges*) and the concession contract is signed.

#### **Concession contracts**

Concession contracts cannot exceed 25 years, however they are renewable.

A set of specifications (*cahier des charges*) relating to the concession is drawn up by the forest administration. It includes general clauses and special clauses. The Specifications are drawn up in line with a regulatory template. It notably includes a social clause, which must comply with the template provided for by Order n°023 and is an agreement concluded between the logging company and the local communities and/or indigenous people.

It is attached to the concession contract, which is signed by the Minister and the successful bidder. If the concession covers an area between 300,000 and 400,000 hectares, the contract is approved by a decree issued by the President of the Republic. If the concession covers an area exceeding 400,000 hectares, it is approved by a law (Art. 92 of the Forest Code).

The concession contract grants the concessionaire the right to harvest timber in the forest area covered by the concession, in compliance with the law and the regulatory authorisations (Art. 90 of the Forest Code).

#### *Transferring the concession*

Concession holders may not rent out, sell, exchange or give up forest concessions without the prior approval of the Minister or the President of the Republic, depending on the surface area of the concession concerned (Art. 95 of the Forest Code).

### **Artisanal logging**

There is a special regime for artisanal forest units, the creation and allocation of which are governed at provincial level in line with a process that is identical (*mutatis mutandis*) to the allocation of forest concessions (Ministerial Order n°85/CAB). The moratorium on concession allocation does not apply to artisanal concessions. Artisanal loggers must obtain a profession accreditation, issued by the provincial governor and valid for 5 years.

Category 1 artisanal logging is any logging conducted by a natural person of Congolese nationality in an area of less than 50 hectares.

Category 2 artisanal logging is any logging conducted within an artisanal forest unit by a natural or legal person in an area between 100 and 500 hectares. Category 2 artisanal loggers must obtain an annual allowable cut within an artisanal forest unit. The annual allowable cut is awarded through a tender procedure similar to the forest concession tender procedure, and only if the area has been subjected to a forest management process implemented by the forest administration (Art. 9 and 10 of Ministerial Order n°85/CAB).

### **Local community forest concessions**

The law also states that local communities may obtain forest concession on forests legally owned by virtue of custom as a (Art. 22 of the Forest Code). A request must be submitted to the provincial governor by the community representative(s) and must include a participatory map, the approximate surface area of the forest and the minutes from a community committee meeting (Art. 4 of Decree n°14/018). The forest administration then proceeds with a preliminary inquiry with a view to verifying the requesting community's rights (Art. 9 of Decree n°14/018).

The provincial governor makes a reasoned decision to accept or reject the request and, if applicable, issues an order confirming the free allocation of a perpetual forest concession to the local community (Art. 15 of Decree n°14/018).

Category 1 artisanal loggers can access the timber resources covered by community concessions through a written agreement signed with the local community concerned.

## *Description of risk*

### *Conversion of old forest concession titles*

- The regulatory time frames for converting old forest titles are not respected; (REM, 2011 and 2013, OI-FLEG/OGF, 2014, Global Witness, 2015, Greenpeace Africa, 2016)

### *Forest concession allocation process*

*(Unless stated otherwise, risks below also apply to artisanal concession, due to the unclear legal framework and lack of information)*

- Public inquiries are not carried out before land concessions are awarded (Based on expert consultation, 2019);
- New industrial concession contracts are awarded in violation of the moratorium in force; (OI-FLEG/REM, 2011; Global Witness, 2007; Greenpeace Africa, 2016, GTCRR, 2021)
- Concession contracts are awarded at the discretion of the State despite not being based on any of the grounds specified by the regulations, notably with the aim of bypassing the stringent requirements of the public tender procedure; (Greenpeace Africa, 2016, GTCRR, 2021)
- The specifications (Cahier des charges) attached to the concession contract are not signed (Based on expert consultation, 2019);
- The specifications (Cahier des charges) does not contain a social clause in compliance with the regulatory template, duly signed by the logging company and the local communities and/or indigenous populations; (Global Witness, 2015 and 2018)
- Corrupt practices happen during the process for allocating forest concessions (Based on expert consultation, 2019);

### *Continuation of unmanaged concessions*

- Concession contracts are not terminated where a forest management plan has not been duly drawn up and approved within the 4-year period specified by law for old forest titles converted into concessions (Greenpeace estimated in 2019 that 24 forest concessions fell into this scenario, accounting for 4.5 million hectares allocated contrary to the law – on a total of around 60 concessions in DRC covering around 10 million hectares); (Greenpeace Africa, 2019)

### *Community Forest not managed by communities concerned and in their interests*

- Community forest concessions are monopolised or manipulated by the elite or commercial entities. Concessions must be applied for by one or several community representatives, however it is still difficult to ensure that these representatives are acting properly on behalf of and in the interest of the communities concerned. (Comptoir Juridique junior & Client Earth, 2017)

## *Risk Conclusion*

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

### **1.2.6. Risk designation and specification**

Industrial forest concessions, artisanal forest units and local community forests concessions: Specified risk

Private planted or natural forests: Not applicable

### 1.2.7. Control measures and verifiers

(1) Check any open source information about the concession to verify that basic information about the concession align, in particular in the [Forest Atlas of the Democratic Republic of Congo](#), the [COMIFAC database](#), etc.

(2) Collect the following documents:

*For community forest concessions:*

- An order granting the forest concession to the local community;

*For industrial concessions and artisanal forest units:*

- An order for the publication and approval of the public inquiry conducted prior to the allocation of the concession;
- Documentation relating to the compensation of local communities who have rights over the land concerned, if applicable;
- Concession contract and its specifications (cahier des charges) containing the general and specific provisions, including the social clauses signed by the local communities and/or indigenous people affected;
- For concessions covering between 300,000 and 400,000 hectares, the presidential decree approving the concession contract;
- For concessions covering more than 400,000 hectares, the law approving the concession contract;

**In addition:**

*For concessions awarded through public tender:*

- Concession tender notice;
- Contract award report;
- Report from the independent observer of the tender process;

*For concessions that have been sold, rented out or exchanged:*

- The agreement of the Minister or President (for concessions covering areas greater than 400,000 hectares);

*For old forest titles converted into forest concessions:*

- Verification report approved by the interministerial commission;
- Approved management plan if the concession contract dates back more than 4 years.

## 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°011/2002 of 29 August 2002 on the Forest Code (Art. 1, 25, 71, 74, 75, 76, 99, 100);

- Ministerial Order n°034/CAB/MIN/EDD/03/03/BLN/2015 of 3 July 2015 laying down the procedure for drawing up, verifying, approving, implementing and following up the management plan of a forest concession for timber production;
- Ministerial order n°025/CAB/MIN/FCN-DD/CJ/00/RBM/2016 of 9 February 2016 laying down specific provisions for the management and operation of local community forest concessions (Art. 22, 23);
- Ministerial Order n°85/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 29 October 2016 on Artisanal Forest Units (Art. 9 to 13);
- Canevas commenté du rapport semestriel d'avancement du processus d'élaboration du Plan d'Aménagement (framework for the half-yearly progress reports on the preparation of the forest management plan);
- Canevas et guide de réalisation de l'Etude Socio-économique (framework and operational guide for the socio-economic study);
- Canevas commenté du Plan d'Aménagement (forest management plan framework);
- Protocole de vérification et d'approbation du Plan de Gestion Provisoire (protocol for the verification and approval of the provisional management plan);
- Canevas commenté du Plan de Gestion Provisoire révisé (revised framework for the provisional management plan);
- Canevas commenté du Plan Quinquennal (five-year management plan framework);
- Protocole de suivi de la Mise en Œuvre des Plans de Gestion Provisoires et Quinquennaux (protocol for monitoring the implementation of the provisional and five-year management plans);
- Canevas commenté du Plan Annuel d'Opérations (annual operations plan framework);
- Canevas commenté du Plan Annuel d'Opérations simplifié pour la mise en œuvre du Plan de Gestion Provisoire (simplified annual operations plan framework for the implementation of the provisional management plan)
- Canevas commenté du Rapport Quinquennal de Gestion Forestière (framework for the forest management five-year report).

### **1.3.2. Legal authority**

- Ministry of Environment and Sustainable Development
- Provincial governors

### **1.3.3. Legally required documents or records**

- A sampling plan and its certificate of conformity;
- A management inventory report and its certificate of conformity;
- Socio-economic assessment report and its certificate of conformity;
- Forest management plan;
- Forest management plan approval order;
- Five-year management programme and its certificate of validity;
- Annual operations plan;

*For concession contracts signed within the last five years:*

- Management programme;



- Decision/order/ministerial decree authorising the extension of the deadline if the contract was signed more than four years ago;
- Half-yearly progress reports on the preparation of the forest management plan;

*For community forests:*

- Approved simplified management programme.

#### **1.3.4. Sources of information**

*Non-Government sources*

- FAO database. Timber-Lex - Democratic Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed on 16 August 2021];
- Greenpeace Africa (2019). Industrial logging in the DRC: 24 null and void concessions need to be immediately returned to the state. Available at: <https://storage.googleapis.com/planet4-africa-stateless/2019/04/bc1196f4-briefer-final-english-v3.pdf> [accessed on 22 October 2019];
- OI-FLEG/OGF (2019 and 2014). Rapports de mission de terrain n°7 (2017) and n°11 (2019). Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance];
- Global Witness (2018). Total system failure. Exposing the global secrecy destroying forests in the Democratic Republic of Congo.

#### **1.3.5. Risk determination**

*Overview of Legal Requirements*

The law stipulates that all forest management and logging activities must be conducted in accordance with a forest management plan drawn up in advance (Art. 71 of the Forest Code).

This forest management plan must be drawn up under the responsibility of the concessionaire and approved by the provincial governor (Art. 76 of the Forest Code).

The concessionaire is responsible for drawing up the forest management plan within the first four years of signing the concession contract. The concessionaire can get an additional 12 months (maximum) by reasoned request upon the decision of the Minister (Art. 5 of Order n°34/CAB/MIN/EDD).

If at the end of this time frame the forest management plan has not been submitted to the forest administration, the harvest permits are suspended. In contrast, for old forest titles converted into concessions, the regulations stipulate the systematic termination of the concession contract if the forest management plan is not approved within 4 years (Art. 19 of Decree n°05/116).

A forest management plan can apply to one forest concession or several continuous forest concessions that fall under the responsibility of the same concessionaire (Art. 7 of Order n°34/CAB/MIN/EDD).

A series of operational guides provide detailed information and explanations relating to the techniques and templates for the different management documents. They include both illustrative and prescriptive information. They also provide details on the procedures for having these documents validated by the forest administration.

#### **Drawing up the forest management plan**

The forest management plan must be drawn up in line with the operational guides and prescriptive documents published by the forest administration.

Forest management plans are based on:

- A sampling plan, which must be approved in advance by the forest administration (certificate of conformity);
- A forest management inventory report, the activities of which must be verified by the forest administration (certificate of conformity);
- A socio-economic assessment report, also validated by the forest administration (certificate of conformity).

The process is of a participatory nature and must include consultation meetings with the local communities (Art. 11 of Order n°34/CAB/MIN/EDD). Minutes of these meetings must be drawn up, outlining the observations of local communities in terms of the forest management plan and the zoning and allocation of land.

The concessionaire is responsible for updating the forest administration regarding the progress of the forest management plan twice a year (Art. 10 of Order n°34/CAB/MIN/EDD).

Following this process, a validation committee representing various administrative departments is created. This committee approves the forest management plans, issues the certificate of conformity and sends it all to the provincial governor. The provincial governor then issues an order for the approval of the forest management plan.

### **Management programmes and annual operations plans**

The concession area is divided into five-year management blocks, which are then themselves divided into annual allowable cuts (AAC). The five-year management blocks are subject to management programmes, which schedule the activities for the five years, apart for the period directly preceding the adoption of the forest management plan. Indeed, for the first four years following the adoption of the concession contract, the management programme acts as the provisional forest management plan (Art. 20 of order n°34/CAB/MIN/EDD). Management programmes are recognised by a "validity certificate" issued by the forest administration.

Each annual allowable cut is also accompanied by an annual operations plan. This covers the period from January to December of the relevant year. It is drawn up based on the results of the annual allowable cut harvesting inventory, in accordance with the provisions of the forest management plan and the current five-year management programme. An industrial harvest permit is issued once the annual operations plan has been validated (see section 1.4).

### **Monitoring of forest management instructions**

Whilst the forest management plan is being implemented, the concessionaire prepares an annual logging operations report, in line with the template produced by the forest administration (Art. 65 of Order n°34/CAB/MIN/EDD). The concessionaire also draws up a five-year management report every five years.

The forest administration must ensure that the forest management plan is checked, monitored and evaluated (Art. 76 of the Forest Code).

### **Artisanal forest units**

The process for drawing up and implementing a forest management plan for an artisanal forest unit or *unité forestière artisanale* (UFA) is normally similar but adjusted slightly (*mutatis mutandis*), overseen by the provincial forest administration (Art. 10 of Ministerial Order n°85/CAB). The regulations do not provide any specific details regarding which parts can be adjusted and how, or which remain unchanged.

## Community forest concessions

Community concessions are managed and operated in line with a simplified management programme prepared by the local community with the support of the local forest administration, in compliance with an operational guide produced by the forest administration (Art. 22 of Order n°25/CAB). As well as dividing the concession into specific areas, the simplified management programme notably provides a schedule based on a simplified multi-resource inventory, a socio-economic survey report and a description of the applicable management measures in line with the practices and customs of the communities (Art. 23 of Order n°25/CAB). If one of the areas is allocated to logging operations, the simplified management programme stipulates the quantities or volumes that can be harvested annually over a maximum period of 5 years (Art. 24 of Order n°25/CAB). The simplified management programme is approved by the local forest department. It is subject to a mandatory five-year evaluation.

