

# Timber Legality Risk Assessment Central African Republic

Version 1.2 | November 2017



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FSC™ A000535

This risk assessment has been developed by NEPCon with support from the LIFE programme of the European Union, UK aid from the UK government and FSC™.



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This material has been funded by the UK aid from the UK government; however the views expressed do not necessarily reflect the UK government’s official policies.

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## B. Overview of legality risks

**Timber Risk Score: 20 / 100 in 2017**

This report contains an evaluation of the risk of illegality in the Central African Republic for five categories and 21 sub-categories of law. We found:

- **Specified risk for 18 sub-categories.**
- **Low risk for 1 sub-categories.**
- **No legal requirements for 2 sub-categories.**

The Timber Risk Score for the Central African Republic is 20 out of 100. The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, taxes and fees, timber harvesting activities, and third parties' rights, and trade and transport.

For **Legal rights to harvest**, there is a risk that:

- land use conflicts occurs (1.1)
- private plantations owners do not have land titles (1.1)
- prior consultation with the neighbouring population when issuing permits are not taking place (1.2)
- illegally encroachment upon forest areas takes place (1.2)
- illegal artisanal logging are carried out in the areas allocated under Forest Management Permit (Permis d'Exploitation et d'Aménagement – PEA) (1.2).
- allocation process is being violated due though corruption (1.2)
- approval delay for the Annual Operation Plan, as well as the transition period after the logging inventory, can lead to harvesting without permit (1.3)
- loggers do not respect the requirement of submitting the Annual Operation Plan in November of each year (1.3)
- the requirements and process concerning the call for tenders when issuing permits are not respected (1.4)
- harvesting outside the borders of the cutting areas (1.4, 1.8)
- harvest without approval takes place (1.4)

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

- under-declaring of volumes and species takes place to avoid paying the full amount of felling taxes (1.5)

For **Timber harvesting activities**, there is a risk that:

- trees with too small diameters are harvested (1.8)
- protected species are harvested (1.8, 1.9)
- illegal logging in protected areas takes place (1.9)
- Environmental Impact Assessments are lacking (1.10)
- staff are rarely trained in relation to security and hygiene (1.11)
- staff are not declared to the social security (CNSS), and health centers, even when they exist (1.12)
- qualified personnel are lacking or are not well equipped (1.12)
- access to personal protective equipment are not in place (1.12)

For **Third parties' rights**, there is a risk that:

- the Commune do not carry out the redistribution of taxes to communities transparently, as required by law (1.13, 1.15)
- commitments to social work in the Annual Operation Plan are in fact not implemented (1.13, 1.15)
- the platform requested by the management plan to serve as a framework for consultation has not been implemented (1.13, 1.15)

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

- transporters who are not carrying the required documents bribe the road control agents at the barrier controls (1.17).
- fraud with CITES species takes place, and there is a specific risk in recognizing the types of species protected by CITES (1.20)

## Timber source types and risks

There are 3 main timber source types, and one potential source type found in the Central African Republic. 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 these source types and found that risk is the same.

### Concessions in Permanent Forest Estate (PFE)

Concessions in Production forests  
The license required is Forest Management Permit (Permis d'Exploitation et d'Aménagement - PEA) attributed by presidential decree after a bidding process. PEA is awarded for 30 years, which is equivalent to one harvesting rotation. The surface area of these concessions varies between 156,000 and 475,000 hectares. License Requirements: Forest management plan approved by the forest administration; Five-year plan; Annual operating plan

### Artisanal logging in Permanent Forest Estate (PFE)

Artisanal logging can be done with Artisanal Logging Permits.  
License Requirements: Specifications (Cahier de charges)  
The artisanal permit is allocated to nationals and can be companies or small timber producers.

### Community forest

Community forests is a potential source of timber, but do currently not exist.  
A management agreement will be required.  
License Requirements: Simple management plan

### Plantation forest

Plantation forest requires no harvesting permit, but a Land title is required, as well as a Simple management plan and specifications (cahier de charges)  
The plantations generally stem from private forests, but also from forests belonging to the State.



This table summarises the findings of the timber legality risk assessment. The risks are not distinguished between the sources types for the Central African Republic, hence the risk conclusions are for all sources of timber in the Central African Republic.

Legal Category	Sub-Category	All Source Types
Legal rights to harvest	1.1 Land tenure and management rights	Specified
	1.2 Concession licenses	Specified
	1.3 Management and harvesting planning	Specified
	1.4 Harvesting permits	Specified
Taxes and fees	1.5 Payment of royalties and harvesting fees	Specified
	1.6 Value added taxes and other sales taxes	Low
	1.7 Income and profit taxes	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Specified
	1.9 Protected sites and species	Specified
	1.10 Environmental requirements	Specified
	1.11 Health and safety	Specified
	1.12 Legal employment	Specified
Third parties' rights	1.13 Customary rights	Specified
	1.14 Free prior and informed consent	
	1.15 Indigenous/traditional peoples rights	Specified
Trade and transport	1.16 Classification of species, quantities, qualities	Low
	1.17 Trade and transport	Specified
	1.18 Offshore trading and transfer pricing	
	1.19 Custom regulations	Low
	1.20 CITES	Specified
	1.21 Legislation requiring due diligence/due care procedures	



## C. Overview of the forest sector in Central African Republic

The CAR Government is the main custodian and owner of all national forests. As such, it is sole responsible for allocating temporary or permanent use rights to undeveloped lands and forest resources. Forests are divided into Permanent Forest Estates (PFE) and Non-Permanent Forest Estates (NPFE). NPFE are unclassified forests and may be destined for uses other than forestry. Although it is considered the framework for communal, community and private forests, no allocation of NPFEs has yet been recorded in CAR. This is due mainly to the absence of appropriate implementation legislation. Conversely, PFEs are classified use forests and include production forests, conservation forests and plantation forests. These cover about 5.8 million hectares, divided into 5.2 million hectares of production forests, 520,000 hectares of protection forest, and 3,000 hectares of planted forests.

Production forests are divided into Forest Management Units (FMUs or Unités Forestières de Gestion, in French), which are also subdivided into specific Cutting Areas. Logging operations take place in the production forests and cutting areas, and may be conducted by individual artisanal loggers or concession holders. To log, artisanal loggers must obtain a one-year renewable permit (permis artisanal) and their operation areas should not exceed 10 hectares. This permit is awarded mainly to CAR citizens.

Concession holders, on the other hand, must hold a Forest Management Permit (Permis d'Exploitation et d'Aménagement - PEA). It is awarded for 30 years, which is equivalent to one harvesting rotation (Article 32, Forestry Code). The surface area of these concessions varies between 156,000 and 475,000 hectares. In order to harvest, concession holders must also submit a management plan to the forest administration, a five-year investment/industrialization plan, and an annual operating plan. Management plans are prepared with the assistance of PARPAF (Projet d'appui à la réalisation des plans d'aménagement forestier). In 2010, approximately 3.1 million hectares of PFE were allocated as forest concessions and operated by only 15 companies. Only eight of these companies finalized the preparation of their management plans, corresponding to a total area of 2.4 million hectares.

Unfortunately, no area of CAR forest can currently be classified as being under sustainable management due to the country's lack of capacity to monitor and fully implement the required forest management plans. The problem continues to grow as management plan numbers have risen over the last decade. The prevailing political uncertainty and the subsequent difficulties in enforcing forestry laws constitute additional obstacles hampering the efforts to improve forest governance in CAR. A 2009 report from the Ministry of the environment and ecology (*Ministère de l'environnement et de l'écologie* - MEE, 2009) states that «forests currently suffer from generalized non-compliance with regulations, which generates overexploitation and destructions of the resource».

Lack of harmonization and inconsistencies within and between relevant legal texts, the persisting conflict between the statutory and customary tenure regimes, lack of capacity, and political instability are among the major governance problems preventing CAR from effectively implementing its laws and eliminating illegal actions (Forest Legality Initiative, 2013).

The lack of governance issue has resulted in the weakening and even the disappearance of forestry administration, NGOs and other civil society institutions. As a result, much archive and data have been lost. Before the crisis, CAR already had deficiencies in official publication of legal texts, particularly with regards to the forest sector. This has not improved since the beginning of the ongoing political crisis, which began in 2012. For this reason, most legal texts are not available online, hence the lack of hyperlinks in this analysis.

Sources:

- Forest Legality Initiative (2013). *Risk tool – Central African Republic* [online]. Available at: <http://www.forestlegality.org/risk-tool/country/central-african-republic-0#tab-management>

Additional sources:

- Checklist.cites.org (N.Y): *Checklist of CITES Species. Central African Republic*. Available at: [http://checklist.cites.org/#/en/search/country\\_ids%5B%5D=9&output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=1&show\\_english=1&show\\_spanish=1&show\\_french=1&scientific\\_name=plantae&page=2&per\\_page=20](http://checklist.cites.org/#/en/search/country_ids%5B%5D=9&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=1&show_english=1&show_spanish=1&show_french=1&scientific_name=plantae&page=2&per_page=20)
- EU FLEGT Facility. 2017. *Central African Republic*. EU FLEGT Facility. <http://www.euflegt.efi.int/car>
- FAO. 2015. *Evaluation des Ressources Forestières Mondiales 2015 - Rapport National - République centrafricaine*. <http://www.fao.org/3/a-az183f.pdf>
- Global Witness. 2015. *Blood Timber – How Europe helped fund the war in the Central African Republic*. Global Witness. <https://www.globalwitness.org/en/campaigns/forests/bloodtimber/>
- OCHA. 2017. *Central African Republic*. United Nations. <http://www.unocha.org/car>

## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

*Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. 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.*

##### 1.1.1. Applicable laws and regulations

- CAR 2015 finance law. Available at: <http://droit-afrique.com/upload/doc/rca/RCA-LF-2015.pdf>

##### Land and Property Law

- Law n°139-60 concerning the CAR Land and Property Code (Loi n° 139-60 portant Code domanial et foncier) (partially or entirely rescinded by Law n°63-441 dated January 9, 1964, which rescinded "All previous provisions to the contrary" (Loi n° 63-441 du 9 janvier 1964 qui a abrogé « toutes dispositions antérieures contraires »)): Available at: [http://www.camimo.com/BD\\_noitalsig/bdlegisl\\_centrafric.htm](http://www.camimo.com/BD_noitalsig/bdlegisl_centrafric.htm)
- Law n°8.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code (Code Forestier). Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
  - Article 5 defines the national forest estate, which includes permanent forest estates and non-permanent forest estates
  - Title II refers to zoning. This zoning plan defines two main categories of forest estates: permanent forest estates (PFE) and non-permanent forest estates (DPFE).
  - Article 3 defines the southwestern forest, its limits, its area, and its industrial logging vocation
  - Articles 14, 15 and 16 concern customary usage rights
  - Articles 133 to 139 define community forests and their goals
  - Article 176 of the Forestry Code (Code Forestier): Ministerial approval
  - Articles 177 to 188 of the Forestry Code (Code Forestier) concern forest taxes and royalties: types of taxes and royalties, terms of payment. The finance law indicates the distribution rate of these taxes in the communities
- Decree N°09.118 dated April 28, 2009 (Le Décret N° 09.118 du 28 avril 2009) defining the allocation modalities for the Logging and Management Permits.

- Decree N°09.117 dated April 28, 2009 (Décret N° 09.117 du 28 Avril 2009) defining the application modalities for law N°08.022 (loi N°08.022 portant) concerning the Forestry Code (Code Forestier)
- Ordinance N°83.083 dated December 31, 1983 (Ord. N°83.083 du 31/12/83) (Articles 7 and 8)
- Decree N°83.550 dated December 31, 1983 (Décret N°83.550 du 31.12.83) (Articles 1 to 7) defining the conditions necessary to obtain a professional commercial license.
- Decree n°004/MEFPCI/DFB/CAB/SGF/DGID (arrêté n°004/MEFPCI/DFB/CAB/SGF/DGID) defining the requirement to use the NIF, (Articles 1 and 2)

Other texts concerning zoning and land tenure:

- Law n°139-60 (Loi n° 139-60) concerning the Land and Property Code (Loi n° 139-60 portant Code domanial et foncier) (partially or entirely rescinded by Law n°63-441 dated January 9, 1964, which rescinded "All previous provisions to the contrary" (Loi n° 63-441 du 9 janvier 1964 qui a abrogé « toutes dispositions antérieures contraires »))
- Law n°63-441 dated January 9, 1964 (Loi n° 63-441 du 9 janvier 1964) concerning the national estate
- Decree n°64-174 dated May 19, 1964 (Décret n° 64-174 du 19.5.1964) defining the minimum amount for development and the minimum price of sale and rent for rural and urban land.
- Ordinance n°71-015 dated February 11, 1971 (Ordonnance n° 71-015 du 11.2.1971) defining the allocation procedure for state-owned lands
- Ordinance n°71-088 dated August 6, 1971 (Ordonnance n° 71-088 du 6.8.1971) defining the allocation conditions for land on the edge of national and regional roads.

