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## FINAL REPORT

### Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) in the Democratic Republic of Congo



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December 2010 – April 2013  
Democratic Republic of Congo (DRC)



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## ABBREVIATIONS

<b>ACIBO</b>	Industrial Logging Authorisation ( <i>Autorisation de Coupe Industrielle de Bois d'œuvre</i> )
<b>APJ</b>	Judicial Police Officer ( <i>Agent de Police Judiciaire</i> )
<b>BPC</b>	Provincial Law Enforcement Brigade ( <i>Brigade Provinciale de Contrôle</i> )
<b>CDF</b>	Congolese Franc
<b>CdL</b>	Reading Committee ( <i>Comité de Lecture</i> )
<b>CF</b>	Forest Code ( <i>Code forestier</i> )
<b>CIM</b>	Inter Ministerial Committee
<b>CJ</b>	Legal Unit ( <i>Cellule Juridique</i> )
<b>COFED</b>	Support Unit for the National Authorising Officer for the EU Development Fund ( <i>Cellule d'Appui à l'Ordonnateur National du Fonds Européen de Développement</i> )
<b>CR</b>	Meeting Minutes ( <i>Compte Rendu</i> )
<b>CSO</b>	Civil Society Organisation
<b>DCVI</b>	Department for Law Enforcement and Internal Verification ( <i>Direction de Contrôle et Vérification Interne</i> )
<b>DGDA</b>	Directorate-General for Customs and Excise ( <i>Direction Générale des Douanes et Accises</i> )
<b>DGF</b>	Department of Forest Management ( <i>Direction de la Gestion Forestière</i> )
<b>DGI</b>	Directorate-General of Tax ( <i>Direction Générale des Impôts</i> )
<b>DGRAD</b>	Directorate-General for Administrative and State Revenues ( <i>Direction Générale des Recettes Administratives Domaniales et de Participation</i> )
<b>DIAF</b>	Department for Forestry Inventory and Development ( <i>Direction des Inventaires et Aménagements Forestiers</i> )
<b>DRC</b>	Democratic Republic of Congo
<b>ECN-T</b>	Environment, Nature Conservation and Tourism ( <i>Environnement Conservation de la Nature-Tourisme</i> )
<b>EU</b>	European Union
<b>EUTR</b>	EU Timber Regulation
<b>FFN</b>	National Forestry Fund ( <i>Fonds Forestier National</i> )
<b>FIB</b>	Timber Industry Federation ( <i>Fédération des industriels du bois</i> )
<b>FPIC</b>	Free, Prior and Informed Consent
<b>HR</b>	Human Resources
<b>IM</b>	Independent Monitoring
<b>IM-FLEG</b>	Independent Monitoring of Forest Law Enforcement and Governance
<b>MECNT</b>	Ministry for the Environment and Nature Conservation ( <i>Ministère de l'Environnement et Conservation de la Nature</i> )
<b>NGO</b>	Non-Governmental Organisation
<b>OCC</b>	Congolese Law Enforcement Office ( <i>Office Congolais de Contrôle</i> )
<b>OPJ</b>	Sworn Police Officer ( <i>Officier de Police Judiciaire</i> ) with competence on forest issues
<b>P. Arti</b>	Artisanal permit ( <i>Permis artisanal</i> )
<b>PCB</b>	Felling permit ( <i>Permis de coupe de bois</i> )
<b>PCPCB</b>	Monitoring Programme for the Production and Marketing of Wood ( <i>Programme de Contrôle de la Production et de la Commercialisation des Bois</i> )
<b>PV</b>	Official Report ( <i>Procès-Verbal</i> ), specifically notifying a potentially illegal act
<b>REM</b>	Resource Extraction Monitoring
<b>VPA</b>	Voluntary Partnership Agreement

## EXECUTIVE SUMMARY

The reforms that have taken place since the Democratic Republic of Congo (DRC) Forest Code was enacted in 2002, along with its subsequent implementing measures, need evaluating. This is especially important given the Congolese government's recent formal commitment to sign a Voluntary Partnership Agreement (VPA) with the European Union (EU), announced on 31 August 2012 by the Minister for the Environment.<sup>2</sup> One of the main objectives of this VPA process is to improve governance and combat illegality in the forest sector. This is in the context of the European Union Timber Regulation (EUTR), which has banned the entry of illegal timber onto the European market and which came into effect on 3 March 2013.

A general review of the reforms taken so far indicates that the country is having difficulty in implementing them and that illegality remains widespread. This was the conclusion reached by Resource Extraction Monitoring (REM) at the end of its two-year term of Independent Monitoring (IM) of Forest Law Enforcement and Governance in the DRC.

Over the course of its two-year mandate, the IM has observed a forest sector that is developing largely outside the scope of existing legislation. Despite the lack of a global forest policy and the cumulative delays in signing its implementing texts, the 2002 Forest Code does offer a relatively simple legal basis capable of ensuring a good level of resource control while satisfying the needs of numerous stakeholders. And yet the IM's observations and analyses reveal a severe lack of appropriation of forest law on the part of both the private sector operators and the administration responsible for ensuring that the legislation is completed and enforced.

Law enforcement failures can be seen at virtually all levels and take a multitude of forms; it is, however, rare for legal proceedings to be commenced, which undermines the credibility of the law in the eyes of the different actors, resulting in widespread fraud and illegal logging.

In this report, the IM highlights a number of important observations made and refers back to certain aspects that have been widely analysed in a number of specific documents available on REM's website<sup>3</sup>. Specific recommendations aimed at certain administrative departments and various members of the government are subsequently made in the light of this analysis. These recommendations as a whole show that, despite the apparent complexity of the sector, a few simple measures could be put in place that would improve the legislation and its implementation.

Since the appointment of a new government in April 2012, some encouraging signs have been noted. Corrective measures such as the publication of the first signed concession contracts, the cancellation of some artisanal permits allocated to companies, and a partial review of the controversial provisions of Order 011/2007<sup>4</sup> are all examples of initiatives that will need to be continued and expanded if the DRC is to move towards the signing of VPAs and embark on a path to sustainable development.

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<sup>2</sup> News of the resumption of formal negotiations between the DRC and the EU:  
[www.mecnt.cd/images/DOWN/conference\\_presse\\_apv.pdf](http://www.mecnt.cd/images/DOWN/conference_presse_apv.pdf)

<sup>3</sup> All of the IM-FLEG DRC reports are available from: [www.observation-rdc.info/Rapports.html](http://www.observation-rdc.info/Rapports.html)

<sup>4</sup> The financial provisions of Order 011/2007 on the authorisation of timber logging and its authorisation for sale, purchase and export, which also offered the possibility of MECNT granting artisanal permits in place of the provincial government, as stated in the law.

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# 1 CONTEXT

## 1.1 Tackling widespread forest illegality

The Democratic Republic of Congo (DRC) is a country extremely rich in resources. Although its abundant mineral reserves have been presented as a “geological scandal”<sup>5</sup>, the DRC also has enormous forest potential, being home to more than 61% of the Congo Basin’s dense forests<sup>6</sup>. Despite its attributes, the country remains extremely poor and exposed to very high levels of corruption. It is one of the countries of the sub-region in which forest illegalities have been most frequently denounced by national and international civil society. Illegal forest exploitation is not only hindering efforts to preserve forest ecosystems, but also inhibits the socio-economic development of forest-dependent populations. The causes of these recurrent illegalities can be traced back to security, institutional, legal and infrastructural issues.

**TABLE 1: Macro-economic and forest resource data**<sup>7,8,9,10,11,12</sup>

Population			Forest profile			
Population <sup>3</sup>	74	Million	(2012)	DRC area <sup>6</sup>	2.345 million km <sup>2</sup>	(2012)
Density <sup>3</sup>	31	hab./km <sup>2</sup>	(2012)	Forest cover <sup>6</sup>	68 %	(2009-10)
Median age <sup>3</sup>	17.6	years old	(2012)	Dense forest cover <sup>6</sup>	49 %	(2010)
Fertility <sup>3</sup>	5.1	children/woman	(2012)	Production		
Life expectancy (at birth) <sup>3</sup>	56	years	(2012)	Forest cover loss <sup>6</sup>	0.46 % per year	(2005-10)
Development			(2010)	Wood volume allowed for logging <sup>6</sup>	673,000 m <sup>3</sup>	(2010)
HDI <sup>4</sup>	187	th/187	(2011)	Forest product exports <sup>7</sup>	135 million \$	(2011)
GDP/habitant <sup>3</sup>	226	th/226	(2011)	MECNT		
Pop. under poverty level <sup>3</sup>	70	%	(2006)	MECNT annual budget spending <sup>8</sup>	36.5 million \$	(2011)
Corruption ranking <sup>5</sup>	168	th/183	(2012)	MECNT workforce <sup>6</sup>	5,967 people	(2011)
Economy						
GDP <sup>3</sup>	14.8	billion \$	(2011)			
State income <sup>3</sup>	4.6	billion \$	(2011)			
State expenditure <sup>3</sup>	5.9	billion \$	(2011)			

Some ten years after the introduction of a series of innovative reforms, the forest sector is still struggling to improve its image and competitiveness. This is largely because of a failure to fully implement reforms that are essential to the sector’s development, such as the conversion of old forest titles, the agreement and adoption of implementing texts for the 2002 Forest Code, and the strengthening of those departments responsible for forest law enforcement. Moreover, government action suffers from being inconsistent due to a lack of coordination and collaboration between the departments and institutions responsible for forest management.

<sup>5</sup> Augustin Matata Ponyo, Prime Minister of the DRC– Libération, 12 December 2012

<sup>6</sup> COMIFAC – Etat des Forêts 2010 – Les forêts du Bassin du Congo

<sup>7</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>

<sup>8</sup> [http://hdr.undp.org/en/media/HDR\\_2011\\_FR\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2011_FR_Complete.pdf)

<sup>9</sup> [www.transparency.org/country#COD](http://www.transparency.org/country#COD)

<sup>10</sup> Ressources Naturelles Congolaises, First Vade-mecum conducted by MECNT, GIZ and ICCN, 2012

<sup>11</sup> [http://faostat3.fao.org/home/index.html#VISUALIZE\\_BY\\_DOMAIN](http://faostat3.fao.org/home/index.html#VISUALIZE_BY_DOMAIN)

<sup>12</sup> [www.ministeredubudget.cd/esb2011/findecembre2011\\_new/esb\\_global\\_par\\_administration\\_et\\_chapitre.pdf](http://www.ministeredubudget.cd/esb2011/findecembre2011_new/esb_global_par_administration_et_chapitre.pdf)

## 1.2 Objectives of IM-FLEG in DRC

Out of a desire to improve governance and reduce illegality, the Congolese government signed an agreement for a two-year period of Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG), to be implemented by the British NGO Resource Extraction Monitoring (REM)<sup>13</sup>. Funding for the project was provided by the European Union. The Project contract supervision was provided by the EU Governance Support Programme in the DRC. The main objectives and results of the monitoring are given in the table below.

**FIGURE 1: REM IM-FLEG project**

GOAL							
Contribute to good governance in forest operations and support improvement in forest law enforcement							
RESULTS	INDICATORS	OUTPUTS					
The forest operations control mechanisms and procedures are analysed, their efficiency and their compliance with the laws and regulations are verified	Control procedures guide book produced and used by the forest control officers	1	2	3	4	5	6
	IM missions done, reports published and recommendation followed up						
	Briefing notes produced, reports published and recommendations followed up						
The application of procedures to illegal operators is improved and the legal cases are followed up	Forest infractions detection during missions are exposed and published in IM mission reports and followed up by the administration and justice system						
	Other results published by the IM presented to MECNT. Technical, legal and political reforms needed follow as a result						
Joint law enforcement missions led by the MECNT allow the IM to improve application of the law through its recommendations	The results of monitoring of legal cases by MECNT are published by the IM						
The diffusion of forest operations information is ensured	Publication and circulation of mission reports, thematic reports and briefing notes on forest law implementation and governance. Recommendations submitted to MECNT and published by the IM						
Ensure the sustainability of Independent Monitoring through civil society involvement	IM homologue team technically trained						7
	CSO informed on governance, FLEGT and IM and design their own IM implementation strategy						8

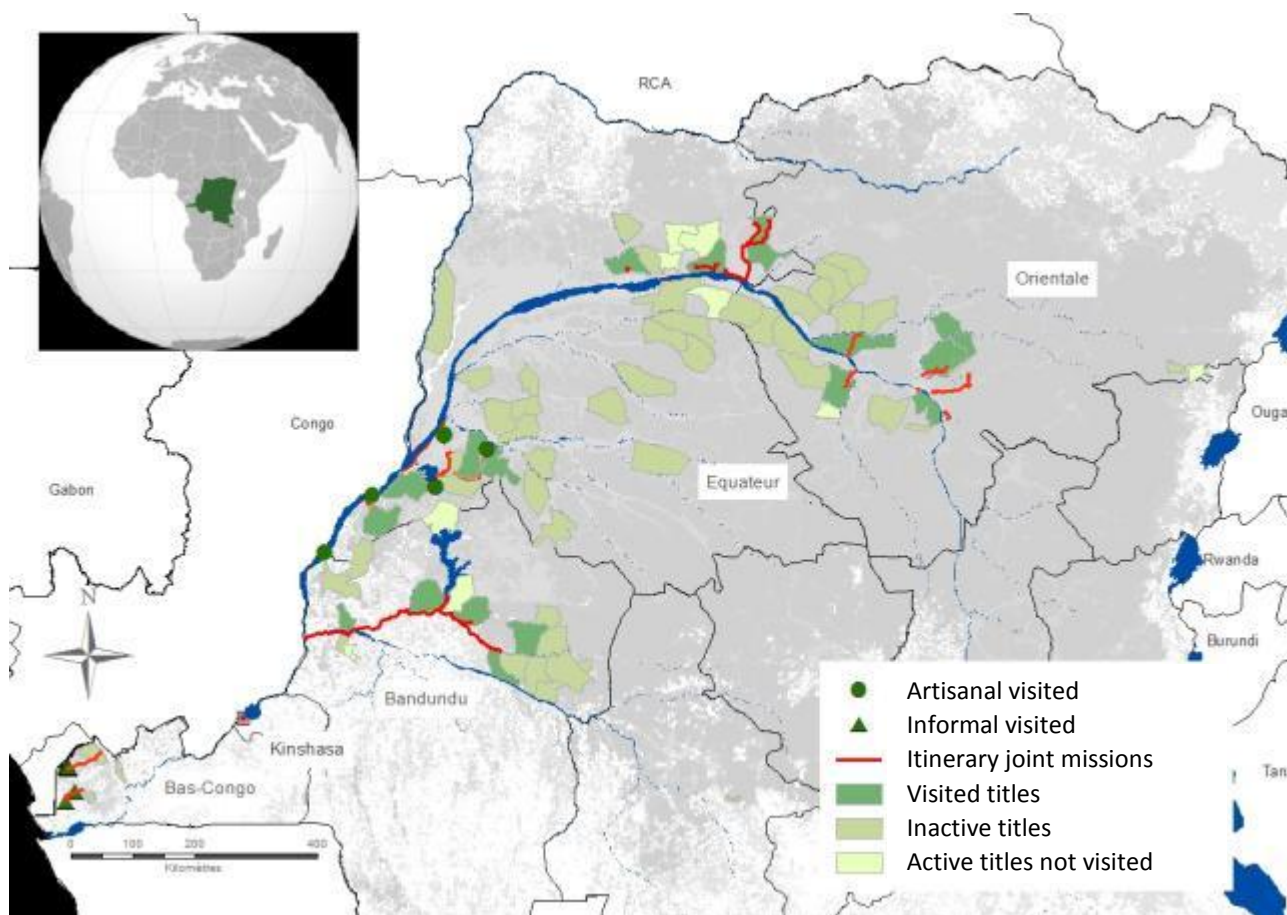
1	IM mission report and RC (Reading Committee) minutes	5	Forest control procedures guide book
2	IM thematic reports : Analysis and briefing notes	6	Follow up meetings reports
3	Specific training on legal cases	7	National DRC IM team and others trained
4	IM correspondence with MECNT, COFED (European Development Fund National Authorising Officer Support Unit) and EU	8	IM strategy for DRC in place

<sup>13</sup>www.rem.org.uk

The four forest law enforcement missions conducted jointly by REM with the MECNT OPJs of the Department for Law Enforcement and Internal Verification (DCVI) and with the provincial Environment, Nature Conservation and Tourism (ECN-T) teams over the two years of project implementation, formed the core of the IM-FLEG work. As a consequence of these investigations and other research, a series of briefing notes were produced by REM in relation to forest law enforcement: litigation, legislation, official reports (PVs), damages and interest, out-of-court settlements, artisanal logging, spatial aspects, etc.