### *Description of Risk*

- The forest management plan is drawn up without any participative process or consultation meetings with local communities (Based on expert consultation, 2019);
- The deadlines stipulated for drawing up and validating the forest management plan are not respected; (Global Witness, 2018, OI-FLEG/OGF, n°11-2019)
- The five-year management plan and/or the annual management document (« plan annuel d'opération ») is/are not in place ; (Global Witness, 2007 and 2015), OI-FLEG/OGF (n°7-2017 and n°11-2019)
- The provisions of the forest management plan are not implemented or are only partially implemented; (see for example Global Witness, 2018)
- Activities not stipulated in the forest management plan are authorised or not checked (mining, hunting, farming, etc.); (see for example OI-FLEG/OGF, n°7-2017)
- There are discrepancies between the concession limits indicated in the forest management plan and those indicated in the concession contract and the official database (Forest Atlas of the Democratic Republic of Congo) (Based on expert consultation, 2019).
- In addition, management activities are poorly monitored and controlled by the forest administration (Based on expert consultation, 2019). For instance, management surveys might be formally validated despite no suitable field check being conducted.

### *Risk Conclusion*

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

#### **1.3.6. Risk designation and specification**

Industrial forest concessions, Artisanal forest units and local community forests concessions: Specified risk

Private planted or natural forests: Not applicable

#### **1.3.7. Control measures and verifiers**

(1) Collect the following documents:

*For concession contracts signed within the last five years:*

- Management plan;

- Decision/order/ministerial decree authorising the extension of the deadline if the contract was signed more than four years ago;
- Half-yearly progress reports on the preparation of the forest management plan.

*For all other concessions:*

- Forest management inventory report and its certificate of conformity;
- Socio-economic assessment report and its certificate of conformity;
- Minutes from the consultation meetings with the local communities;
- Forest management plan;
- Forest management plan approval order;
- Five-year management plan and its certificate of validity;
- Annual operations plan.

*For community forests:*

- Approved simplified management programme.

(2) Carry out the following checks:

- Ensure that there is coherence across all forest management instructions (for example for industrial concessions, the order of the five-year blocks and annual allowable cuts defined in the forest management plan, the five-year management plan and the annual operations plan).

(3) Where possible, consult the following resources and parties:

- Mandated independent observer (OGF);
- Societal players involved in land-related issues (WWF, RRN, etc.).

## 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°011/2002 of 29 August 2002 on the Forest Code, Art. 94, 96, 97 et seq; 111, 112, and 113;
- Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016 of 29 October 2016 on the conditions and rules for timber harvesting, Art. 20 to 23; 42;
- Ministerial Order n°034/CAB/MIN/EDD/03/03/BLN/2015 of 3 July 2015 laying down the procedure for drawing up, verifying, approving, implementing and following up the management plan of a forest concession for timber production;

- Ministerial Order n°028/CAB/MIN/-ECNT/15/JEB/08 of 7 August 2008 establishing model concession contracts for the harvesting of forest products and the related cahier des charges, Annex 2: Model cahier des charges for forest concession contracts, Art. 4;
- Ministerial Order n°85/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 29 October 2016 on Artisanal Forest Units (UFA).

#### 1.4.2. Legal authority

- Ministry of Environment and Sustainable Development
- Provincial forest officials

#### 1.4.3. Legally required documents or records

*For industrial forest concessions:*

- Annual operations plan;
- Valid industrial harvest permit;
- If applicable, an official document issued by the forest administration extending the validity period of the harvest permit (extension of two years maximum for a total period of three years).

*For local community concessions:*

- Harvest permit awarded to the community or an artisanal logger;
- If applicable, a written agreement (*Convention d'exploitation*) concluded between the community and an artisanal logger;
- If applicable, the artisanal logger's accreditation;

*For artisanal forest units:*

- The artisanal logger's accreditation;
- Artisanal harvest permit;

*For wood located in forest concessions belonging to private individuals:*

- Harvest permit for private wood; or
- If applicable, a declaration of the harvesting of wood originating from reforestation operations.

#### 1.4.4. Sources of information

*Non-Government sources*

- Global Witness (2019). Buyers beware. Available at: [https://www.globalwitness.org/documents/19675/buyers\\_beware\\_EN\\_FINAL\\_1403.pdf](https://www.globalwitness.org/documents/19675/buyers_beware_EN_FINAL_1403.pdf) [accessed on 13 August 2021];
- OI-FLEG/OGF (2013-2020). Rapports de mission de terrain n°1 à n°14. Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance];
- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international. Available at: [https://www.globalwitness.org/documents/18007/Exporting\\_impunity\\_French.pdf](https://www.globalwitness.org/documents/18007/Exporting_impunity_French.pdf) [accessed on 20 October 2019];
- Greenpeace (2013). Cut it out: illegal logging in the Democratic Republic of Congo (DRC) Available at:

<https://allafrica.com/download/resource/main/main/idatcs/00060634:838a5234d6471c17c8bf7fe73b4932be.pdf> [accessed on 10 August 2019];

- OI-FLEG/Resource Extraction Monitoring (2013). Rapport final – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo (2010-2013).

#### **1.4.5. Risk determination**

##### *Overview of Legal Requirements*

Where the logging operations are carried out by private loggers, harvest permits are issued on top of the forest concession (Art. 97 and 98 of the Forest Code).

##### **Industrial forest concessions**

For industrial forest concessions, this permit is issued in the form of an industrial harvest permit (Art. 20 of Order n°84/CAB/MIN/ECNDD).

This permit covers an annual allowable cut. It is issued based on the annual operations plan, previously validated on the basis of the results of the harvesting inventory (Art. 22 of Order n°84/CAB/MIN/ECNDD; Art. 27 of Order n°34/CAB/MIN/EDD). It is signed by the Ministry of Forests.

It is valid for one year and may be extended by one or two additional years if harvesting operations are still on-going in compliance with the forestry regulations in force (in total, an annual allowable cut cannot be harvested for longer than three years before the next rotation) (Art. 23 of Order n°84/CAB/MIN/ECNDD). The permit stipulates the number of trees that can be harvested for each species and the expected volumes.

##### **Artisanal logging, local community concessions, private timber**

Artisanal loggers must obtain an accreditation issued by the provincial governor. Category 1 loggers (areas under 50 hectares) must sign a written agreement with a local community before obtaining a category 1 harvest permit. For category 2 loggers (areas between 100 and 500 hectares), once an annual allowable cut has been allocated within an artisanal forest unit, the logger must obtain a category 2 artisanal harvest permit, covering the area defined in the annual allowable cut allocation certificate (Art. 24 of Ministerial Order n°84/CAB). Artisanal harvest permits are valid for 1 year and are issued by the provincial governor.

If the local communities are carrying out the logging operations themselves within their concession, they must also obtain a harvest permit. If they are not, they must sign a written agreement with an artisanal logger, who must in turn have their own harvest permit (see above).

To harvest wood located within a private land concession, a harvest permit must also be obtained. It is valid for one year and cannot cover more than 1,000 hectares. It specifies the authorised harvestable volume and can be renewed once. In contrast, the harvesting of wood originating from reforestation operations within land concessions belonging to private individuals is subject to a simple declaration to the forest administration (Art. 26 to 29 of Ministerial Order n°84/CAB). Reforestation is defined in the Forest Code as the planting of forest tree species within a forest area (Art. 1 of the Forest Code).

##### *Description of Risk*

###### *Industrial concessions:*

- Logging operations are carried out without a harvest permit, before a permit is issued or after a permit has been revoked (1.4); (OI-FLEG/OGF, n°1-2013, n°2-2014, n°5-2015, n°6-2016, n°7-2017, n°9-2017, n°12-2019)
- Harvest permits for industrial concessions are allocated without an annual operations plan; (OI-FLEG/OGF, n°7-2017, n°11-2019)

- The annual allowable cut (industrial concession) is harvested beyond its statutory period (maximum three years) (Based on expert consultation, 2019).

*Artisanal permits:*

- Logging operations are carried out without a harvest permit; (OI-FLEG/OGF, n°2-2014, n°8-2017, n°9-2017, n°10-2017, n°13-2019)
- Artisanal permits are awarded to entities which are not designated by the regulation as allowed recipient of artisanal permits (for instance foreign national or enterprises up to 2016); (Global Witness, 2015, OI-FLEG/REM, 2013)
- Fraudulent use of artisanal permits (allocated to a different entity or for a different area); (Based on expert consultation, 2019)
- Artisanal operators are not registered with the designated local authorities (holding their accreditation as artisanal operators); (Global Witness, 2015, OI-FLEG/OGF, n°2-2014, n°3-2014, n°8-2017, n°9-2017, n°10-2017, n°13-2019)
- Artisanal permits are not delivered by the designated competent authority (Provinces Governors); (Global Witness, 2015)
- Single artisanal operators are granted more annual permits than the maximum legally allowed (2 permits). (Global Witness, 2015)

*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.

**1.4.6. Risk designation and specification**

All source types: Specified risk

**1.4.7. Control measures and verifiers**

(1) Collect the following documents:

*For industrial forest concessions:*

- Annual operations plan;
- Valid industrial harvest permit;
- If applicable, an official document issued by the forest administration extending the validity period of the harvest permit (extension of two years maximum for a total period of three years).

*For local community concessions:*

- Harvest permit awarded to the community or an artisanal logger;
- If applicable, a written agreement (Convention d'exploitation) concluded between the community and an artisanal logger;
- If applicable, the artisanal logger's accreditation;

*For artisanal forest units:*

- The artisanal logger's accreditation;
- Artisanal harvest permit;

*For wood located in forest concessions belonging to private individuals:*

- Harvest permit for private wood; or
- If applicable, a declaration of the harvesting of wood originating from reforestation operations.

(2) Consult the following parties to obtain information on the issuance of permits:

- Mandated independent observer (OGF);
- Civil society organisations.

## 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°011/2002 of 29 August 2002 on the Forest Code (Art. 54, 68, 81, 93, 102, 120, 121);
- Decree n°08/09 of 8 April 2008 establishing the procedure for allocating forest concessions (Art. 14);
- Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016 of 29 October 2016 on the conditions and rules for timber harvesting (Art. 9, 19, 40, 46);
- Interministerial Order n°CAB/MIN/EDD/2020/005 and n°CAB/MIN/FINANCES/2020/066 of 24 July 2020 fixing the rates for duties, taxes and fees to be charged by the Ministry of Environment and Sustainable Development in the forestry sector (Art. 3, 5, 8, 11, 12, 13).

#### 1.5.2. Legal authority

- Ministry of Public Finance (Central Bank as custodian of the public purse);
- Forest Management Department (implementing body);
- Directorate general of state revenues (Direction Générale des Recettes Administratives, Domaniales et de Participation) (implementing body);
- Directorate General of Customs and Excise (DGDA) (collection body)
- Fund for the Reconstruction of Forest Cover (Fond pour la Reconstitution du Couvert Forestier) (implementing body);
- Provincial environmental organisations (collection bodies)

#### 1.5.3. Legally required documents or records

Not applicable



#### 1.5.4. Sources of information

##### *Non-Government sources*

- Jurec Conseil (2020). Etat des lieux de la fiscalité – parafiscalité du secteur forestier en République démocratique du Congo, rapport d'étude;
- ATIBT, FIB (2019). Etat des lieux des acteurs de la filière forêt-bois en République Démocratique du Congo;
- OI-FLEG, OGF (2015, 2017). Rapports de mission de terrain n°5 et n°7. Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance];
- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international. Available at: [https://www.globalwitness.org/documents/18007/Exporting\\_impunity\\_French.pdf](https://www.globalwitness.org/documents/18007/Exporting_impunity_French.pdf) [accessed on 20 October 2019];
- Chatham House (2014). Illegal logging in the Democratic Republic of Congo;
- OI-FLEG/Ressource Extraction Monitoring (2013). Note de briefing – Analyse de la fiscalité forestière. Available at: [http://www.observation-rdc.info/documents/REM\\_OIFLEG\\_2013\\_taxes\\_DRC.pdf](http://www.observation-rdc.info/documents/REM_OIFLEG_2013_taxes_DRC.pdf) (accessed on 9 December 2019);
- Global Witness (2013). Les forêts de RDC victimes d'une grande braderie. Evasion fiscale, arrangements illégaux : 90 % des taxes absentes des caisses publiques;
- Forest legality initiative Risk tool (2013). Democratic Republic of Congo. Available at: <https://forestlegality.org/risk-tool/country/democratic-republic-congo> (accessed on 9 December 2019);
- OI-FLEG/Resource Extraction Monitoring (2011). Mise en application de la loi forestière et de la gouvernance. Analyse de la législation forestière de la RDC;
- Karsenty, A. (2004) Enjeux des réformes récentes de la fiscalité forestière dans le bassin du Congo. Bois et forêts des tropiques, 2004, n°281 (3). Available at: [http://bft.cirad.fr/cd/BFT\\_281\\_51-60.pdf](http://bft.cirad.fr/cd/BFT_281_51-60.pdf);
- Tshikala, E. (2004). Régime fiscal forestier et dépenses de l'Etat en faveur du secteur forestier en République Démocratique du Congo. Rapport réalisé pour le compte de la FAO. Available at: <http://www.fao.org/3/ad492f/ad492f00.htm#TopOfPage> (accessed on 5 August 2019).

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

- Area tax

The Forest Code only stipulates one tax applicable to logging operators with an industrial forest concession: area tax (Art. 121 of the Forest Code). This tax is based on a floor annual rate fixed by the administration, plus the additional financial offer proposed by the concessionaire for concessions allocated through public tender procedures. "Given that no tender procedure has yet been established, this increase does not yet exist in practice" (OI-FLEG, 2013). Old forest titles converted into concessions are therefore subjected to the floor rate.

The area tax is charged only for the productive area of the forest concession (Art. 2 of order n°008/CAB).

The area tax is paid annually.

- Felling tax

The Forest Code also stipulates a felling tax. The felling tax rate is determined based on the value of each species and the areas from which they are taken. It is calculated based on the information provided by the logging operators themselves.

This tax also applies to logging operations taking place outside of a forest concession (which *de facto* means artisanal forest units and trees on private land concessions) (Art. 102 and 120 of the Forest Code).

The law also stipulates a reforestation tax, normally imposed on the logging operator and also calculated based on the volumes actually harvested.

The issuance of accreditations and permits is also subject to payment of specific fees.

### *Description of risks*

Several organisations have attempted to conduct extensive analyses between the taxes due and the amounts actually paid (Chatham House, 2014, OI-FLEG/REM, 2013). In general, it is still proving difficult to collect all the necessary data. However, the OI-FLEG successfully demonstrated that significant potential tax revenue has been lost and concluded that at least \$3,400,00 in assessed taxes was not levied in 2010, accounting for 28% of all amounts due. The estimated figure for 2011 was lower (\$1,000,000 or 7% of the amounts due)<sup>1</sup>. These calculations are based on the amounts due for volumes legally harvested under industrial concessions. Given the strong likelihood that the actual volumes collected are higher than the volumes declared, the rate of revenue collection is very low.