#### **1.1.2. Legal authority**

- Ministry of the Environment and Sustainable Development, Water, Forests, Hunting and Fishing (Ministère de l'Environnement du Développement Durable, des Eaux, Forêts, Chasse et Pêche) (MEDDEFPCP)
- Ministry of Finance and Budget (Ministère des Finances et du Budget) (General Direction for Taxes) (Direction Générale des impôts)
- Ministry of Trade and Industry (Ministère des Commerces et des Industries)

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

- PEA allocation decree
- Definitive agreement for the companies under development
- Provisional validated agreement for the companies preparing their management plan

- Approved Five-year Management Plan (Plan de Gestion Quinquennal) (PGQ)
- Approved Annual Operating Plan (Plan Annuel d'Opération) (PAO)
- Logging permit for plantations

#### 1.1.4. Sources of information

##### *Non-Government sources*

- Kouaranga, S., B. Imandja, P. Zoga, E. Fatou, & B. Nzonikoua, (2014). *Report of study of the level of transparency in logging during periods of conflict and post conflict in CAR as part of the application of APV/FLEGT*. [online]. Available at <http://cidt.org.uk/wp-content/uploads/2014/11/Rapport-d%C3%A9tude-sur-la-transparence-CAR.pdf> [Accessed 12 July 2016]
- Global Witness, (2015). *Bois de Sang: Comment l'Europe a aidé à financer la guerre en République Centrafricaine* (Blood Wood: How Europe helped finance the war in the Central African Republic). [online]. London: Global Witness Limited. Available at: [https://www.globalwitness.org/documents/18025/BOIS\\_DE\\_SANG\\_web.pdf](https://www.globalwitness.org/documents/18025/BOIS_DE_SANG_web.pdf). [Accessed 9 June 2016]
- Eba'a Atyi, R. (2009). *Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade Annex*. WWF and Traffic. Available at: [http://d2ouvy59p0dg6k.cloudfront.net/downloads/national\\_legality\\_framework\\_final\\_car.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/national_legality_framework_final_car.pdf) [Accessed 9 June 2016]
- Forestlegality.org, (2013). *Risk Tool of Central African Republic*. [online]. Forest Legality Alliance. Last Updated September 2013. Available at: <http://www.forestlegality.org/risk-tool/country/central-african-republic-0#tab-management> [Accessed 9 June 2016]
- Abangui.com, (2014). *La Centrafrique perd six places à l'Indice de perception de la corruption 2014* (The Central African Republic loses six seats on the Corruption Perception Index 2014). [online]. aBangui. Available at: <http://news.abangui.com/h/6779.html> [Accessed 9 June 2016]
- Verbelen, F. (2015). *Du Bois Commercialisé Par Une Entreprise Belge Qui Sert Les... Conflits En Afrique* (Timber Marketed by a Belgian Enterprise Who Serves ... Conflicts in Africa). [online]. Published on July 29. Available at: <http://www.greenpeace.org/belgium/fr/vous-informer/forets/blog/du-bois-qui-sert-les-conflits-en-Afrique/blog/53528/> [Accessed 24 November 2016]
- Transparency International, (2016). Country Profile of Central African Republic. [online]. Transparency.org. Available at: <http://www.transparency.org/country#CAF> [Accessed 9 June 2016]

#### 1.1.5. Risk determination

##### *Overview of Legal Requirements*

Forests like the ones described in the Central African Forestry Code, as well as the protection and reforestation perimeter, constitute the national forest estate. The

national forest estate includes the permanent forest estate (PFE) and the non-permanent forest estate (NPFE). The primary vocation of the DFP is to produce logs, goods and services, the protection of biological diversity and water regimes. This is where industrial logging takes place. We can also find protected areas, whereas community forestry is considered in the NPFEs.

Foreign investors, for the most part European and Asian, carry out the industrial logging. The grading or downgrading of forests aims to allocate an area of the forest for particular uses. Other than the customary rights that limit the usage rights, the forestry code allows the local and native populations to allocate community forests and artisanal permits for themselves (Forestry Code 2008) (Code Forestier 2008).

Contradictions can be noted in the laws in terms of local population rights. The forestry code grants local population customary rights, whereas the land and property law does not. Consequentially, the property rights for native and local populations are not guaranteed.

### *Description of risk*

On the basis of the great scope of terrain considered by the author (Mr. Don de Dieu Katshunga) for the current risk assessment, the population's property rights are not guaranteed. The NPFEs are all the lands that can be assigned for forestry or non-forestry uses (agricultural, etc.). The author includes private, collective and community forest estates. The minimum area for a community forest is 50 hectares and the maximum is 5000 hectares.

The current zoning system is inappropriate because of out-of-date information, poor imagery and lack of consultation with the populations and local communities. Since the southwestern forest is divided in its entirety into Management and Logging Permits (PEA), only the agricultural and conversion areas are reserved for the local and native populations, and this remaining space is too restricted to allow feasible logging for the communities. Because this forest does not have as much space for community forests as the law dictates due to allocation for advanced industrial logging, cohabitation between communities and loggers is difficult. This problem in the operationalization of community forests does not make the PEAs illegal *de facto*, but represents a risk to the social peace.

Still according to Mr. Katshunga's experiment, the main risks linked to land property and management of rights are the following:

1. The southwestern forest is classified for forestry use, but the PEAs overlap with other types of logging permits. This creates a conflict with the legal use of lands: PEA, mines, agricultural plantations, infrastructure installations, artisanal and community logging, are all authorized in the permanent forest estate. The absence of coherence between the different laws and lack of collaboration between the different State services in the same estate, generates a risk that, for instance, the timber may be cut without authorization by the mining operator, using his title to cut timber outside the limits of his mining operation, which is illegal. The situation is the same for illegal artisanal logging carried out in the PEAs. All this confusion in tenures, and the lack of collaboration between the different State services, leads to the presence of illegally cut timber on the CAR's market.

2. There is also the issue of corruption highlighted by NGOs such as Transparency International (Transparency International, 2016). Corruption occurs in the conversion of lands. Illegally and without total transparency, the DFP parcels are granted by the state agents to private owners and industrialists to use for activities other than logging.
3. It is frequently noticed that the private owners who own plantations do not have land titles.

#### *Risk conclusion*

Based on the available information, the illegality risk for the land and management laws has been evaluated as specified risk because the laws are incoherent among themselves, lack of collaboration between State services, and corruption.

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

Specified risk

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

In order to reassure the suppliers, the following documents are necessary:

- A PEA allocation decree and a land title for the plantations has to be available
- Consult with stakeholders to detect whether the land in questions is subject to conflicting claims to ownership.
- In areas where there are conflicts over land ownership, consultation with the neighbors, the local communities and other participants has to confirm that the land rights are clear
- For plantations, the company needs to show a logging authorization for the allocated land, delivered by the forestry administration.

### **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°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code (Code Forestier), (Art. 31, 41, 48, 93, 176, 179-189). Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Environmental Code (Code de l'Environnement). Available at: <http://cf.chm-cbd.net/implementation/loisnation/legislation->



[environnementale/codeenvironnementrca.pdf/download/en/1/codeenvironnementrca.pdf](http://environnementale/codeenvironnementrca.pdf/download/en/1/codeenvironnementrca.pdf)

- Decree n°83.083 dated December 31, 1983 (Ordonnance n° 83.083 du 31 décembre 1983), concerning the regulation of commercial activities and service delivery in Central African Republic (Art. 7 and 8)
- General Tax Code (Code Général des Impôts) edition 2009 (Art 334)
- Decree 09.118 dated April 28, 2009 (Décret 09.118 du 28.04.2009) art. 13-17, 22, 44
- Decree N°83.550 dated December 31, 1983 (Décret N°83.550 du 31.12.83) (art. 1 to 7)
- Decree N°0.19 dated July 5, 2006 (Arrêté N°0.19 du 05.07.2006) concerning the approval of national specifications for the development of management plans (Volume 1)
- Decree N°09.026 dated July 28, 2009 (Arrêté N°09.026 du 28.07.2009) concerning the approval of national specifications for the development of management plans (Volume 2)
- Decree 09.021 (Arrêté 09.021) defining the application modalities for law 08.002 dated October 17, 2008 (loi 08.022 du 17/10/2008) concerning the forestry code
- Decree N°09.116 dated April 27, 2009 (Décret N° 09.116 du 27/04/2009)
- Decree n°004/MEFPCI/DFB/CAB/SGF/DGID setting the use of the NIF as a requirement, (Art. 1 and 2)
- Registration guide

#### **1.2.2. Legal authority**

- MEDDEFCP (General Direction of Water, Forests, Hunting and Fishing)
- Ministry of Finances and Budget (Ministère des Finances et du Budget) (General Taxes Direction) (Direction Générale des impôts)
- Ministry of Commerce and Industry (Ministère des Commerces et des Industries)
- Ministry of Justice (Ministère de la Justice)

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

- Ministerial Decision concerning logging approval
- Allocation decree for the Logging and Management Permit (PEA)
- Provisional and definitive agreements
- Certificate of Environmental Conformity (following EIE)
- Payment receipt for 3 years rent, proof of payment of administrative fees, proof of payment of pre-recognition royalties, NIF, RCCM and Consular attestation
- Professional trader license

- Allocation report for the PEAs, and report from the Independent Observer under the responsibility of the MEDDEFCP.

#### 1.2.4. Sources of information

##### *Government sources*

- Trade and investment regimes. Word Document. Available at: [https://www.wto.org/french/tratop\\_f/tpr\\_f/s183-02\\_f.doc](https://www.wto.org/french/tratop_f/tpr_f/s183-02_f.doc) [Accessed 24 November 2016]
- Law N°08.022 concerning the forestry code of the Republic. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf> [Accessed 24 November 2016]

##### *Non-Government sources*

- Transparency International, (2016). Country Profile of Central African Republic. [online]. Transparency.org. Available at: <http://www.transparency.org/country#CAF> [Accessed 9 June 2016]
- Observateur Indépendant, (2013). *Rapport de l'observateur indépendant pour l'attribution des permis d'exploitation et d'aménagement (pea) relatif a l'appel d'offres* (Report from the 'Independent Observer' (Observateur Indépendant) for the allocation of logging and management permits (PEA) concerning the bid solicitation N°248/MEFCP/DIRCAB/DGEFCP). [online]. Available at: <http://docplayer.fr/2897867-Rapport-de-l-observateur-independant-pour-l-attribution-des-permis-d-exploitation-et-d-amenagement-pea.html> [Accessed 12 July 2016]

#### 1.2.5. Risk determination

##### *Overview of Legal Requirements*

The law foresees a process of allocation of logging approvals: publication of the bid solicitation, constitution of the allocation commission that includes the 'Independent Observer' (Observateur Indépendant). Companies have to pay all inherent fees at each stage, i.e. application fees. Concerning information to the community, decree 09.021 dated April 30, 2009 (arrêté 09.021 du 30 avril 2009), defines the consultation requirements for neighboring communities and native populations as part of industrial logging. The law requires prior consultations with the resident and native populations by all means, including putting up posters. The municipal forest service has to collect the opinions of the population and deliver a written report to be sent to the Rural Municipality. The forest inventory is carried out by the authorities in charge of the forests, and provided to the bidders (as logging specifications). Finally, an Environmental Impact Assessment has to be carried out in order to obtain a Certificate of environmental conformity, issued by the MEDDEFCP.

##### *Description of risk*

The main risks linked to these criteria are the following:

1. Lack of prior consultation with the population: it is not uncommon to observe that the prior consultations required by law are not upheld ('Independent Observer' (Observateur Indépendant), 2013). Indeed, based on his field experience, the

author of the current risk analysis (Mr. Don de Dieu Katshunga) observes that, instead of a real consultation, the local populations receive more often an information session, and this only after the permit has been issued.