Although missions took place regularly during the first year of the project (three missions averaging two weeks each), the frequency was reduced the second year, with just one mission. This was a consequence of a six-month wait for the appointment of a new government and problems in establishing a Reading Committee (CdL) of IM-FLEG reports (see Chapter 5.2).

**MAP 1: Sites visited by the IM**



Of the 24 titles converted and published on the MECNT website ([www.mecnt.cd](http://www.mecnt.cd)) in February 2012, 10 were the subject of joint MECNT/IM-FLEG enforcement missions. Additionally, of the 80 forest titles judged convertible by the Inter-Ministerial Commission (CIM), only 28 were being logged during the period of project implementation. Eighteen of these were visited jointly by the OPJ inspectors from the DCVI and the REM team (see Map 1). REM’s mission reports, including recommendations, were presented to the MECNT but follow-up in terms of implementing these recommendations was hindered due to difficulties in establishing a Reading Committee open to civil society and donors.

This report thus focuses on the governance themes identified and analysed during the project, highlighting possible ways of ensuring better forest law enforcement in the DRC, both from a legal, institutional and operational point of view.

*All the REM IM-FLEG DRC project documents, including briefing notes, are available online at [www.observation-rdc.info](http://www.observation-rdc.info)*

## 2 IMPROVING THE LEGAL FRAMEWORK AND INSTITUTIONS

### 2.1 Improving policy and legal frameworks

#### Political basis

The general aim of a forest policy is to guide decision-making in forestry matters and provide an overall vision. In the absence of such a policy, forest management only has a weak basis on which to rely and the functionality of the support administrative system cannot be guaranteed. This is an extremely important point as the current lack of a forest policy is one of the main causes of the disorganisation affecting the DRC's forest management system (see Box 1).

#### BOX 1: Importance of a forest policy

The DRC 2002 Forest Code and the numerous implementing texts that were adopted in its wake, along with the administrative decisions taken, have not been based on any coherent forest policy. This is probably unique in Africa and represents a considerable gap in the country's forestry system. For lack of any overview, coherence, strategic planning or mid- to long-term objectives, the Congolese forestry system is lacking in vision. The issue of *a posteriori* forest policy is, however, a double-edged sword. Although it would bring many forestry sector actors together, providing unity to a dismembered system that is lacking any real coherence, it would also, however, presents a two-fold risk in terms of:

- Overhauling an existing system that is already lacking in enforcement capacity; and, above all,
- Wasting considerable time as the start-up of such discussions may lead to a temporary halt in the enforcement of existing legislation.

Besides, would a forest policy adopted in 2013 be fundamentally different from what it would have been 10 years previously?

To mitigate the risks of a gap in the application of existing legislative texts, the IM therefore proposes that the MECNT temporarily adopt a **forest sector policy paper** which, without overhauling the current legal system, would establish a certain number of fundamental principles and objectives aimed at giving direction to the sustainable exploitation of timber in the DRC. Only when the current system is being applied, as in other forested African countries, will the DRC be able to make adjustments and, where necessary, revise the system against the background of a proper forest policy.

#### Legal basis

Forest legislation in the DRC generally covers the main points essential for a technically sustainable management of forest resources, including elements of governance, forest inventory and planning requirements, the use of a management plan and/or social clauses in companies' terms and conditions.

Nonetheless, our experience of its application indicates numerous failings related to: general governance affecting forest management, legal loopholes, a lack of certain essential texts and a lack of consistency (even non-conformity) between texts that exist side-by-side with the 2002 Law.

In fact, after documentation and analysis, the IM identified 14 significant gaps in the legal and regulatory arsenal covering the forest domain in the DRC. These are presented in Table 2.

Apart from the need to complete the legal and regulatory framework, there is also a problem in terms of enforcing those laws that are already in place. Over the course of its mandate, the IM observed the administration's habitual practices. An analysis of these reveals a low level of compliance with the law generally, and recurrent cases of clear violations of the Forest Code and its implementing measures. By documenting these recurrent practices, the IM has been able to list 14 particularly significant infractions, see Table 3.

**TABLE 2 : Legislative developments that need to be promoted**

Legal issues	Types		Logging		
	Gaps	Inconsistencies	Industrial	Artisanal	Local comm
1 Absence of regulation defining and organising forest zoning					
2 Regulatory inconsistencies in ACIBO maximum size allocation					
3 Absence of regulation concerning the deforestation tax rate					
4 Absence of regulation to facilitate local community participation in forest management					
5 Absence of regulation in practical artisanal logging operations					
6 Absence of regulation for community forest operations					
7 Absence of regulation for timber exportation procedures					
8 Absence of regulation for applying logging tax to industrial concession's timber					
9 Inconsistency on the reforestation tax rate					
10 Absence of regulation for licensing artisanal loggers to operate					
11 Inconsistency on MECNT presence in exportation sites					
12 Absence of regulation for damages and interest calculation					
13 Absence of regulation for national forest planning					
14 Inconsistency between the Forest Code 2002 and the constitution from 2006					

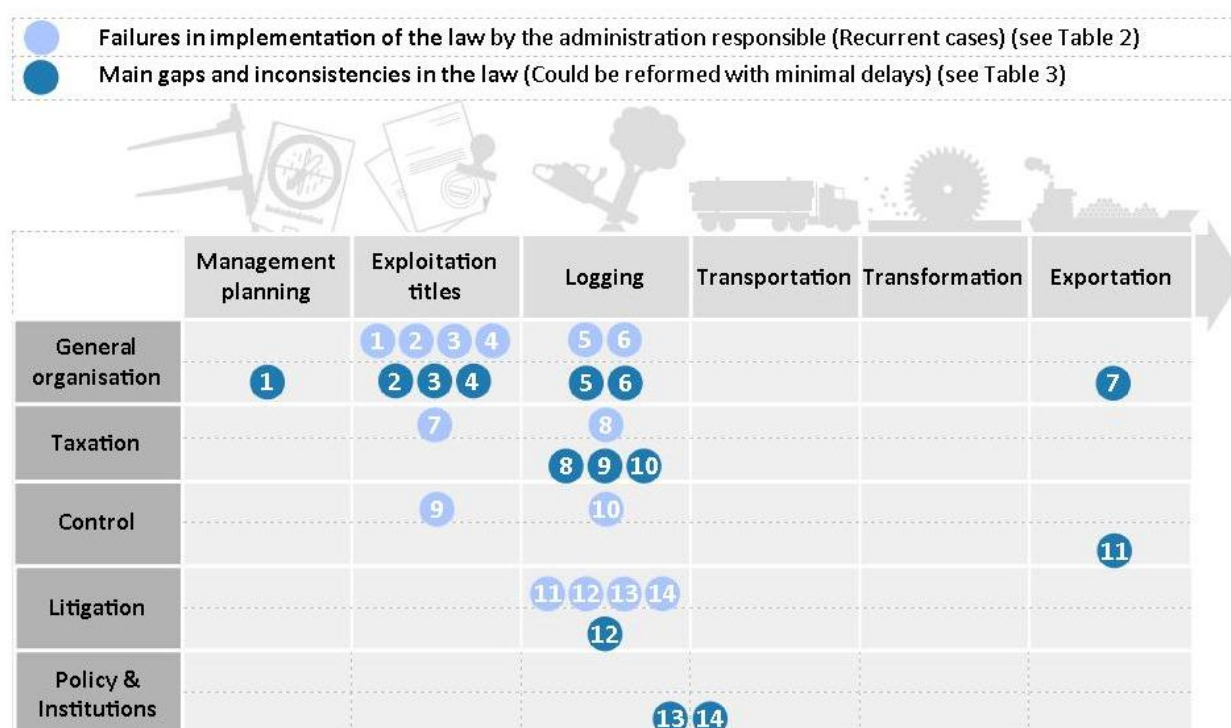
See Annex 2 for more details

**TABLE 3: Problems enforcing existing legislation**

Recurrent illegalities	Law violations	Responsible Department					Logging		
		Min. ECNT	DGF	DAF	DCVI	FFN	Prov. Coord	Industrial	Artisanal
1 PCB (Wood Cutting Permit) assigned to corporations	Art 8 order 035								
2 ACIBO (Industrial Timber Logging Authorisation) allocated without evidence of area tax payment for previous year	Art 6 order 011								
3 ACIBO assigned without evidence of payment of the annual forest allocation map fee	Art 6 order 011								
4 ACIBO assigned to industrial loggers with converted titles	Art 6, 7, order 035								
5 Forest allocation maps not made	Art 6 order 011; art 73 FC								
6 Exploitation documents not made freely available to operators	Art 50, 54, 60 order 035								
7 Wrong calculation of area tax	Art 121 FC								
8 Wrong calculation of logging tax	Art 1 intermin. order 2010								
9 Forest law enforcement schedule not applied	Art 16 order 102								
10 Technical standards not checked	Art 3 order 102								
11 Litigation procedures violated	Art 133 FC; art 41 order 102								
12 Forest 'transaction' procedures violated	Order 104								
13 Untimely transmission of Official notices of infractions (PV)	Order 102, 104								
14 Fines calculated using wrong method	Art 143 FC; art 11 order 104								

By identifying these factors throughout the entire timber sector (as presented in Figure 2), the inadequacies of the legislation and the extent of law enforcement in relation to land and logging issues, in particular, can be observed. The noted concentration of problems corresponds with an analysis of the IM’s observations. However, the IM cannot guarantee that its research has been exhaustive; given the backdrop of the “trivialization” of illegal forestry practices, all stages of the process are likely to suffer from governance problems.

**FIGURE 2: Map showing the major weaknesses in forest governance throughout the timber sector, as observed by the IM**



The numerous problems noted by the IM in relation to weak forest law enforcement underscore the responsibility of the forest administration. Although logging companies are the main perpetrators of infractions, they are primarily exploiting the lack of state presence on the ground, the authorities’ lax attitude with regard to violations of the regulatory and legislative texts, the lack of monitoring, and the derisory financial penalties. All these factors combined result in a proliferation of illegal logging.

The IM also noted that most actors, including public officials and both industrial and artisanal forest loggers, have generally not taken the forest legislation on board. Accepted practice very often dominates in the context of forest exploitation, particularly with regard to forest law enforcement and the follow-up of forest litigation. Finally, the authorities’ failure to observe their own procedures has a knock-on effect in that it undermines their performance and their capacity to enforce the necessary laws.

*A specific analysis of legislation is available online at [www.observation-rdc.info](http://www.observation-rdc.info)<sup>14</sup>*

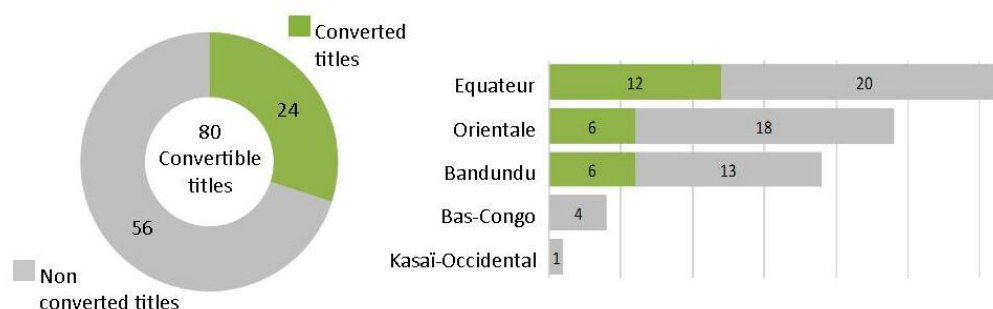
<sup>14</sup> [www.observation-rdc.info/documents/REM\\_RDC\\_legislation.pdf](http://www.observation-rdc.info/documents/REM_RDC_legislation.pdf)

## 2.2 Addressing the regulatory loopholes

### Industrial logging

Since the enactment of the Forest Code in 2002, the industrial logging sector in the DRC has struggled to be competitive because of its failure to complete the so-called “conversion of former forest titles” process, as stipulated, by 29 August 2003. This considerable delay weakens the application of forest legislation, creating anomalies in logging practices (see Chapter 2.1) and resulting in a serious loss of revenue for the Congolese state.

**GRAPH 1: Status of conversion process**



The delay in converting former forest titles into forest concession contracts, added to the lack of transitional arrangements, has had a considerable impact on the theoretically-applicable forest exploitation system. The practice on the ground is largely disconnected from the spirit of the 2002 Forest Code. Because of the 10-year delay in producing a forest policy (see Box 2 above), it is now urgent that the government pursue the priority agenda initiated in 2002. The challenge is to complete this process and implement innovations with regard to planning, or risk losing the benefits linked to sustainable management, including the increased revenues due to the state, and the prevention of illegal logging.

### BOX 2: Consequences of the failure to complete the conversion process

The failure to convert former titles should already have led to these permits being cancelled on two occasions:

- On 29 August 2003, all titles were retained because none of them had been converted by the date set by Article 155 of the Forest Code.