There is therefore a risk that the amounts due are not claimed and that the amounts claimed are not recovered (Greenpeace Africa, 2013, Global Witness, 2015 and 2019, ATIBT, 2019).

Furthermore, there is also common arrangement between the administration and the Ministry of Forests of agreeing on payment deadlines or waivers on the basis of vague legal foundations (Global Witness, 2015).

The OI-FLEG also found that area tax is imposed only for the productive area of each concession while the law provides for it to be imposed for the whole area. The 2008 Order appears to detail how the area tax should be applied (i.e. on the productive area only) – unless it is considered as contrary to the law and thus invalid (the Forest Code mentions the terms “tax on allocated area”, which could be interpreted as a tax applying to the entire concession area).

The OI-FLEG also reported in 2013 that no permit tax or felling tax was paid on large volumes of recent artisanal semi-industrial harvest.

Lawson (2014) reports that the absence of appropriate billing and collection of forest taxes by the government and non-payment by companies is a useful indicator of the level of forest governance in the DRC.

Finally, the reforestation tax does not seem to have been applied uniformly, notably regarding the actual collection of the tax and the entities liable to pay it.

### *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.

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<sup>1</sup> Despite data being from 2011, we consider this is still reflecting the current situation.

### 1.5.6. Risk designation and specification

All source types : Specified risk

### 1.5.7. Control measures and verifiers

Collect the following documents:

- Industrial forest concessions: proof of payment of area tax (e.g. receipt);
- Artisanal forest units, local community forests (when the harvest is done by an artisanal logger) and private forests: proof of payment of felling tax (e.g. receipt);
- Debt clearance issued by the competent authorities.

## 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

- General Tax Code
- Law n°11/005 of 25/06/2011 on the ratification of Ordinance-Law 10/001 of 20/08/2010 on the introduction of VAT
- Interministerial Order n°CAB/MIN/EDD/2020/005 and n°CAB/MIN/FINANCES/2020/066 of 24 July 2020 fixing the rates for duties, taxes and fees to be charged by the Ministry of Environment and Sustainable Development in the forestry sector
- Ministerial Order n°0011/CAB/MIN/ECN-EF/2007 of 12/04/2007 on the regulations for the authorisation for industrial logging and authorisations for the purchase, sale and export of timber
- Instruction n°DGDA/DG/DGA.T/dg/2011/005 of 28 December 2011 on import and export VAT

### 1.6.2. Legal authority

- Ministry of Forests
- Ministry of Finance

### 1.6.3. Legally required documents or records

- Permit to purchase or sell timber

### 1.6.4. Sources of information

#### *Non-Government sources*

- Jurec Conseil (2020). Etat des lieux de la fiscalité – parafiscalité du secteur forestier en République démocratique du Congo, rapport d'étude;
- OI-FLEG/REM (2011). Eléments proposés pour un manuel de procédures du contrôle forestier – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo.

### 1.6.5. Risk determination

#### *Overview of Legal Requirements*

Ministerial Order n°0011/CAB stipulates that timber cannot be subjected to any transaction without a permit to purchase, sell or export. These permits are issued by the Ministry of Forests, upon payment of the permit fees. The permit fees are 2,500 US dollars per permit for artisanal loggers, 3,000 US dollars per permit for concessionaires with an official forest title, and 10,000 US dollars per permit for other business people/non-official loggers.

VAT was introduced in the Democratic Republic of the Congo in 2012. A 0% rate is applied to exports. Consequently, any entity purchasing and selling wood in the DRC normally pays VAT to the state and then adds these amounts onto the invoices it issues to its customers. At the end of the chain, the exporter recovers the VAT amount billed to it by its supplier. Pre-export processing chains are extremely short and it is not normal for forest products to be sold between legal entities in Congolese territory before export.

Forest products for export are therefore not a source of VAT payments in the DRC.

The payment of export taxes is covered in section 1.19 below.

#### *Description of Risk*

There is no information available on the issuance of permits for the purchase and sale of timber, or on the payment of the fees associated with issuing these permits.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk for all source types. There is not enough information to establish 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.

### 1.6.6. Risk designation and specification

All source types: specified risk based on a precautionary approach.

This conclusion is based on the general high level of risks for DRC, and the low CPI (18 in 2020), which indicates a high level of corruption. We therefore have no evidence to state low risks and attention to this indicator should be paid when sourcing from DRC.

### 1.6.7. Control measures and verifiers

Currently we have not identified potential mitigation measures for the risk identified. Any input on possible mitigation measures will be appreciated.

## 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 as constituted by successive Finance Laws, including:
  - Finance Law n°18/025 of 13 December 2018 on fiscal year 2019, Art. 17
- Ordinance-Law n°69-009 of 10 February 1969 on schedular taxes on income, as amended by successive Finance Laws, Art. 30, 39, 80 and 83

- Ordinance-Law n°13-006 of 23 February 2013 on the tax regime applicable to small enterprises as regards tax on profits, as amended by successive Finance Laws, Art. 2 and 6
- Law n°004/2003 of 13 March 2003 reforming tax procedures, as amended by successive Finance Laws, Art. 12 and 23
- Law n°004/2002 of 21 February 2002 on the Investment Code, Art. 13 and 19

#### 1.7.2. Legal authority

- Ministry of Finance

#### 1.7.3. Legally required documents or records

- N/A

#### 1.7.4. Sources of information

##### *Government sources*

- National agency for the promotion of investments (ANAPI), 2017. Quel est le taux de l'impôt sur les bénéfices et profits en R.D. Congo ? Available at: <https://www.investindrc.cd/fr/centre-d-informations/faq/342-quelles-sont-les-conditions-d-enregistrement-et-d-agrement-d-une-entreprise-de-genie-civil-ou-de-construction> (accessed on 10 December 2019).

##### *Non-Government sources*

- Jurec Conseil (2020). Etat des lieux de la fiscalité – parafiscalité du secteur forestier en République démocratique du Congo, rapport d'étude;
- World Bank Group (2017). Étude sur les écarts fiscaux en République démocratique du Congo. Available at: <http://documents.banquemondiale.org/curated/fr/634121537940846295/pdf/Tax-Gap-Analysis.pdf> (accessed on 10 December 2019);
- Makongo, A. I. (2013). Les effets de la TVA sur le patrimoine des ménages de la RDC. Available at: [https://www.memoireonline.com/01/14/8645/m\\_Les-effets-de-la-TVA-sur-le-patrimoine-des-menages-de-la-RDC9.html](https://www.memoireonline.com/01/14/8645/m_Les-effets-de-la-TVA-sur-le-patrimoine-des-menages-de-la-RDC9.html) (accessed on 9 December 2019).

#### 1.7.5. Risk determination

##### *Overview of Legal Requirements*

The tax system in the Democratic Republic of the Congo includes a corporate income tax (IBP – formerly called “professional contribution”), which has stood at 30% since 2018.

Corporate income tax applies to the net profits generated by any industrial, commercial, artisanal, agricultural or property company whose professional activities are conducted in the DRC. Foreign companies conducting activities in the DRC must pay tax on any profits generated by their establishments permanently located in the DRC. The base for corporate income tax is determined in line with the net profits generated during the tax year, i.e. on income net of deductible expenses incurred to acquire or conserve this income (Makongo, 2013).

Some exemptions may be agreed on, in particular by virtue of the Investment Code (art. 13 and 19) and of the specific regime for small businesses (art. 2 and 6 of the Law n°13/006). Hence, the corporate income tax for sales from small businesses is 1% of the turnover declared for the tax year.

##### *Description of Risk*

No information is available on the payment of corporate income tax by logging companies in particular. In general, the Congolese tax system is not considered very effective. The World Bank report (2017)

estimates the tax gap (the difference between the sums that should have been paid and the sums actually collected) at around CDF 200 billion.

### *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 timber source types: Specified risk

#### **1.7.7. Control measures and verifiers**

Collect the following documents:

- Proof/receipt of corporate income tax (IBP) payment issued by the general tax office.

## **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°011/2002 of 29 August 2002 on the Forest Code (Art. 96 to 113);
- Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016 of 29 October 2016 on the conditions and rules for timber harvesting, Chapter V (Art. 56 to 65);
- Ministerial Order n°034/CAB/MIN/EDD/03/03/BLN/2015 of 3 July 2015 laying down the procedure for drawing up, verifying, approving, implementing and following up the management plan of a forest concession for timber production;
- Ministerial Order n°025/CAB/MIN/FCN-DD/CJ/00/RBM/2016 of 9 February 2016 laying down specific provisions for the management and operation of local community forest concessions;
- Ministerial Order n°028/CAB/MIN/ECN-TI 27/JEB/08 of 7 August 2008 establishing model concession contracts for the harvesting of forest products and the related specifications (cahier des charges) (Art. 32);
- Ministerial Order n°021/CAB/MIN/ECN-T/15/JEB/2008 of 7 August 2008 regarding standards related to facilities to be set up within the forestry concessions;
- Ministerial Order n°85/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 29 October 2016 on Artisanal Forest Units (UFA) (Article 11);
- Operational guide establishing the Standards for Reduced Impact Logging;

- Operational guide establishing the Standards for Harvesting Inventories;
- Operational guide establishing the Framework for the Five-Year Management Plan published by the Ministry of Forests.

#### **1.8.2. Legal authority**

- Ministry of Environment and Sustainable Development

#### **1.8.3. Legally required documents or records**

*For industrial forest concessions:*

- Annual operations plan;
- Industrial harvest permit;
- Site log books;
- Quarterly declaration of timber produced.

*For artisanal forest units (UFA):*

- Forest management plan;
- Artisanal harvest permit;

*For local community concessions:*

- Simplified management plan;
- For private natural forests:
- Private wood harvest permit.

#### **1.8.4. Sources of Information**

*Non-Government sources*

- FAO database. Timber-Lex - Democratic Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed on 16 August 2021];
- OI-FLEG/OGF (2013-2020). Rapports de mission de terrain n°1 à n°14. Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance] ;
- Global Witness (2019). Buyers beware. Available at: [https://www.globalwitness.org/documents/19675/buyers\\_beware\\_EN\\_FINAL\\_1403.pdf](https://www.globalwitness.org/documents/19675/buyers_beware_EN_FINAL_1403.pdf) [accessed on 13 August 2021];
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- Global Witness (2018). Total systems failure. Exposing the global secrecy destroying forests in the Democratic Republic of Congo;
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- OI-FLEG/Resource Extraction Monitoring (2011). Mise en application de la loi forestière et de la gouvernance. Analyse de la législation forestière de la RDC ;
- Global Witness (2007). Forêts de RDC : « Vers des normes satisfaisantes de gestion et de gouvernance » ? Available at: <https://www.globalwitness.org/sites/default/files/library/policybrieffinalfr.pdf> [accessed on 20 October 2019].

#### 1.8.5. Risk determination

##### *Overview of Legal Requirements*

The Forest Code stipulates that “forest products must be harvested in compliance with the clauses of the specifications (*cahier des charges*) attached to the contract or the provisions stipulated in the permit” (Art. 107). The law recognises two distinct forms of logging: industrial logging and artisanal logging.

A number of general standards are laid down by Order n°84/CAB, which reiterates that all timber harvesting operations “are subject to the observation of the principles of sustainable, environmentally sound, economically viable, technically efficient and socially just management.” The required actions notably involve:

- Preparing a harvesting inventory (including in private natural forests);
- Preparing a detailed logging schedule (based on the forest management plan, the management plan and the annual operations plan);
- Ensuring efficient operations with a low environmental impact;
- Conducting a post-logging evaluation and communicating it to the forest administration;
- Using qualified and competent staff.

The technical details of the logging standards to be implemented by all industrial concession-holders in the DRC are specified in the Standards for Reduced Impact Logging (RIL), which amalgamate legal obligations and recommendations for loggers.

The obligations relating to logging operations are as follows:

- Before logging operations commence, the area concerned (annual allowable cut or artisanal harvest permit area) must be physically marked out.
- Felling outside of this area is prohibited, with the exception of trees located on service roads opening the path to the annual allowable cut for industrial logging. However, the timber cannot be evacuated before logging operations are officially permitted in the relevant logging area.



- Loggers must implement controlled felling.
- The logging operations must respect the specified time frames.
- Clearcutting is prohibited.
- The use of fire to clear cutover is prohibited.
- Felling must respect the minimum harvestable diameters specified for each species, with the exception of trees felled for the necessary infrastructure (service network, base camp, logyards, bridges, etc.) and those damaged by natural means (windfall).
- Abandoning wood with a market value is prohibited (whether the wood is raw or processed).
- Felling more trees than the number stipulated on the harvest permit is prohibited, unless prior authorisation has been obtained from the forest administration following a reasoned request.
- Where possible, the logger must take all necessary precautions to prevent the cut trees from damaging those to remain standing. Crop trees must be avoided during skidding operations.
- Cut wood must be clearly marked. The same goes for stumps following the felling operations.
- Industrial loggers must keep a site log book, in line with the template provided by the regulations. The log book must always be present on the logging site.
- The log trucks must not be loaded beyond their loading capacity, and must not be used to transport external passengers, weapons, or bushmeat. They must respect the speed limits in force.
- Upon completion of the logging operations, loggers must not leave any logging debris in the riverbank protection areas or leave obstacles blocking the flow of water.
- The wood must be removed from the logging area within 2 years (artisanal harvest permits) or 3 years (annual allowable cuts for industrial concessions). After this time, the wood is deemed abandoned and belongs to the state (certified abandonment report and issuance of an order declaring the abandonment of the wood).
- During the forest management plan preparation period, the concessionaire may only harvest wood within a single annual allowable cut whose surface area cannot exceed 1/25th of the total concession area, for one year only. The concessionaire may harvest all species authorised by the regulations.

The specifications (*cahier des charges*) attached to the concession contract also includes a list of species that cannot be harvested (see section 1.9).

Logging operations, including felling, may be outsourced by the forest concessionaire, subject to the forest administration being informed. For felling in particular, outsourcing must be approved by the administration.