2. The author (Mr. Don de Dieu Katshunga) also observes that people who illegally encroach upon forest areas convert these areas for agricultural purposes, which goes against the law. The timber harvested in this way may be found in the supply chain. This is also the case for illegal artisanal logging carried out in the PEAs.
3. There is also the climate of corruption in CAR, described by NGOs such as Transparency International, and recognized everywhere. The CAR is a country with a weak governing system where corruption and lack of transparency have become common in the management of public affairs (Transparency International, 2016). Due to this corruption, the license holders can obtain their logging licenses getting around the aforementioned allocation rules

### *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

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

Specified risk

### **1.2.7. Control measures and verifiers**

- The buyer must request the results of the prior consultations with the communities, to insure they have been carried out. The buyer will need to make sure that a real community consultation has taken place before being issued a logging license.
- The company has to be able to show payment receipts for 3 years of rent (for the newly issued permits) to demonstrate the legality of the concession. Proof of payment of administrative fees, proof of payment of pre-recognized royalties, the NIF, the RCCM, a Consular attestation, the trader's professional license; allocation report for the PEAs, and the report from the 'Independent Observer' (Observateur Independent) under the responsibility of the MEDDEFCP.
- The supplier has to be able to show the Certificate of environmental conformity issued by the MEDDEFCP following the Environmental Impact Assessment (EIE). This certificate by itself is not enough, given the level of corruption in the country. The supplier also has to be able to show to the buyer the EIE report and, more importantly, the written report of the public consultation carried out with the neighboring communities.

## **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°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
  - Article 41 makes the management plan obligatory for all logging and management permits
  - Art. 94, 103 and 114 concerns the industrial logging and management modalities.
- Decree N°09.026 dated July 28, 2009 (Arrêté N°09.026 du 28.07.2009) concerning the approval of national norms for the development of management plans (Volume 2)
- Decree N°019 dated July 5, 2006 (Arrêté N°0.19 du 05.07.2006) concerning the approval of national norms for the development of management plans (Volume 1)
- Definitive Management-Logging Agreement

### **1.3.2. Legal authority**

- MEDDEFCP (General Direction of Water, Forests, Hunting and Fishing)

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

- Note of approval of the management plan for the PEAs in the definitive agreement
- Note of approval of the Annual Operations Plan (PAO)
- Signed Provisional Agreement

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

#### *Non-Government sources*

- Kouaranga, S., B. Imandja, P. Zoga, E. Fatou, & B. Nzonikoua, (2014). *Report of study of the level of transparency in logging during periods of conflict and post conflict in CAR as part of the application of APV/FLEGT*. [online]. Available at <http://cidt.org.uk/wp-content/uploads/2014/11/Rapport-d%C3%A9tude-sur-la-transparence-CAR.pdf> [Accessed 12 July 2016]

### **1.3.5. Risk determination**

#### *Overview of Legal Requirements*

The forestry code defines the main stages of forest management. Among these stages are: drafting the management plans with the division of forest management units into felling plots (Assiette de coupe) (AC), a logging inventory for each AC, drafting Annual Operations Plans (PAO). The MEDDEFCP has to approve these management plans. The logging inventory is carried out three months before commissioning the AC. The PAO has to be submitted in November of each year to the forest administration for examination and approval. Under the provisional agreement, the concessions have

three years to implement their management plan. The management plan is valid for 5 years.

#### *Description of risk*

In this section, the risk concerns the approval delay for the PAO, and the transition period after the logging inventory. Sometimes, the loggers do not respect the requirement of submitting the PAO in November of each year. Failing this legal deadline, the companies sometimes ask for a special cutting authorization to get into an AC where the PAO has not been approved. They can also ask for an extension of an AC to continue logging in the same area. However, the companies make the most of the State forest service's lack of capability, as well as the lack of independent observation from the community, and continue harvesting without approval. The control missions are usually financed by the private sector. These practices force the administration to establish a reliable and objective report (KOUARANGA S. et al, 2014).

#### *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.

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

Specified risk

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

- The companies have to show a five-year management plan approved by the forest administration and especially a valid Annual Operating Plan (PAO) for the year in question.
- Validated provisional agreement for the companies whose management plan is being drafted (less than three years from the allocation decree for the PEA) must also be in place and can be requested from the company.

### **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°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, Art. 62-64 and 173. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Decree n°09.021 dated April 30, 2009 (Arrêté n° 09.021 du 30 avril 2009), Art. 72 to 75.

#### 1.4.2. Legal authority

- MEDDEFCP (General Direction of Water, Forests, Hunting and Fishing)

#### 1.4.3. Legally required documents or records

- Agreement from the Ministry of Forests
- Authorization for perimeter exploration
- Exploration report
- Simple Management Plan

#### 1.4.4. Sources of information

##### *Non-Government sources*

- Kouaranga, S., B. Imandja, P. Zoga, E. Fatou, & B. Nzonikoua, (2014). *Report of study of the level of transparency in logging during periods of conflict and post conflict in CAR as part of the application of APV/FLEGT*. [online]. Available at <http://cidt.org.uk/wp-content/uploads/2014/11/Rapport-d%C3%A9tude-sur-la-transparence-CAR.pdf> [Accessed 12 July 2016]

#### 1.4.5. Risk determination

##### *Overview of Legal Requirements*

Whether it is for plantations or natural forests, plantation harvesting falls under the responsibility of the State but can be handed over to companies as delegated labour through bid solicitations. The selection of beneficiaries is carried out after the call for tenders, and the logging has to be undertaken in conformity with the specifications (cahiers de charge) imposed by the administration. The cutting permits identify the cutting areas and the species authorized for harvesting.

##### *Description of risk*

For this section, the lack of transparency in the process of the call for tenders to obtain authorizations violates the law. In practice, the interested operator sends a request to the Ministry of Water, Forests, Hunting and Fishing (MEFCP) which begins the process of bid solicitation. The requirements concerning the call for tenders at this level are not respected. This is an arrangement between the applicant and the forest administration. This means that the process of the call for tenders is not systematic.

One example is the case of ebony logging, where the interested forest companies send a request to the administration, which then gives its consent for logging.

Going over the limits in cutting areas, harvesting protected species, and harvesting trees with too small diameters are frequent violations.

In general, companies make the most of the lack of capacity of the State's forest services, as well as the lack of independent observation from civil society. They harvest without approval. The control missions are usually financed by the private sector. These practices weaken the administration, which can no longer establish reliable and objective reports (KOUARANGA. Et al, 2014). According to these authors, *« il y a lieu de préciser que l'Observateur Indépendant recruté auprès des commissions interministérielles d'attribution des titres ne représente pas la SC (société civile) ni les CLA (communauté locale et autochtone), mais rend compte seulement au MEFCP qui garde le contrôle du processus d'attribution des PEA »* (it must be said that the Independent Observer recruited by the inter-ministerial commissions granting the permits does not represent civil society nor the local community but responds solely the MEFCP, which remains sole comptroller of the process of granting permits).

#### *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.

#### **1.4.6. Risk designation and specification**

Specified risk

#### **1.4.7. Control measures and verifiers**

To control the risks concerning the harvesting permits, the buyer must verify that his supplier has:

- Permission or authorization from the Ministry (MEFCP) for plantations
- Obtain copies of the Authorization to survey the perimeter, Survey report and Simple management plan to determine if they meet the legal requirements
- Document of call for proposals and written report of bidders' selection
- Report of inspection of the harvesting site confirming that the harvesting takes place within the limits of the property for all authorized species.



## 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°08.022 dated October 17, 2008 concerning the Forestry Code (Loi n° 08.022 du 17.10.08) (<http://faolex.fao.org/docs/pdf/caf107432.pdf>), art. 179 to 189, which impose the following taxes: rent, felling, reforestation and royalties for deforestation and pre-recognition.
- Decree 09.118 dated April 28, 2009 (Décret 09.118 du 28.04.2009), art. 22 and 44
- Finance Law for each financial year.

#### 1.5.2. Legal authority

- MEDDEFCP (General Direction for Water, Forests, Hunting and Fishing)
- General Direction for Taxes

#### 1.5.3. Legally required documents or records

- Income tax payment receipts
- Felling tax payment receipts
- Reforestation tax payment receipts
- Notification prescribing exceptional measures concerning the payment of taxes and royalties for the company.

#### 1.5.4. Sources of information

##### *Government sources*

- European Union Delegation, (2014). *Second meeting from the joint implementation committee (conjoint de mise en œuvre) (CC-MO) from the APV-FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/228038/Aide-m%C3%A9moire+de+la+deuxi%C3%A8me+r%C3%A9union+du+Comit%C3%A9+Conjoint+de+Mise+en+Oeuvre/56c371ff-6957-4ede-8148-46abe8cae3e5> [Accessed 19 July 2016]

##### *Non-Government sources*

- Karsenty, A. (2002). *Le rôle controversé de la fiscalité forestière dans la gestion durable des forêts tropicales: l'état du débat et les perspectives en Afrique Centrale* (The Controversial Role of Forest Taxation in Sustainable Management of Tropical Forests: State of the Debate and Prospects in Central Africa). [online]. Available

at: <http://ageconsearch.umn.edu/bitstream/206085/2/CESR-64-5-36.pdf>  
[Accessed 26 July 2016]

- Yalibanda, Y. (2004). *Forest Finance: Régime fiscal forestier et dépenses de l'État en faveur du secteur forestier en République Centrafricaine* (Forestry tax system and government expenditure on the forestry sector in the Central African Republic). [online]. Published on the FAO website. Available at: <ftp://ftp.fao.org/docrep/fao/007/ae211f/ae211f00.pdf> [Accessed 25 July 2016]

#### **1.5.5. Risk determination**

##### *Overview of Legal Requirements*

Companies are subject to pay the following forest taxes:

- Felling tax: calculated based on the volume of fallen logs
- Reforestation tax: calculated based on the volume of exported tree species
- Rent tax: The holder of PEAs is subject to pay rent, that is, the yearly tax perceived per usable hectare, as well as the cutting tax and the reforestation tax (calculated based on the volume fallen and exported).

All requested authorizations for deforestation for activities other than forestry are subject to payment of deforestation royalties defined by the finance law. The General Direction for Water, Forests, Hunting and Fishing issues all these taxes as they come. The law dictates that these taxes and royalties shall be calculated based on declarations made by the companies concerning the commercialization of timber and the exportation of products through 'timber movements', 'border control declarations' and 'commercial exportation declarations'.

##### *Description of risk*

According to the authors of this criteria (Jean Kennedy Mathamale and Evariste Mbayelao), due to lack of regular control and corruption, the risk of under-declaring volumes and species in order to avoid paying the full amount of taxes exists despite the controls conducted by the BIVAC in the Southwest of the country. The work of the BIVAC minimizes the risks of under-declaration of volumes for tax reasons. However, this can only be done if no cut timber stays hidden in the forest, because the felling tax is calculated based on the fallen volume. Yet, according to the authors of these criteria, it is common for blocks of timber to be abandoned in the forest. Thus, the risk concerning felling tax fraud is specified.

It is difficult to control these risks. Only unannounced controls by the Ministry (MEFCP) and independent observation reports from NGOs on the worksites to compare the data on the field with that in the worksite books can detect the cases of underestimation of harvested volumes, but the State does not carry out these kinds of controls.

##### *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.

#### **1.5.6. Risk designation and specification**

Specified risk

#### **1.5.7. Control measures and verifiers**

A buyer wishing to control the risk that his supplier does not degrade species or undervalue the volumes sold in order to pay less taxes in CAR, should request with his orders:

- The tax rate chart for different species and volumes from the Central African Republic forest authorities
- Proof (receipt) of payment by the supplier of royalties and harvesting rights, including the calculation of taxes depending on the species and volumes purchased
- A copy of the mission report carried out by the administration or the mission reports from 'Independent observations' (observations indépendantes) from NGOs, in order to confirm that there are no abandoned blocks of timber in the forests.

### **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 (Code Général des Impôts) (CGI) edition 2009 – articles 120, 125, 140, 247, 248 and 257 concerning corporate profits tax, IMF, Value Added Tax (VAT).
- Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10.08) concerning the Forestry Code, Art. 180 to 182, which establishes the annual tax levied per usable hectare, as well as the cutting tax. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Directive N°-1/99/CEMAC\_028\_CM\_03 (Directive N°-1/99/CEMAC-028-CM-03) concerning the harmonization of legislations from the Member States in terms of VAT and excise duty tax.
- Finance law (Loi des finances). Available at: <http://www.droit-afrique.com/uploads/RCA-LF-2016-.pdf>

#### **1.6.2. Legal authority**

- General Direction for Water, Forests, Hunting and Fishing
- General Direction for Taxes
- Ministry of Commerce and Industry

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

- Payment receipt for the exit fee (droit de sortie) (DS)

- Trade and Property Credit Register (Registre de commerce et de crédit mobilier) (RCCM)
- Tax payer's account
- Annual activity statement
- Receipt of tax payments (Receipt of payment for the Added Value Tax 'VAT'; Receipt of payment for the corporate and income taxes; Receipt of payment for the IMF...)
- "Timber Movements" («Mouvements de bois») (overview of timber movement).