Subsequently:

- On 24 October 2006, all titles were retained because none of them had been converted by the date set by Decree No. 05/116.

The administration has twice missed self-imposed deadlines and continues to consider these different titles as being valid. The failure to publish implementing regulations for these two texts within the given deadline is responsible for this delay but should not have legally prevented these titles from being taken back into the state ownership. Nine and six years after these two administrative failures, industrial logging continues to be insufficiently regulated. Two groups of titles now co-exist (see Graph 1):

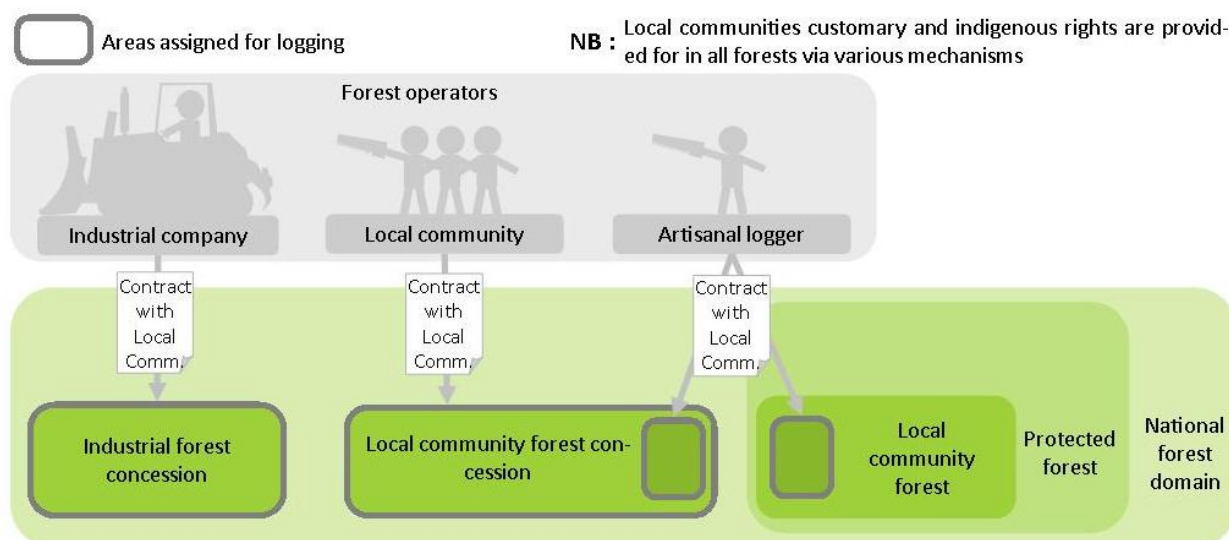
- One group of 24 titles for which the conversion process is complete but for which the regulatory provisions of the new forest regime are not being applied. These titles currently continue to form the object of industrial logging authorisations (ACIBOs) that were anticipated by a transitional system that should no longer be applied. All the companies that have signed these forest concession contracts have a management plan, which is a condition for signing a concession contract;
- A group of 56 titles still not converted. No legislative text has yet set a new deadline beyond which unconverted titles would be considered invalid. Some of these titles continue to receive an ACIBO each year. This lack of any deadline has led to an unfair forest system that is severely damaging the proper functioning of the forest sector in the DRC. This problem could be promptly resolved if MECNT were to set a new deadline for the conversion process.

## Artisanal logging

As with “industrial” logging, “artisanal” logging cannot be considered legal unless it is fully compliant with the requirements of the Forest Code and its implementing regulations. And yet, during its two-year term, the IM has not encountered one example of artisanal logging that could be considered strictly legal.

- Firstly, the failure to establish (by joint order of the two ministries) a document accrediting the profession of artisanal logger is systematically preventing the collection of any logging taxes. Despite this regulatory loophole, numerous accreditation documents and logging permits have been issued since 2002;
- Secondly, a simple documentary analysis of the lists of permits allocated in 2009, 2010 and 2011 reveals that 94% of them were allocated to companies (and not private individuals), in violation of the regulations;
- Finally, on several occasions the IM noted the use of machinery on the ground that were not authorised in the accreditation documents. This related primarily to heavy machinery appropriate to industrial-scale logging. Other legal provisions governing artisanal logging have also been violated, including cases of loggers operating outside of local community forests or without a contract with the communities. As can be seen from Figure 3 below, the terms of the law state that no artisanal logging can be undertaken without a signed contract with the local population.

**FIGURE 3: Theoretical place of artisanal logging in the national forest domain**



Currently, due to the lack of implementing measures enabling the creation of local community forest concessions, an artisanal logger can only log in community forests that fall within the protected forest domain.

It should be noted that a slight improvement has been observed in the legal situation in this regard given that, in October 2012, a conflict of jurisdiction was resolved between the provincial governors and the national ministry<sup>15</sup> with regard to the allocation of logging permits.

<sup>15</sup> This conflict of jurisdiction appears to have been resolved since 6 October 2012 by Order 031/CAB/MIN/ECN-T/10/BNME/012 amending and completing Order 0011 of 12 April 2007, in particular annulling the article giving the central ministry powers to issue artisanal permits.

**PHOTO 1 : Small-scale illegal artisanal logging in Bas-Congo province**



### Community logging

Community logging is still not possible in the DRC because there are no supporting regulations implementing the Forest Code in this regard. A decree needs to be signed establishing the methods for allocating local community concessions, along with an ordinance establishing the rules for managing and sustainably logging them. Table 4 below describes and summarises the issues:

**TABLE 4: Issues involved in the decree on community forest concessions**

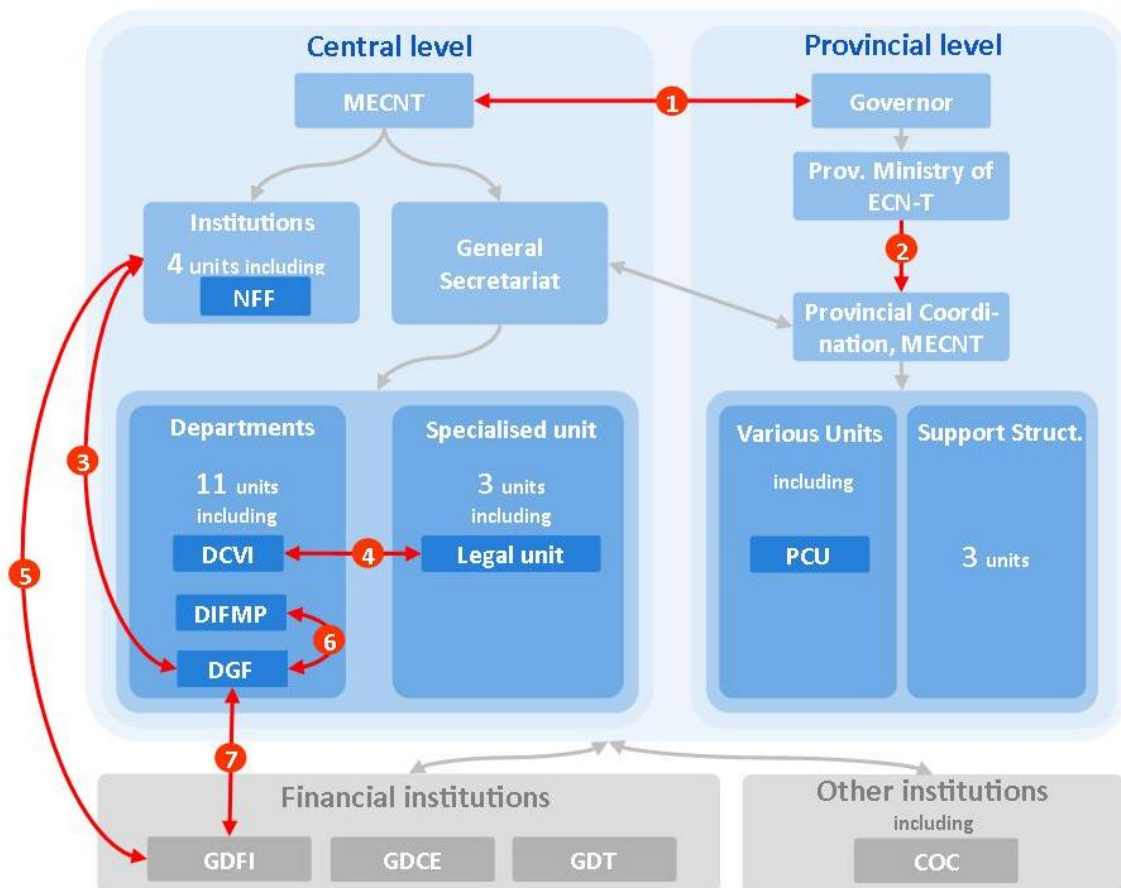
OBJECTIVE To link local communities with forest management		
BENEFITS	RISKS	SOLUTIONS
<ul style="list-style-type: none"> <li>• Directly involves the communities in forest resource exploitation</li> <li>• Monitoring will be provided by the communities in their concession</li> <li>• Reduces poverty through the substantial benefits obtained from exploiting their forest</li> </ul>	<ul style="list-style-type: none"> <li>• Inexperience of the communities in their formal relations with third parties (contract negotiation)</li> <li>• Monopolisation of the logging of community concessions by third parties</li> <li>• Possibility of laundering timber with logging documents from local community concessions</li> </ul>	<ul style="list-style-type: none"> <li>• A permanent system for cooperation between communities and the administration, on the basis of free, prior and informed consent (FPIC)</li> <li>• Communities to take responsibility for all activities that could take place in their concession, or on the basis of contracts signed with third parties</li> </ul>
EFFECTS		
<ul style="list-style-type: none"> <li>• Demarcation of local community forests</li> <li>• Regulation of the logging conducted by local communities and the artisanal sector</li> <li>• Creation of a consultation framework within local communities</li> <li>• Improved standard of living of local communities</li> <li>• Promotion of the sustainable use of forest resources</li> </ul>		

See Annex 3 for more details

## 2.3 Better coordination between forest administration departments

A lack of communication and coordination between the central and provincial departments responsible for forests was identified by IM-FLEG as a major constraint to forest resource management, particularly forest law enforcement. The IM has recommended that the MECNT seek solutions aimed at increasing the flexibility and operationalisation of the administration, as this will ensure both its competitiveness and efficiency.

**FIGURE 4: (Unofficial) diagram of departmental responsibilities within the forest domain**



PCU	Provincial Control Unit	DIFMP	Directorate of Inventories and Management Planning
GDCE	General Directorate of Customs and Excise	NFF	National Forest Fund
GDT	General Directorate of Taxes	COC	Congolese Office of Control
GDFI	General Directorate of Federal Incomes	MECNT	Min. of Environment and Nature Conservation

- 1 Jurisdictional dispute due to conflicting legal texts defining the responsible authority in charge of artisanal logging permits (Ministerial Order 035 on logging and Order 011 establishing the permit allocation process). (NB this conflict seems to have settled in October 2012)
- 2 MECNT's provincial coordination unit has responsibilities to both the MECNT General Secretariat and ECN-T Provincial ministries which have sometimes differing policies and visions
- 3 DGF and NFF issue parallel debit notes to recover artisanal logging permit tax
- 4 The MECNT legal unit have responsibilities in the following legal cases but is not working together the DCVI
- 5 The NFF receives the artisanal logging tax in lieu of GDFI. The NFF is strengthened by the administrative memo from the Minister (18 July 2011) concerning recovery of taxes
- 6 Conflict over the sharing of revenue for updating the forest allocation maps. This tax is collected by the DGF, but does not transfer it to the DIFMP
- 7 Lack of communication between the DGF and the DGRAD on the area tax (industrial titles) as permits are assigned despite the lack of evidence of area tax payment, which is a legal requirement.

### 3 FOREST EXPLOITATION ON THE GROUND

#### 3.1 Forest infractions and pressure from the industrial sector

Following four missions conducted to three of the country’s main forested provinces (see Graph 2), the IM has concluded that industrial logging operations are marred by multiple violations of current regulatory standards. The most common infractions relate to rules governing the marking of timber, a failure to respect the authorised volumes or a lack of the necessary permits. The IM noted that these problems were generally widespread and recurrent.

**GRAPH 2: An imperfect industry (total number of infractions noted by the IM after visiting 21 logging sites during four field visits in 2011 and 2012)**



The industrial sector is organised into professional associations, the main one being the FIB (*Fédération des Industriels du Bois*). This body works constantly to obtain a relaxation of the sector’s legal and fiscal obligations. Such is, for example, the case of the area tax, which formed the object of a payment moratorium<sup>16</sup> in 2009 and 2010, and then a spreading of payments<sup>17</sup> in 2011 due to the “financial crisis”. Despite these measures, cases of non-payment or partial payment were observed by the IM, while the FIB continues to apply pressure in order to maintain these support measures, which are considered transitional by the government. This constant rescheduling, fuelled by the missed deadlines related to the conversion of former titles and the lack of various implementing regulations for the Forest Code, is creating a legal vacuum that is contributing to a proliferation of illegal or unsustainable logging.

#### BOX 3: A sector under pressure

Unlike artisanal logging, which is exempt from some obligations, the new system governing forest exploitation imposes specific rules on the industry aimed at enabling the sustainable exploitation of the resource and effective taxation. The concession holders are therefore required to: produce management plans, implement social clauses, pay taxes to the state, and take responsibility for their workers’ social security. Artisanal loggers benefit from a less restrictive system but still have the same opportunities for trading and exporting timber as concession holders. The statistics show higher rates of production for artisanal producers than for some industrial loggers. The difference between these two forest exploitation systems has thus resulted in an opportunistic move on the part of some operators towards artisanal operations of a “semi-industrial” nature.