For local community forest concessions, timber may only be produced using specific equipment: a chainsaw, a crosscut saw and a winch. The logging operations may be carried out by the local community or by artisanal loggers, in line with the simplified management plan (which must identify the position of the harvestable trees and the volumes thereof in advance). The felled trees must then be recorded on a logging sheet provided by the forest administration.

### *Description of Risk*

Between 2010 and 2021, the OI-FLEG (NGOs Ressource Extraction Monitoring until 2013 and OGF since then) visited many industrial and artisanal logging sites and reported systematic breaches of the regulations (OI-FLEG/REM, 2013, Global Witness, 2015, OI-FLEF/OGF, 2013 to 2021).

The OI-FLEG reports have notably highlighted cases of:

- Logs and stumps not being properly marked; (OI-FLEG/REM, 2013, Greenpeace Africa, 2013, Global Witness, 2007 and 2015, OI-FLEG/OGF, n°1-2013, n°2-2014, n°3-2014, n°6-2016, n°11-2019)
- Wood being harvested beyond the authorised volume; (OI-FLEG/REM, 2013, Global Witness, 2015, OI-FLEG/OGF, n°1-2013, n°2-2014, n°5-2015, n°6-2016)
- Non-authorised species being harvested; (OI-FLEG/REM, 2013, Global Witness, 2015, OI-FLEG/OGF, n°1-2013, n°2-2014, n°5-2015, n°6-2016)
- The felling of trees below the minimum diameter; (Global Witness, 2015, OI-FLEG/OGF, n°3-2014, n°11-2019)
- Logging activities carried out beyond the specified limits; (Global Witness, 2015, 2018 and 2019, OI-FLEG/OGF, n°11-2019, ATIBT, 2019)
- Wood being illegally abandoned; (OI-FLEG/REM, 2013, Global Witness, 2015, OI-FLEG/OGF, n°2-2014, n°5-2015, ATIBT, 2019)
- Damaged soil and subsoil. (Global Witness, 2015)

The harvesting of wood species beyond the authorised volume is very common. In one of the most well-known cases, the observer reported that a logging company had exceeded its authorised volumes under two concessions in a "broad and almost systematic" manner, with an excess of 12,000 m<sup>3</sup> recorded in the first few months of 2011. One of the concessions involved had nevertheless been able to obtain a Controlled Wood certificate from the FSC, which was supposed to guarantee the legality of the wood (Greenpeace Africa, 2013).

An examination carried out by the OI-FLEG of a sample of data across 80 licensed logging operations revealed that the harvested volumes actually recorded exceeded the authorised volumes by 19%, accounting for an excess of non-authorised volumes of 39,000 m<sup>3</sup>. The majority of these excess volumes were three leading commercial species: Sapele, Sipo and Iroko.

### *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 timber 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 industrial forest concessions:*

- Documents relating to the harvesting inventory conducted prior to the harvest permit application;
- Annual operations plan;
- Valid harvest permit;
- Site log books and quarterly declarations of wood production;
- If applicable, reports of field inspections conducted by the forest administration;
- If applicable, reports from the independent observer.

*For artisanal forest units (UFA):*

- Forest management plan;

- Artisanal harvest permit;

*For local community concessions:*

- Simplified management plan;

*For private natural forests:*

- Private wood harvest permit.

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

- That all stumps, boles and blocks are marked in compliance with the regulations in force;
- That the logging operations are compliant with the stipulated species, diameters, quantities and perimeters;

(3) Consult the following parties to obtain information on the implementation of logging standards in the forest concerned:

- Civil society organisations.(forest governance observatory (OGF/RENOI), WRI, others).

## 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°011/2002 of 29 August 2002 on the Forest Code (Art. 45, 48, 49, 50 and 51);
- Ministerial Order n°CAB/MIN/AF.F-E.T/276/2002 of 5 November 2002 defining the protected forest species;
- Order n°056 CAB/MIN/AFF-ECNPF/01/00 of 28 March 2000 on the regulation of international trade in endangered wildlife and flora species (CITES);
- Ministerial Order n°028/CAB/MIN/ECN-TI 27/JEB/08 of 7 August 2008 establishing model concession contracts for the harvesting of forest products and the related specifications (cahier des charges) (Art 1, annex 1, Art 12, annex 2, Art. 5);
- Ministerial Order n°034/CAB/MIN/ECN-T/15/JEB/08 of 22 August 2008 on the regulations for harvesting certain forest products (Art. 11 to 14);
- Principles of Reduced Impact Logging (RIL).

### 1.9.2. Legal authority

- Ministry of Environment and Sustainable Development

### 1.9.3. Legally required documents or records

- For industrial concessions: Forest management plan; management plan and annual operations plan;
- For local community concessions: Simplified management plan;
- For artisanal forest units: Forest management plan;
- Harvest permit (industrial, artisanal, community or private wood);
- If applicable, the CITES permit.

### 1.9.4. Sources of Information

#### *Government sources*

- Secretary General of Environment and Nature Conservation, Ministry of Environment, Conservation of Nature and Tourism (2014 and 2018). Non-detriment finding for the harvesting and trading of Afrormosia (*Pericopsis elata*) in the Democratic Republic of the Congo;
- Annual reports from the Congolese Institute for Nature Conservation.

#### *Non-Government sources*

- EIA, Premi Congo (2019). Scheduled extinction. Our last chance to protect the threatened African Mukula trees;
- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international;
- Greenpeace (2015). Trading in chaos. The impact at home and abroad of illegal logging in the DRC;
- OI-FLEG/OGF (2014). Rapports de mission de terrain n°2. Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance];
- OI-FLEG/Resource Extraction Monitoring (2013). Rapport final – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo (2010-2013).

### 1.9.5. Risk determination

#### *Overview of Legal Requirements*

#### **Species protected on a national scale**

The Forest Code broadly prohibits the felling of protected species, a list of which has been established in the applicable regulations (Art. 49 and 50).

Ministerial Order n°CAB/MIN/AF.F-E.T/276/2002 specifies the applicable logging conditions and the list of protected species. Three lists are attached to the order, duplicating the annexes adopted by the Convention on International Trade of Endangered Species (CITES). A fourth annex is expected to be drawn up regarding forest species present in the Congolese forest domain but not covered by the CITES.

The main species concerned by this regulation and in high demand on the international wood market are those commonly known as rosewood (*Afrormosia - Pericopsis elata* and Mukula – *Pterocarpus tinctorius*). The harvesting of these species is permitted under industrial concessions on the basis of the harvesting inventory of the annual allowable cut, specified in the annual operations plan and the industrial harvest permit (quota established in terms of number of trees that can be harvested). Industrial forest concessions for which the forest management plan is in the process of being prepared

may obtain harvestable quotas based on management inventories, which must be duly validated by the forest administration and determine an annual allowable harvest.

The specific regime applicable to exporting CITES species is outlined in detail in section 1.20 below.

### **Sites and species protected by the forest management plan**

The forest concession management plan (or the simplified management plan) determines the management rules to be implemented in terms of times and spaces, and therefore determines the areas that are protected within the forest concession, and the species that must not be harvested due to their special status. The management plan also specifies certain sites and habitats that are protected (corridors, steep inclines, water sources, etc.) protection series and conservation series.

The Forest Code also prohibits the felling of trees located 50m either side of running water and within a 100m radius of any water sources (Art. 48).

### *Description of Risk*

#### **Species protected on a national scale**

There is a risk of illegal harvesting of protected species in the DRC.

There are numerous reports documenting cases of illegal harvesting of Afrormosia and Mukula, often also referred to as "African padauk".

#### **Mukula**

Mukula is growing in the South of the country and is therefore exported through neighbouring Zambia. CITES listing of *Pterocarpus tinctorius* is only dating back from 2019. EIA has reported about on-and-off harvest bans in the Katanga region and harvesting taking place outside of designated concession. A process was designed in 2019 to sell existing stockpiles of logged Mukula through Zambia, with an existing risk of not being effectively monitored and being used to export freshly logged timber (EIA, 2019).

#### **Afrormosia**

The issues uncovered concern, on the one hand, the issuance of irregular harvest permits (Global Witness, 2015, Greenpeace, 2015) and the use of fraudulent harvest permits (Global Witness, 2015). Global Witness has also documented concession-holders buying Afrormosia from irregular artisanal loggers (Global Witness, 2015).

Significant work has been conducted with the assistance of international programmes (ITTO, FAO-FLEGT) to determine strict measures to be adhered to when issuing Afrormosia harvest permits and CITES permits (Congolese Institute for Nature Conservation, 2014).

However, this study conducted for the DRC CITES body in 2014 also revealed a lack of coordination between the administrations in charge of monitoring logging operations in the DRC, which prompted the CITES management body to carry out a legality check for all *P. elata* export permits, which falls outside of its physical and technical capacities. The administrative issues revealed notably concern the verification of administrative permit procedures, volume checks, the order of the stages in the export control process and limiting the validity of the permits to 6 months, leading in some cases to the cancellation and replacement of expired permits "with all the risks of inconsistencies and potential fraud that that involves." A new report published in 2018 specified the different stages and players involved in the process facilitating the allocation of harvestable and export quotas. There is no information in the public domain on the efficiency of these new procedures and their effective application. No information is available stating that those issues are no longer present.

For a detailed description of the risks related to the export of CITES species and notably Afrormosia, see subcategory 1.20 below.

## Species and sites protected at concession level

Between 2011 and 2016, the OI-FLEG notably revealed several cases of non-authorized species being harvested, as well as felling in an area exposed to high risks of erosion (OI-FLEG/REM, 2013, Global Witness, 2015, OI-FLEG/OGF, n°1-2013, n°2-2014, n°5-2015, n°6-2016).

### *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.

#### **1.9.6. Risk designation and specification**

All timber source types: Specified risk

#### **1.9.7. Control measures and verifiers**

Collect the following documents and check that the species identified in the harvest permit are coherent with the species provided for in the management plan:

- If applicable, the forest management plan (industrial concession, UFA) or simplified management programme (local community concession), stating that the operator is permitted to harvest the species;
- Harvest permit stating the species and quantities to be harvested;
- If applicable, a CITES permit.

## **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°011/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment (Art. 21, 22, 23, 49, 50, 53, 54);
- Law n°011/2002 of 29 August 2002 on the Forest Code (Art. 45, 46, 48, 50);
- Decree n°14/019 of 2 August 2014 establishing the rules of functioning of environmental protection processes;
- Ministerial Order n°034/CAB/MIN/EDD/03/03/BLN/2015 of 3 July 2015 laying down the procedure for drawing up, verifying, approving, implementing and following up the management plan of a forest concession for timber production (Art. 4 and 9);

- Ministerial Order n°028/CAB/MIN/ECN-TI 27/JEB/08 of 7 August 2008 establishing model concession contracts for the harvesting of forest products and the related specifications (cahier des charges) (Art 1, annex 1, Art 10 and 11, annex 2 Art. 14);
- Ministerial Order n°29/CAB/MIN/ECNDD/23/ RBM/2016 of 22 March 2016 establishing the fees relating to the evaluation of environmental and social impact assessments;
- Ministerial Order n°021/CAB/MIN/ECN-T/15/JEB/2008 of 7 August 2008 regarding standards related to facilities to be set up within the forestry concessions (Art. 1, 2 and 17);
- Operational guide establishing the standards for Reduced Impact Logging.

#### 1.10.2. Legal authority

- Ministry of Environment and Sustainable Development

#### 1.10.3. Legally required documents or records

- Forest management plan or simplified management plan (local community concessions);
- For industrial concessions: management plan, annual operations plan;
- Environmental and social impact assessment report and its environmental and social management plan;
- Environmental certificate issued by the Congolese environment agency.

#### 1.10.4. Sources of information

##### *Non-Government sources*

- FAO database. Timber-Lex - Democratic Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed on 16 August 2021];
- OI-FLEG/Resource Extraction Monitoring (2013). Rapport final – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo (2010-2013);
- COMIFAC/KFW (2015). Elaboration d'un standard de réponse des entreprises de RDC aux exigences du RBUE.

#### 1.10.5. Risk determination

##### *Overview of Legal Requirements*

On the one hand, the Forest Code makes no explicit reference to environmental and social impact assessments. Forest concession management must ensure that the forest maintains its ecological functions (biological diversity, climate regulation, protection of the soil, regulation of water regimes, maintenance of water quality). The forest management plan must notably determine the potential impact of the infrastructure (roads, camps, etc.) and outline the mitigation measures. Measures to mitigate negative impacts must also be provided for when the concession directly borders a protected area. The Forest Code also provides for forest cover protection measures, notably against illicit harvesting, over-harvesting, overgrazing, fires and slash-and-burn agriculture. The deforestation of areas exposed to the risk of erosion or flooding is prohibited. The forest concession contract indicates the logger's obligation to combat bush fires, poaching and illegal timber harvesting (notably by checking traffic routes within the concession, implementing environmental safeguarding measures and minimising or offsetting any negative impacts the infrastructure construction works have on the environment). For local community forest concessions, the simplified management plan indicates the specific rules stipulated for the conservation of the natural surroundings and the protection of the environment. The community must ensure that the forest reserves are replenished by promoting regeneration through the conservation of seed-bearing trees and banning deforestation and clearcutting

in logging areas. The community may also carry out reforestation works and promote agroforestry. The simplified management plan must contain specific instructions on the actions to be taken to replenish the forest reserves.

On the other hand, the law on environmental protection stipulates that “any logging project that may have an impact on the environment is subjected to a prior environmental and social impact assessment (ESIA), accompanied by a relevant management plan”. This environmental and social management plan must notably specify “the impacts, the mitigation or improvement measures, the supervisory and follow-up responsibilities and their estimated cost during and after the project, the monitoring indicators, the schedule, the capacity building modalities, and the results of the public consultation procedure” (Art. 19 of Decree n°14/019). The impact assessment must be carried out by a specialist consultant. If the ESIA result is acceptable, the Congolese Environment Agency issues an environmental certificate.

After drawing up a forest management plan, forest concessionaires must produce an Environmental and Social Impact Assessment (ESIA) report that outlines all the impacts - positive or negative - of the logging operations on the natural or human environment, and describes the mitigation or compensation measures to be put in place (COMIFAC/KFW, 2015).