#### 1.6.4. Sources of information

##### *Government sources*

- European Union Delegation, (2014). *Second meeting from the joint implementation committee (conjoint de mise en œuvre) (CC-MO) from the APV-FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/228038/Aide-m%C3%A9moire+de+la+deuxi%C3%A8me+r%C3%A9union+du+Comit%C3%A9+Conjoint+de+Mise+en+Oeuvre/56c371ff-6957-4ede-8148-46abe8cae3e5> [Accessed 19 July 2016]

##### *Non-Government sources*

- Karsenty, A. (2002). *Le rôle controversé de la fiscalité forestière dans la gestion durable des forêts tropicales: l'état du débat et les perspectives en Afrique Centrale* (The Controversial Role of Forest Taxation in Sustainable Management of Tropical Forests: State of the Debate and Prospects in Central Africa). [online]. Available at: <http://ageconsearch.umn.edu/bitstream/206085/2/CESR-64-5-36.pdf> [Accessed 26 July 2016]
- Yalibanda, Y. (2004). *Forest Finance: Régime fiscal forestier et dépenses de l'État en faveur du secteur forestier en République Centrafricaine* (Forestry tax system and government expenditure on the forestry sector in the Central African Republic). [online]. Published on the FAO website. Available at: <ftp://ftp.fao.org/docrep/fao/007/ae211f/ae211f00.pdf> [Accessed 25 July 2016]
- Gérard, J. (2007). *Les forêts du Bassin du Congo - Etat des Forêts 2006* (Forests of the Congo Basin – State of the Forests 2006). [online]. European Union Publications Office, pp. 90-105. Available at: [http://carpe.umd.edu/Documents/2006/Les\\_FORETS\\_DU\\_BASSIN\\_DU\\_CONGO\\_Et\\_at\\_des\\_Forets\\_2006.pdf](http://carpe.umd.edu/Documents/2006/Les_FORETS_DU_BASSIN_DU_CONGO_Et_at_des_Forets_2006.pdf) [Accessed 28 July 2016]

#### 1.6.5. Risk determination

##### *Overview of Legal Requirements*

Directive N°1/99/CEMAC\_028\_CM\_03 of the Finance law from the fiscal year 2000 became applicable in CAR on July 1, 2000. This directive involves the harmonization of legislations from the Member States concerning the VAT and excise duty tax. They retain a unique rate of 19%, a disposition that the forest companies are also subject to.

On top of the VAT, they have to pay corporate tax and minimum tax rate (IMF).

The holder of PEAs is subject to pay rent, that is, the yearly tax perceived per usable hectare, as well as the cutting tax and the reforestation tax (calculated based on the volume fallen and exported).

The General Direction for Water, Forests, Hunting and Fishing is responsible for issuing receipt orders for the collection of forest taxes from the beneficiaries. These receipt orders are issued based on "timber movements", a declaration from the company based on a unique formula involving timber productivity, transformation and exportation, which highlights the species farmed and the corresponding volumes. This allows the General Direction of Water, Forests, Hunting and Fishing to issue receipt orders for the collection of taxes and border control rights.

The value of the timber - expressed in FCFA (Francs Communauté Financière Africaine) per cubic meter for each species - is established biannually by joint decree from the MEDDEFCP and the Ministry of Commerce and Finances and is based on the FOB (Free on Board) value.

It is necessary to compare the documents on the Border Control Declaration and the Commercial Exportation Declaration (DEC) to determine the "timber movements". The receipt from the exit fee (droit de sortie) (DS) allows a comparison between the rates for each species and the current regulations.

### *Description of risk*

The sector gives sizable contributions to the State tax revenue, and the royalties and forest taxes alone amount to approximately 10 billion FCFA per year ((Gérard, J, 2007). The collection of VATs and other taxes is generally carried out without problem. During the politico-military crisis, the following situation prevailed: « Nous constatons actuellement, un très faible niveau de fonctionnement des structures étatiques de régulation, contrôle et fiscalité, avec des lacunes qui s'expliquent pour différentes raisons: capacités matérielles et opérationnelles, problème persistant de sécurité pour l'accès aux concessions et transport, etc. » (European Union Delegation, 2014). The collection of sale taxes was carried out based on declarations made by the loggers, and the State had no means to control these declarations. However, since the political situation improved in CAR, the BIVAC has resumed its activities controlling the loggers' declarations. The risk of illegality concerning taxes on added value and sale taxes is low.

It should be noted that, according to a forest inspector from the MEDDEFCP, the Ministry for Sustainable Management, Water, Forests, Hunting and Fishing (MEDDEFCP) (M.Yves Yalibanda), the issues of legality also concern the reimbursement of the VAT by the State to the forest companies. Indeed, forest companies that import products are subject to pay VAT, and the amount paid should be reimbursed by the State. In most cases, the State does not reimburse the tax and the companies talk about "VAT credit". This is not a legal issue in terms of this risk analysis, and it could not be controlled by European buyers, but it is an issue that affects the forestry sector in CAR.

### *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.

#### **1.6.6. Risk designation and specification**

Low risk

#### **1.6.7. Control measures and verifiers**

N/A

### **1.7. Income and profit taxes**

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

#### **1.7.1. Applicable laws and regulations**

- Law n°8.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, art. 198. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Finance law for each financial year
- Art. 12 and 22 of the CEMAC border control Code
- Directive N°\_01/04-UEAC-177U-12 dated July 30, 2004 (Directive N°\_01/04-UEAC-177U-12 du 30 juillet 2004) concerning the revision of Act n°3/77-UDEAC-177 dated December 21, 1977 (Acte n° 3/77-UDEAC-177 du 21 décembre 1977) concerning the introduction of a Private Persons' Income Tax (impôt sur le Revenu des Personnes Physiques) (IRPP).
- Act n°1/92-UDEAC-556-CD-SE1 dated July 30, 1992 (Acte n° 1/92-UDEAC-556-CD-SE1 du 30 Avril 1992) concerning the adoption of a turnover tax (Taxe sur le Chiffre d'Affaires) (TCA) and an Excise duty of the CEUCA (Customs and Economic Union of Central Africa) (UDEAC in French)
- Act n°1/93-UDEAC-573-CD-SE1 dated May 17, 1993 (Acte n° 1/93-UDEAC-573-CD-SE1 du 17 mai 1993) defining the modalities for the General Secretary's presentations concerning agreements.
- Act n°7/93-UDEAC-556-CD-SE1 dated June 21, 1993, revising the Common External Tariff and defining the application modalities for the Generalized Preferential Fee. Available at: <http://www.droit-afrique.com/upload/doc/cemac/CEMAC-Acte-1993-07-tarif-douanier.pdf>
- Act n°16/96-UDEAC-556-CD-57 (Acte n° 16/96-UDEAC-556-CD-57)
- Act n°5/89-UDEAC-491 (Acte n° 5/89-UDEAC-491)

#### **1.7.2. Legal authority**

- MEDDEFCP (General Direction for Water, Forests, Hunting and Fishing)

- General Direction for Taxes
- General Direction for Border Control

#### 1.7.3. Legally required documents or records

- Payment receipt for the exit fee (droit de sortie) (DS)
- Payment receipt for taxes
- Trade and Property Credit Register (RCCM)
- Tax payers' account
- Annual activity statement
- Border control declarations
- Commercial Exportation Declaration (DEC)

The verification with the BIVAC and the revenue collection services has to confirm the conformity of these documents, compared with the "timber movements".

#### 1.7.4. Sources of information

##### *Government sources*

- European Union Delegation, (2014). *Second meeting from the joint implementation committee (conjoint de mise en œuvre) (CC-MO) from the APV-FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/228038/Aide-m%C3%A9moire+de+la+deuxi%C3%A8me+r%C3%A9union+du+Comit%C3%A9+Conjoint+de+Mise+en+Oeuvre/56c371ff-6957-4ede-8148-46abe8cae3e5> [Accessed 19 July 2016]

##### *Non-Government sources*

- Greenpeace, (2015). *L'occasion fait le larron - Pourquoi les grandes entreprises importatrices chinoises doivent aider à combattre le commerce de bois illégal au Bassin du Congo*. [online]. Available at: <http://www.greenpeace.org/africa/Global/africa/French/Forets/publications/l-occasion-fait-le-larron.pdf> [Accessed 20 July 2016]
- Karsenty, A. (2002). *Le rôle controversé de la fiscalité forestière dans la gestion durable des forêts tropicales: l'état du débat et les perspectives en Afrique Centrale* (The Controversial Role of Forest Taxation in Sustainable Management of Tropical Forests: State of the Debate and Prospects in Central Africa). [online]. Available at: <http://ageconsearch.umn.edu/bitstream/206085/2/CESR-64-5-36.pdf> [Accessed 26 July 2016]
- Yalibanda, Y. (2004). *Forest Finance: Régime fiscal forestier et dépenses de l'État en faveur du secteur forestier en République Centrafricaine* (Forestry tax system and government expenditure on the forestry sector in the Central African Republic). [online]. Published on the FAO website. Available at: <ftp://ftp.fao.org/docrep/fao/007/ae211f/ae211f00.pdf> [Accessed 25 July 2016]

#### 1.7.5. Risk determination



### *Overview of Legal Requirements*

Firstly, Directive N°\_01/04-UEAC-177U-12 dated July 30, 2004 (Directive N°\_01/04-UEAC-177U-12 du 30 juillet 2004) (made applicable by the 2006 finance law) introduced the Private Persons' Revenue Tax (IRPP). The taxpayers are required to declare their salaries, property income, industrial and commercial profits (BIC) and realized gains. The Private Persons' Revenue Tax is subtracted at the source.

Secondly, the PEA holders are subject to pay rights and taxes for the exportation of rough wood, sawn timber, peeled wood, plywood and sliced wood. These border control rights and taxes are called exit rights and are calculated based on the FOT value (Free on Truck).

### *Description of risk*

With the effects of the political crisis in CAR, where until recently army groups occupied all of the territory, in synergy with the high corruption index in CAR and the State's lack of capacity to control the industrial declarations, there was a specified risk that the companies would not pay the totality of the exportation taxes or the revenue tax (IRPP) by creating false declarations about the price or volumes sold (European Union Delegation, 2014).

However, with the progressive redeployment of the State administration, notably in the Southwest of the country, which is the only area subject to logging, the State has signed a contract of service delivery with the Bureau Véritas society (BIVAC) in order to ensure that the receipts are linked to the logging by putting a traceability system in place with the inspector, which allows following the timber from the company's log yard in the forest to the port of Douala. For the purpose of taxation, the BIVAC inspectors verify the volumes declared by the companies for exportation. The exit rights and other border control taxes are paid before the timber is exported, and monitoring of the species and volumes sold by the companies is carried out. Since the State has taken back control with the help of BIVAC, the risk of illegality concerning taxation and revenue collection linked to the harvested and sold volumes and species has become low.

### *Risk conclusion*

In the Southwest of the country, where the State has taken back control and where the BIVAC verifies the species and volumes, the risk is low. In the areas occupied by army groups, there is no softwood logging.

#### **1.7.6. Risk designation and specification**

Low risk

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

N/A

## 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°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code art. 94, 102, 103, 105, 107 and 114
- Decree N°09.026 dated July 28, 2009 (Arrêté N°09.026 du 28.07.2009) concerning the approval of national norms for the elaboration of management plans (Volume 2)
- Decree N°0.19 dated July 5, 2006 (Arrêté N°0.19 du 05.07.2006) concerning the approval of national norms for the elaboration of management plans (Volume 1)
- Provisional agreement
- Definitive agreement

#### 1.8.2. Legal authority

- General Direction for Water, Forests, Hunting and Fishing

#### 1.8.3. Legally required documents or records

- Logging Inventory Report
- PAO deposit letter to the cabinet of the Ministry in charge of forests
- Official letter of approval for the PAO
- Control mission report from the forest administration
- Worksite book
- Authorization to open a track for an AC and timber movements

#### 1.8.4. Sources of Information

##### *Non-Government sources*

- Kouaranga, S., B. Imandja, P. Zoga, E. Fatou, & B. Nzonikoua, (2014). *Report of study of the level of transparency in logging during periods of conflict and post conflict in CAR as part of the application of APV/FLEGT*. [online]. Available at <http://cidt.org.uk/wp-content/uploads/2014/11/Rapport-d%C3%A9tude-sur-la-transparence-CAR.pdf> [Accessed 12 July 2016]

#### **1.8.5. Risk determination**

##### *Overview of Legal Requirements*

The law requires that the cutting areas foreseen on the maps be materialized. The regulation ensures that the service network is planted and carried out according to the current regulations. Felling has to take into account the Minimum Management Diameters (Diamètres Minimum d'Aménagement) (DMA), found in the management plan, and the PAO for each farmable and farmed species. The species harvested are PA authorized or species that are normally unauthorized but have been given special authorization. The law to avoid damage when the timber falls dictates directional felling. All technical aspects of the timber harvest are documented in the PAO, which is approved by the forest administration. The harvest is forbidden in ecologically fragile areas.