<sup>16</sup> Letter No RDC/GC/CPM/0003/2009 dated 9 January 2010 on the area tax

<sup>17</sup> Report on the harmonisation of views meeting between the DGRAD and FIB on 7 April 2011 related to payment of the area tax

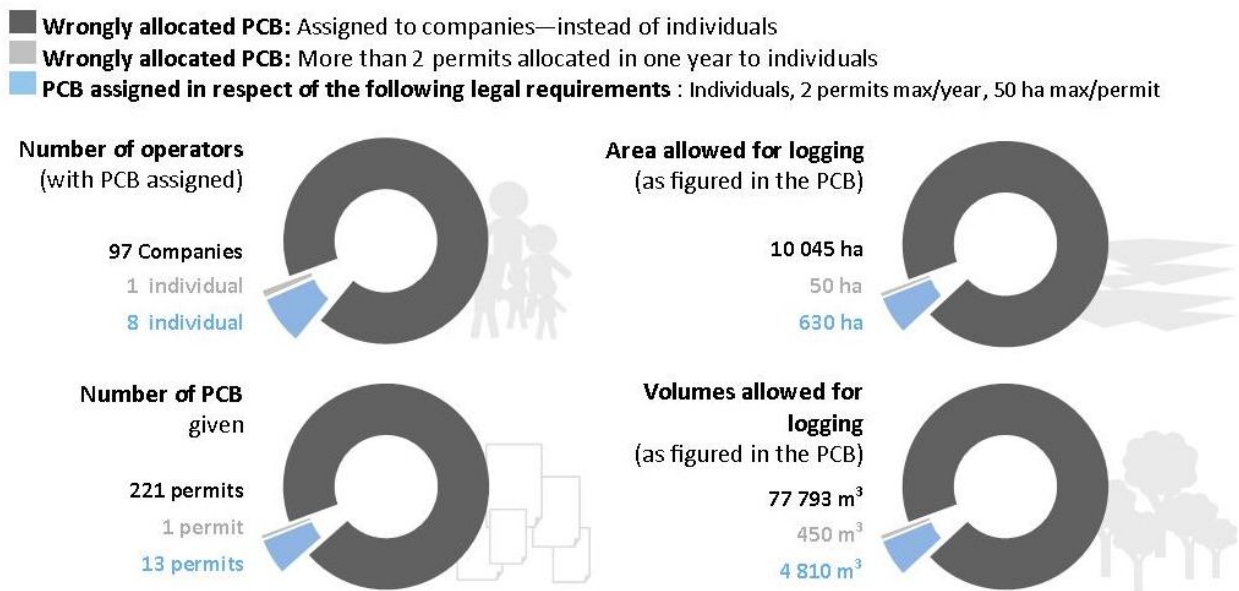
## 3.2 The trend towards “semi-industrial” logging

Forest exploitation in the DRC has, over the last three years, experienced a boom in a new category of operators known as “semi-industrial”. This category now represents more than 90% of holders of artisanal felling permits in the DRC (see Figure 5). It comprises foreign-owned companies with significant technical and financial resources who use logging permits normally reserved for artisanal operators (private and accredited Congolese individuals) to industrially log timber in local community forests. The IM has documented the move towards this new kind of operation, which is completely outside the regulations<sup>18</sup> and was heavily criticised in 2011 and 2012.

The IM’s analysis highlights that this situation is a consequence of the delays in converting forest titles into forest concession contracts. In fact, the moratorium has not prevented the appearance of new investors who have - with the administration’s support - circumvented the regulations to obtain unjustified logging authorisations. These new operations are not tied to any social obligations for the local communities in the areas being logged, nor any requirements for sustainable logging (inventory, reforestation, etc.).

This timber can now be found in ports and processing plants, alongside timber from industrial concessions, being exported to Europe, Asia and the US.

**FIGURE 5: Allocation of felling permits (consolidated data 2010, 2011 and 2012)**



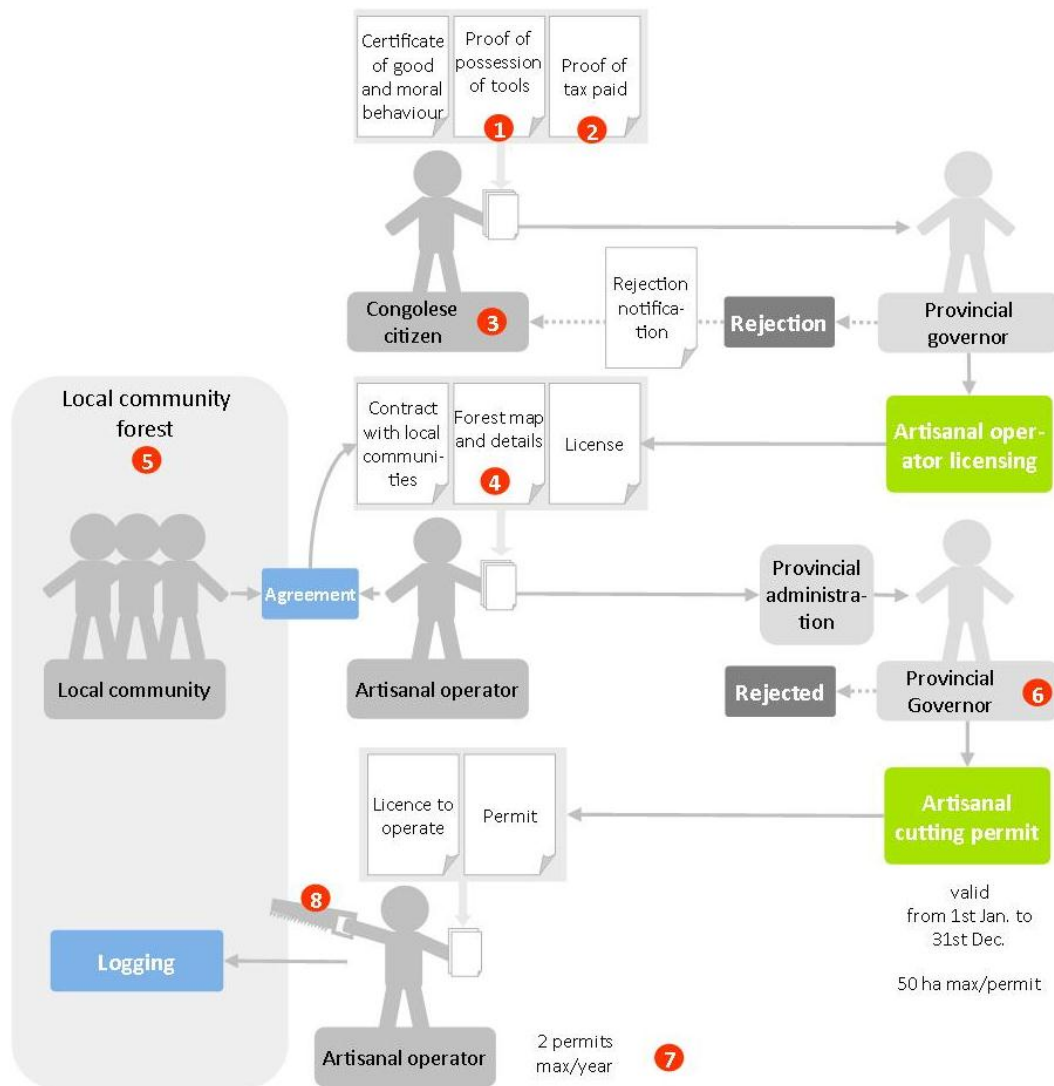
Apart from their completely informal nature, which is indicative of the DRC’s routine governance and forest law enforcement problems, these operations are seriously marred by irregularities and illegalities. Artisanal felling permits are, in fact, being granted in violation of the regulations governing them (that they be issued to private Congolese individuals, a maximum of 2 per year, and 50 ha max/permit), the authorised felling volumes are not being respected, the wood is not being properly marked, taxes are not being paid (permit tax, logging tax, reforestation tax), and quarterly production statements are not being submitted within the given timeframe (if at all).

<sup>18</sup> REM Briefing Note No. 7, “Les dérives de exploitation artisanale en RDC”, November 2012: [www.observation-rdc.info/documents/Note\\_artisanale\\_OIFLEG\\_RDC\\_REM\\_7\\_2012.pdf](http://www.observation-rdc.info/documents/Note_artisanale_OIFLEG_RDC_REM_7_2012.pdf)

### 3.3 Artisanal logging in local community forests

Artisanal logging in the DRC is regulated by the 2002 Forest Code and Order No 035 of 2006 although these texts need supplementing by a decree setting out the methods for managing local community forests.

**FIGURE 6: Theoretical diagram of the allocation of artisanal permits**

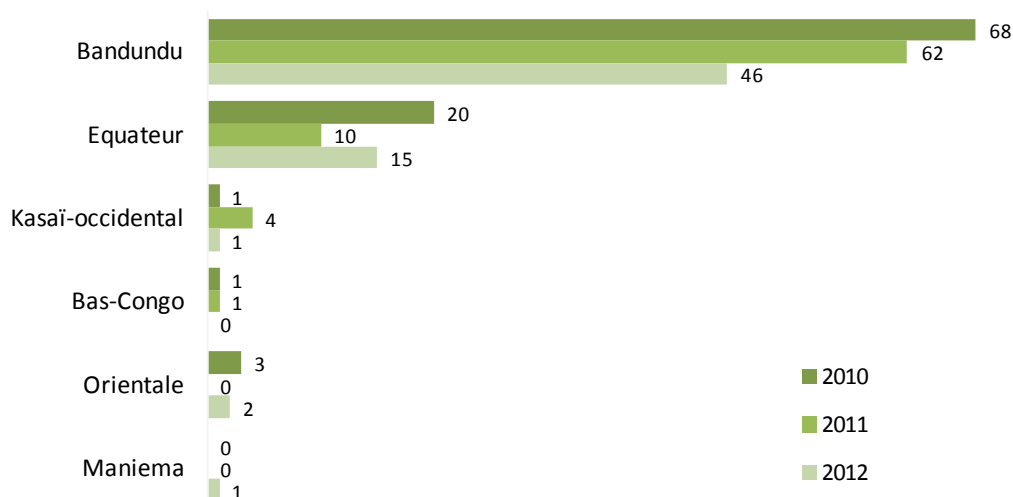


	Problem noted	Legislative Problem	Law enforcement problem
1	No clear definition of authorised equipment (Order 035)	✓	
2	Lack of an order establishing the rate of taxation	✓	
3	Private companies obtaining accreditation documents		✓
4	A number of operators have no map		✓
5	Lack of implementing regulations for local community forests	✓	
6	The Minister for the Environment issues permits (*legal problem resolved)	✓	
7	More than 2 permits/year have been authorised to the same logging company		✓
8	Equipment is used that is not noted on the accreditation document		✓

The main problems now occurring are a result of contradictory legislation, bad law enforcement and legal loopholes in some provisions which are, nonetheless, set out in the regulatory texts and essential to the proper functioning of artisanal forest exploitation in the DRC. In fact, more than 94% of the artisanal felling permits observed were not being operated legally<sup>19</sup>, and less than 6% of those allocated between 2010 and 2012 were operating in accordance with the Forest Code and its implementing regulations.

The IM conducted a specific analysis of artisanal logging on the basis of various irregularities observed during the course of its missions (see Figure 5)<sup>20</sup>, and produced a briefing note that included a series of recommendations aimed at closing the legal loopholes identified and preventing the drift towards illegality in these kinds of operation.

**GRAPH 3: Breakdown by province of artisanal logging permits (2010-2012)**



Orientale, Equateur and Bandundu provinces have the largest forested areas in the country respectively; however, the quantitative distribution of permits is in no way proportional. The MECNT only issued five artisanal felling permits in Orientale Province between 2010 and 2012 but 60 times more in Bandundu. This situation raises a number of questions and can be explained by the region's proximity to Kinshasa, Matadi and Boma, areas of high consumer demand for wood and from where much timber is also exported abroad.

Artisanal loggers can only operate in local community forests when requested to do so by these communities and on the basis of a written agreement or logging contract. And yet, as things currently stand, the boundaries of these local community forests are customary and, consequently, often very imprecise. The question of customary ownership is based primarily on habitual use, and is a regular cause of dispute within the communities when trying to establish the person who has authority to sign agreements with artisanal loggers. This issue is at the root of numerous inter-communal conflicts, including with the holders of industrial logging concessions. These conflicts can lead to an over-exploitation of forests, out of -limits logging, and also complications when allocating or logging some industrial titles.

The IM observed an almost generalised situation of illegality within artisanal felling, either because of the lack of a valid authorisation, the status of the person holding the authorisation or the equipment being used to undertake it. Moreover, the IM noted that the forest administration has been unable to bring either the artisanal or industrial logging under control.

<sup>19</sup> REM Briefing Note, "Les dérives de exploitation forestière artisanale en RDC", December 2012: [www.observation-rdc.info/documents/Note\\_artisanale\\_OIFLEG\\_RDC\\_REM\\_7\\_2012.pdf](http://www.observation-rdc.info/documents/Note_artisanale_OIFLEG_RDC_REM_7_2012.pdf)

<sup>20</sup> Mission Reports 1, 1b, 2, 3 and 4, IM-FLEG, July, October, November 2011 and November 2012, [www.observation-rdc.info/Rapports.html#7](http://www.observation-rdc.info/Rapports.html#7)

## 4 LACK OF ENFORCEMENT, REPORTING AND LITIGATION

### 4.1 Ensuring an effective enforcement mechanism

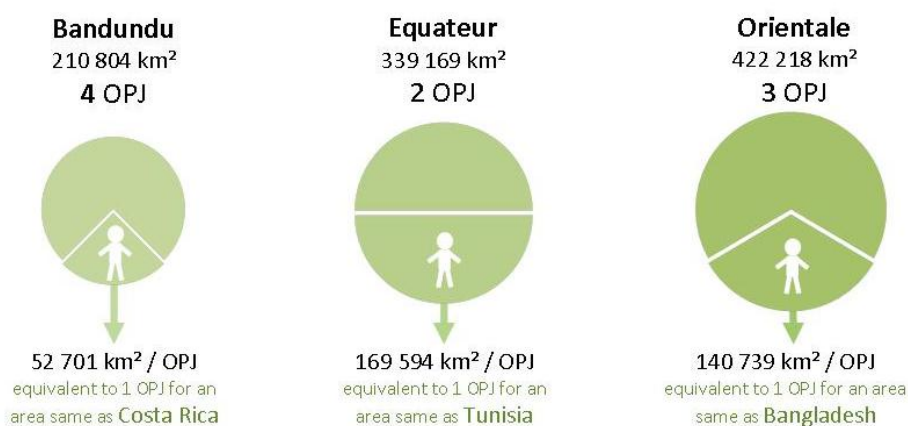
During the two years of project implementation, the IM identified several regulatory and technical weaknesses which, combined with a lack of human resources, are hindering forest law enforcement. These will need to be resolved if the DRC wishes to ensure long-term, credible and effective forest law enforcement as the basis for sustainable forest management.

#### The underlying problem

Sworn Police Officers (OPJ) have limited forest law enforcement powers and IM-FLEG analyses show they have little will to exercise their duties. For example, procedures for noting forest infractions are ignored to the point that any official statements of offence are rarely produced and the imposition of out-of-court penalties is even less likely, despite the existing regulations.

The number of OPJs acting in the forest domain is derisory, given the size of the national territory. Moreover, what OPJs there are, are found primarily in the large urban centres, to the detriment of the decentralised bodies in the interior of the country, and their distribution is not proportional to the forested areas to be covered (see Graph 4). An examination of the ages of the MECNT officials shows that many of these OPJs are coming up for retirement, with no clear plans to replace them.