Finally, the discharge of any waste or substances that may alter or damage the surface water or groundwater is, as a matter of principle, prohibited and subject to restriction, declaration or authorisation. Measures are also provided for regarding the supervision of activities that could damage the soil, and the use of chemical products, pesticides and pollutants. The operational guide regarding the principles of reduced impact logging reiterates the fact that waste from logging activities must be collected, stored, destroyed or evacuated. Engines and equipment must be serviced in such a way that minimises pollution. The operator must notably collect all waste oil or diesel not fit for consumption. The operator must limit the use of toxic substances or products, take necessary precautions to prevent fuel leakages, and respect the safety distances for areas where hydrocarbons are stored and used.

### *Description of Risk*

Many companies harvest forest resources despite not having produced an Environmental and Social Impact Assessment (ESIA) report approved by the competent authority. Companies that have prepared an environmental and social management plan do not always comply with the provisions determined therein. (Based on expert consultation, 2019)

### *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.

#### **1.10.6. Risk designation and specification**

Specified risk for all source types

#### **1.10.7. Control measures and verifiers**

Collect the following documents:

- Environmental and social impact assessment report;
- Environmental certificate validating the ESIA;
- Report on the implementation of an environmental and social management plan (from the concession-holder).



## 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°16/010 of 15 July 2016 amending and supplementing Law n°015-2002 of 16 October 2002 on the Labour Code (art. 187, 196 and 197);
- Law n°16-009 establishing the rules on the general social security regime;
- Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM/2016 of 29 October 2016 on the conditions and rules for timber harvesting (Art. 65);
- Ministerial Order n°021/CAB/MIN/ECN-T/15/JEB/2008 of 7 August 2008 regarding standards related to facilities to be set up within the forestry concessions (Art. 7 to 15);
- Ministerial Order n°12/CAB/MIN.ETPS/043/20 08 of 8 August 2008 establishing the operating rules for the health and safety committee and the enhancement of workplaces;
- Ministerial Order n°028/CAB/MIN/ECN-TI 27/JEB/08 of 7 August 2008 establishing model concession contracts for the harvesting of forest products and the related specifications (cahier des charges) (Art 1, annex 2 Art. 9);
- Principles of Reduced Impact Logging (RIL) (section 2.2).

### 1.11.2. Legal authority

- Labour Inspectorate
- Health and Safety Committee
- Forest inspector and sworn inspectors

### 1.11.3. Legally required documents or records

- Health and safety committee annual report
- Proof that employees have been declared to the National Social Security Institute (INSS)
- Accidents at work follow-up report
- Service or employment contract with a healthcare professional (doctor, infirmary service, health centre, etc.).

### 1.11.4. Sources of information

#### *Non-Government sources*

- OI-FLEG/OGF (2013-2020). Rapports de mission de terrain n°1 à n°14. Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance] ;
- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international. Available at:

[https://www.globalwitness.org/documents/18007/Exporting\\_impunity\\_French.pdf](https://www.globalwitness.org/documents/18007/Exporting_impunity_French.pdf) [accessed on 20 October 2019].

#### 1.11.5. Risk determination

##### *Overview of Legal Requirements*

The employer must ensure that all work is carried out in appropriate conditions, both from a safety point of view and in terms of the health and dignity of the workers. Health and safety at work is notably ensured with a view to preventing accidents at work and to creating salubrious working conditions, etc. Every company is responsible for ensuring the provision of an occupational doctor's services in order to ensure that the workers receive appropriate medical supervision and that victims of accidents or illness receive immediate care and assistance. The scale of the healthcare service is determined based on the size of the company. Its main role is to oversee all industrial hygiene conditions, the risks of contagion and the health of all individuals (and their partners and children) working for the employer. The criteria for employees and their families to be able to benefit from medical and medicinal coverage are established by order of the Minister of Labour. All workers and accidents at work must be declared to the National Social Security Institute.

Companies with more than 20 employees must have a dedicated Health and Safety Committee. The main purpose of this committee is to draw up and execute a policy for the prevention of accidents at work, and monitor the smooth running of the services responsible for ensuring health and safety at work. The manager of the company is responsible for submitting an annual action plan for the promotion of health and safety at work to the committee for its approval. The committee's work is documented in a report submitted to the labour inspectorate. An annual report is also prepared and disclosed to the Ministry of Employment.

The concession contract also stipulates the obligation for the logging company to provide its employees with health and safety equipment suitable for their roles, as well as appropriate first aid and medical care equipment. The Principles of Reduced Impact Logging (RIL) also outline the personal protective equipment required for logging operations.

Finally, all campsites located within the forest concession must be clean, ventilated and located near a permanent source or body of water, and, if possible, on the top of a hill. The concessionaire must also provide the camp with regularly tested drinking water. The workers' accommodation must be equipped with clean running drinking water, lighting points, electrical outlets if possible, a rubbish chute, and sanitary facilities (showers and toilets connected to a septic tank). If the camp is not located near a village, the logging operator is also responsible for setting up an infirmary, a primary school, a shop, social and cultural facilities and a waste timber collection system for energy production.

##### *Description of Risk*

Compliance with regulatory health and safety at work requirements is very poor across logging companies, unless they are part of a credible certification system that regularly audits health and safety practices.

The potential risks are:

- Absence of any appropriate medical services (infirmary, first aid kit, partnership contract with a health centre, occupational doctor); (OI-FLEG/OGF, n°6-2016)
- Absence of a health and safety committee (for companies with more than 20 employees);
- Workers are not provided with the appropriate care in the event of an accident or illness (Based on expert consultation, 2019);
- Accidents at work are not declared to the National Social Security Institute (INSS) (Based on expert consultation, 2019)
- Workers are not declared to the INSS (Based on expert consultation, 2019);

- No medical examinations are carried out annually or when workers are first hired (Based on expert consultation, 2019)
- Base camps are not complying with minimum legal requirements; (OI-FLEG/OGF, n°1-2013, n°-2015, n°6-2016, n°7-2017, n°11-2019, n°12-2019)
- Absence of drinking water at sites and work premises; (OI-FLEG/OGF, n°5-2015, n°6-2016, n°7-2017)
- Absence of appropriate personal protective equipment. (OI-FLEG/OGF, n°1-2013, n°7-2017, n°11-2019, n°12-2019)

### *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.

#### **1.11.6. Risk designation and specification**

Specified risk for logging companies (can be relevant to all source types)

#### **1.11.7. Control measures and verifiers**

Collect the following documents:

- Documents relating to the existence of a dedicated health service (partnership contract with a health centre, declaration of an infirmary to the administration, nurse employment contracts, contract with a doctor specialising in occupational health, etc.);
- For companies with more than 20 employees, documents relating to the existence of a health and safety committee;
- A sample of initial enrolment and annual medical examination reports;
- Documents relating to the provision of personal protective equipment to workers;
- Proof that workers are registered with the INSS.

## **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**

- Constitution of the Democratic Republic of the Congo, as revised by Law n°11/002 of 20 January 2011;
- Law n°16/010 of 15 July 2016 amending and supplementing Law n°0152002 of 16 October 2002 on the Labour Code;
- Law n°011/001 of 10 January 2009 on child protection (Art. 50 to 55 and 110 paragraph 4);

- Ministerial Order n°12/CAB.MIN/TPS/045/08 of 8 August 2008 establishing the conditions of child labour;
- Decree n°18/017 of 22 May 2018 setting the guaranteed interprofessional minimum wage, the minimum family allowances and the equivalent value of housing (Art. 2, 7, annex);
- Ministerial Order n°12/CAB.MIN/ETPS/ 042 of 8 August 2008 establishing a model payroll and written statement of remuneration.

#### 1.12.2. Legal authority

- National Labour Inspectorate
- National Employment Office (ONEM)
- National Commission for Foreign Employment (CNEE)
- National Social Security Institute (INSS)

#### 1.12.3. Legally required documents or records

- Employment contracts signed between the company and the workers and stamped by the administrative authorities;
- Workers' National Social Security Institute (INSS) registration cards;
- Payslips;
- Documents relating to workers' trade union organisation memberships.

#### 1.12.4. Sources of information

##### *Non-Government sources*

- FAO database. Timber-Lex - Democratic Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed on 16 August 2021];
- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international. Available at: [https://www.globalwitness.org/documents/18007/Exporting\\_impunity\\_French.pdf](https://www.globalwitness.org/documents/18007/Exporting_impunity_French.pdf) [accessed on 20 October 2019];
- Federation of Businesses of the Congo (2018). Veille juridique des entreprises - le salaire minimum interprofessionnel garanti en application en République démocratique du Congo. Bulletin N°007/DJSF/2018 from November 2018. Available at: <http://www.fec-rdc.com/index.php/nos-publications/category/2-publications?download=88:veille-juridique-novembre-2018-le-salaire-minimum-interprofessionnel-garanti-en-application-en-republique-democratique-du-congo> [accessed on 13 August 2021].

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

The Congolese constitution prohibits slavery, cruel, inhumane or degrading treatment, and forced or obligatory labour. It recognises that all citizens have a right and a duty to work. It stipulates that the state must guarantee all citizens the right to work and must provide all workers with fair and satisfactory remuneration.

The Congolese Labour Code classifies working relationships into different types of contracts, including apprenticeships and employment. All employment contracts are either permanent or temporary.

Employment contracts specify the obligations of the employee and the employer. There is a certain amount of information that they must stipulate (duration, nature, date of entry into force, remuneration, etc.). They must comply with all regulations, collective conventions and company rules. Apart from situations in which the worker is hired on the spot, employment contracts must be drawn up in writing and submitted for approval by the National Employment Office (Articles 21 and 47 of Law n°015/2002). The same applies for the termination of employment contracts (Article 33 of Law n°15/2002). All employees must be declared to the National Social Security Institute (INSS).

Children below the age of 16 cannot be employed, however exemptions can be made from the age of 15 (with psychological/medical approval from an expert and the labour inspectorate) and for light and salubrious work. The worst forms of child labour are prohibited, as are tasks beyond their strengths or that expose them to high occupational hazards (notably including maintenance of machines and machinery, the driving of engines and equipment, the use and handling of saws, works that are carried out with dangerous tools or involve handling heavy loads, and any work presenting particularly high safety hazards). Workers under the age of 18 cannot work more than 8 hours a day. If the working period exceeds 4 hours a day, it must be split up by one or several rest periods of at least 1 hour. Workers below the age of 18 cannot work on Saturdays or Sundays. Wherever a company employs individuals below the age of 18, a list of said workers and their jobs must be drawn up by the employer, which must then be addressed to the competent labour inspectorate.

Remuneration must be at least equal to the daily minimum interprofessional wage (SMIG), which is set at 7,075 CFA francs per day for an ordinary labourer in 2018 (Decree n°18/017). This minimum wage increases depending on the worker's category (specialist worker, semi-qualified, qualified, highly qualified, supervisory staff and employee) and how long the worker has been working continuously for the same company (3% increase per year). Workers must receive their remuneration by way of a payslip laid out in line with the template provided for by Ministerial Order n°12/CAB.MIN/ETPS/042.

Workers have the right to form organisations for the purpose of defending and developing their professional interests. No prior authorisation is required to form a professional organisation, also known as a trade union. Trade unions are required to register with the Ministry of Labour. Employers are prohibited from hiring or dismissing a worker based on their affiliation or lack thereof with a professional organisation. Workers are also represented by an elected delegation.

Legally, workers cannot work more than 45 hours a week and 9 hours a day, unless exemptions are made at sector level by way of an order. The right to a weekly rest day and annual leave must be respected. The law stipulates the right to at least 1 working day of paid annual leave for each full month of service for workers aged 18 and over, and 1.5 working days for workers below the age of 18. This period is increased by one day per year for every 5 years of service at the company.

Companies must have a set of internal regulations, stamped by the Labour Inspectorate (Art. 321 of Law n°015/2002).

In the event of force majeure, the employer may decide to interrupt its activities by agreement with the staff delegates and the administration. Main reasons include: forced leave ("congé technique"), scheduled shutdown ("arrêt technique"), financial problems, etc.

Pregnancy shall not constitute a source of employment discrimination. Any pregnant woman has the right to suspend her employment contract if a doctor believes that continuing to work constitutes a health risk. Any pregnant woman has the right to suspend her employment contract for fourteen consecutive weeks, a maximum of eight of which can be taken post-delivery and six before.

If a worker is transferred or required to work outside of their workplace, the employer is required to provide the worker and their family with appropriate housing or, failing that, appropriate compensation. The employer shall bear the consequent cost of transporting the worker from their place of residence to their workplace and vice versa.

Employers are obliged to ensure that the workers they employ receive professional training.

### *Description of Risk*

Compliance with regulatory labour law requirements is very poor across logging companies (see for instance Global Witness, 2015), unless they are part of a credible certification system that regularly audits practices in terms of employment legality. The main breaches observed are as follows (Based on expert consultation, 2019):

- The company does not have any internal regulations validated by the labour inspectorate;
- The workers do not have an employment contract registered with the National Employment Office (ONEM);
- The company does not record or pay social security contributions for its workers;
- The workers are not given annual leave;
- The workers are not paid by way of a payslip;
- Workers without an employment contract are paid below the minimum wage.

### *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.

#### **1.12.6. Risk designation and specification**

Specified risk for logging companies (can be relevant to all source types)

#### **1.12.7. Control measures and verifiers**

(1) Collect the following documents:

- A sample of employment contracts;
- A sample of social security affiliation documents;
- A sample of payslips in line with the prescribed framework;
- Minutes from the staff delegate elections.

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

- Verify that there are no non-declared employees and/or employees below the age of 16 and/or forced labour.