For species listed as "unauthorized" in the management plan, harvesting is subject to a special authorization issued by the administration.

##### *Description of risk*

On the basis of his field experiment, the author of this indicator (Evariste Mbayelao) notices that, since the politico-military crisis, the forest controls in CAR are rarely carried out and are logistically supported by the forestry societies. This leads to a threat to the objectivity and independence of the inspectors. This observation is confirmed by a study based on transparency in forest logging during periods of conflict and post-conflict in CAR. This study was carried out as part of the implementation of the APV/FLEGT, in 2014: Control missions are usually financed by the private sector. This practice forces the administration to establish a reliable and objective report. (KOUARANGA S. et al.). The scrutiny from the private sector, and the interest for them in ensuring the inventories are properly carried out, means that the cutting areas are generally well marked, though often not respected.

Going over the limits in cutting areas, harvesting protected species, and harvesting trees with too small diameters are frequent violations.

For the rest, the author notices that companies carry out directional felling, the DMAs are generally respected, and the companies receive special authorization from the forest administration to harvest species not listed in the management plan. The risk here is limited to the respect of the limits of the cutting area.

##### *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.

#### **1.8.6. Risk designation and specification**

Specified risk

#### **1.8.7. Control measures and verifiers**

The control of risks from lack of compliance in cutting areas can be carried out the buyer, either through a field survey, or via high resolution satellite photos and tools to analyse these photos with tools developed by the Transparent Forest organization on behalf of the FSC (<http://www.denisalder.net/fmt/>), or Sarmap (<http://www.sarmap.ch/index.php>). The timber supplier should be able to provide maps showing the authorized cutting areas, so that they can be compared by the organizations with the satellite images.

- Harvesting shall be conducted within the authorized boundaries of the FMU.
- Harvesting shall not take place in areas where harvesting is legally prohibited.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be listed in operational plans.
- Harvesting restrictions shall be observed in the field.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be marked in the field.

### 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°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, Art. 8, 10-13, 77, 83. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Law n°07.018 dated December 28, 2007 (Loi n° 07.018 du 28 décembre 2007) concerning the environmental code art 36 to 41 that addresses the conservation of biodiversity. Available at: <http://cf.chm-cbd.net/implementation/loisnation/legislation-environnementale/codeenvironnementrca.pdf/download/en/1/codeenvironnementrca.pdf>
- Law N°09.005 dated April 29, 2009 (Loi N° 09.005 du 29 avril 2009) concerning the mining code for the Central African Republic. Available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/83176/100671/F523877437/CAF-83176.pdf> - title V: for the preservation of the environment
- Ordinance N°93.007 dated May 25, 1993 (Ordonnance N°93.007 du 25 mai 1993) concerning the Central African Republic Oil Code. Available at: <http://www.droit-afrique.com/upload/doc/rca/RCA-Code-1993-petrolier.pdf> title 7, which addresses the obligations and rights linked to oil operations
- Ordinance N°84.045 (Ordonnance N°84.045) concerning the protection of wild fauna and regulating hunting activities in the CAR

- Law of parks and reservations
- Ramsar Convention on Wetland. Available at: [http://www.ramsar.org/sites/default/files/documents/library/scan\\_certified\\_f.pdf](http://www.ramsar.org/sites/default/files/documents/library/scan_certified_f.pdf)
- Convention on biological diversity: <https://www.cbd.int/doc/legal/cbd-fr.pdf>
- Agreement from the African Timber Organization (Organisation Africaine du Bois) (OAB)
- International Tropical Timber Agreement 2006 (Accord International des Bois Tropicaux) (AIBT). Available at: <http://www.itto.int/fr/itta/>
- Convention on international trade of endangered species of wildlife and plants (CITES). Available at: <https://cites.org/sites/default/files/fra/disc/CITES-Convention-FR.pdf>
- Framework convention on climate change. Available at: <http://unfccc.int/resource/docs/convkp/convfr.pdf>
- Decree N°09.117 dated April 28, 2009 (Décret N°09.117 du 28 Avril 2009) describing the modalities for application of Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, Art. 15-17
- Decree 09.021 dated April 30, 2009 (Arrêté 09.021 du 30/04/2009) defining the modalities for application of Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, Art. 53, which establishes the list of plant species protected in CAR.

#### **1.9.2. Legal authority**

- MEDDEFCP (General Direction of Water, Forests, Hunting and Fishing)
- Ministry of Mines

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

- Cartography corresponding to the logging permit (PEA), and plantation permit
- PEA allocation decree
- Plantation export authorization
- Report of survey of species to be logged (in the case of plantations), exportation inventory report (PEA)
- List of protected species in CAR
- Decree for the classification of state-owned forests
- Specifications (Cahier de charge)
- Worksite Book

#### **1.9.4. Sources of Information**

*Government sources*

- Ministry of the Environment and Ecology (2010). *4<sup>th</sup> national report on the conservation of biological diversity*. [online]. Ministère de l'Environnement et de l'Écologie (MEE), pp. 1-93. Available at: <https://www.cbd.int/doc/world/cf/cf-nr-04-fr.pdf> [Accessed July 18 2016]
- Ministry of Water, Forests, Hunting and Fishing (2009). *Manuel legal pour la protection de la faune sauvage en République Centrafricaine* (Legal manual for the protection of wildlife in Central African Republic). [online]. Ministère de l'Environnement, des Eaux, des Forêts de la Chasse et de la Pêche (MEEFCP), pp. 1-17. Available at: [http://laga-enforcement.org/Portals/0/Documents/Legal%20documents/CAR/Legal\\_CAR\\_Book\\_Fr.pdf](http://laga-enforcement.org/Portals/0/Documents/Legal%20documents/CAR/Legal_CAR_Book_Fr.pdf) [Accessed 24 July 2016]

#### *Non-Government sources*

- Konzi-Sarambo, B. (2006). *Difficultés de gestion des aires protégées en RCA* (Difficulties in managing protected areas in CAR). [online]. Extract from the Information Exchange Center of the Central African Republic's website. Available at: <http://cf.chm-cbd.net/implementation/les-aires-protegees-de-la-r.c../probleme-aire-prot> [Accessed 18 July 2016]
- Bonannee, M. (2001). *L'étude prospective du secteur forestier en Afrique (FOSA): République Centrafricaine* (The Prospective Forest Sector Study in Africa (FOSA): Central African Republic). Extract from the FAO website. Available at: <http://www.fao.org/3/a-ab588f.pdf> [Accessed 25 July 2016]
- Mahode J., & N. Mvale, (2002). *Etude des besoins en formation forestière en RCA* (Study of forestry training needs in CAR). [online]. Available at: [http://pfbc-cbfp.org/tl\\_files/archive/formation/rca.pdf](http://pfbc-cbfp.org/tl_files/archive/formation/rca.pdf) [Accessed 19 July 2016]
- Centrafrique-presse.info (n.d.). *La fréquence des abattages des espèces protégées dans le parc Zanga Sangha inquiète WWF* (The frequency of slaughter of protected species in the Zanga Sangha park worries WWF). [online]. Centrafrique Presse. Published 30 June 2016. Available at: <http://www.centrafrique-presse.info/site/info-societe-9516.html> [Accessed 18 July 2016]
- International Crisis Group, (2014). *La crise centrafricaine: de la prédation à la stabilisation* (Central African crisis: from predation to stabilization). [online]. Rapport Afrique N°219. Available at: <http://www.crisisgroup.org/~media/Files/africa/central-africa/central-african-republic/219-la-crise-centrafricaine-de-la-predation-a-la-stabilisation.pdf> [Accessed 24 July 2016]

#### **1.9.5. Risk determination**

##### *Overview of Legal Requirements*

The law, by way of the Forestry Code, defines the permanent State-owned estate, conformed by national parks, natural reservations and state production forests. According to article 8. "Any logging is forbidden in national parks, sanctuaries, reservations and recreational forests that constitute the country's protected areas.

However, in the state's production forests, apart from protection, research and conservation, forest logging as well as certain population customary usage rights are regulated. A MEDDEFCP decree establishes a list of protected species that cannot be logged wherever they are catalogued. The list of forbidden species varies from one PEA to the other.

The law also requires that the loggers control access to and hunting activities of local populations in the forest once the tracks have been opened.

### *Description of risk*

All of the protected areas have two particularities: they are located in Sudanese zones or Sahelo-Sudanese zones, and they are located at the borders. This creates major surveillance and poaching problems (Michel BONANNAEE, 2001). In the North, Northeast and Southeast zones that are under army group occupation, the state administration and the forest administration are absent. The army groups make the law, going into the protected areas and taking the resources that they need (Evariste MBAYELAO, based on his field work). Also, the national parks, located mainly in the north, are on the borders with countries such as Sudan, where the entrances and exits are not materialized and the areas fall prey to poaching and all types of people who log the natural resources.

Even in areas under the control of the administration, there is a weak human, financial and logistical capacity from the forest administration in charge of the mission (MAHODE and MVELA, 2002). Moreover, since the corruption index is high in the Central African Republic according to reports from the World Bank and Transparency International, the effective control of the respect of sites and protected species is rare. The forest company's controls by the State forest administration are often carried out with the help of that same company because of the lack of personnel and equipment that the forest agents need in the field. This constitutes an obstacle for monitoring loggers' compliance with management plans and worksite books.

In the Southwestern forest areas (where the softwood logging is for commercial purposes), track access controls are not carried out by loggers, and wildlife species are poached by populations once the logging tracks have been cleared.

### *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.

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

Specified risk

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

To avoid buying illegal timber, the buyer has to take the following precautions:

- Have a map of the area covered by the logging permit (PEA) or the plantation permit, and compare it to the map of protected areas



- Ask for the plantation's logging authorization
- Ask for the survey report or the species to be logged (in the case of plantations), logging inventory report (PEA)
- Know the list of protected species in CAR
- Ask for the control mission's report from the forest administration, confirming that the rules concerning protection are being upheld, that the report confirms the respect of conservation regulations in the areas where logging is forbidden and in PEAs such as ecologically fragile areas
- Determine in the field whether the control of access and poaching by the company is effective, or consult the local authorities, the villagers and the relevant local and international environmental NGO present in the field
- Obtain the list of forbidden species for the PEA that provides the timber

### 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°07.018 dated December 28, 2007 (Loi n° 07.018 du 28 décembre 2007) concerning the Environmental Code. Available at: <http://cf.chm-cbd.net/implementation/loisnation/legislation-environnementale/codeenvironnementtrca.pdf/download/en/1/codeenvironnementtrca.pdf>
  - Art 87 and art 93 establish the requirement for an Environmental Impact Assessment (EIE)
  - Art. 3, 19 and 20, 43 to 45 deal with waste management
  - Art. 15 and 102 establish the requirement for an environmental audit
- Law n°08.002 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code art. 83 to 92 and 102 dealing with the conservation of nature and biodiversity. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Definitive management-logging agreement Art. 8) dealing with the forest management clauses

#### 1.10.2. Legal authority

- MEDDEFCEP (General Direction for Water, Forests, Hunting and Fishing)

- MEDDEFCP (General Direction for the Environment)

#### 1.10.3. Legally required documents or records

- Report of Environmental Impact Assessment
- Approved environmental certificate (Certificate of environmental conformity delivered by the competent authority)
- Environmental audit report
- Control report from the administration in charge of the environment

#### 1.10.4. Sources of information

##### *Non-Government sources*

- Central African Association for Professionals in Environmental Evaluations (2001). *Annual activity report 2011*. Association Centrafricaine des Professionnels en Evaluation Environnementale) (ACAPEE). Not available online.
- Dutch Commission for Environmental Evaluation (2013). *Evolution of the EIE system and decision making in CAR*. Commission Néerlandaise pour l'Evaluation Environnementale (CNEE) and Executive Secretary for Environmental Evaluation in Central Africa (Secrétariat Exécutif pour l'Evaluation Environnementale en Afrique Centrale) (SEEAC). Not available online.
- Dutch Commission for Environmental Evaluation (2013). *Results of the EIE CAR 2013 cartography*. Commission Néerlandaise pour l'Evaluation Environnementale (CNEE) and Executive Secretary for Environmental Evaluation in Central Africa (Secrétariat Exécutif pour l'Evaluation Environnementale en Afrique Centrale) (SEEAC). Not available online.