**GRAPH 4: Not enough law enforcement officers**



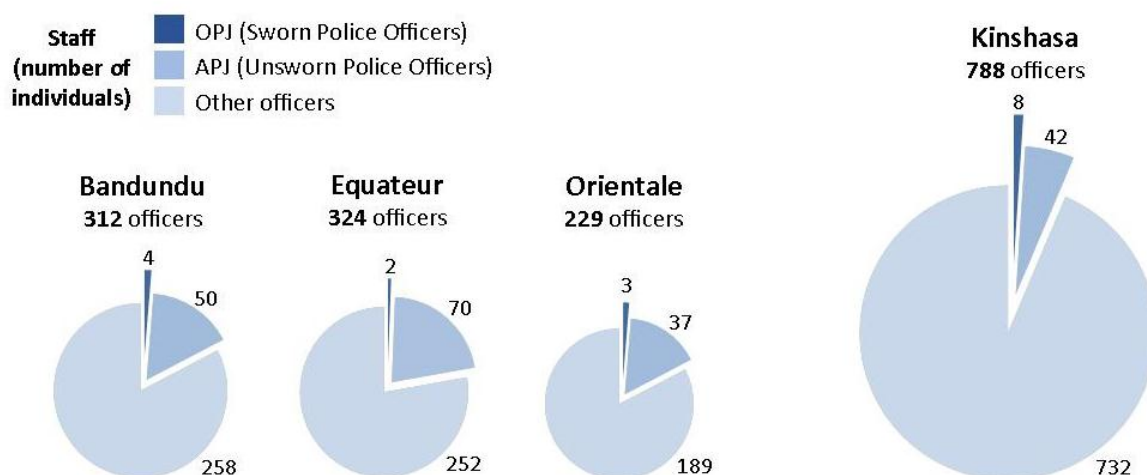
Given this situation, ineffective enforcement is to be expected, resulting in a lack of tax revenues for the state and impunity on the part of the offenders.

Actions that should have been implemented when the new forest law enforcement system was enacted<sup>21</sup>, such as the zoning of the territory, the creation of law enforcement brigades and control points, have not taken place, exacerbating the problem of staff resource optimisation. The OPJs currently represent only around 1% of the MECNT's total staff (it has a total of 788 staff in Kinshasa - see Graph 5).

Departmental instability and a lack of coordination between central and provincial activities are just two more factors limiting effective forest law enforcement in the DRC.

<sup>21</sup> Article 2, Order N°102/CAB/MIN/ECN-t/15/JEB/09 of 16 June 2009 establishing the rules and formalities of forest law enforcement

**GRAPH 5: MECNT staff (central and provincial levels)<sup>22</sup>**



The country's geography and the sparse road network do, however, offer an opportunity to effectively monitor the channels used for timber evacuation and export. This is not currently an option, however, because the regulations prevent the presence of forest law enforcement OPJs at border posts<sup>23</sup>.

**BOX 4: Loss of export control<sup>24</sup>**

It is especially crucial to monitor the points at which timber is exported from the DRC:

1. As the last point in the chain, they are a strategic point for law enforcement:
2. Export taxes, which should provide considerable revenues for the state, can only be calculated and paid at this point.

And yet, currently, there are still no complete regulations governing the export of logs and sawn timber. The timber export procedure, in terms of traceability and enforcement by the forest administration, is not complete and remains above all dependent on general customs procedures. In addition, export monitoring on the ground is virtually impossible because MECNT agents are not authorised to work in the border posts. This situation seems illogical. For example, the timber export tax can only be correctly calculated by a MECNT agent as it depends on the volume and species. Their absence from the border posts contributes to a lack of monitoring of timber exports.

This also has an effect on the monitoring of timber exports, to the point that the Minister recently had to issue a circular on the requirement to undertake packing of containers in the presence of DCVI inspectors, and specifying that the packing report had to be verified and approved by the DCVI Director and by customs and excise officers before any timber could be exported.

This note did not, however, remove the restriction regarding the presence of MECNT officers at the border posts, given that:

- Under the principal of respect for legal hierarchy, only a presidential decree can reconsider the list of departments authorised to operate in the DRC border posts;
- The enforceability of this circular as regards loggers and other commercial operators could be questioned as it is an internal MECNT document by nature.

<sup>22</sup> Unofficial data.

<sup>23</sup> Decree N° 036/2002/ of 28 March 2002 on service allocation and public bodies authorised to operate within the DRC

<sup>24</sup> Circular No. 004/CAB/MIN/ECN-T/15/JEB/2012

## 4.2 Legal proceedings need to take their due and proper form to reduce perceived impunity and corruption

The lack of transparency presented in the tables below is a particular point of vulnerability in the state apparatus, and it encourages and maintains an environment in which corruption can persist to the benefit of the personal interests of public officials. Sanctions must be applied to curb such situations.

**TABLE 5: Elements of governance that discourage corruption**

	Responsibilities				
	Minister	DGF	DIAF	DCVI	Prov. coordination
Publication of regulatory texts	☹️				
Publication of concession contracts	😊				☹️
Publication of allocated permits		☹️			☹️
Publication of areas considered good for logging			☹️		
Publication of forest statistics		☹️			
Publication of tax collection data	☹️				
Publication of information from forest control				☹️	
Publication of information about litigation				☹️	

Despite a number of considerable failings on the part of the officials, the IM saw no administrative sanctions applied to those responsible, despite the existing legal provisions.

### BOX 5: Applying the established administrative sanctions<sup>25,26</sup>

Forest law must be enforced in relation to both operators and the forest administration itself, and this latter is, moreover, at the root of a large number of failings that lead to violations of the regulations.

- For the operators, the penalties for these violations may be criminal, civil or administrative;
- For administrative officials responsible for breaches of forest legislation, the sanctions range from criminal sentences to disciplinary action, as provided by the relevant texts.

In the forest jurisdiction, and specifically when dealing with infractions, officials in charge of law enforcement who do not fulfil their obligations, as anticipated by the Law and its implementing regulations, may be subject to disciplinary action. In the DRC, the system of disciplinary sanctions for civil servants is laid out in a general regulation<sup>1</sup> and in specific provisions for the forest administration in particular<sup>2</sup>.

Application of the anticipated disciplinary sanctions forms an important and necessary part of the solution to improving governance, all the more so as the DRC has a well-adapted two-pronged system. Both their administrative and their judicial line managers are empowered to pursue this kind of action against the DCVI's OPJs.

These disciplinary sanctions are applicable to all state officials, including senior administrative and judicial personnel who tolerate or permit faults or failings on the part of their subordinates in the exercise of their duties.

<sup>25</sup> Ordinance 82-031 of 19 March 1982 on administrative regulations governing the disciplinary regime and means of appeal for public service staff and Ordinance No. 85-193 of 7 August 1985 on special provisions relating to the disciplinary regime for public service staff.

<sup>26</sup> Article 18 of Order 104 CAB/MIN/ECN-T/015/JEB/09 of 16 June 2009 establishing the procedure for out-of-court settlements and Article 57 of Order 102 CAB/MIN/ECN-T/015/JEB/09 of 16 June 2009 establishing the formalities for forest law enforcement.

In addition to disciplinary sanctions, there is also a need to review and improve the pay and conditions of OPJs working in forest law enforcement, in order not only to obtain the best results from them but also to reduce the risk of attempted corruption on the part of the commercial operators they are monitoring (see Box 6 below).

#### **BOX 6: The importance of improving OPJ working conditions**

Because of the remoteness of logging sites and the very high levels of corruption in the DRC, forest law enforcement officials need to demonstrate a high degree of professionalism. MECNT's OPJ inspectors are faced with significant financial, logistic and material constraints. An OPJ inspector officially earns an average of 65,000 CDF a month, or around 53 Euros. This complicates the way in which enforcement operations are conducted and forest infractions monitored. Shortcomings in the training of OPJs and the compartmentalised nature of the administrative structure further contribute to this impression that both the central and provincial departments responsible for enforcement are marginalised.

In such a context, it is difficult for the few young, trained people there are to imagine a career within a system in which most of the staff are ageing, in an unstable situation, undervalued and demotivated (70% of applications received by the IM for the post of forest expert were from MECNT staff members).

To remedy this situation, there is a need to:

- Enhance the work of officials by establishing a series of procedures internal to the MECNT aimed at clarifying the organisational structure, defining roles and applying administrative rules, including a scale of penalties;
- Organise the work carefully. Three criteria seem necessary in this regard: consistency; a results-based approach; and a staff appraisal system, including a system of bonuses.

Evaluation is key to assessing the performance and skills of a department, structure or person. To date, the only evaluation conducted within the DCVI is the administrative grading undertaken by all of Congo's government departments. This corresponds more to managing a civil servant's career path than appraising a person's skills and performance. Qualitative evaluation, and the monitoring of planning and activities, reduces the possible impact of individual influence over the work and encourages staff to focus on achieving the task in question. It enables line management relations to be improved by assuring each official that his evaluation does not depend solely on his immediate superior.

As important as rewarding high-performing staff is the need to apply administrative sanctions that are sufficient to dissuade staff who have not done their job properly or who are suspected of collusion, of serious misconduct, or of moral or ethical breaches.

Effective forest law enforcement depends on a combination of human, technical and financial factors. Weaknesses in any one of these can seriously compromise this objective. IM-FLEG noted that forest law enforcement in the DRC is weak in all of these areas. The OPJs are insufficient in number, badly trained and in many cases lack an absolute minimum of resources with which to carry out their duties (IM-FLEG had to cover the costs of the four joint missions conducted with the DVCI). This vulnerability undermines both enforcement procedures and OPJs, and is likely to compromise the objective of combating illegal logging. By way of a solution, IM-FLEG has proposed capacity building on law enforcement and respect for legal proceedings through training and refresher courses for the relevant staff, along with the production and application of a code of ethics and a system of incentives in this regard.

### 4.3 A judicial system eager for litigation

The judicial process is not sufficiently used to handling forest litigation,<sup>27</sup> while the out-of-court settlement procedures, supposedly preferred by the OPJs and forest offenders, is not being used<sup>28</sup>. In the few known cases that have been referred to court, the outcome was not systematically communicated to the forest administration which, in most cases, is a stakeholder in the conflict (see Graph 6).

**GRAPH 6: Handling of litigation resulting from the missions with the IM**



The IM was, on a number of occasions, faced with a lack of transparency in the forest litigation monitoring system. The OPJs should be actively contributing to the transparency of such litigation as they are obliged to rigorously document their work (see Box 7).

#### **BOX 7: Transparency of litigation**

The transparency of forest litigation is interpreted as referring to all the mechanisms put in place by the administration to handle litigation independently in order to produce reliable, accurate and exhaustive results that are both available and accessible. A monitoring system based on the documentation of infractions is thus necessary. Two kinds of document are provided for:

Legal documents:

- Forest law enforcement mission reports
- The PV as an official statement of offence
- PVs relating to the implementation of precautionary measures (stop work orders, seizures, holding of seized items...)
- The PV as an out-of-court settlement and the technical note, as appropriate
- The general records of the department responsible for forest law enforcement (DCVI)
- The individual records of the OPJ

Documents relating to the internal monitoring system:

- The forest infraction monitoring sheet
- The out-of-court settlement monitoring sheet
- The register of forest infractions describing how the infractions noted over a given period were handled (to be published widely on a periodic basis)

The OPJ often prefer not to send litigation files to court, allegedly so that they can retain control over the follow-up to the case. They thus demand that the offenders pay them “out-of-court fines” directly. This practice, akin to corruption, is in complete violation of the existing law and prevents the justice system from operating normally.

<sup>27</sup> Briefing Note No. 3 on statements of offence, IM-FLEG DRC, June 2012, [www.observation-rdc.info](http://www.observation-rdc.info)

<sup>28</sup> Briefing Note No. 6 on out-of-court settlements, IM-FLEG DRC, November 2012, [www.observation-rdc.info](http://www.observation-rdc.info)

Depriving the court system of cases in this manner is highly detrimental given that, despite significant loopholes, there are positive aspects to the existing regulations (see Box 8) as they provide, in particular, a range of enforcement measures adapted to each party.

### **BOX 8: Improving the system of sanctions**

The DRC's system of sanctions for illegal activities in the forest sector is in part deficient. From a purely regulatory point of view, the following can be observed:

**Positive points:**

- The existence of regulations that make the application of strict administrative sanctions on operators possible, extending as far as the withdrawal of an operator's title for failure to meet their tax, environmental or social obligations;
- The existence of disciplinary sanctions for administrative officials guilty of misconduct in the exercise of their duties.

**Negative points,** the system of financial penalties seems largely inappropriate:

- No basis is provided for the calculation of damages and interest;
- The amount of fines is still systematically under-estimated due to a calculation error in the conversion to 'franc constant';
- The fines previewed in the texts are relatively low in value.

The same infraction may take on very different proportions within the forest sector. While a fine is generally intended as a sanction, losses must normally be redressed via the payment of damages. And yet the lack of a methodology for calculating damages within the Congolese forestry regulations creates a permanent risk that those guilty of significant forest infractions, such as illegal felling on a large scale for example, will incur financial penalties that are a fraction of the profits they may already have made on the operation.

*A specific briefing note analysing fines and damages is available online at [www.observation-rdc.info](http://www.observation-rdc.info)<sup>29</sup>*

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<sup>29</sup> [www.observation-rdc.info/documents/Note\\_DI\\_OIFLEG\\_RDC\\_REM\\_5\\_2012.pdf](http://www.observation-rdc.info/documents/Note_DI_OIFLEG_RDC_REM_5_2012.pdf)

## 5 PREPARING FOR FLEGT

### 5.1 Gaining the trust of the government partner

Despite the efforts made to improve the forest sector, illegal logging remains one of the country's main forest governance problems. In order to respond to this, and strengthen measures aimed at combating the illegal logging of forests and its associated trade, the DRC has entered into negotiations with the European Union with a view to signing a Voluntary Partnership Agreement on forest law enforcement, governance and trade (VPA-FLEGT).

**PHOTO 2: The DCVI and IM on a field mission<sup>30</sup>**



The IM-FLEG initiative has been aimed at improving the institutional framework, as a precursor to implementing a VPA to be negotiated within the EU FLEGT process. The IM project has focused on governance both at the level of forest law enforcement and in terms of the detection and suppression of forest infractions. The aim is to ensure that the information gathered by IM-FLEG is made available to governments prior to the allocation of permits (so that corrective action can be taken), and to the auditing body before it undertakes its spot checks. Through IM-FLEG, the Congolese government may establish a climate of trust with its partners prior to signing the agreement.