## **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**

- Constitution of the Democratic Republic of the Congo, as revised by Law n°11/002 of 20 January 2011 (Art. 34);

- Law n°011/2002 of 29 August 2002 on the Forest Code (Art. 8, 16, 22, 36, 37, 38, 39, 40, 41, 42, 43, 44, 89, 106, 111, 112, 113, 150, 151);
- Decree n°05/116 of 24 October 2005 laying down the procedures for converting old forest titles into forest concession contracts and extending the moratorium on new logging titles (Art. 19 paragraph 2);
- Decree n°14/18 of 2 August 2014 establishing the modalities for allocating forest concessions to local communities;
- Ministerial Order n°023/CAB/MIN/ECNT/28/JEB/10 of 7 June 2010 establishing a model social clause for the forest concession contract's specifications (cahier des charges);
- Ministerial Order n°028/CAB/ MIN/ECNT/15/JEB/08 of 7 August 2008 establishing a model concession contract for the harvesting of forest products and the related specifications (cahier des charges) (Annex 1 Art. 6, Annex 2 Art. 1);
- Ministerial Order n°025/CAB/MIN/FCN-DD/CJ/00/RBM/2016 of 9 February 2016 laying down specific provisions for the management and operation of local community forest concessions;
- Ministerial Order n°034/CAB/MIN/EDD/03/03/BLN/2015 of 3 July 2015 laying down the procedure for drawing up, verifying, approving, implementing and following up the management plan of a forest concession for timber production (Art. 4 and 12);
- Ministerial Order n°034/CAB/MIN/ECN-T/15/JEB/08 of 22 August 2008 on the regulations for harvesting certain forest products;
- Operational guide for preparing the simplified management plan for local community forest concessions;

#### **1.13.2. Legal authority**

- Secretary-General for the Environment and Forests
- Director of Forest Management

#### **1.13.3. Legally required documents or records**

- Forest management plans identifying local and indigenous communities' rights over the resources;
- The social clause(s) of the specifications (cahiers de charges) concluded between the local communities and the concessionaire, attached to the concession contract.

#### **1.13.4. Sources of information**

##### *Non-Government sources*

- OI-FLEG/OGF (2013-2020). Rapports de mission de terrain n°10 à n°13. Observation Indépendante de la mise en Application de la Loi Forestière et de la Gouvernance (OI-FLEG) [Independent observation of the implementation of forest law and governance] ;
- Rainforest Foundation UK, CAGDTF (2018). Une stratégie nationale pour la foresterie communautaire en RDC;
- Koné, L. (2017). Garantir les droits fonciers coutumiers en République démocratique du Congo : Guide pratique à l'intention des acteurs impliqués dans le processus de la réforme foncière;
- Tsanga, R., Cerutti, P., Bolika, J-M., Tibaldeschi, P. (2017). Suivi non mandaté des clauses sociales en République Démocratique du Congo (2011-2015). Report;
- Kipalu et al. (2016). Sécuriser les droits des peuples forestiers et combattre la déforestation en République démocratique du Congo. Moteurs de la déforestation, impacts locaux et solutions basées

sur les droits – Report drawn up on behalf of the FPP. Available at: <http://www.forestpeoples.org/sites/default/files/publication/2016/05/drc-report-fr-web.pdf> [accessed on 20 August 2019];

- GIZ/KfW (2016). Cartographie des acteurs de la Foresterie Communautaire en RDC – un aperçu des intervenants, de la vision et les défis dans sa mise en œuvre;
- OI-FLEG/Resource Extraction Monitoring (2013). Rapport final – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo (2010-2013);
- Samaki, W (2012). La protection de l'environnement en droit coutumier congolais. Cas de pygmées de la province de l'Equateur en RDC. Thesis submitted for Master's degree in Law from the Université Catholique de Kinshasa. Available at: <https://www.memoireonline.com/01/14/8638/La-protection-de-l-environnement-en-droit-coutumier-congolais-Cas-de-pygmees-de-la-province-de-l-E.html> [accessed on 20 August 2019];
- Debroux, L., Hart, T., Kaimowitz, D., Karsenty, A., and Topa, G. (Eds.) (2007). Forests in post-conflict Democratic Republic of Congo: Analysis of a priority agenda.

#### 1.13.5. Risk determination

##### *Overview of Legal Requirements*

Generally speaking, the Forest Code provides for the forest usage rights of peoples living within or in proximity to the forests, insofar as these are not contrary to law and public order (Art. 36 of the Forest Code).

Protected forests are subjected to very few limits in terms of user rights. Crops can be grown, unless prohibited by the provincial governor. The Minister may also regulate the collection of any forest products.

Permanent production forests, allocated in the form of concessions to logging operators, are free from all occupancy rights (Art. 31 of Law n°011/2002): potential third party rights over the forest to be allocated are subject to compensation (Art. 84 of Law n°011/2002). However, "local populations of a forest concession continue to exercise their traditional user rights over the concession where this is compatible with the harvesting operations, with the exception of agriculture" (Art. 44 of Law n°011/2002).

The exercise of user rights in forest concessions is notably governed by the forest management plan and the social clauses concluded between the local communities within the concessions and the logging operator (see below), a template for which is provided by the regulations and notably includes an article listing the following user rights: collecting firewood, collecting wild fruits and caterpillars, collecting medicinal plants, traditional hunting and fishing (Art. 10 of the annex to Order n°023/CAB). The exercise of user rights shall not give rise to any indemnities or compensation payable to the concessionaire.

The Congolese forestry legislation also requires the concessionaire to take the local communities into consideration in the forest management plan. During the forest management plan preparation phase, the concessionaire must identify the local communities. The concessionaire must notably conduct a socio-economic survey that identifies, amongst other things, the different ways in which the local populations use the forest resources (Art. 12 of Ministerial Order n°034/CAB). The forest management plan is drawn up in conjunction with the local populations concerned and the law encourages these communities to participate in the management of the forest. The concessionaire must mention the applicable user rights in the concession's forest management plan (Art 10 of the annex to Order n°023/CAB).

Furthermore, the "social clause" in the forest concession specifications (*cahiers de charges*) must redistribute the benefits of the industrial logging operations amongst the local communities, providing for the creation of socio-economic infrastructure for said local communities, particularly "the



construction of roads, renovation and construction of hospitals and schools, and facilitation of transportation services for people and goods" (Art. 89 of the Forest Code). This agreement must be concluded following a consultation procedure between the local communities and the concessionaire. Several social clauses may be signed by a logging company, in line with the number of local communities within the concession (Tsanga et al., 2017).

The social clause template that must be used by all logging companies identifies all stakeholders and reiterates that it "aims to regulate the relationships between the parties regarding the management of the forest concession" (Art. 1 of the annex to Order n°023/CAB). It specifies what socio-economic infrastructure is required (Art. 4 annex) and the related schedule, and it indicates that the concessionaire will finance these activities through the development fund. This fund is financed by way of a payment of two to five US dollars per cubic metre of wood harvested within the forest concession.

This fund is managed and monitored by two distinct bodies: the Local Management Committee (CLG) and the Local Monitoring Committee (CLS). The CLG is formed of one concessionaire delegate, several local community/indigenous population representatives and one civil society delegate to act as an observer. This committee is responsible for setting up the socio-economic infrastructure for the population. The CLS is responsible for monitoring and evaluating the commitments made between the concessionaire and the local communities/indigenous populations. It is formed of the district administrator, a concessionaire representative and three local community//indigenous population representatives.

Finally, the Congolese constitution also guarantees the right to collective property acquired according to custom. This is reflected in the Forest Code, which states that local communities can obtain a forest concession (maximum 50,000 hectares on a portion of the forests it owns by virtue of custom). Local community forest concessions are allocated free of charge by order of the provincial governor, following a regulated procedure (see section 1.2). In order to ensure the correct management of the forest concession, a community assembly and a council of elders is established, and a management system is set up (either a dedicated management entity or an internal organisation formed of other bodies). All members of a local community may, if provided for in the simplified management plan, harvest timber, fuel wood and non-timber forest products within the concession of their community and for their domestic use.

### *Description of Risk*

The consideration of user rights is poorly integrated into forest management processes in the DRC.

In 2014, upon the completion of the old forest title conversion process, 85 social clauses were signed by 57 forest concession holders in the DRC (sometimes with several social clauses per concession). Between 2011 and 2015, a low proportion of the required infrastructure was completed (38% of projects completed or on-going between 2011 and 2015) (Tsanga et al., 2017, Global Witness, 2015 and 2019). Several problems were identified, notably including the lack of financing of the local development fund (FDL) due to the absence or interruption of logging operations, logging companies' lack of internal skills required to carry out development works, and local communities' lack of skills required to choose suppliers that are sufficiently equipped to carry out the works scheduled, etc. On the other side, the monitoring bodies (CLS and CLG) often struggle to carry out the supervision and monitoring duties assigned to them. The running of these bodies depends on the FDL being properly financed and their members often lack strong management abilities. This has led to widespread poor governance practices by the FDL managers, resulting in the misappropriation of funds and equipment and the over-billing of works (Tsanga et al., 2017).

Artisanal logging is also frequently conducted without prescribed contracts with local communities (OI-FLEG/REM, 2013, OI-FLEG/OGF, n°10-2017, n°11-2019, n°13-2019).

Finally, concerns have been raised by civil society about the risk of creation of local communities forests concessions controlled by loggers and/or local elites and/or non-local NGOs without the required involvement of communities (GIZ/KfW, 2016, Rainforest Foundation, 2018).

### *Risk Conclusion*

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

#### **1.13.6. Risk designation and specification**

Industrial forest concessions, Artisanal forest units and local community forests concessions: Specified risk

Private planted or natural forests: Not applicable

#### **1.13.7. Control measures and verifiers**

(1) Collect the following documents:

*Industrial forest concessions:*

- Forest management plan outlining the user rights of the concession's local communities;
- The social clause(s) of the specifications (cahiers de charges) concluded between the local communities and the concessionaire;
- Documents relating to the setting up of the local management and monitoring committees (CLG and CLS respectively);
- Documents relating to the creation of the required socio-economic infrastructure.

*Artisanal logging:*

- The agreement between the artisanal logger and the concerned communities;

*Local communities forest concessions:*

- Documents highlighting the involvement of forest users in the decision making process.

(2) Ensure that all local communities affected by the forest concession are taken into consideration in the social agreements or agreement with artisanal logger or community concession decision-making process.

(3) Consult the following parties in order to ensure that user rights are properly exercised and that the social clauses are implemented:

- Affected local communities;
- Mandated independent observer (OGF);
- Civil society players (WWF, RRN, etc.).

### **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.

#### **Not applicable**

When allocating a forest concession, the law only stipulates that the local communities must be consulted. Their rights over the forest land covered by the concession are noted and compensated for (Art. 23 and 84 of the Forest Code). Strictly speaking, the law therefore does not require their consent, however the conclusion of the social clauses of the specifications (*cahier des charges*) attached to the

concession contracts may resemble, to a lesser extent, a free agreement concluded between the logger and the local communities (see previous section 1.13).

## 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.

Not applicable.

Despite the DRC government's support for the United Nations Declaration on the Rights of Indigenous Peoples, as well as requests from civil society and the submission of a proposed law in 2014, there is no precise definition of the concept of "indigenous peoples" in Congolese legislation (Koné, 2017). In practice, the role played by indigenous peoples within the various committees (CLG and CLS) is relatively modest, and their concerns are still poorly acknowledged (Tsanga et al., 2017).

Indigenous peoples' rights to use the forest resources and participate in forest management are therefore identical to the general rights of the local communities and are subject to the same procedures (see section 1.13).

### *Non-Government sources*

- Koné, L. (2017). Garantir les droits fonciers coutumiers en République démocratique du Congo : Guide pratique à l'intention des acteurs impliqués dans le processus de la réforme foncière;
- Tsanga, R., Cerutti, P., Bolika, J-M., Tibaldeschi, P. (2017). Suivi non mandaté des clauses sociales en République Démocratique du Congo (2011-2015). Report.

## 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

- Ordinance-Law n°10/002 of 20 August 2010 on the Customs Code (Art. 53);
- Law n°011/2002 of 29 August 2002 on the Congolese Forest Code (Art. 108);
- Interdepartmental Order n°BCE/CE/ECNT/007/85 of 3 December 1985 on regulating the export of logs;
- Order n°084/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 29 October 2019 (Art. 66, 67, 68, 72, 76);
- Guide opérationnel - Liste des essences forestières de la République Démocratique du Congo (Operational guide - List of forest species from the Democratic Republic of the Congo).

### 1.16.2. Legal authority

- Ministry of Transport & Communications
- Ministry of Environment and Sustainable Development
- Ministry of Economy and Foreign Trade

### 1.16.3. Legally required documents or records

- Site log book;
- Transport permit.

### 1.16.4. Sources of information

#### *Non-Government sources*

- Global Witness (2015). L'impunité exportée. Comment les forêts du Congo sont exploitées illégalement pour le marché international. Available at: [https://www.globalwitness.org/documents/18007/Exporting\\_impunity\\_French.pdf](https://www.globalwitness.org/documents/18007/Exporting_impunity_French.pdf) [accessed on 20 October 2019];
- OI-FLEG/REM (2011). Eléments proposés pour un manuel de procédures du contrôle forestier – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo.

### 1.16.5. Risk determination

#### *Overview of Legal Requirements*

The forest administration requires all felled wood to be recorded in the documents designed for this purpose, which are: the site log book and the transport slip. The concessionaire is responsible for producing these documents in line with the pre-established templates provided in the operating standards. The table below outlines the information to be provided and the legal requirements relating to these documents.

	Site log book	Transport slip
Legal reference	Art. 68 of Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016	Art. 71 of Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016
Required information	<ul style="list-style-type: none"> <li>• the serial number of the tree;</li> <li>• the commercial or scientific name of the species or, failing that, the common name;</li> <li>• the date of felling;</li> <li>• the diameter and length of the tree;</li> <li>• the number and size of the blocks produced: length, diameter and volume;</li> <li>• the date of hauling of each log and its likely destination.</li> </ul>	<ul style="list-style-type: none"> <li>• the identity of the carrier;</li> <li>• the means of transport;</li> <li>• the full identity of the logging company;</li> <li>• the route and destination of the forest product;</li> <li>• the volume or quantity of products permitted to be transported;</li> <li>• the date of issue and validity period of the permit.</li> </ul>

Standing trees are usually assigned a number during the harvesting inventory.

When filling out the documents, the concessionaire must respect the names of the species and their dimensions (large-end diameter, small-end diameter, length). The transport slip must be presented by the carrier upon the request of all competent forestry officers and officials (Art. 73 of Order n°84/CAB).

Periodic summaries of the quantities harvested and transported are used for the payment of logging taxes, which must be declared every quarter (Article 76 of Order n°084/CAB).