#### 1.10.5. Risk determination

##### *Overview of Legal Requirements*

All development projects and any physical work that risks to harm the environment are subject to prior environmental impact studies (EIE), monitored by the Ministry in charge of the Environment, according to art. 87 of the Environment Code. In the case of logging, the EIEs relate to the PEAs, the management series such as production series in particular, including the base camp. If the EIEs are judged satisfactory by the administration, the minister delivers a certificate of environmental conformity to the developer. According to these legal requirements, companies are required to respect the legal requirements concerning water pollution and air pollution, and they have to appropriately treat the waste that comes from the company's activities. Also, the periodical environmental audit allows evaluation of the impact that the presence of the company and its production, as a whole or in part, is susceptible to generate on the environment. According to forestry law, in order to maintain the forest cover required for the protection and conservation of biodiversity, the land under or outside the forest can be put under protection, declared as ecologically fragile zone, and classified as protection perimeter. In the case of PEAs, this relates to the type of protection programmed within the management plan.

### *Description of risk*

The risk for this section can be analyzed as follows:

There are 14 PEAs in CAR. 5 of these PEAs have recently been subject to the EIE process. The 9 others have never been subject to an EIE in due form.

The environmental audits are rare or almost non-existent in the PEAs, just like the EIEs in the different series established within the framework of the management plan (ACAPEE, 2011). The MEDDEFCEP lacks personnel and controls are almost non-existent. This is the same for the administration that carries out, from time to time, forest control missions: not only do they rely on logistical means provided by the forest companies, but they do not devote enough attention to the environmental aspects. Since the procedures are not clear due to lack of enforcement, it is not uncommon for the administrative officials to be subjects of corruption during their rare controls.

### *Risk conclusion*

In the absence of clear and well recognized procedures, and because of the common practice of corruption in the country, the risk for this criterion is specified.

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

Specified risk

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

- The EIE report has to exist, as well as the certificate of environmental conformity
- The report from the environmental audit approved by the MEDDEFCEP has to exist
- Approved PAO showing the technical harvesting requirements and the waste management system in place
- The environmental and social management plan has to exist
- A European buyer cannot rely solely on documents. It is best to carry out a field mission to compensate for the administration's lack of controls.

### **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°09.004 (Loi n° 09.004) concerning the Labor Code – Sub-section 4, which deals with the hygiene and security committees (art. 82 to 87)

- Law n°06.035 dated December 28, 2006 (Loi n° 06.035 Du 28/12/2006) concerning the social security Code. Available at: <http://www.ilo.org/dyn/travail/docs/1218/Code%20de%20Securit%C3%A9%20Sociale.pdf>
- International Labor Office, C155 Agreement on the security and health of workers, 1981 (Art. 12 paragraphs a and b, art. 16), ratified by the Central African Republic on June 5, 2006. Available at: [http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312300](http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312300)
- Decree 055/MFPRESSFP/CAB/DGTEFP dated July 11, 2004 (Arrêté 005/MFPRESSFP/CAB/DGTEFP du 11 juillet 2004) Establishment and operation of the hygiene and security committees in Central African Republic (Art. 1 to 3; Art 9 to 17)

#### **1.11.2. Legal authority**

- Ministry in charge of Work, employment and Social Affairs
- Labor Inspection

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

- Written report from the meeting that created the Hygiene and Security Committee for companies of more than 30 employees
- List of endowments of hygiene and security material for the staff
- Reports from the hygiene and security meetings
- Employers register numbered and initialed by the competent labor inspector
- Inspection report
- Health service availability

#### **1.11.4. Sources of information**

##### *Government sources*

- Ministry of Civil Service, Labor, Social Security and professional integration of young people (2009). *Guide méthodologique de l'inspection du travail* (Methodological guide to labor inspection). [online]. pp. 1-83. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/genericdocument/wcms\\_167756.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_167756.pdf) [Accessed 20 July 2016]

##### *Non-Government sources*

- Mahode, J. & N. Mvale (2002). *Etude des besoins en formation forestière en RCA* (Study of forestry training needs in CAR). [online]. pp. 1-65. Available at: [http://pfbcbf.org/tl\\_files/archive/formation/rca.pdf](http://pfbcbf.org/tl_files/archive/formation/rca.pdf) [Accessed 19 July 2016]

#### **1.11.5. Risk determination**

### *Overview of Legal Requirements*

The law establishes the mandatory creation of a hygiene and security committee in all companies or establishments with more than 30 workers, including part-time or temporary workers. Also, the Labor Inspector can impose a 15-day delay for the creation of a hygiene and security committee (Comité d'Hygiène et de Sécurité) (CHS), depending on the nature of the work and the particular risks that the workers are exposed to, even if the number of workers is fewer than 30. The members of the CHS are elected for a mandate of three renewable years. According to the Labor Code, in all companies and establishments where there is no CHS, the staff representatives automatically become the hygiene and staff security representatives, as well as representatives for preventive healthcare, and they are meant to suggest appropriate measures on the subject. It can also be noticed that in establishments where there are fewer than 11 workers, staff representatives are elected.

The legislation requires that the employer provide each worker with individual protective equipment (équipement de protection individuel) (EPI)

The companies are required to put in place a shared medical and sanitary service, or create community clinics or infirmaries within a group of businesses or establishments. Also, in each agricultural or forestry operation with a workforce of more than 100 workers, a periodical medical visit is mandatory. The employer is required to declare any work-related accidents or illnesses noted to the National Social Security Fund (Caisse Nationale de Sécurité Sociale) (CNSS) within 8 days.

### *Description of risk*

The legislation is clear concerning hygiene and security at work. According to the author of the current analysis, on the basis of his field work, the members of the CHS or, failing this, the staff delegates, are rarely trained in aspects linked to security and hygiene. The companies that want to go into forest certification put in place a CHS. However, in certain companies, the CHSs, when they are put in place, struggle to succeed in their mission to inspect the establishment for compliance with the legislative and regulatory dispositions, as well as the instructions concerning hygiene and security, due to lack of training for their activities and scarce means at their disposal. Certain employees are not declared to the social security (CNSS), and health centers, even when they exist, lack qualified personnel or are not well equipped. Access to the personal protective equipment is sometimes rare.

### *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

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

- Written report of the meeting that created the Hygiene and Security Committee for businesses with more than 30 employees
- Reports from the hygiene and security meetings
- Employers register numbered and initialed by the competent labor inspector
- Inspection report
- Health service availability

### **1.12. Legal employment**

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

#### **1.12.1. Applicable laws and regulations**

- Law 09.004 dated January 29, 2009 (Loi 09.004 du 29.01.2009) concerning the Labor Code, Art. 12, 17, 18, 30, 31, 33 dealing with freedom to conduct union activities; Art. 58, 60 and 67 dealing with the election of staff representatives; Art. 221 to 230 and 94 to 99 dealing with workers' payment
- Law n°09.004 (Loi n°09.004) concerning the Labor Code art. 247 to 249 which deal with work duration, and art. 94-101 defining the conditions for work contracts
- Law n°09.004 (Loi 09.004) concerning the Labor Code art. 7 and 8, which deal with forced or mandatory labor; art. 10 and 11 on labor and payment equality, Art. 14 on professional staff training
- Law n°06.035 dated December 28, 2006 (Loi n° 06.035 Du 28/12/2006) concerning the Social Security Code, (Art. 31)
- Collective agreement on logging operations in the Central African Republic

#### **1.12.2. Legal authority**

- Ministry in charge of Work, Employment and Social Affairs
- Labor Inspection
- General Direction for the CNSS (National Social Security Fund)
- General Direction for the ACFPA (Central African Agency for Employment Training)

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

- Register of contributions to the National Social Security Fund (Caisse Nationale de Sécurité Sociale) (CNSS)
- Registration certificate and discharge of payment for collections, delivered by the CNSS
- Employee's insurance contract
- Certificate of staff training
- Written report of the representatives' meetings
- Employers registers, numbered and initialed by the competent labor inspector
- Posted information note on the aim of the competent authority to guarantee freedom of union
- Posted written report from the representatives' meetings (if the employees are members of the union)
- Training certificates referred by the competent labor inspector

#### 1.12.4. Sources of information

##### *Government sources*

- Ministry of Civil Service, Labor, Social Security and professional integration of young people (2009). *Guide méthodologique de l'inspection du travail* (Methodological guide to labor inspection). [online]. pp. 1-83. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/genericdocument/wcms\\_167756.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_167756.pdf) [Accessed 20 July 2016]

##### *Non-Government sources*

- Mahode, J. & N. Mvale (2002). *Etude des besoins en formation forestière en RCA* (Study of forestry training needs in CAR). [online]. pp. 1-65. Available at: [http://pfbc-cbfp.org/tl\\_files/archive/formation/rca.pdf](http://pfbc-cbfp.org/tl_files/archive/formation/rca.pdf) [Accessed 19 July 2016]

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

Children cannot be employed in any company, even as apprentices, before the age of 14, unless they have a special derogation (Art. 259 of the Labor Code). After the contract has been signed, the company is required to declare the worker to the national social security fund (CNSS). Workers have to benefit from an enhanced training program at the Central African Agency for Professional Training and Employment (Agence Centrafricaine pour la Formation Professionnelle et de l'Emploi) (ACFPE). The company must be registered in the agency. In the agricultural and forestry sector, there are 48 work-hours per week. The law guarantees freedom of union for the workers. The law also requires that the employers pay all their workers the equivalent of the minimum agricultural guaranteed wage (salaires minima agricoles garantis) (SMAG), defined by decree by the Ministry in charge of labor, employment



and social affairs, after consultation with the Permanent National Labor Assembly (Conseil National Permanent du Travail).

The employee's social security is regulated by the social security code and implemented by the CNSS. The substantive scope of this law foresees a branch of health insurance that is not yet up and running. A Social and Sanitary Affairs Fund (Action Sociale et Sanitaire) (FASS) was created within the CNSS, financed by the withdrawals carried out on the different branch receipts of the regime. The FASS has, among others, a responsibility to establish and manage socio-medical services and social services; the promotion of prevention in general, prevention of work accidents and professional illnesses, and rehabilitation for disabled workers.

#### *Description of risk*

The SMAG and minimum age are generally respected. The problem lies with the professional training of the employees, which is irregular. The workers who have an effective know-how are often given a helping role, and the apprentices' main role is watching the qualified or specialized employees work. in order to imitate their movements (Jérôme MAHODE and Nicolas MVALA, 2002).

It is not uncommon for the staff representatives to suffer intimidations from their employers concerning their union activities (according to the author of this analysis, on the basis of his field work).

#### *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

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

The buyer has to ensure that the business provides the following evidence: Sanitary and Social Affairs Fund (Fonds d'Action Sanitaire et Sociale) (FAS) covers the workers involved in the harvesting through the obligatory insurances, and they have the required competence certificates. Among other things, the company has to provide the following evidence:

- Up-to-date contributions log from the National Social Security Fund (CNSS)
- Registration certificate and payment discharge for the contributions issued by the CNSS and the ACFPE
- Employer register numbered and initialed by the competent labor inspector
- Information sheet on the guarantee of freedom and written report of the union meetings
- Training certificate for the employees covered by the competent labor inspector

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable laws and regulations

- Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10.08) concerning the Forestry Code, art. 14 to 22, 107
- Decree 09.118 dated April 28, 2009 (Décret 09.118 du 28.04.2009), Art. 17 (4,5)
- Decree N°0.19 dated July 5, 2006 (Arrêté N°0.19 du 05.07.2006) concerning the approval of national regulations for the development of management plans (Volume 1)
- Decree N°09.026 dated July 28, 2009 concerning the approval of national regulations for the development of management plans (Volume 2)

#### 1.13.2. Legal authority

- MEDDEFCEP (General Direction of Water, Forests, Hunting and Fishing)

#### 1.13.3. Legally required documents or records

- Written report of the community consultation
- Allocation commissions report of the PEAs that have taken a representative for the community forests
- Report or written report of the population consultation meetings when the new cutting areas open
- Validated PAO including the foreseen social work

#### 1.13.4. Sources of information

##### *Non-Government sources*

- Initiative for Democracy and Sustainable Management (Démocratie et le Développement Durable) (I3D) (2016). *Advocacy and lobbying strategy for the formalization of a multi-actor consultation platform for the PEAs and the protected areas*. Not published.
- Initiative for Democracy and Sustainable Management (Démocratie et le Développement Durable) (I3D) (2015). *Annual activities report 2015*. Not published.