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<sup>30</sup> Joint mission of the DCVI and IM to Nteno, Bandundu Province

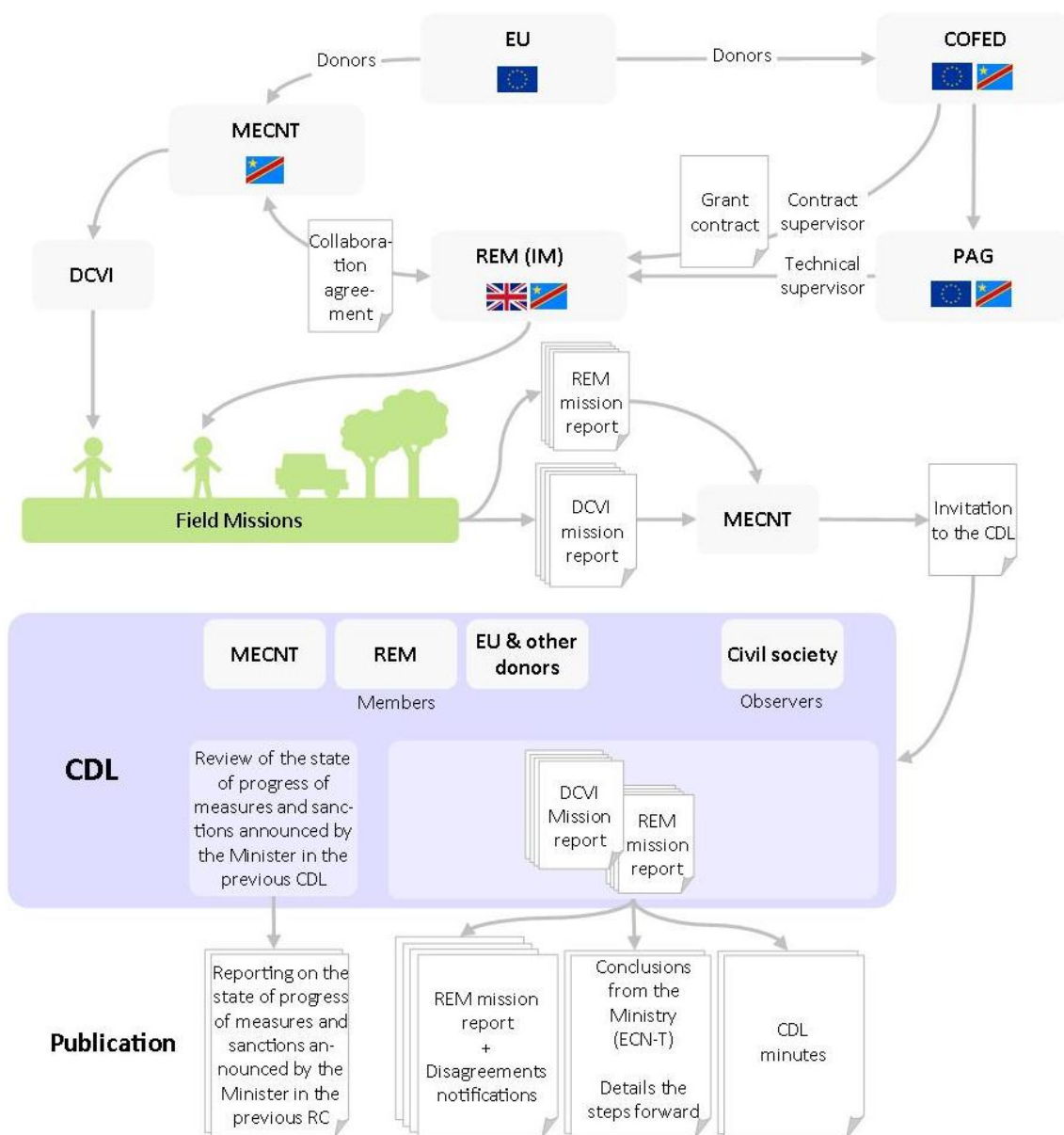
## 5.2 Independent monitoring in the institutional landscape

According to the DRC's forest regulations, the IM is a stakeholder in forest law enforcement aimed at ensuring its credibility: it therefore takes part in forest law enforcement missions. Nonetheless, the context within which its mission reports are considered was a limited one. IM-FLEG has thus called on this framework to be revised by ministerial decree, ensuring that it is opened up to the technical and financial partners, and national civil society.

### Establishing an open reading committee for the IM: a major project outcome

The IM-FLEG's mission reports are examined in accordance with the new MECNT Order<sup>31</sup>, prior to being published.

FIGURE 7: The process of drafting and discussing mission reports



<sup>31</sup> N° 32/CAB/MIN/ECN-T/10/BNME/012 of 16 October 2012 amending and completing Ministerial Order No 102/CAB/MIN/ECN-T/15/JEB/09 of 16 June 2009 establishing the rules and formalities of forest law enforcement

A considerable delay (12 months) was observed between the submission of the first mission report and the holding of the first Reading Committee; the reason for this was MECNT's initial reticence to include civil society and the technical and financial partners in the committee in order to encourage the necessary transparency.

### **BOX 9: Delays in holding the Reading Committee**

The IM's Terms of Reference provided for a Reading Committee to consider its mission reports that would be open to civil society and the donor community. The IM began to press the Ministry regarding the establishment of a Reading Committee on its return from its first mission, at the start of August 2011. A draft decree establishing the Reading Committee was officially sent to the Ministry but, in October 2011, a meeting held under the authority of the Cabinet Director ended in disagreement, with the Minister refusing to agree to the presence of civil society or the donors in the Reading Committee, despite the Terms of Reference adopted by that same Ministry at the projects inception.

Actions aimed at opening up the Reading Committee intensified throughout 2012. The IM made further requests to the Ministry. Awareness raising work was also conducted with the bilateral donors. In particular, a formal request for inclusion on the Reading Committee was made by the Norwegian Embassy on 15 March 2012. Alongside this, further meetings were held with the Cabinet and the Minister. On 19 April 2012, the outgoing minister asked his cabinet to undertake a review of Decree 102 in this regard. The Minister left his post two weeks later and the work was not completed. During the IM meeting of 17 and 18 June 2012 "Outlook - Prospects", all the partners (EU, World Bank, civil society, GIZ, DGF and DIAF directors, etc.) were again informed and questioned, as was also the case during a "Green Roundtable" meeting involving those responsible for the technical side of the forest programmes, on 3 June 2012. The transition to, and finally the arrival of, the new Minister was a long process. On 11 May 2012, the PAG made a formal request to the new Minister to open up the Reading Committee. Finally, on 3 August, a meeting with the new Minister ended in a new commitment to open up the Reading Committee. On 17 September 2012, the IM was contacted by legal advisors of the Ministry in order to comment on a draft decree aimed at opening up its membership. On 16 October 2012, the draft decree opening up the Reading Committee's membership was finally adopted and a meeting took place in December 2012.

Quite apart from being detrimental to the operationalisation of the IM approach, the long disagreement over this transparency issue called into question the functionality of the IM approach in the DRC. Especially when compared to the same approach as implemented in other countries of the region.

The five mission reports produced by IM-FLEG DRC were thus examined by the ad hoc committee, open to the technical and financial partners and national civil society as observers, on 3, 5, 7 and 14 December 2012 and were then published, in accordance with REM's Terms of Reference and above-stated Decree 032.

Moreover, the discussions during the meetings to examine the IM's reports have enabled the committee members to gain a better understanding of the work of the IM and its importance in the context of combating illegal logging. These reports should enable the MECNT, as was highlighted by the EU delegation in the DRC (as technical partner on this committee), to understand the outside view with regard to how MECNT is fulfilling its role, to obtain objective information on widespread situations of illegality, e.g. the misuse of artisanal logging permits, and to promote improvements in the legal framework for forest exploitation.

Following its examination of the reports, the ad hoc committee made recommendations and suggested measures and actions to be taken with regard to the administrative failings and governance problems as observed by IM-FLEG REM over the course of the last two years. Its conclusions were published, along with the measures actually taken to improve the governance situation, on the IM site.

As a framework for an open exchange, the Reading Committee enables transparency of communication and management of forest exploitation to be evaluated. It is one of the basic elements of independent monitoring as implemented by REM.

*All the mission reports are available online via [www.observation-rdc.info](http://www.observation-rdc.info)*

## 5.3 Future role of civil society in IM

### Civil society involvement

Within the context of its mission, IM-FLEG's mandate has evolved, now offering Congolese civil society an opportunity to reflect on how it views the future of IM in the DRC. This is also in line with the donors' apparent ongoing desire to increase civil society's ownership of IM-FLEG.

A workshop was organised by REM on 13 and 14 September 2012 to reflect on a strategy<sup>32</sup> to achieve this end and to develop a roadmap. This meeting was facilitated by Réseau Ressources Naturelles (RRN)<sup>33</sup> and involved around 30 representatives from Congolese CSOs, selected for the links in their work to that of the IM. On the basis of a study prepared by an independent consultant, a team was established to validate civil society's strategy.

#### PHOTO 3: National civil society consultation workshop on the strategy for independent monitoring



A committee comprised of national CSO representatives was organised in January 2013 to finalise civil society's independent monitoring strategy for forest law enforcement and governance in the DRC, at which activities for the coming year were prioritised. A platform for discussion was also established. This working group voiced a wish to include their work in the civil society VPA-FLEGT negotiating platform.<sup>34</sup>

The CSOs decided to focus on the following actions for 2013:

- Training for those who need it (capacity building in IM: social and legal aspects, along with the rules of forest exploitation);
- The conducting of the first missions for those who did not need training;
- One or more partnership agreements between the CSOs to coordinate the IM's activities;
- An annual evaluation meeting.

Through this process, REM has supported the establishment of the necessary conditions for civil society to independently develop its own strategy towards a future IM framework. This approach will encourage ownership of the strategy on the part of Congolese civil society.

In REM's experience, the success of IM depends on developing an approach to which the government is truly committed. REM notes that this dimension of engagement with the government has not been clearly considered in the proposed strategy.

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<sup>32</sup> [www.observation-rdc.info/Rapports.html#8](http://www.observation-rdc.info/Rapports.html#8)

<sup>33</sup> [www.observation-rdc.info/documents/RRN\\_atelier\\_OI\\_2012.pdf](http://www.observation-rdc.info/documents/RRN_atelier_OI_2012.pdf)

<sup>34</sup> [www.observation-rdc.info/documents/Validation\\_Strategie\\_OI\\_2013.pdf](http://www.observation-rdc.info/documents/Validation_Strategie_OI_2013.pdf)

## The future of IM

Alongside the activities described above, REM has been able to directly contribute to the training of local specialists in independent monitoring. Staff from Congolese civil society, notably two legal advisors and two forest engineers, have participated in all of the IM's activities. Apart from the necessary technical and legal expertise, these staff have also been made aware of the issue of responsibility, and thus the professionalism necessary for implementing IM with a "mandate" from the government. Eager to capitalise on this unique experience, these individuals have taken the initiative to set up their own organisation (see Box 10):

### BOX 10: Observatoire de la Gouvernance Forestière (OGF)

OGF in the DRC is a civil society organisation legally-constituted in the DRC and established in September 2012 by the local staff of the IM-FLEG project implemented by REM. It was created in the context of efforts to sustain the concept of Independent Monitoring by handing it over to national civil society at the end of the two-year project. OGF hopes to conduct its activities throughout the DRC.

OGF intends to contribute to improving forest governance through the effective enforcement of existing legislation and regulations aimed at sustainably managing the DRC's forests. Apart from its main objective of developing and conducting monitoring of forest resource management and exploitation, OGF intends to support and accompany the implementation of the voluntary partnership agreements (VPA) and REDD+ issues on the one hand, and to disseminate information and make relevant recommendations to the competent authorities aimed at correcting bad forest exploitation practices, on the other. The main anticipated activities are:

- Regular publication of thematic notes on forest governance;
- Monitoring of forestry activities;
- Producing an Annual evaluation of forest governance.

There is a considerable momentum to establish IM in DRC, especially where this is conducted by civil society. Throughout the Congo Basin as a whole, however, most national CSOs still lack the necessary technical expertise, and require capacity building to ensure that the IM can be effective and credible. Some in the FLEGT community have concerns about the CSOs' capacity to implement credible and objective IM actions.

The implementation of credible IM does, in fact, require multiple areas of in-depth expertise, including:

- Experts with specific training (e.g. lawyers, foresters) and solid experience;
- Several years of on-the-job training, in addition to participation in workshops organised by REM in the region;
- A strong research and analysis capacity, along with in-depth management and data cross-checking skills;
- Knowledge of different software programmes (e.g. GIS, Word, Excel) for complex cross-checking and presentation of data;
- An excellent understanding of the national, regional and international issues and processes;
- An ability to communicate with various actors, including government representatives, the private sector, civil society and donors;
- A good management and administrative capacity, given the complexity of logistics for field missions, the significant risks and costs of the activities, managing the precision required in reporting.

In the past, this expertise was shared between the national and international team members; however, a process of handing over to experts in the sub-region has been implemented by REM over the past decade.

In order to meet this need for complex technical and strategic support in IM, a sub-regional organisation called the Field Legality Advisory Group (FLAG) has been established. National civil society organisations in the region wanting to conduct IM will thus benefit from the necessary technical capacity available through

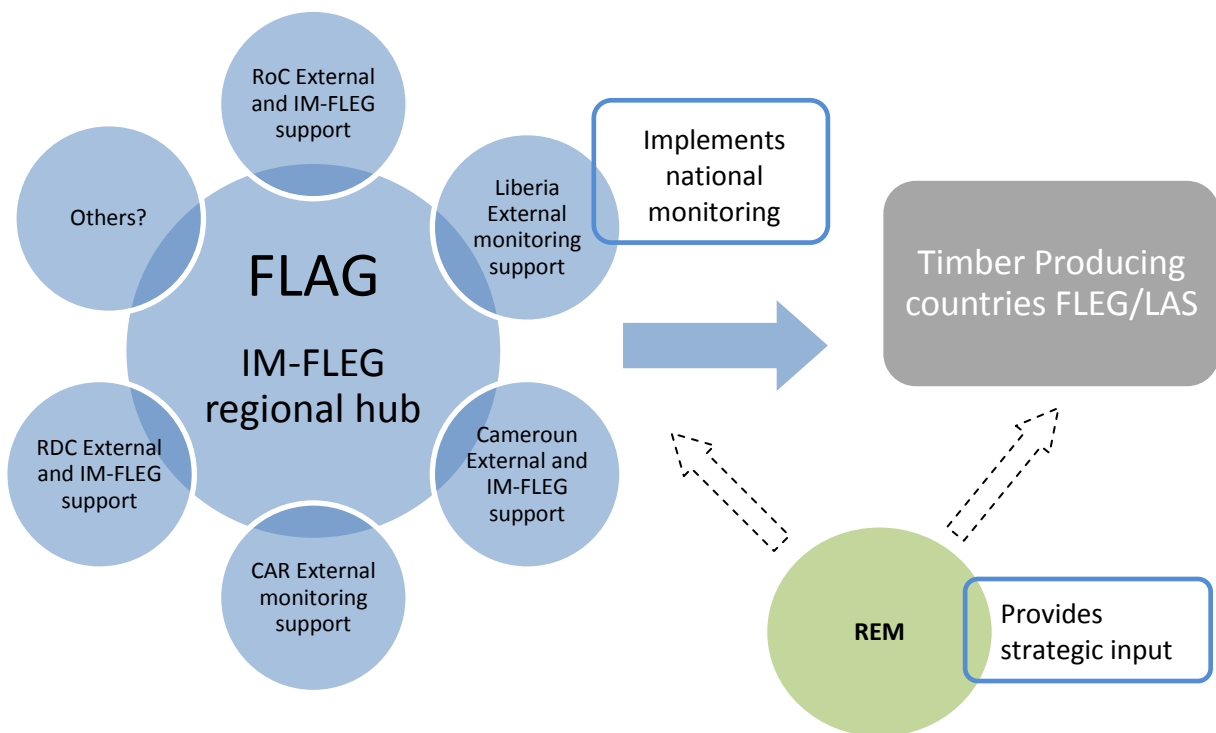
FLAG. Quality control of the IM conducted by the CSOs and a link between the initiatives will also increase the reliability of information emerging from the IM, enabling its use by FLEGT actors.