### *Description of Risk*

- Irregular / false declarations are made in the site log books; (Global Witness, 2015, OI-FLEG n°1-2013, n°3-2014, n°6-2016, n°11-2019, n°12-2019) False declarations are made regarding species and their volumes on the transport slips; (Global Witness, 2015)
- Prescribed declaration are not filed with the administration, or irregular / false quarterly declarations are made or declarations are not accompanied by the valid documents used during the quarter for the purpose of forest administration checks. (Global Witness, 2015, OI-FLEG/OGF, n°3-2014, n°5-2015, n°7-2017 n°11-2019)

These breaches occur within the context of corruption amongst the officials in charge of checking / monitoring the sites and verifying the transport permits on the roads (Global Witness, 2015).

### *Risk Conclusion*

This indicator has been evaluated as specified risk for all timber sources. 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 timber sources: Specified risk

#### **1.16.7. Control measures and verifiers**

(1) Collect the following documents:

- Harvest permit;
- Site log book (samples);

(2) Carry out the following checks:

- That the information included on the various documents relating to the logging operations and the transport of logs and sawn wood (site log book, transport permits) is coherent;
- That the species stated in the export/export sale documents are the same as those that appear on the logging and transport documents (site log book, transport permits);
- That the species sold are the same as the species declared in the transport and sale documents.

(3) If necessary, carry out a macroscopic, microscopic or DNA analysis of the wood.

## 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

- OHADA Uniform Act of 15 December 2010 on general commercial law (Art. 2, 6, 13, 14, 15, 34, 44);
- Law n°73/009 of 5 January 1973 on trade as amended by Law n°74-014 of 10 July 1974;
- Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016 of 29 October 2016 on the conditions and rules for timber harvesting (Art. 52, 66 to 83);
- Interministerial Order n°86/CAB/MIN/ECN-DD/CJ/00/RBM/2016 and 322/CAB/MIN/FINANCES/2016 on the relaunch of the Timber Production and Marketing Control Programme (PCPCB) (Art. 2, 3, 4, 5, 11);
- Ministerial Order n°0011/CAB/MIN/ECN-EF/2007 of 12/04/2007 on the regulations for industrial harvest permits and permits for the purchase, sale and export of timber.

### 1.17.2. Legal authority

- Ministry of Transport & Communications
- Ministry of Environment and Sustainable Development
- Ministry of Economy and Foreign Trade

### 1.17.3. Legally required documents or records

- Site log book;
- Transport slip;
- If applicable, permit to purchase or sell timber;
- If applicable, vehicle registration certificate or pink card;
- If applicable, driver's license.

### 1.17.4. Sources of information

#### *Non-Government sources*

- OI-FLEG/REM (2011). *Eléments proposés pour un manuel de procédures du contrôle forestier – Observation indépendante de la mise en application de la Loi forestière et de la gouvernance (OI-FLEG) en République Démocratique du Congo.*

### 1.17.5. Risk determination

#### *Overview of Legal Requirements*

Two documents are used for the stages between harvesting and export: the site look book and the transport slip. The concessionaire is responsible for producing these documents in line with the pre-established templates provided in the operating standards (Art. 68 and 71 of Order n°84/CAB).

The transport slips must be stamped by the forest administration, or, failing this, a forestry officer along the route (Art. 71 of Order n°84/CAB). The transport slips must notably mention the identity of the carrier, the identity of the logging company, the destination of the wood, the identification of the transported wood (including the harvest permit number), the species and identification number of the logs, and the volume being transported.

If the transported load is modified during the journey ("*rupture de charge*"), a new transport slip must be created (Art. 73 of Order n°84/CAB).

Ministerial Order n°0011/CAB stipulates that timber cannot be subjected to any transaction without a permit to purchase, sell or export. These permits are issued by the Ministry of Forests, following payment of the permit fees. The transfer of ownership of any timber (purchase or sale) must be declared to the Ministry of Forests within 15 days of the transaction (Art. 80 of Order n°84/CAB).

Finally, since 2010, the DRC has been developing a Timber Production and Marketing Control Programme (PCPCB), which aims to reinforce the traceability of wood through the establishment of IT systems and the use of barcode labels on the logs. This programme notably aims to combine physical checks with IT data. The programme has been assigned to several private partners (SGS and AUFS/RDC). There is little documentation regarding the progress of these traceability innovations.

The official documents are only verified during site checks and when being transported between two sites.

### *Description of Risk*

The following risks have been identified:

- No site log book is kept to record daily production by the concessionaire (Global Witness, 2015, OI-FLEG/OGF, n°1-2013, n°3-2014, n°5-2015);
- Fraudulent transport documents are used (from sites other than where the wood was actually harvested) (Based on expert consultation, 2019);
- Missing purchase and sale permit (OI-FLEG/OGF, n°14-2020).

### *Risk Conclusion*

This indicator has been evaluated as specified risk for all timber sources. 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**

(1) Collect the following documents:

- Site log books (sample);
- Transport slips (sample);
- If applicable, permit to purchase or sell timber;

(2) Consult the following parties if necessary:

- Forest experts and civil society/independent observer for advanced checks into traceability from the logging site.

## 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°10/002 of 20 August 2010 on the Customs Code;
- Decree n°15/019 of 14 October 2015 instituting a Single Window for Foreign Trade.

### 1.18.2. Legal authority

- Ministry of Environment and Sustainable Development
- General Directorate of Customs and Excise (DGDA)
- Congolese Control Office (OCC)

### 1.18.3. Legally required documents or records

- Timber export permit
- Export verification certificate

### 1.18.4. Sources of information

#### *Non-Government sources*

- Tshikala, E. (2004). Régime fiscal forestier et dépenses de l'Etat en faveur du secteur forestier en République démocratique du Congo. Report prepared for the FAO programme on financing sustainable forest management. Available from: <http://www.fao.org/3/a-ad492f.pdf> (accessed on 24 August 2019);
- Imballo, M. (2000). Rapport d'étude sur les produits forestiers de la République du Congo. Report drawn up for the project "Collecte et analyse de données pour l'aménagement durable des forêts - joindre les efforts nationaux et internationaux". Available from: <http://www.fao.org/3/X6751F/X6751F00.htm> (accessed on 20 August 2019).

### 1.18.5. Risk determination

#### *Overview of Legal Requirements*

There are no regulations specifically targeting the combat against the manipulation of transfer prices and trading with offshore companies.

However, whenever wood is exported, the authorities must consider the sale contracts and notably whether the price of the wood is coherent with the market price for exported Congolese wood. Market prices are usually defined every year by the government authorities ("commission nationale de mercuriale" under the supervision of the Ministry of Commerce) and made public.



The export procedure is supposed to prevent the illegal transfer pricing practices carried out between different subsidiaries of the same company to reduce profits made in the DRC.

### *Description of Risk*

When setting the prices for their timber, companies show little respect for the official market values, worsened by a backdrop of corruption and lack of forestry and customs control.

There is currently no substantiated documentation on the risk of transfer price manipulation. In light of the prevalence of corruption and the majority interest of foreign companies in the companies harvesting and exporting the wood, this indicator is evaluated as high risk (see for instance Global Witness, 2018).

### *Risk Conclusion*

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

#### **1.18.6. Risk designation and specification**

Specified risk for all exported timber (can be relevant to all source types)

#### **1.18.7. Control measures and verifiers**

(1) Collect the following documents:

- Timber export permit;
- Export verification certificate.
- Market values in force for that year in the DRC;

(2) Carry out the following checks:

- The precise identity of the entity declared as the exporter of the wood coming from the DRC (the entity must be registered in the DRC);
- 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 or company related to the exporter.

## **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;
- Law n°73/009 of 5 January 1973 on trade as amended by Law n°74-014 of 10 July 1974;
- Law n°11/29 of 29 August 2002 on the Congolese Forest Code (Art. 94, 109, 121 and 122);
- Decree n°15/019 of 14 October 2015 instituting a Single Window for Foreign Trade;
- Interministerial Order n°035/CAB/MIN/-FINANCES/2016 and n°005/CAB/MIN-COM/2016 of 23 March 2016 on the manual of harmonized procedures applicable to the Single Window for Foreign Trade (Art. 1 paragraph 2);
- Interdepartmental Order n°BCE/CE/ECNT/007/85 on regulating the export of logs;

- Ministerial Order n°025/CAB/MIN/FCN-DD/CJ/00/RBM/2016 of 9 February 2016 laying down specific provisions for the management and operation of local community forest concessions (Art. 49);
- Ministerial Order n°84/CAB/MIN/ECNDD/CJ/00/RBM /2016 of 29 October 2016 on the conditions and rules for timber harvesting (Art. 82);
- Interministerial Order n°CAB/MIN/EDD/2020/005 and n°CAB/MIN/FINANCES/2020/066 of 24 July 2020 fixing the rates for duties, taxes and fees to be charged by the Ministry of Environment and Sustainable Development in the forestry sector (Art., 6, 7, 9, 10);
- Circular Note n°013/CAB/MIN/ECNT/11/BNME/2013 of 3 October 2013 on the strict respect of agreed volumes.

#### **1.19.2. Legal authority**

- Ministry of Finance
- Ministry of Environment and Sustainable Development
- General Directorate of Customs and Excise (DGDA)
- Congolese Control Office (OCC)

#### **1.19.3. Legally required documents or records**

- Timber export permit
- Certified loading report issued by the Congolese Control Office (OCC)
- Export verification certificate
- Certificate of origin
- Phytosanitary certificate

#### **1.19.4. Sources of information**

##### *Non-Government sources*

- FAO database. Timber-Lex - Democratic Republic of the Congo. Licence: CC BY-NC-SA 3.0 IGO. See <https://timberlex.apps.fao.org/> [accessed on 16 August 2021];
- Jurec Conseil (2020). Etat des lieux de la fiscalité – parafiscalité du secteur forestier en République démocratique du Congo, rapport d'étude;
- EIA, Premi Congo (2019). Scheduled extinction. Our last chance to protect the threatened African Mukula trees;
- Greenpeace Africa (2013). Couper! L'exploitation forestière illégale en République démocratique du Congo (RDC) - un mauvais scénario;
- Resource Extraction Monitoring (2011). Mise en application de la loi forestière et de la gouvernance. Analyse de la législation forestière de la RDC.

#### **1.19.5. Risk determination**

##### *Overview of Legal Requirements*

To export wood, companies must be accredited as a wood exporting logging company. To become accredited, they must meet a set of general export conditions and own a working wood processing unit. All companies make an application for an annual export quota.

Only wood from a forest concession or artisanal forest unit can be exported (Art. 82 of Order 84/CAB). Wood from community forests therefore cannot usually be exported to international markets.

Only logging operators and operational processing unit holders can export wood in the form of logs, for a maximum of 10 years following the start of the logging operations and up to a maximum of 30% of their annual production. Precise export quotas are agreed on to specify the species, volumes, origin of the wood and exit point from the DRC. Roughly squared wood counts as a "log". Unused volumes of the annual export quota cannot be carried over to a later period. A company cannot transfer its quotas to another company without prior express authorisation from the Department for Foreign Trade.

### **Export taxes**

The Forest Code stipulates that export taxes on processed products are lower than that on raw materials (Art. 121).

Export tax ("taxes d'exportation" or "droits de sortie") is calculated based on the market prices for the wood. In 2013, it stood at 10% for logs and 5% for sawn wood (REM 2013). Market prices are usually defined every year by the government authorities ("commission nationale de mercuriale" under the supervision of the Ministry of Commerce) and made public.

Companies must also pay fees to obtain the required documents (export permit, certificate of origin, phytosanitary certificate).

### **Export procedure**

The exporter prepares the specification/packing list for the batch to be exported, applies for an export permit and opens an export file with the *guichet unique du commerce extérieur* (one-stop window for foreign trade). The exporter must already be in possession of a sales contract, which must be validated by the Ministry of Environment and Sustainable Development.

The exporter makes an application to the General Directorate of Customs and Excise (DGDA), attaching their harvest permit and sales contract, for a check to be carried out on the goods to be exported. The goods are loaded in the presence of the Congolese Control Office (OCC), which then carries out the scaling process. The national inspectors/*officiers de police judiciaire* (police officers) then draw up the relevant certified report. This report must be requested by the border crossing services during the wood export procedures.

Certificates of origin and phytosanitary certificates are also issued by the Ministry of Environment.

Following these stages, an export verification certificate is issued, as well as a loading permit.

The export fees are paid through an authorised bank.

### ***Description of Risk***

There is very little information available on compliance with the export procedure and the payment of taxes based on an appropriate estimate of volumes. There is also no documentation regarding the risk of log export quotas not being respected.

There is a risk of falsification of data on volumes exported to lower export tax payment (Greenpeace Africa, 2013).

There is also a risk that wood is exported illegally through bordering countries to avoid paying the export tax and undergoing any customs checks. This notably concerns wood from artisanal permits (EIA, 2019).

### *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.

#### **1.19.6. Risk designation and specification**

Specified risk for all exported timber (can be relevant to all source types)

#### **1.19.7. Control measures and verifiers**

Collect the following documents:

- Timber export permit
- Certified loading report
- Export verification certificate
- Export fee clearance certificate
- Phytosanitary certificate
- Certificate of origin

## **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°14/003 of 11 February 2014 on the conservation of nature (Art. 63 to 67);
- Ministerial Order n°056/CAB/MIN/AFF-ECNPF/01/000 of 28 March 2000 on the regulation of international trade in endangered wildlife and flora species (CITES);
- Ministerial Order n°021/CAB/MIN/-EDD/AAN/WF/05/2017 of 31 August 2017 transferring the CITES Management Authority to the Congolese Institute for the Conservation of Nature (ICCN) (Art. 1, 12, 14, 17, 18);
- Ministerial Order n°CAB/MIN/AF.F-E.T/276/2002 of 5 November 2002 defining the protected forest species;
- Interministerial Order n°004/CAB/MIN/ECN-T/2010 and n°30/CAB/MIN/Finances/2010 of 26/4/2010 fixing the rates of duties, taxes and fees for fauna and flora;
- Interministerial Order n°03/CAB/MIN/ECN-EF/2006 and n°099/CAB/MIN/FINANCES/2006 of 13 June 2006 fixing the rates for duties, taxes and fees to be charged for fauna and flora by the Ministry of Environment, Nature Conservation, Water and Forests (Art. 10).

