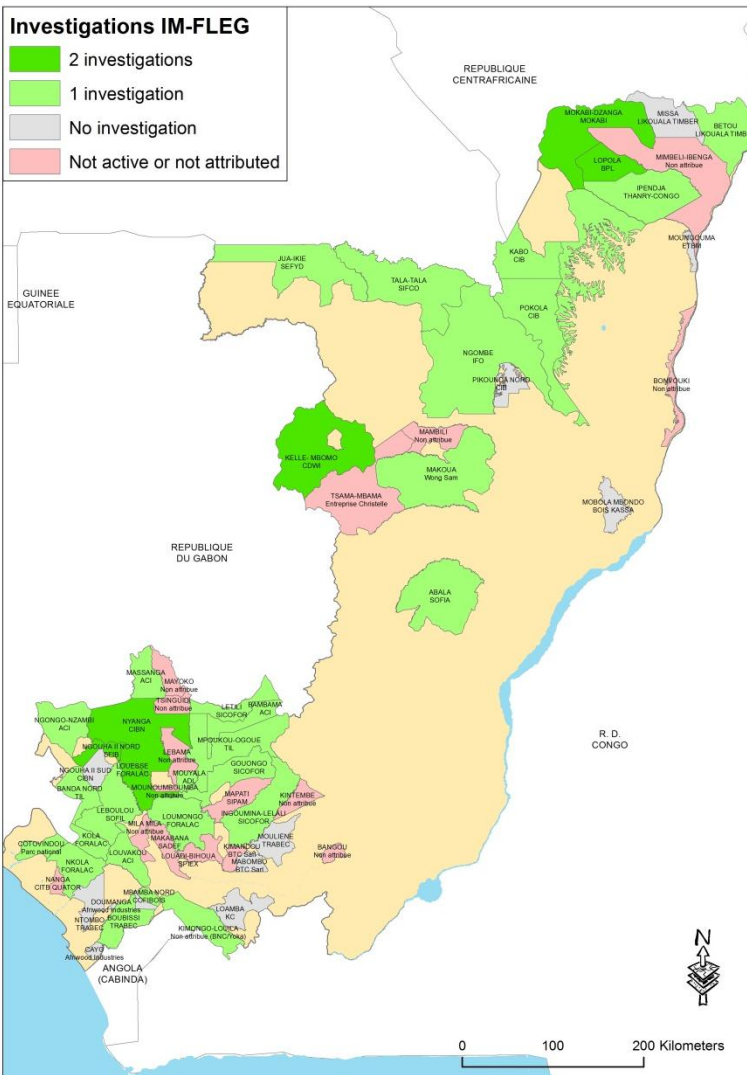


Final Briefing Note, June 2013

IM-FLEG: a source of reliable information on the realities of the forestry sector

On March 1, 2013 the Voluntary Partnership Agreement (VPA) of Forest Law Enforcement, Governance and Trade (FLEGT) between the Republic of Congo and the EU came into force. The FLEGT-VPA aims to ensure that timber products exported from the Congo to the EU comply with forestry legislation. But is the Congolese Legality Assurance System (LAS) capable of ensuring the legality? What specific problems need to be addressed to ensure VPA success? These are among the questions that IM-FLEG seeks to address by conducting field investigations.

IM-FLEG carried out at least 1 investigation in 34 of 46 (74%) of attributed forestry concessions (thematic missions are not displayed on the map)



Key findings

Congo has made FLEG improvements in...

- ✓ responding to IM-FLEG recommendations
- ✓ allocation of law enforcement resources
- ✓ revenue collection procedures

However, illegalities remain widespread, particularly...

- ✗ Fraud to lower cutting taxes
- ✗ Non-respect of the exportation quotas
- ✗ Illegal cutting

And, FLEG problems persist regarding...

- ✗ Quantity of control missions
- ✗ Fines and penalties administered
- ✗ Allocation procedures
- ✗ Collection of taxes and fines
- ✗ Sustainability
- ✗ Data management

Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG), Republic of Congo

Implementation: Forests Monitor, Resource Extraction Monitoring (REM) and *Le Cercle d'Appui à la Gestion Durable des Forêts (CAGDF)*

Duration: December 2010 – June 2013

Donors: EU and DFID

Type: Mandated IM – in collaboration with the *Ministère de l'Economie Forestière et du Développement Durable (MEFDD)*

Aims:

- Publish reliable information on the realities of the forestry sector in the Congo
- Contribute to the effective implementation of the FLEGT VPA in the Congo
- Develop IM-FLEG capacity of civil society in the Congo Basin