**BOX 11: Field Legality Advisory Group (FLAG)**

The **Field Legality Advisory Group (FLAG)** is a sub-regional NGO specialising in the promotion of transparency and good governance in the forest sector. FLAG was created and established with REM’s support in the context of a restructuring of the Technical and Financial Partners’ intervention in the countries of the Congo Basin. FLAG’s aim is to sustain the approach and concept of IM-FLEG as developed by REM.

The approach is intended to be innovative in the sense that it links the capacity building of different stakeholders with the public dissemination of reliable and objective information on respect for and enforcement of the forestry laws in Africa. FLAG comprises forestry and legal experts who have pioneered IM in Africa as staff of REM and its partner organisation, Forests Monitor, two British NGOs which, for more than a decade, have been implementing IM-FLEG projects in Cameroon, the DRC, the Congo and elsewhere.

The diagram below previews a higher IM-FLEG involvement from a regional organisation, a closer interaction with national monitoring CSOs, and a reduced, more global and strategic input from REM. This arrangement represents a significant shift of responsibility from REM, a northern based organisation, to regional and national players.



**PHOTO 4: The IM on a joint mission with the DCVI in Equateur Province**



## 5.4 IM opinion on the challenges facing the DRC in relation to the VPAS

In October 2010, the DRC embarked on a process of negotiating a Voluntary Partnership Agreement with the EU. For a number of reasons, this process ground to a halt between September 2011 and August 2012, which meant that the deadlines for achieving some of the activities anticipated in the indicative roadmap drawn up during the first negotiating session in February 2011 had to be extended. Given this significant delay, it is unlikely that the DRC will be ready by March 2013, or even that it will be possible to verify the legality of the country’s wood by that date, which is when the EU Timber Regulation (EUTR) comes into force, restricting the import of wood onto the European market.

**FIGURE 8: Timetable for the VPA in the DRC**



See Annex 4 for more details

The most significant obstacles to signing an agreement are to be found not so much in the negotiation process itself but rather in relation to the institutional and legal context in which forest exploitation is conducted in the DRC. The administration continues to use transitional arrangements that contradict the 2002 Forest Code, thus maintaining a two-tier system which makes the design of a reliable legality matrix and a real system of traceability for artisanal wood, in particular, very difficult (see Box 10 below).

**BOX 122: Artisanal logging's access to the international timber market - a key issue to be decided by the VPA<sup>35,36</sup>**

Timber coming from artisanal logging is likely to be exported. In any case, the forestry law does not ban this and, although it is not explicit in this regard, it does give favourable signals with regard to exporting the products obtained through an artisanal felling permit.

The regulations permit an artisanal logger to request and obtain an authorisation to export timber in the same way as an industrial logger or any commercial operator. According to the Law, artisanal loggers, who are of necessity duly accredited national operators, are subject to the same obligations as those running operational processing units. These latter are required to export no more than 30% of their total annual production.

This export of artisanally logged timber raises several problems, the main one being the lack of a national forest policy. The widespread illegality that is taking place within artisanal forest exploitation represents a real risk for the VPAs but, paradoxically, with this great export opportunity, legal artisanal logging could itself become a threat to the country's forests. The current state of regulations in this sector meaning there could be little managed exploitation.

It is difficult to ensure the traceability of wood in the DRC because of a failure to control national and cross-border flows of timber and related products. The physical chain of custody is defective, and so the origin of the timber is not always known. Moreover, there is no control over the issuing of logging authorisations, which takes place under flagrantly irregular conditions. The production of a legality matrix and an effective system of traceability is thus proving extremely difficult for the Congolese government. Tools produced in such a context would present the risk of being disconnected from the reality, non-operational and inappropriate to the implementation of any potential agreements (see Box 11).

**BOX 133: The risks of bad VPAs enforcement**

The Voluntary Partnership Agreements (VPAs) offer a great opportunity for the DRC. They should enable support for a set of reforms that will be very useful in what is still a deficient forest sector. With just a few months to go before the entry into force of the EU Timber Regulation (EUTR) banning the entry of illegally-sourced timber onto the European market, reforms are essential to ensure that the export timber sector is able to respond as needed to the demands of the Congolese law and its implementing regulations.

The IM has noted that the logging sector is marred by illegalities right from the very first stages in the process (planning and purchase of titles and permits, for example). In the strict sense of the law, even when a permit is issued by the competent authority, it remains invalid unless all of the conditions prior to its acquisition were duly met. In addition to the logging companies' bad practices, legislative loopholes and breaches committed by the administration are ever-present elements of illegality in the DRC's forest landscape and should, as such, be fully considered in the VPAs.

Finally, a question arises here (as in other exporting countries) as to the political weight the VPAs will carry on 3 March 2013 when the EUTR enters into force. As of that date, without ratified VPAs, it will be the European importers who will be legally responsible for proving the legality of their wood, via a process of "due diligence". Unless adjustments are made to the VPA strategy, this situation risks reducing the need - and thus the will - of the government to pursue the necessary forest sector reforms and governance improvements.

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<sup>35</sup> Art 11 para 3, Decree 0011 of 2007 regulating the authorisation for industrial logging and authorisations to purchase, sell and export timber.

<sup>36</sup> Art 109 of the CF

The DRC's commitment to the VPA is justified by the fact that they offer an important opportunity for trade and a chance to rectify or correct the failings in the existing forest management system.

The agreements, once signed, will commit the two parties to the trade in wood from legal sources between the DRC and the European Union.

For the DRC, the national mechanism therefore needs to be strengthened not only so that it can achieve its own national forest policy objectives but also so that it can fulfil its future obligations resulting from the bilateral agreement. As this report has shown, this will need to result in improved forest governance, establishing a rigorous system of surveillance and policing of forest exploitation, in synergy with the essential needs of sustainable development. This system will need to have been previously established in the context of a forest policy produced with the involvement of all actors, and particularly the local communities.

## 6 CONCLUSION

### 6.1 Challenges and recommendations

The extent of the legal, technical and political problems facing the DRC's forest management are considerable, and a large number of recommendations have therefore been made in relation to the situations observed over the course of the project. These recommendations identify concrete actions that can be taken by the authorities. Specifically, REM has identified 34 priority recommendations:

TABLE 6: Recommendations and priorities

		Order of priority of recommendations		
		 1st priority	 2nd priority	 3rd priority
Short term	1	Take regulatory action to clarify artisanal logging procedures		
	2	Establish an artisanal logging licence price		
	3	Stop issuing ACIBO to industrial operators with converted titles		
	4	Take regulatory action to establish a damages and interest methodology		
	5	Stop assigning PCB to companies		
	6	Strictly follow the procedure for starting litigation		
	7	Strictly follow the procedure for forest transactions		
	8	Calculate fines correctly		
	9	Transmit official notifications of infractions within time delays		
	10	Stop assigning ACIBO without proof of area tax payment from the past year		
	11	Calculate the area tax on a correct basis		
	12	Calculate the logging tax correctly		
	13	Put in place a regulation to establish a firm deadline beyond which any convertible titles that have not been converted will automatically return to the State		
	14	Establish a simple database on forest litigation cases		
	15	Take measures to end the regulatory inconsistency in the reforestation tax calculation		
	16	Validate and print new infraction notification (PV) forms matching the Forest Code		
	17	Take measures to end the regulatory inconsistency regarding the MECNT export sites issue		
	18	Systematically control the technical standards on logging sites		
Mid term	19	Put in place regulations to define the procedures for granting concessions to local communities		
	20	Take regulatory action to define local communities concessions operating procedures		
	21	Redefine export timber procedures (repeal of Decree 011)		
	22	Print operating documents and make them available and free of charge to operators		
	23	Produce forest allocation maps		
	24	Communicate openly and regularly all the forest administration information (operating data, export control, litigation)		
	25	Apply the logging tax to the industrial wood production		
	26	Adopt and implement the forest control procedures guide book		
	27	Apply the required disciplinary actions to administrative officials guilty of misconduct		
	28	Take regulatory action to establish the deforestation permit tax rate		
	29	Observe the legal forest control frequency		
Long term	30	Take regulatory action to define and organize forest zoning		
	31	Define the national forest plan		
	32	Put in place the conditions to upgrade APJs to OPJs		
	33	Adopt logical and transparent measures to better organize the work between the different structures involved in forest management		
	34	Align the Forest Code with the 2006 Constitution		

As Table 6 and Figure 9 below show, most of the recommendations could be implemented in the short term. These relate above all to changes in practices that could be immediately applied and which require political will rather than financial resources.

**FIGURE 9: Timeframe for priority recommendations**

Recommendation number <b>1</b>	Priority of the recommendation (see Table 6)		
	<span style="color: red;">●</span> 1st priority	<span style="color: orange;">●</span> 2nd priority	<span style="color: yellow;">●</span> 3rd priority
	Timeframe to implement the recommendations		
Themes of the recommendations	Short term	Medium term	Long term
Harmonise the 2002 Forest Law with the Constitution			<span style="color: yellow;">●</span> 34
Complete and harmonise the regulation texts with the Law	<span style="color: red;">●</span> 1 <span style="color: red;">●</span> 2 <span style="color: red;">●</span> 6 <span style="color: red;">●</span> 7 <span style="color: red;">●</span> 9 <span style="color: red;">●</span> 12 <span style="color: red;">●</span> 13 <span style="color: red;">●</span> 15 <span style="color: red;">●</span> 17 <span style="color: red;">●</span> 18	<span style="color: red;">●</span> 19 <span style="color: orange;">●</span> 28 <span style="color: orange;">●</span> 29	<span style="color: red;">●</span> 30 <span style="color: red;">●</span> 31
Harmonise administrative practices with the Law and the regulation texts	<span style="color: red;">●</span> 3 <span style="color: red;">●</span> 5 <span style="color: red;">●</span> 8 <span style="color: red;">●</span> 10 <span style="color: red;">●</span> 11 <span style="color: red;">●</span> 14	<span style="color: red;">●</span> 22 <span style="color: red;">●</span> 23 <span style="color: orange;">●</span> 27	
Improve the regulation to 'normalize' the forestry sector operations and management	<span style="color: red;">●</span> 4 <span style="color: orange;">●</span> 16	<span style="color: red;">●</span> 20 <span style="color: red;">●</span> 21 <span style="color: red;">●</span> 25	
Improve internal procedures to allow the forestry sector to respond		<span style="color: red;">●</span> 24 <span style="color: orange;">●</span> 26	<span style="color: orange;">●</span> 32 <span style="color: orange;">●</span> 33

Implementation of these recommendations also depends on the degree to which the different stakeholders take responsibility for forest resource management. The Minister for the Environment, Nature Conservation and Tourism has the greatest responsibility in this regard (see Table 7). MECNT must therefore promote reforms and adjustments favourable to improving the sector. Among others, an awareness of the consequences of the different authorities' actions on forest exploitation must be developed.

**TABLE 7: Responsibilities for implementing different recommendations**

	MECNT				Presi- dent	Prime Minis.
	Minis.	DGF	DIAF	DCVI		
<span style="color: red;">●</span> 1						
<span style="color: red;">●</span> 2						
<span style="color: red;">●</span> 3						
<span style="color: red;">●</span> 4						
<span style="color: red;">●</span> 5						
<span style="color: red;">●</span> 6						
<span style="color: red;">●</span> 7						
<span style="color: red;">●</span> 8						
<span style="color: red;">●</span> 9						
<span style="color: red;">●</span> 10						
<span style="color: red;">●</span> 11						
<span style="color: red;">●</span> 12						
<span style="color: red;">●</span> 13						
<span style="color: red;">●</span> 14						
<span style="color: orange;">●</span> 15						
<span style="color: orange;">●</span> 16						
<span style="color: yellow;">●</span> 17						
<span style="color: yellow;">●</span> 18						
<span style="color: red;">●</span> 19						
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<span style="color: orange;">●</span> 26						
<span style="color: orange;">●</span> 27						
<span style="color: yellow;">●</span> 28						
<span style="color: yellow;">●</span> 29						
<span style="color: red;">●</span> 30						
<span style="color: red;">●</span> 31						
<span style="color: orange;">●</span> 32						
<span style="color: orange;">●</span> 33						
<span style="color: yellow;">●</span> 34						

## 6.2 Outlook

Despite the efforts of the Congolese state, it is taking time, perhaps too much time, for real progress to be made, as can be seen in the delays in converting former titles into forest concession contracts. In the absence of any transitional measures, this *status quo*, which is favourable to the old practices, plunges forest management in the DRC into a situation of widespread illegality.

The aspirations that were expressed when the 2002 Forest Code was enacted – sustainable forest resource management, job creation, poverty reduction and general development – remain only a vision. It is true that the MECNT suffers from a real lack of funding and training but a strong political will would enable it to more effectively implement the provisions of the Forest Code, turning it firmly in the direction of a sustainable management of the forest sector (see Box 12).

### BOX 14: An opportunity to be seized

The DRC has experienced many years of conflict which have left its forests, and their related policies, in a chaotic situation. Forest titles that were allocated under previous regimes have been logged under conditions that are completely lacking in transparency or accountability. The country's forests, estimated at 135 million hectares, represent 50% of Africa's rainforest and 7% of the world's tropical forests. Despite the pressure on the DRC's forests, the level of deforestation remains fairly limited in comparison with global statistics, and the DRC now has an unprecedented new opportunity to balance an equation that has defeated others:

- Conserving its biodiversity over very large areas;
- Guaranteeing community rights;
- Creating wealth, jobs and strong tax revenues with which to drive development.