#### **1.20.2. Legal authority**

- Ministry of Environment and Sustainable Development
- Congolese Institute for Nature Conservation (ICCN)

#### **1.20.3. Legally required documents or records**

- Harvest permit

- Legal acquisition notice
- CITES permit for the export of protected species

#### 1.20.4. Sources of information

##### *Government sources*

- Secretary General of Environment and Nature Conservation, Ministry of Environment, Conservation of Nature and Tourism (2014 and 2018). Non-detriment finding for the harvesting and trading of Afrormosia (*Pericopsis elata*) in the Democratic Republic of the Congo.

##### *Non-Government sources*

- Jurec Conseil (2020). Etat des lieux de la fiscalité – parafiscalité du secteur forestier en République démocratique du Congo, rapport d'étude;
- Nkanda, J.M. (2019). Quels documents / preuves de légalité pour la « Due diligence » dans le cadre de la mise en œuvre du RBUE et du Lacey Act ? Point de vue de la société civile congolaise (RDC). Available at: <https://www.illegal-logging.info/sites/files/chlogging/Jean-MarieCommunication%20JM%20%2528OSC-RDC%2529.pdf> (accessed on 23 August 2019);
- Greenpeace (2015). Trading in chaos. The impact at home and abroad of illegal logging in the DRC. Available at: <https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/trading-in-chaos-20150709.pdf> (accessed on 23 August 2019);
- UNEP (2014). Analysis of the environmental impacts of illegal trade in wildlife. Available at: [https://wedocs.unep.org/bitstream/handle/20.500.11822/17554/FINAL\\_%20UNEA2\\_Inf%20doc%2028.pdf?sequence=2&isAllowed=y;](https://wedocs.unep.org/bitstream/handle/20.500.11822/17554/FINAL_%20UNEA2_Inf%20doc%2028.pdf?sequence=2&isAllowed=y;)
- Global Witness, Greenpeace, CIEL, EIA (2014). Letter to CITES delegates about Afrormosia (*Pericopsis elata*) from DRC. Available from: [https://ciel.org/Publications/CITES\\_DRC\\_8Jul2014.pdf](https://ciel.org/Publications/CITES_DRC_8Jul2014.pdf).

#### 1.20.5. Risk determination

##### *Overview of Legal Requirements*

Ministerial Order n°CAB/MIN/AF.F-E.T/276/2002 defines a list of protected species and the applicable harvesting conditions. Three lists are attached to the order, duplicating the annexes adopted by the Convention on International Trade of Endangered Species (CITES).

Harvesting these species is not prohibited. However, such harvesting must be provided for by the forest management documents and the harvest permits. Regarding the species *Pericopsis elata* in particular, the last non-detriment finding published in 2018 by the competent Congolese authorities outlines the applicable harvesting procedure, which is contingent upon the allowable cut determined on the basis of the management and/or harvesting inventories. The aggregate forest concession inventory data determines the national annual export quota for this species. For example, in 2016 the national export quota was 56,201 m<sup>3</sup>; in 2017 it was 41,108m<sup>3</sup> and in 2018 it was 50,013 m<sup>3</sup>.

This species can only be exported if a CITES permit has been issued by the DRC CITES management body, in accordance with the predetermined quotas. The quotas issued each year to the forest concessionaires, in compliance with established conditions, are valid for 4 years under a rotating system in line with the start and end dates for the various annual allowable cuts (AAC). Each AAC can be harvested for a maximum of 3 years, and a considerable amount of time is required for the removal and processing of the wood. The CITES export permit is also accompanied by a legal acquisition notice, based on a file and form that the operator is required to send to the management body. The application file must notably include the forest concession contract, the relevant harvest permit, and the felling numbers of the trunks removed or the trunks that will constitute the shipment of wood for sawing.

It should be noted that as of August 2019, CITES Appendix II extended its scope of application for Afrormosia to processed products (“logs, sawn wood, veneer sheets, plywood and extracts”). A CITES permit is therefore mandatory regardless of the type of product exported from the DRC.

The Padauk species *Pterocarpus tinctorius* has also been added to CITES Appendix II in 2019.

### *Description of Risk*

The issuance of irregular harvest permits (Global Witness, 2015, Greenpeace, 2015) and the use of fraudulent harvest permits (Global Witness, 2015) have been documented for Afrormosia (*Pericopsis elata*).

Significant work has been conducted with the assistance of international programmes (ITTO, FAO-FLEGT) to determine strict measures to be put in place for the issuance of Afrormosia harvest permits and CITES export permits (Congolese Institute for Nature Conservation, 2014).

However, the study conducted for the DRC CITES body in 2014 also revealed a lack of coordination between the administrations in charge of monitoring logging operations in the DRC, which prompted the CITES management body to carry out a legality check for all *P. elata* export permits, which falls outside of its physical and technical capacities. These administrative issues notably concern the verification of administrative permit procedures, volume checks, the order of the stages in the export control process and limiting the validity of the permits to 6 months, leading in some cases to the cancellation and replacement of expired permits “with all the risks of incoherence and potential fraud that that involves.”

A report published by UNEP in 2014 reiterated that for CITES, the DRC is one of the most problematic countries in Africa for the illegal exploitation of natural resources, from ivory to wood.

In a letter addressed to the CITES Secretariat, a number of international NGOs notably revealed their concerns regarding weaknesses in the inventory process for obtaining Afrormosia harvest permits, and poor monitoring of these inventories by the forest administration. Several cases of illegal Afrormosia felling (without a special permit) have been documented. There are also concerns over the poor traceability of the wood and difficulties in ensuring that shipments of Afrormosia do indeed originate from concessions covered by a special permit.

The new report containing the non-detriment finding published in 2018 by the Congolese authorities specified the different stages and players involved in the process for allocating harvesting and export quotas. There is currently no information in the public domain on the efficiency of these new procedures and their effective application.

The harvesting of Mukula or African padauk (*Pterocarpus*) is also exposed to a high level of risk, due to unclear and changing regulations issued by the administration, going from it being banned, to the ban being suspended, to the ban being reimposed, etc. (EIA, 2019). The logging pressure on Mukula has grown to the point that its sustainability has been questioned by several authors who have conducted investigations, notably into the supply chain in Katanga. Mukula is often exported from the Congo through Zambia before being shipped primarily to Asian markets.

### *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.

#### 1.20.6. Risk designation and specification

Specified risk for all exported CITES species (can be relevant to all source types)

#### 1.20.7. Control measures and verifiers

*For CITES species*

Collect the following documents and verify and cross-check information to ensure that CITES permits are legally issued, and the species are legally harvested:

- Forest management plan;
- The harvest permit stating the species and quantities thereof;
- Legal acquisition notice
- CITES export permit.

### 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.

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

## PROCESSING

### 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

- OHADA Uniform Act of 15 December 2010 on general commercial law (Art.);
- Law n°011/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment;
- Decree n°13/015 of 29 May 2013 governing classified facilities;
- Ministerial Order n°024/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 9 February 2016 updating annex 1 of Decree n°13/015 of 29 May 2013 on the classification of category 1 installations.

#### 1.22.2. Legal authority

- Ministry of Environment and Sustainable Development
- Ministry of Trade

#### 1.22.3. Legally required documents or records

- National identification number
- Declaration of registration on the Trade and Personal Property Credit Register
- Provincial or national operating license, as applicable

#### 1.22.4. Sources of information

##### *Non-Government sources*

- NSIMBA N. E. (2012). Analyse de l'usage des Entandrophragma à la Société de Développement Forestier. Available at: <https://www.institut-numerique.org/analyse-de-lusinage-des-entandrophragma-a-la-societe-de-developpement-forestier-sodefor-52f0903660238> (accessed on 10 December 2019).

#### 1.22.5. Risk determination

##### *Overview of Legal Requirements*

All companies have a national identification number, which must be displayed on all documents (letters, invoices, receipts) issued by them. Traders must also all be added to the Trade and Personal Property Credit Register. They must conduct their bookkeeping and draw up their annual financial statements in compliance with the provisions of the Organization for the Harmonization of Business Law in Africa (OHADA). The national identification number and inclusion on the Trade and Personal Property Credit Register are obtained from the *Guichet unique de création des entreprises*, a single point ("one-stop shop") for business creation.

Industrial installations presenting dangers or disadvantages are ranked according to the potential degree of severity. They are initially submitted either for declaration, or for authorisation, which gives rise to a national or provincial operating licence.



- Warehouses containing less than 25m<sup>3</sup> of sawn wood and artisanal furniture manufacturers fall under category II. They are subjected to a preliminary declaration to the local environment administration.
- Sawmills and mechanical timber workshops with a maximum power of 7 hp and manual timber labour workshops in urban districts fall under category Ib. They must receive prior authorisation, granted by way of a provincial operating licence.
- Sawmills and mechanical timber workshops with power exceeding 7 hp, timber impregnation factories and logyards located in urban settings fall under category Ia. They must receive prior authorisation, granted by way of a national operating licence.

Before an operating licence can be issued, a preliminary public inquiry is conducted by the environment administration. If the installation could potentially have an impact on the environment, an environmental and social impact assessment is carried out instead.

The DRC's industrial processing units are all located in the town of Kinshasa, apart from two major industrial sites located in Nioki in Bandundu and Bumba in Équateur (NSIMBA, 2012).

### *Description of Risk*

No risk of systematic illegality has been identified.

### *Risk Conclusion*

This indicator has been evaluated as low risk. 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.

#### **1.22.6. Risk designation and specification**

Low risk

#### **1.22.7. Control measures and verifiers**

N/A.

## **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°011/009 of 9 July 2011 on the fundamental principles relating to protection of the environment (Art. 21, 22 and 37 to 40);
- Decree n°14/019 of 2 August 2014 establishing the rules of functioning of environmental protection processes;
- Decree n°13/015 of 29 May 2013 governing classified facilities (Art. 25);
- Ministerial Order n°024/CAB/MIN/ECN-DD/CJ/00/RBM/2016 of 9 February 2016 updating annex 1 of Decree n°13/015 of 29 May 2013 on the classification of category 1 installations;
- Ministerial Order n°021/CAB/MIN/ECNT/15/JEB/2008 of 7 August 2008 regarding standards related to facilities set up within the forestry concessions (Art. 2);

### 1.23.2. Legal authority

- Ministry of Environment and Sustainable Development
- Congolese Environment Agency

### 1.23.3. Legally required documents or records

- The processing unit's operating licence
- If applicable, an environmental and social impact assessment report;
- If applicable, an environmental certificate;
- If applicable, a report of the implementation of an environmental and social management plan.

### 1.23.4. Sources of information

#### *Non-Government sources*

- NSIMBA N. E. (2012). Analyse de l'usage des Entandrophragma à la Société de Développement Forestier. Available at: <https://www.institut-numerique.org/analyse-de-lusage-des-entandrophragma-a-la-societe-de-developpement-forestier-sodefor-52f0903660238> (accessed on 10 December 2019).

### 1.23.5. Risk determination

#### *Overview of Legal Requirements*

Before an operating licence is issued, if the installation could potentially have an impact on the environment, an environmental and social impact assessment (ESIA) is carried out.

In general "all proposed infrastructure [...] that could have an impact on the environment [...] must be subjected to a preliminary environmental and social impact assessment, accompanied by a management plan" (Decree n°14/019). The Congolese Environment Agency may be called upon to determine whether the installation must be subjected to the ESIA or not.

Timber processing units may also be required to have an impact assessment carried out by a specialist consultant. If the ESIA result is acceptable, the Congolese Environment Agency issues an environmental certificate. After the successful ESIA, the measures provided for in the environmental and social management plan (ESMP) must be implemented at the timber processing unit.

Finally, all installations within the forest concession must be subjected to an environmental and social impact assessment. This includes industrial installations. The impact assessment must notably provide details of the land intended for use (natural elements, fauna, flora, running water, etc.) and determine the measures to protect the environment, reduce impacts or provide compensation. The operator must then draw up a site plan, detailing the position of the various activities and potential buildings. The site plan is approved by the forest administration. The special clauses of the concessionaire's specifications (*cahiers des charges*) may also include specific obligations relating to the industrial installations.

#### *Description of Risk*

In the majority of cases, factories are installed before the environmental and social impact assessment (ESIA) is carried out. The vast majority of companies do not pay close enough attention to the consideration of the environment in relation to their wood processing units and the ESIA's are not carried out.

#### *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.

### 1.23.6. Risk designation and specification

Specified risk

### 1.23.7. Control measures and verifiers

(1) Collect the following documents:

- The processing unit's operating licence;
- If applicable, an environmental and social impact assessment report;
- If applicable, an environmental certificate;
- If applicable, a report of the implementation of an environmental and social management plan.

(2) Consult the following parties to obtain information on compliance with environmental standards within the company concerned:

- Mandated independent observer (OGF);
- Civil society players (WWF, RRN, etc.).

## 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).

Not applicable. There are no legal requirements identified specifically for timber processing.

## 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.

## D. Annex I. Timber source types

The table **Timber Source Types in the Democratic 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 DEMOCRATIC REPUBLIC OF THE CONGO					
Forest type	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Industrial forest concession	Permanent production forest	State owned	The concessionaire manages the forest	Concession contract Management plan Annual operations plan Industrial harvest permit	<p>Category introduced by the 2002 Forest Code. It took several years to convert the old forest titles, however in theory this is now complete. A moratorium prohibiting the attribution of new concessions is currently in place: industrial forest concession should not be allocated outside transfer processes.</p> <p>Industrial forest concessions are managed in accordance with clearly defined harvesting regulations, in line with the rotation of annual allowable cuts (AAC).</p>
Artisanal forest unit	Protected forest	State owned	Not clearly defined	Management plan Artisanal harvest permit	<p>Category introduced by order in 2016. The logging area is between 100 and 500 hectares.</p> <p>There is normally some form of management within artisanal forest units, however regulations do not provide a clear indication of who is responsible for this management.</p>
Local community forest concession	Protected forest	Customary rights	Management by local communities	Simplified management plan Community harvest permit Potential written agreement	<p>Local communities can harvest the forest resources located in their own concession in compliance with the simplified management plan.</p> <p>In theory, the timber from local community concessions is not for export.</p> <p>Artisanal loggers can access the resources by signing a written agreement (<i>Convention d'exploitation</i>) with the local communities.</p>

Private planted or natural forest	Private land concession	State ownership, granted to a private individual	The owner of the land rights can access the forest resources	Private harvest permit or administrative declaration	The natural wood located in land concessions of persons with private rights can be harvested under a harvest permit. Wood originating from reforestation is subject to a simple declaration.
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## 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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