#### 1.13.5. Risk determination

##### *Overview of Legal Requirements*

The Forestry Code recognizes that the community forests have customary usage rights. These customary rights are limited to collecting dead timber and PFNLs. The 2008 Forestry Code recognizes that the communities have the right to grant themselves

community forests, the right to take part in the allocation commissions for the logging and management permits, and access to all forms of forest management (participative management). The management plan authorizes forest companies to put in place multi-actor platforms (administrations, private and community forests) around PEAs in order to anticipate conflicts and discuss issues of community rights.

We can observe some contradictions in the laws concerning the rights of local populations. The Forestry Code recognizes the customary rights of the local populations, whereas the property and land law does not. Consequentially, the land rights of the local and native populations are not guaranteed.

#### *Description of risk*

The authorities often infringe on the rights of the communities, especially concerning profit-sharing. The Commune does not carry out the redistribution of taxes transparently, as is required by law. Companies make strong commitments to social work in the PAOs, but these are not always implemented. The companies, or the associations, or the forest administration, have not established the platform requested by the management plan to serve as a framework for consultation (I3D, 2016).

#### *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.

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

Specified risk

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

- Stakeholder consultation shall confirm that customary rights are observed during harvesting activities.
- Written reports of the consultation meetings with the community forests committees
- Written reports of the executive meetings of tripartite consultations (administration and forest, local community, and indigenous concessions)
- Forest allocation commission reports of meetings where a representative from the local communities concerned participated.

### **1.14. Free prior and informed consent**

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

#### **1.14.1. Applicable laws and regulations**

- The 169 ILO Convention (Convention 169 de l'OIT) on native and indigenous people was signed by the CAR in 2010, but the principle of CLIP has not yet been

integrated into the Forestry Code. Therefore, CLIP is not a legal requirement applicable in CAR.

#### **1.14.2. Legal authority**

N/A

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

N/A

#### **1.14.4. Sources of information**

N/A

#### **1.14.5. Risk determination**

N/A

#### **1.14.6. Risk designation and specification**

N/A

#### **1.14.7. Control measures and verifiers**

N/A

### **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 land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.*

#### **1.15.1. Applicable laws and regulations**

- Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10.08) concerning the Forestry Code, Art 14 to 22, 107, 134-139. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Decree 09.118 dated April 28, 2009 (Décret 09.118 du 28.04.2009)
- Decree 09.012 dated April 30, 2009 (Arrêté 09.012 du 30/04/2009) describing the modalities for application of the law 08.022 dated October 17, 2008 concerning the CAR Forestry Code Art. 29-32, 39
  - The Forestry Code mentions the native populations
  - The CAR ratified the OIT 169 Agreement concerning native peoples, and recently the new constitution recognized the native pygmy people's rights

#### **1.15.2. Legal authority**

- MEDDEFCEP (General Direction of Water, Forests, Hunting and Fishing)
- High Commissioner for Human Rights

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

- Approved Annual Operations Plan (PAO)
- Forest Management Permit (PEA) allocation report involving the representative of forest communities
- Written report of the consultation with the local and native populations

#### **1.15.4. Sources of information**

##### *Non-Government sources*

- Initiative for Democracy and Sustainable Management (Démocratie et le Développement Durable) (I3D) (2016). *Advocacy and lobbying strategy for the formalization of a multi-actor consultation platform for the PEAs and the protected areas*. Not published.
- Initiative for Democracy and Sustainable Management (Démocratie et le Développement Durable) (I3D) (2015). *Annual activities report 2015*. Not published.

#### **1.15.5. Risk determination**

##### *Overview of Legal Requirements*

The Forestry Code recognizes the forest community's right to customary usages. This customary right is limited to collecting dead timber, PFNL and access. The management plan authorizes the forest companies to put in place multi-actor platforms (administrations, private and forests community) around PEAs in order to anticipate conflicts and discuss issues of community rights.

##### *Description of risk*

The authorities often condemn the rights of the communities, particularly concerning the sharing of profits. The Commune does not carry out the redistribution of taxes in all transparency. Companies make strong commitments to social work in the PAOs, but these are not always implemented. The companies, or the associations, or the forest administration, have not established the platform requested by the management plan to serve as a framework for consultation (I3D, 2016).

##### *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.

#### **1.15.6. Risk designation and specification**

Specified risk

#### **1.15.7. Control measures and verifiers**

- The prior community-consultation report describing the procedures of said consultation has to exist

- If there has been a displacement of populations, the study of the reinstating also has to exist, as well as a description of the compensation measures for the ETC cultures.
- Written reports of consultation meetings with the forest communities
- Written reports of manager's meetings with the tripartite consultations (administration, forest concessions and local and native communities)
- Report of forest allocation commission in which the representative of the local communities in question has participated

## 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

- Law n°08.002 dated November 17, 2008 concerning the Forestry Code (Loi n° 08.022 du 17.10. 08 portant Code Forestier) (Art, 93, 186 and 190). Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- CEMAC (Central African Economic and Monetary Community) Border Control Code, Articles 133 and 134
- Decree 09 021 dated April 30, 2009 (Arrêté 09 021 du 30 04 09), Article 53
- Definitive Agreement

#### 1.16.2. Legal authority

- General Direction for Water and Forests
- General Direction for Border Control
- General Direction for Taxes

#### 1.16.3. Legally required documents or records

- Worksite books
- "Timber movements" («Mouvements de bois»)
- Special authorization for normally unauthorized species
- List of protected species
- Roadmap or Car number
- Shipping voucher accompanied by: Specifications, D15, Commercial Exportation Declaration, Invoice, Certificate of Origin

#### 1.16.4. Sources of information

##### *Non-Government sources*

- Bonannee, M. (2001). *L'étude prospective du secteur forestier en Afrique (FOSA): République Centrafricaine* (The Prospective Forest Sector Study in Africa (FOSA):



Central African Republic). Extract from the FAO website. Available at: <http://www.fao.org/3/a-ab588f.pdf> [Accessed 25 July 2016]

- Mahode J., & N. Mvale, (2002). *Etude des besoins en formation forestière en RCA* (Study of forestry training needs in CAR). [online]. Available at: [http://pfbc-cbfp.org/tl\\_files/archive/formation/rca.pdf](http://pfbc-cbfp.org/tl_files/archive/formation/rca.pdf) [Accessed 19 July 2016]
- Yalibanda, Y. (2004). *Forest Finance: Régime fiscal forestier et dépenses de l'État en faveur du secteur forestier en République Centrafricaine* (Forestry tax system and government expenditure on the forestry sector in the Central African Republic). [online]. Published on the FAO website. Available at: <ftp://ftp.fao.org/docrep/fao/007/ae211f/ae211f00.pdf> [Accessed 25 July 2016]
- International Crisis Group, (2014). *La crise centrafricaine: de la prédation à la stabilisation* (Central African crisis: from predation to stabilization). [online]. Rapport Afrique N°219. Available at: <http://www.crisisgroup.org/~media/Files/africa/central-africa/central-african-republic/219-la-crise-centrafricaine-de-la-predation-a-la-stabilisation.pdf> [Accessed 24 July 2016]

#### 1.16.5. Risk determination

##### *Overview of Legal Requirements*

The species are identified and marked in the logging inventory. Each company has a forest hammer bearing the triangular mark of the logger, filed in the High Civil or Commercial Court Registry as well as the local forest administration, and this sign has to be marked on any timber being moved. In the management plan, a list of species to be logged is made, and if the company discovers a species that could be logged and is not listed in the management plan, a special cutting authorization is required. The Annual Operations Plan (PAO), validated by the forest administration, defines the technical logging modalities, transportation requirements and the quotas of species to log. A MEDDEFCP decree defines the list of species excluded from logging.

##### *Description of risk*

Logging in CAR is selective, meaning that it is based on a few leading species, the regulation offers opportunities/facilities concerning taxes for logging species that should be promoted. Apart from the natural risk of logging outside of the permits and logging protected species, there was a real risk of incorrect classification of species in order to avoid or benefit from tax reductions. In view of the State verification problems, it was suspected that the declared production was inferior to reality, in order to reduce the taxes due (Yves Yalibanda, 2004). Added to these risks are the structural problems of the forestry sector, such as lack of knowledge about the resources, lack of respect for the regulatory texts, and inappropriate control mechanisms (Jérôme MAHODE and Nicolas MVALA, 2002).

The CAR is among the most corrupt countries in the world, there is a risk that the fraud is organized by the company by corrupting the agents in charge of the controls. However, since the BIVAC commitment to the control of forestry declarations to the State, these risks are now low, according to the author of this criterion (Evariste

Mbayelao) and according to a recent written communication by M. Yves Yalibanda (23 August 2016).

#### *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.

#### **1.16.6. Risk designation and specification**

Low risk

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

The following documents are necessary for the buyer who wants to minimize the risks concerning species, volumes and qualities:

- List of logging species recognized in the management plan
- Special authorization for the unauthorized species
- Worksite books
- "Timber movements" («Mouvements de bois»)
- List of protected species
- Roadmap or Car letter
- Shipping voucher accompanied by: Specifications, D15, Commercial Exportation Declaration, Invoice, Certificate of Origin.

### **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**

- Ordinance N°83.083 dated December 31, 1983, (Art. 7 and 8)
- General Tax Code edition 2009 (Art. 204, 334)
- CIMA insurance Code (art. 200). Available at: <http://www.droit-afrique.com/upload/doc/cima/CIMA-Code-assurances-2012.pdf>
- Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, (Art. 93, 176). Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>

- Decree n°9.043 dated May 1990 (décret n° 90.043 de mai 1990) which deals with land transportation in CAR, determines the conditions for transportation of forest products for exportation
- Decree n°88.151 dated April 25, 1988 (Décret n°88.151 du 25.04.1988) (Art. R138, R138 paragraph 1 and R134 paragraph 4)

#### 1.17.2. Legal authority

- MEDDEFCP (General Direction of Water, Forests, Hunting and Fishing)
- General Direction for Border Control

#### 1.17.3. Legally required documents or records

- Professional license, NIF, valid taxpayer I.D.
- RCCM, written report of the notarized constitution
- Roadmap or car letter
- Dispatch ticket accompanied by: Specification, D15, Commercial Exportation Declaration, Invoice and Certificate of Origin
- Car registration document, technical sheet, insurances, transport patent, transport authorization
- Exit Free (DS) payment receipt

#### 1.17.4. Sources of information

##### *Government sources*

- Ministry of the Environment and the Ecology (MEE) (2009). *Projet de rapport sur un cadre national de biosécurité de la RCA* (Draft Report on a National Biosafety Framework for the CAR, April, Bangui). [online]. pp. 1-72. Available at: [http://www.unep.org/biosafety/Documents/Central\\_%20African%20 Republic NBF .pdf](http://www.unep.org/biosafety/Documents/Central_%20African%20 Republic NBF .pdf) [Accessed 24 July 2016]

##### *Non-Government sources*

- Mahode J., & N. Mvale, (2002). *Etude des besoins en formation forestière en RCA* (Study of forestry training needs in CAR). [online]. Available at: [http://pfbc-cbfp.org/tl\\_files/archive/formation/rca.pdf](http://pfbc-cbfp.org/tl_files/archive/formation/rca.pdf) [Accessed 19 July 2016]
- International Crisis Group, (2014). *La crise centrafricaine: de la prédation à la stabilisation* (Central African crisis: from predation to stabilization). [online]. Rapport Afrique N°219. Available at: <http://www.crisisgroup.org/~media/Files/africa/central-africa/central-african-republic/219-la-crise-centrafricaine-de-la-predation-a-la-stabilisation.pdf> [Accessed 24 July 2016]

#### 1.17.5. Risk determination

##### *Overview of Legal Requirements*

Timber cannot circulate unless marked by the forest hammer bearing the triangular mark of the logger. The timber cargos have to be accompanied by the letter of the car or the roadmap, also called a Delivery or Evacuation receipt, dispatch ticket, and certificate of origin. The lorry has to carry the valid documents, such as transport authorization, insurance, technical sheet, car registration document and patent. The Exit Fee (DS) payment receipt has to escort the package when it is exported. The company has to respect the prohibition measures for transportation of people.

#### *Description of risk*

It is not uncommon to see the logging trucks transporting travelers, which is forbidden by law.

Within the CAR, transporters who are not carrying the required documents corrupt the road control agents at the barrier controls. Since the corruption index is high, there is a risk of illegality with respect to trade and transportation of timber in Central Africa. However, the vehicles' files and documents are generally well kept by the forest companies transporting the timber out of the country, since they are required at the borders as well as at the Port of Douala for the FOB documents.