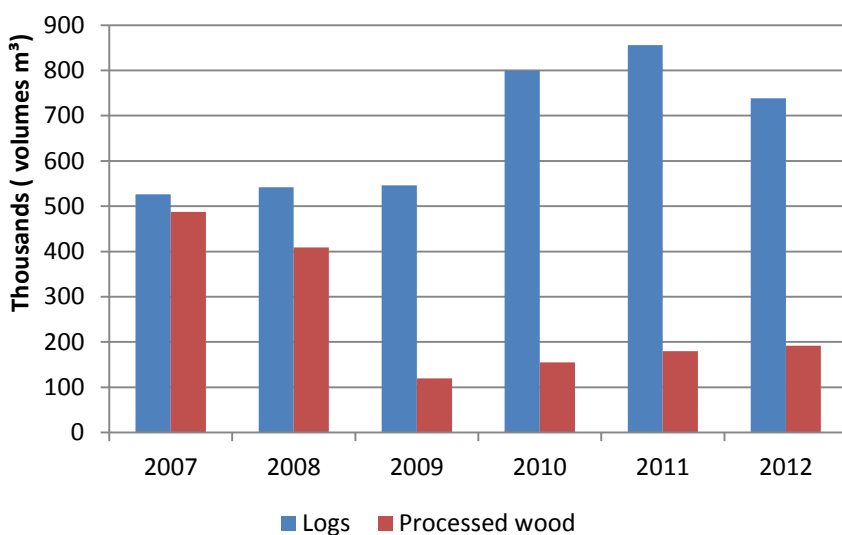
Three common illegalities observed by IM-FLEG

1. Fraud to lower taxes

Observed in almost every concession investigated – fraud includes non-declaration of abandoned wood, declaring incorrect species, duplication of log numbers, fraudulent log markings, or under-declaration of volumes. The service in charge of controlling forest product exports (SCPFE) often detects under declaration of volumes. For instance, in just one month, **November 2012, the SCPFE calculated an under-declaration of 4,347 m³ of logs exported by 12 companies – a commercial value of over 2.5 million euros⁽¹⁾.**

2. Non-respect of export quotas

Volumes of logs and processed wood (converted to equivalent log volumes) exported 2007 – 2012⁽³⁾



According to the forest code, 100% of exports should be processed wood. However, special approval can be obtained for a log export quota of 15%. Regardless, exports of processed wood should always be much greater than that of logs. The figure to the left shows that the opposite has been true since 2009. MEFD took action in 2012 and suspended 13 companies from exporting logs. However, thematic IM-FLEG investigations (Reports 9 and 10) reveal how governance weaknesses led to continued log exports.

3. Illegal cutting

Our investigations confirmed 105 cases of illegal cutting. The majority of cases involved violating annual cutting permit limits. Logging outside of boundaries was the least observed. However, IM-FLEG does not patrol large portions of boundaries and we do not employ remote sensing technology due to time-lags in available data. As a result, our ability to detect difficult cutting outside of boundaries is limited. Furthermore, IM-FLEG observations provide only a snapshot and thus represent only a fraction of the true extent of illegal cutting.

Illegal cutting observed by IM-FLEG (2011-2013): 7,790 trees/€2,272,605

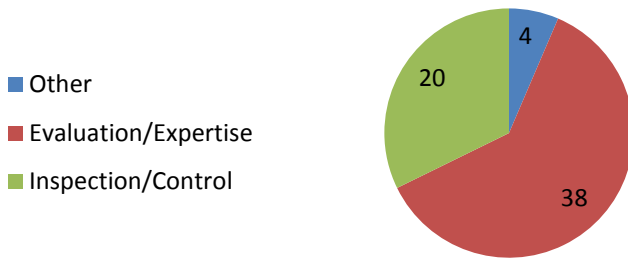
Fines administered as a result: € 324,300

Fines paid so far: € 3,800

Three FLEG problems observed by IM-FLEG

1. Insufficient control missions

Types of DDEF missions, 2012

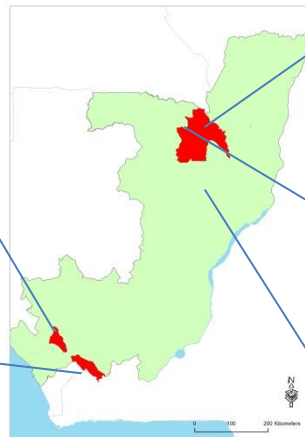


The Departmental Directions of MEFDD (DDEFs) are responsible for the majority of forest law enforcement. In fact, DDEF mission reports appear 18 times as verifiers in the natural forest section of the FLEGT-VPA legality grid. Only inspection/control missions are government financed (others are financed by logging companies) and thus considered by IM-FLEG to be the only true 'enforcement' mission. **In 2012 inspections missions made up 47% of the total and were carried out in only 16 of the 48 (31%) of attributed concessions. Not a single forestry concession was inspected 4 times as required by law ⁽²⁾.**

2. Irregular allocation

Louvakou is allocated to Asia Congo Industries. In 2012, a cutting permit was granted to another company (GET/YZ) within Louvakou concession.

