



Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) to support the FLEGT VPAs in the Congo Basin

Briefing Note, December 2010 - August 2011

Bringing to light the realities of forest law enforcement and governance challenges in the Republic of Congo

Introduction: Why IM-FLEG?

In August 2011, the Republic of Congo ratified the Voluntary Partnership Agreement (VPA) with the European Union (EU) under the Forest Law Enforcement, Governance and Trade (FLEGT) initiative, which aims to fight illegal logging by allowing only legal wood to enter the EU market. The first FLEGT authorisations in Congo are expected to be delivered in December 2012. But how can one assess the value of these FLEGT licenses without really knowing what is going on from the point of extraction to exportation? Are the internal controls in the Congo really strong enough to ensure legality? These are the types of fundamental questions IM-FLEG helps to answer by conducting field investigations and providing explicit and reliable information about the real challenges facing good governance and law enforcement.

From 2007-2010, Forests Monitor and Resource Extraction Monitoring implemented the first IM-FLEG project in Republic of Congo and uncovered fundamental forest governance weaknesses in Congo. The second phase, funded by the European Union and DFID and implemented in partnership with Congolese civil society, has recently become fully operational and will run until June 2013. This briefing note provides a snapshot of results and progress for the first 9 months of the project.

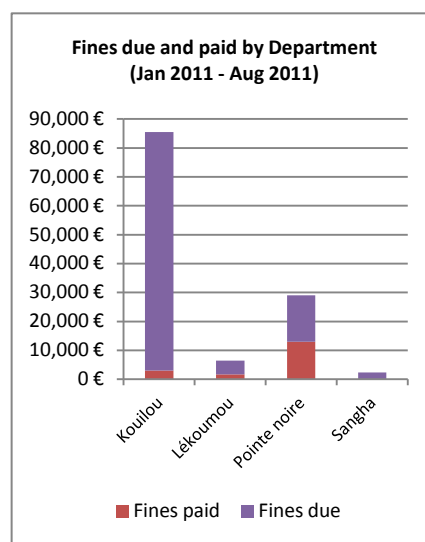
Sample of results from first 5 missions of 2011: so far, not so good

Six of the 9 Forest Departments – Sangha, Likouala, Bouenza, Lékoumou, Niari, Kouilou – were visited to collect data from the Department Offices, plan joint IM-FLEG-government field missions, and assess the awareness of FLEGT among field agents. In accordance with the MOU with the Congolese Government, we cannot publish specific data until the mission reports have gone through a validation process. However, we can summarise information from government reports and provide a sample of trends observed in the field for the first semester of 2011:

- **Access to information:** on a positive note, all but one of the 7 Directions visited provided us with all of the information requested. However, the fact that one Direction refused to cooperate is a reminder that work remains to improve transparency and cooperation.
- **Minimum requirements of government enforcement missions were not met:** only 10 law enforcement missions, 25% of the minimal requirement, were carried out. According to departmental forest offices this is due to a lack of resources.
- **Many government missions were funded by logging companies:** of the 42 missions carried out the majority were 'evaluation' missions to facilitate logging company applications for exploitation permits.
- **Enforcement remains poor regarding special permits:** registers reveal that some beneficiaries hold multiple special permits, which is illegal.



- **Tax breaks granted due to international financial crisis curiously prolonged:** Tax measures include reduction of FOB value by half, indexation of harvesting tax to monthly production, and extended deadline for payments due. This is a considerable loss to the State and should be justified since logging activities increased substantially in 2010.
- **Tax payments remain low:** particularly for the area tax despite the fact it is considerably easier to calculate than the harvesting tax. Among the 30 concessions whose data were analysed, only 5 had made all payments due under the first semester for both taxes.
- **Fine payments remain low:** only 17% of fines due were paid. However, 68% (32 of 47) of cases were paid in full which means that larger fines are neglected.
- **Timber seizures are not often accompanied by fines as required by law.**
- **Gaps in respect of legislation by the Forest Administration:** for example, a 10 year license was granted to the company PCBP (Permis de Coupe des Bois de Plantations), while the law prescribes a maximum of 6 months; and an extension of the contract with the company (ADL) Atelier De la Louessé was granted contrary to the law.
- **FLEGT-VPA knowledge varies greatly:** in general, European companies are aware of FLEGT and sometimes even engaged in its development. Most non-European companies, however, are unaware that FLEGT even exists. Department Directors are aware, though the degree of knowledge has yet to be assessed. While on mission, teams hold discussions with all stakeholders to raise VPA-FLEGT awareness.



How will the VPA legality grid *really* be applied? Development of a practical tool to assess conformity

Putting the VPA into practice is not as straightforward as it may seem. The VPA legality grid for natural forests is comprised of 5 principles, 23 criteria, 65 indicators and 162 means of verification. In many cases, the indicators and means of verification are straightforward – for example, either a logging company possesses a valid commercial license or it doesn't. However, other parts of the legality grid are not so clear. For example, Indicator 4.9.3 is regards whether or not a company respects the social obligations to populations (*cahier des charges*). But what if only 5 of the 20 (or even 19 out of 20) obligations have been met on time? What are the specific procedures to address partial fulfilment of indicators? And what if non-compliance is the fault of the government and not the logging company? Such grey areas will no doubt make VPA implementation challenging.

To address this challenge the project initiated a collaborative effort with the CLFT (government body in charge of assessing VPA legality) and other actors (European Forest Institute and FRM) to develop a practical VPA conformity assessment tool. The tool, which is an Excel spreadsheet, aims to provide clear procedures for the different scenarios of any given conformity analysis, such as partial fulfilment of an indicator. The tool remains under development and will be further developed and tested in the field in close collaboration with the CLFT.