#### *Risk conclusion*

This indicator has been evaluated as specified risk with regard to transportation of travelers on the logging trucks and transportation of timber inside CAR. For other legal requirements concerning trade and transportation of timber, especially transport towards the Port of Douala, the risk is low.

#### **1.17.6. Risk designation and specification**

Specified risk

#### **1.17.7. Control measures and verifiers**

- The species enrolled on the delivery or evacuation slips have to be compatible
- The transportation documents have to be valid and complete
- Valid commercial permit
- Receipt of payment of existing rights and taxes

#### **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**

The CAR does not have laws or regulations concerning foreign trade and transfer prices.

#### **1.18.2. Legal authority**

N/A

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

N/A

#### **1.18.4. Sources of information**

N/A

#### **1.18.5. Risk determination**

N/A

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

N/A

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

- If illegal in the country of the supplier or sub-supplier, the products may not be traded through countries known as “tax havens”.
- There shall be no illegal manipulation concerning transfer cost

### **1.19. Custom regulations**

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

#### **1.19.1. Applicable laws and regulations**

- CEMAC border control Code. Available at: [http://www.vertic.org/media/National%20Legislation/Chad/Code\\_Douanes\\_CEMAC.pdf](http://www.vertic.org/media/National%20Legislation/Chad/Code_Douanes_CEMAC.pdf)
- Art. 12 and 22 of the CEMAC border control Code. Available at: [CEMAC – Code des douanes](#)
- Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08) concerning the Forestry Code, Art. 198.
- Finance law for each financial year
- Act n°1/92-UDEAC-CD-SE1 (Acte n° 1/92-UDEAC-CD-SE1)
- Art. 12 and 22 of the CEMAC border control Code

- Act n°1/93-UDEAC-573-CD-SE1 (Acte n° 1/93-UDEAC-573-CD-SE1)
- Act n°7/93-UDEAC-556-CD-SE1 (Acte n° 7/93-UDEAC-556-CD-SE1). Available at: <http://droit-afrique.com/upload/doc/cemac/CEMAC-Acte-1993-07-tarif-douanier.pdf>
- Act n°16/96-UDEAC-556-CD-57 (Acte n° 16/96-UDEAC-556-CD-57)
- Act n°5/89-UDEAC-491

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

- General Direction for Border Control
- Ministry of Commerce and Industry
- MEDDEFCEP (General Direction of Water, Forests, Hunting and Fishing)

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

- Payment receipt for the Exit Right (DS)
- Border Control Declaration
- Commercial Exportation Declaration (DEC)
- Payment receipt for the DD (Border control right for exportation)
- VAT payment receipt
- TCI (Community Integration Tax) payment receipt
- CCI (Community Integration Contribution) payment receipt
- REIF (Royalty for Financial Technical Tools) payment receipt
- OHADA payment receipt
- CMF (Royalty for the COMIFAC) payment receipt
- Dispatch ticket accompanied by: Specification, D15, Commercial Exportation Declaration, Invoice and Certificate of Origin

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

##### *Government sources*

- European Union Delegation, (2014). *Second meeting from the joint implementation committee (conjoint de mise en œuvre) (CC-MO) from the APV-FLEGT*. [online]. Available at: <http://www.euflegt.efi.int/documents/10180/228038/Aide-m%C3%A9moire+de+la+deuxi%C3%A8me+r%C3%A9union+du+Comit%C3%A9+Conjoint+de+Mise+en+Oeuvre/56c371ff-6957-4ede-8148-46abe8cae3e5> [Accessed 19 July 2016]

##### *Non-Government sources*

- Karsenty, A. (2002). *Le rôle controversé de la fiscalité forestière dans la gestion durable des forêts tropicales: l'état du débat et les perspectives en Afrique Centrale* (The Controversial Role of Forest Taxation in Sustainable Management of Tropical Forests: State of the Debate and Prospects in Central Africa). [online]. Available

at: <http://ageconsearch.umn.edu/bitstream/206085/2/CESR-64-5-36.pdf>  
[Accessed 26 July 2016]

- Yalibanda, Y. (2004). *Forest Finance: Régime fiscal forestier et dépenses de l'État en faveur du secteur forestier en République Centrafricaine* (Forestry tax system and government expenditure on the forestry sector in the Central African Republic). [online]. Published on the FAO website. Available at: <ftp://ftp.fao.org/docrep/fao/007/ae211f/ae211f00.pdf> [Accessed 25 July 2016]

#### 1.19.5. Risk determination

##### *Overview of Legal Requirements*

The timber exportation companies are required to provide a "timber movements" report for the previous month to the forest administration by the 20<sup>th</sup> of each month at the latest. The PEA holders are subject to payment of exportation rights and taxes for rough timber, sawn timber, peeled wood, plywood and sliced wood. These border control rights and taxes are called exit rights (DS) and are calculated based on the FOT value (Free on Truck) for each species.

##### *Description of risk*

The exportation rights are very efficiently controlled because they are easy to recover and represent a considerable part of the total amount of the State receipts (Yves Yalibanda, 2004). This is to say that the collection of the VAT and other taxes is generally carried out without problems.

« *Nous constatons actuellement, un très faible niveau de fonctionnement des structures étatiques de régulation, contrôle et fiscalité, avec des lacunes qui s'expliquent pour différentes raisons : capacités matérielles et opérationnelles, problème persistant de sécurité pour l'accès aux concessions et transport, etc.* » (European Union Delegation, 2014). Since then, the risk of missing collection of border control rights has become low because the exportation declarations that help calculate the border control rights are not defined in the "timber movements" presented by the companies but rather in the private business BIVAC, which involves a chain of verification of the volumes and species that goes from the log yard in the forest to the port of Douala. The exit rights (exportation taxes) are paid before the lorry leaves for the Port of Douala.

##### *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.

#### 1.19.6. Risk designation and specification

Low risk

#### 1.19.7. Control measures and verifiers

N/A



## 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

- Convention on international trade of endangered species of wildlife and plants
- Law n°08.022 dated October 17, 2008 (Loi n° 08.022 du 17.10. 08 portant) concerning the Forestry Code Art. 8, 10-13, 77, 83. Available at: <http://faolex.fao.org/docs/pdf/caf107432.pdf>
- Ordinance N°84.045 (Ordonnance N°84.045) concerning the protection of wildlife and regulating hunting in CAR
- Convention on Biological Diversity
- Decree 09.021 dated April 30, 2009 (Arrêté 09.021 du 30/04/2009) defining the application modalities of law n°08.022 dated October 17, 2008 (loi n° 08.022 du 17.10. 08) concerning the Forestry Code; Art. 53 establishes the list of protected plant species in CAR.

### 1.20.2. Legal authority

- MEDDEFCP (Direction of wildlife)

### 1.20.3. Legally required documents or records

- Worksite Books
- Exportation permits and certificates
- List of species under CITES

### 1.20.4. Sources of information

#### *Government sources*

- Ministry of Water, Forests, Hunting and Fishing (2009). *Manuel legal pour la protection de la faune sauvage en Republique Centrafricaine* (Legal manual for the protection of wildlife in Central African Republic). [online]. Ministère de l'Environnement, des Eaux, des Forêts de la Chasse et de la Pêche (MEEFCP), pp. 1-17. Available at: [http://laga-enforcement.org/Portals/0/Documents/Legal%20documents/CAR/Legal\\_CAR\\_Book\\_Fr.pdf](http://laga-enforcement.org/Portals/0/Documents/Legal%20documents/CAR/Legal_CAR_Book_Fr.pdf) [Accessed 24 July 2016]

#### *Non-Government sources*

- Mahode J., & N. Mvale, (2002). *Etude des besoins en formation forestière en RCA* (Study of forestry training needs in CAR). [online]. Available at: [http://pfbc-cbfp.org/tl\\_files/archive/formation/rca.pdf](http://pfbc-cbfp.org/tl_files/archive/formation/rca.pdf) [Accessed 19 July 2016]

- Bonannee, M. (2001). *L'étude prospective du secteur forestier en Afrique (FOSA): République Centrafricaine* (The Prospective Forest Sector Study in Africa (FOSA): Central African Republic). Extract from the FAO website. Available at: <http://www.fao.org/3/a-ab588f.pdf> [Accessed 25 July 2016]
- Konzi-Sarambo, B. (2006). *Difficultés de gestion des aires protégées en RCA* (Difficulties in managing protected areas in CAR). [online]. Extract from the Information Exchange Center of the Central African Republic's website. Available at: <http://cf.chm-cbd.net/implementation/les-aires-protgees-de-la-r.c../probleme-aire-prot> [Accessed 18 July 2016]
- Centrafrique-presse.info (n.d.). *La fréquence des abattages des espèces protégées dans le parc Zanga Sangha inquiète WWF* (The frequency of slaughter of protected species in the Zanga Sangha park worries WWF). [online]. Centrafrique Presse. Published 30 June 2016. Available at: <http://www.centrafrique-presse.info/site/info-societe-9516.html> [Accessed 18 July 2016]

#### 1.20.5. Risk determination

##### *Overview of Legal Requirements*

The CITES agreement is one of many agreements ratified by the CAR. The agreement covers all species threatened with extinction that are or could be affected by trade. The commerce of specimens of species listed on Appendix I is subject to a strict regulation and can only be authorized under exceptional conditions. As for the species on Appendix II, commerce is subject to the issuance of prior certificates and permits. The commerce of Appendix II species can only be authorized after a prior control and issuance of exportation permits. The issuance of exportation permits and the trade of species enlisted in the CITES list comes from the MEDDEFCP, through the Direction of Wildlife and the Direction of Forests respectively for animal and plant species.

##### *Description of risk*

The difficulties in other areas seen in the forest sector are also present for the trade of CITES species. Besides the low capacity of the forest administration to carry out its control mission, there is a specific risk in recognizing the types of species protected by CITES. For a country like the CAR, with a lack of governance and a high level of corruption, there is a risk that the regulation will not be respected. The current two species of trees on the CITES list (at the time that this analysis was written) are *Pericopsis elata* and *Pterocarpus erinaceus*.

##### *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.

#### 1.20.6. Risk designation and specification

Specified risk

#### 1.20.7. Control measures and verifiers

The buyer in Europe should avoid buying *Pericopsis elata* and *Pterocarpus erinaceus* coming from CAR.

For the other species, the supplier has to be able to supply the following documents:

- CITES list of protected species
- Exportation permits and certificates
- Worksite books

### **1.21. Legislation requiring due diligence/due care procedures**

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

#### **1.21.1. Applicable laws and regulations**

N/A

#### **1.21.2. Legal authority**

N/A

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

N/A

#### **1.21.4. Sources of information**

N/A

#### **1.21.5. Risk determination**

N/A

#### **1.21.6. Risk designation and specification**

N/A

#### **1.21.7. Control measures and verifiers**

N/A

## Annex I. Timber source types

The table Timber Source Types in Central African Republic 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:

- a. **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.
- b. **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.
- c. **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.
- d. **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.
- e. **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.
- f. **License type** - Licenses may be issues 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 CENTRAL AFRICAN REPUBLIC

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural Forest	South-west	Production forests (Permanent Forest Estate (PFE) (Domaine forestier permanent) - DFP)	The State	Private individuals.	PEA (attributed by presidential decree after a bidding process)  <u>License Requirements:</u> - Forest management plan approved by the forest administration - Five-year plan - Annual operating plan  <u>Clarification:</u> The PEAs are managed by the owners and the implementation of the management plan is monitored by the forest administration	Concession in production forests
		Production forests (Permanent Forest Estate (PFE) (Domaine forestier permanent) - DFP)	The State	Companies and small timber producers	Artisanal Logging Permits  <u>License Requirements:</u> Specifications (Cahier de charges)  <u>Clarification:</u> The artisanal permit is allocated to nationals. From 2013 to this day, 19 artisanal permits have been allocated to nationals.	Artisanal logging in production forests

	South-East	No particular regulation. The ZCVs are initiatives taken by the farmers and constitute a sort of community forestry.	The State	Farmers / communities / villagers	Management agreement  <u>License Requirements:</u> Simple management plan  <u>Clarification:</u>	Community forests
	The whole country	Community forests in agricultural areas, in the production forests, and other forests, excluding PEAs.	The State	Communities	Community forests do not exist yet.	Community forests
Plantation forest	The whole country	Non-Permanent Forest Estate (NPFE) (Domaine Forestier Non-Permanent) (DFNP)	The State	Private companies	Land title  <u>License Requirements:</u> Simple management plan and specifications (cahier de charges)  <u>Clarification:</u> The plantations generally stem from private forests, but also from forests belonging to the State.	Plantations



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## About

### Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of 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 joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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