Kimongo-Louila : cutting permit granted to a company (BNC/Yoka) but the concessions is not officially allocated.



Ngombe: IFO granted cutting permit in a community development zone prior to validation of management plan.

Sangha Palm (palm oil plantation): 4 annual cutting permits granted in 2010. Cutting continues in 2013 and plantations not yet established.

Atama (palm oil plantation): cutting permits granted but environmental impact assessment not conducted as required by law.

3. Poor tax and fine collection

Tax 2012	Total due	Paid	Not paid	% Paid
Area	€ 8 873 803	€ 4 018 220	€ 4 855 004	45%
Felling	€ 6 051 522	€ 4 417 230	€ 1 634 293	73%
Total	€ 14 925 325	€ 8 436 029	€ 6 489 296	57%
Fines 2012	Total due	Paid	Not paid	% Paid
Logging companies	€ 1 464 992	€ 66 163	€ 1 398 830	5%
Individuals	€ 62 449	€ 54 019	€ 8 430	87%
Total	€ 1 527 442	€ 120 182	€ 1 407 260	8%
Taxes and Fines Total	€ 16 452 767	€ 8 556 211	€ 7 896 556	52%

Decimal places hidden, hence small discrepancies in sum calculations

Over €7.8 million of taxes (felling and area including debts) and fines were not paid in 2012. Remember that since fraud to lower felling taxes is common, this figure underestimates the true loss of government revenue. Only 3 unpaid fines for the non-respect of export quotas (SICOFOR, CIBN, TAMAN) represent 25% of the total unpaid amount for logging companies. The fines were established in January 2012.

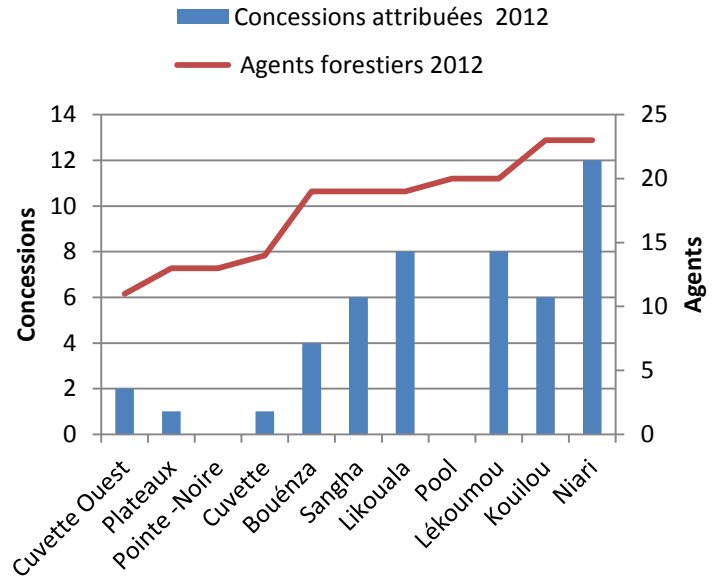
1. Fines in response to IM-FLEG observations

Since IM-FLEG first started in 2007, Congo's forest administration has become more responsive to IM-FLEG. In 2011, 48 fines (€110,000) were administered in response to our observations. However, only €16,500 of the fines has been paid to date and action has not yet been taken on 86 illegalities reported by IM-FLEG between 2011 and 2013.

2. More efficient allocation of resources

In 2011, IM-FLEG reported on the lack of efficient allocation of limited law enforcement resources, particularly forest agents at the DDEF level. The graph to the right shows a relatively positive correlation between the number of forest agents and the number of allocated forestry concessions in each department in 2012 – a sign of improvement. However, it is not known why Pool, which does not have a single attributed forest concession, has 20 forest agents.

Good news: signs of government action



Recommendations

Below is a sample of recommendations to the MEFDD from our final report:

- ✓ Apply punitive measures when taxes are not paid (3% increase of taxes, wood seizures, etc.)
- ✓ Establishing legal deadline for paying fines and clear penalties for non-payment
- ✓ Adhere strictly to allocation procedures as defined by law
- ✓ Establish synergies between DDEFs and tax services to ensure that the latter is aware of amounts collected and unpaid
- ✓ Publish data in accordance with Annex 10 of the VPA



Sources:

- (1) Rapport statistique, détail des exportations de produits bois, Antenne Pointe Noire, SCPFE, périodique novembre 2012
- (2) Article 82 al 5 du Décret 2002-437
- (3) SCPFE annual report 2012.

Read more: Forests Monitor, REM and CAGDF 2013 report, www.rem.org.uk/documents/OIFLEG_FM_RF2013_Congo.pdf