Contribution to forest law reform process

The FAO and the Forest Administration are currently engaged in a forest law reform process to fill policy gaps needed to strengthen the VPA legality grid. The project already contributed to this process by producing a document summarising major problems in the forest law. This diagnostic has been taken into account, but more detailed recommendations, particularly in relation to procedures regarding local populations (see box) are needed. An international expert has been hired to develop specific policy recommendations and devise a strategy with national civil society to ensure the recommendations are pushed forward.

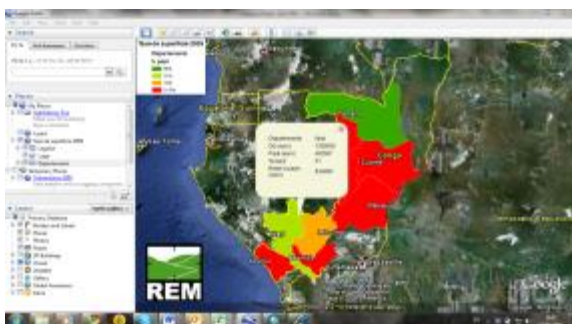
One VPA gap that needs fixing

Indicator 3.1.1 states that logging companies must have a “functioning mechanism” of consultation to ensure that local populations are “sufficiently informed” of their rights. But without clear definitions of “functioning mechanisms” and “sufficiently informed” logging companies can devise their own consultation systems without scrutiny.

The GTC (*Groupe de Travail Conjoint*), which is composed of government and non-government FLEGT actors is expecting our recommendations in December 2011. This is a positive sign that government-civil society collaboration is evolving in the context of FLEGT.

Development of an online database on illegal logging

The project is developing an online database that will enable anyone with an internet connection to easily view and analyse results of IM-FLEG investigations – a useful tool for many actors such as the



FLEGT auditors. For example, users will be able to compile a graph or table on the amount or type of illegal activities detected, or view in Google Earth a summary map on forestry taxes (picture to the left). A first version of the database will go online in late October 2011 and will contain data from the first phase. With funding from the FAO-ACP, the CAGDF (civil society partner) will work with the World Resources Institute (WRI) to merge and

further develop the IM-FLEG database and merge it with WRI’s Forest Transparency Initiative (FTI) database (<http://beta.foresttransparency.org/en/home>). This merger will centralise forest sector data and serve as an important public resource for anyone interested in the forest sector, particularly FLEGT actors.

Engaging other actors in strengthening forest governance: the Anti-Corruption Observatory and the National Commission against Corruption

The Anti-Corruption Observatory (OAC) and the National Commission against Corruption and Fraud (CNLCCF) are semi-autonomous government bodies supported by the World Bank. An anti-corruption law passed in 2009 grants OAC and CNLCCF considerable access to government institutions and documents to conduct investigations. Part of their mandate involves the forest sector and field investigations in logging concessions. A workshop, which took place in Brazzaville last February, aimed to: explore common goals between OAC, CNLCCF and IM-FLEG; develop OAC-CNLCCF knowledge of the forest sector; and identify specific activities for the OAC-CNLCCF. The OAC-CNLCCF will conduct forest sector investigation missions in 3 Departments in October, after



having postponed the missions due to lack of government funds. The OAC will also participate in the reading committee meetings with the Forest Administration to analyse IMFLEG mission reports.

Preparing Congolese civil society to take the lead in 2013

The longer term vision of IM-FLEG in the Congo looks like this: a Congolese civil society organisation (CSO) based in Brazzaville continues to carry out country-wide investigations and work in collaboration with the government and other FLEGT actors to improve governance. But this time, the IM-FLEG will have a broader reach by engaging civil society in all 9 of the Departments throughout the country. In other words, a national civil society network with the technical and institutional capacity to carry out a credible IM-FLEG will be in place. The leading CSO will be the CAGDF, which is currently an official partner of the IM-FLEG and thus already possess considerable technical capacity. Progress so far to achieve this ambitious goal includes:

- **Investigation CAGDF data integrity:** improved investigation data collection, storage and analysis procedures, including the introduction of new field tool with GIS mobile and geo-tag photo capability
- **Technical training of Departmental CSOs:** through a competitive process, CSOs from each Department were selected and trained in IM-FLEG¹
- **CSO investigations in 9 Departments are underway:** investigation proposals were approved following a lengthy revision process and CSOs are currently conducting their own investigations, most of which focus on VPA conformity related to the rights of local populations and logging company employees
- **CAGDF-WRI project:** the FAO-ACP sponsored online database project, obtained with support from IM-FLEG, will be the first time CAGDF manages a grant and will thus be an important exercise in developing their institutional capacity
- **CAGDF strategic plan and procedures** to help ensure continuation after June 2013 and identify clear institutional and technical procedures needed to establish a credible IM-FLEG (data quality control, data validation)



Signature of the first contracts with leader CSOs of Bouenza, Kouilou, Lékoumou, Niari and Plateau

Momentum to build the CSO network development will continue during the next semester starting with a meeting in October to share lessons learned, conduct further trainings, and identify next steps. If the vision is realised, it will be the first time IM-FLEG is led by national civil society.

Stay tuned for more from IM-FLEG, Congo Basin at www.rem.org or www.forestsmonitor.org. Over the next quarter, missions will take place in southern and northern concessions, mission reports will be validated and published, the online database of field investigation data will be functional, and the next steps in developing the CSO national network will be underway.

Projet "Observation Indépendante de l'application de la loi forestière et de la gouvernance (OI-FLEG) en appui aux APV FLEGT dans le Bassin du Congo"

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¹ Full report at http://www.observation-congo.info/documents/Formation_OSC_juin_2011.pdf