The experiences of other countries in the sub-region indicate that, in the absence of a strict framework for forest exploitation and a lack of control over the sustainability of their management and its economic and social consequences, opening up the forests to industrial logging can lead to considerable forest degradation and deforestation. The DRC has an opportunity to avoid the traps that some other countries have fallen into, and this at a time when several donors and programs, including VPA FLEGT and REDD+ for example, might support the reforms necessary. It is thus important to encourage national decision-makers and international community representatives to find effective political solutions because, if not, the DRC's forests will be destined to follow the same path as those of previously forested countries, where the forests have been progressively degraded and converted.

In its preamble, the Forest Code states the desire of the legislators to enable "the forest administration to contribute substantially to national development, and the local populations to participate actively in forest management in order to draw legitimate benefits". In order to implement this vision and enable the Congolese state and people to truly benefit from the forests, the DRC will need to scrupulously observe the spirit of the Forest Code with regard to development and poverty reduction by:

- Ensuring that operators respect the social terms and conditions;
- Combating illegal forest exploitation by giving priority to the 3 preparatory themes in the FLEGT VPA ;
- Developing a system of reliable statistics on the production and payment of taxes;
- Guaranteeing dissuasive enforcement penalties, including a litigation monitoring system.

# ANNEXES

## ANNEX 1: Recurrent infractions - Details

	Recurrent illegalities	Violations	Dept. Responsible						Opera-tors	
			Min. ECNT	DFG	DIFMP	DCIV	NFF	Coord	Prov.	Industrial
1	WLP (Wood Logging Permit) assigned to corporations	Art 8 order 035								
2	ITLA (Industrial Timber Logging Authorisation) allocated without evidences of area tax payment for previous year	Art 6 order 011								
3	ITLA assigned without evidence of payment of the annual forest allocation map fee	Art 6 order 011								
4	ITLA assigned to industrial loggers with converted titles	Art 6, 7, order 035								
5	Forest allocation maps not made	Art 6 order 011; art 73 FC								
6	Exploitation documents not made freely available to loggers	Art 50, 54, 60 order 035								
7	Wrong calculation of area tax	Art 121 FC								
8	Wrong calculation of logging tax	Art 1 Intermin. order 2010								
9	Forest law enforcement schedule not applied	Art 16 order 102								
10	Technical standards not checked	Art 3 order 102								
11	Litigation procedures violated	Art 133 FC; art 41 order 102								
12	Forest 'transaction' procedures violated	Order 104								
13	Notice of infraction (PV) transmission untimely	Order 102, 104								
14	Fines calculated using wrong method	Art 143 FC; art 11 order 104								

### Details

- 1 All together, in 2010, 2011 and 2012, 221 ALPs were assigned to companies (rather than individuals) against the law
- 2 The minister delivers ITLAs without evidence of payment
- 3 DFM accepts ITLA demands without checking area tax payment from the previous year
- 4 Industrial loggers with converted titles should be provided with ACPs instead of ITLAs
- 5 The forest allocation maps which are needed for the forest domain zoning are not available despite the payments made
- 6 Production and provision of operating documents (worksite books, travel permits, deposit slips) is not undertaken by the administration and seems to have been tacitly left to the operator
- 7 The calculation of the area fee is currently being calculated on the basis of the 'exploitable area' whereas this calculation must be based on the 'licensed area'
- 8 The rate currently applied to calculate the logging tax is \$2.5/m<sup>3</sup> for ordinary wood and \$5/m<sup>3</sup> for Wenge when the regulations require to apply a rate of 1.25% Ex Works/m<sup>3</sup> of the value of the species concerned
- 9 Few or no forest law enforcement missions are performed while the regulations require that the central government makes at least 4 missions per year
- 10 The law enforcement officers are usually restricted to the control of the legality of the logging permits and operating facilities while it is clear that compliance with technical standards is required too
- 11 Many irregular PVs are drawn, but not the legal PVs which are crucial as they allow a formal legal case to be opened
- 12 Irregular PVs of 'recovery' processes are often used by OPJs instead of PVs of official 'transaction' processes
- 13 PVs are not transferred on time to the public prosecutor's department. In practice, OPJs often go against the law as they don't transfer the cases to the public prosecutor's department once the offenders have paid transaction fines
- 14 The fines and D&I payments do not take into account the 'constant' value of the Congolese franc as required. In addition, the fines are also paid in USD as opposed to the currency specified in the law

## ANNEX 2: Regulatory loopholes - Details

Legal issues	Types		Logging		
	Gaps	Inconsistencies	Industrial	Artisanal	Local comm
1 Absence of regulation defining and organising forest zoning					
2 Regulatory inconsistencies in ITLA maximum size allocation					
3 Absence of regulation concerning the deforestation tax rate					
4 Absence of regulation to facilitate local community participation in forest management					
5 Absence of regulation in practical artisanal logging operations					
6 Absence of regulation for community forest operations					
7 Absence of regulation for timber exportation procedures					
8 Absence of regulation for applying logging tax to industrial concession's timber					
9 Inconsistency on the reforestation tax rate					
10 Absence of regulation for licensing artisanal loggers to operate					
11 Inconsistency on MECNT presence in exportation sites					
12 Absence of regulation for damages and interest calculation					
13 Absence of regulation for national forest planning					
14 Inconsistency between the Forest Code 2002 and the constitution from 2006					

### Details

- 1 Forest zoning is a requirement for the completion of the titles conversion process. It should result from the forest policy which is not yet defined
- 2 Current regulations on logging permits for industrial loggers are dualistic. They benefit ITLA holders to the detriment of converted titles holders, this should be corrected. There are no regulations limiting the number of ITLA (1 000 ha) that can be issued each year, while the ALP, which should concern converted titles holders are limited to an area equal to 1/25 of the concessions surface
- 3 The reforestation tax rate is not yet fixed. In addition, this tax is criticized and seems complicated to apply as it is linked to other ministries including those of agriculture and mining
- 4 Community forestry and community forest concessions are not yet possible because of the regulation gap
- 5 Several important aspects of the artisanal logging regulation are still lacking. It is necessary to further define the terms of the artisanal logging operation including defining tools/heavy equipment allowed for wood hauling
- 6 Practical operational terms for community forestry in community forests concessions are facing a regulatory gap
- 7 There is currently an urgent need to clarify the procedures for verifying timber export legality, including container packing rules
- 8 Logging taxes should be extended to forest concessions in order to apply a tax that takes into account the volume and the species exploited
- 9 There is an inconsistency in the regulation for calculating the reforestation tax: According to the FC the rate is equivalent to 10% of the reforestation cost per hectare but in practice, the administration uses an order from 2010. This order provides a 4% rate of the EWK value for logs (sawn wood not included) at export, and 2% EWK for Tola species
- 10 The artisanal logging licence is necessary to allow legal operations. However, at present, these licences should not be issued because of a regulatory gap defining the fee
- 11 The export tax cannot be correctly calculated as the regulations prevent access to the exportation sites by MECNT officers
- 12 The market value of the illegally harvested timber is not part of the pecuniary penalties calculation. This lack of proportionality between punishment and seriousness of the offense means that more serious cases are not discouraged
- 13 The national forest plan should define the general forest management guidelines (objectives and actions), but does not
- 14 The Forest Code should be harmonized with the 2006 Constitution to reflect more closely the principal of devolution

## ANNEX 3: Issues regarding the implementing regulations for the Law on Community Forestry – Details

GOAL		
Involve local communities in forest management		
BENEFITS	RISK	OUTLOOK
<ul style="list-style-type: none"> <li>Local communities are directly involved in forest resource management</li> <li>Communities ensure the good stewardship of their concession</li> <li>Reduce poverty through profits from their forest management</li> </ul>	<ul style="list-style-type: none"> <li>Inexperience of the communities in formal relations with third parties (contract negotiation)</li> <li>Grabbing of community concessions by third parties</li> <li>Possibility of laundering timber with community concessions documents</li> </ul>	<ul style="list-style-type: none"> <li>Establish a permanent system of collaboration between communities and the administration on the basis of free and prior informed consent</li> <li>Empower communities for all activities that take place in their concessions on the basis of contracts with third parties</li> </ul>

	EFFECTS		
	BENEFITS	RISK	OUTLOOK
<b>Delineate and define forest communities</b>	<ul style="list-style-type: none"> <li>Better description in the logging areas for both local communities and artisanal operators. Leads to better management in the artisanal sector</li> </ul>	<ul style="list-style-type: none"> <li>Overlapping requests between the industrial concessions and the local community concessions</li> <li>Inaccuracy of the limits requested by the communities</li> </ul>	<ul style="list-style-type: none"> <li>Accurate and final demarcation of the assigned areas for logging (local communities, industrial and artisanal). Resulting in improved forest management planning and allocation. Long term conflict reduction</li> </ul>
<b>Regulation of logging by local communities</b>	<ul style="list-style-type: none"> <li>Reducing the pressure on forest resources by the communities through the modernization of operating methods (management plan)</li> </ul>	<ul style="list-style-type: none"> <li>Difficulties for communities in becoming familiar with new management methods</li> </ul>	<ul style="list-style-type: none"> <li>Facilitate technically, legally and financially, concessions management by local communities</li> </ul>
<b>Establish the framework for dialogue within local communities</b>	<ul style="list-style-type: none"> <li>Organization of the communities into legal entities which have legal personality compatible with community management</li> </ul>	<ul style="list-style-type: none"> <li>Emergence of land conflicts, leadership, group membership and additional representation methods in the community</li> </ul>	<ul style="list-style-type: none"> <li>Lead the community to a representative organization, accountable to its members, and capable of managing a local community concession</li> </ul>
<b>Improve the living standards of local communities</b>	<ul style="list-style-type: none"> <li>Communities benefit directly from all the management of their forests and can self support or invest in local infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>Difficulties in managing income from forest activities</li> </ul>	<ul style="list-style-type: none"> <li>Frame legally and technically the fund management of local community concessions operations</li> </ul>
<b>Promote the sustainable use of forest resources</b>	<ul style="list-style-type: none"> <li>Development and implementation of forest management plans</li> </ul>	<ul style="list-style-type: none"> <li>Financial and technical inability of communities to meet their obligations related to the forest planning</li> </ul>	<ul style="list-style-type: none"> <li>Provide free long-term assistance for the development and implementation of the management plan</li> <li>Simplify the framework of management applicable to the local community concessions</li> </ul>

## ANNEX 4: Timetable for a VPA in the DRC - Details

Year	Month	Activities planned	Activities achieved
2011	2	1 <sup>st</sup> Negotiation session	First FLEGT Technical Commission meeting
	3		
	4		
	5	Video conference on legality grid (industrial logging)	Subcommittee work on the legality grid draft for the industrial operators
	6	Traceability system for industrial logging (Video conference)	Video conference with the EU on the observations of the first legality grid draft
	7	Legality grid (industrial/artisanal/community forests) ; Traceability system; Legality check; Products subject to authorization	
	8		
	9	Legality grid (industrial/artisanal/ community forests) Traceability system; Legality verification system evaluation criteria; Legality check; Products subject to authorization	Subcommittee work on the second version of the legality grid draft for industrial operators
	10	2nd session of negotiation; Legality grid (industrial/artisanal/ community forests) Traceability system; Legality check system evaluation criteria, Legality check: control procedures; Products subject to authorization; Articulation between the different components; Introduction to other annexes	Suspension of the Committee
	11	Legality grid (industrial/artisanal/ community forests) ; Preparation of field tests; Verification of Legality: Law enforcement procedures	
	12		
	2012	1	Legality grid field test
2			
3		Field test results and adaptation of the legality grid (industrial/ artisanal/community forests) (video conference)	
4		European checking procedures (import) and authorisations format; introduction to the text; Independent audit; additional measures including communication; Information made public (video conference)	
5			
6		Text; Legality verification System; Other annexes; Joint Committee; Implementation calendar	
7		3 <sup>rd</sup> session of negotiation	
8		Legality verification system	Designation new FLEGT VPA DRC focal point and technical committee meeting revival
9		Other annexes; Joint Committee; Implementation calendar	
10		Preparation of the Legality Verification System assessment (on paper)	Adoption of the legality grid for industrial operators. Development of the legality grid for arti-
11			
12		Legality Verification System assessment (on paper)	
2013	1	Results of the evaluation paper and adaptations	
	2		
	3		
	4	Finalisation of annexes; Preparation of the implementation agreement and initial agreement	
	5	Legal proofreading	
	6	Agreement signature	

## NOTES:

# LIST OF REM REPORTS ON IM-FLEG

AVAILABLE ON [WWW.REM.ORG.UK](http://WWW.REM.ORG.UK)

## Republic of Congo (Brazzaville) 2005-2013

Following the publication of **2 scoping reports by REM** (2005), an IM-FLEG project has been implemented by Forests Monitor ([www.forestsmonitor.org](http://www.forestsmonitor.org)) and REM (2006-2010). The second phase (2010-2013) is also implemented with the Cercle d'Appui à la Gestion Durable des Forêts (CAGDF), an OSC created by experts recruited by REM. OGF will pursue IM in partnership with Cameroonian CSO FLAG which operates at the regional level and is also composed of former REM IM experts.

Forests Monitor, REM and CAGDF published **11 annual and summary reports** on issues of governance and forest illegalities; **43 reports of field missions**, each covering between 1 to 6 forest titles and up to 13 logging companies for thematic missions; **5 regional workshop reports** for Congo Basin CSOs and **6 national workshops reports** for RoC CSOs on IM-FLEG; as well as **1 capacity building workshop** for the Anti-Corruption Observatory (OAC) and the National Commission for the Fight against Corruption, Extortion and Fraud (CNLCCF) in RoC on forest governance, **1 study on forest taxes** and **1 report** for the participation of local communities in the management of forest concessions in RoC.

## Democratic Republic of the Congo 2010-2013

Following the publication of a scoping report, an IM-FLEG project has been implemented by REM (2010-2013). The Congolese CSO OGF and Cameroonian CSO FLAG, with a regional scope, were created by REM experts to continue the IM approach.

REM published **2 annual reports** and summary notes and **7 thematic syntheses** on issues of governance and forest illegalities, the role of civil society in the FLEG and future; **4 field mission reports** on forest illegalities of operations at 21 sites; **1 analysis of forest legislation in the DRC** and **1 law enforcement procedures manual**; **3 national workshop reports** for CSOs on IM-FLEG in DRC; **1 proposed CSO strategy** for IM-FLEG; and **1 report on the feasibility of a Logging Vehicle Tracking System**. 1 REM report providing recommendations was also issued for the Observer of **old forest licenses conversion**.

## Cameroon 2005-2009

An IM-FLEG project was implemented by REM from 2005 to 2009. **20 interim and annual reports** were published on issues of governance and forest illegalities, **86 field mission reports BNC/REM** covering 1 to 30 forest titles each and on forest illegalities; and **5 independent field mission reports** on forest illegalities.

## Sri Lanka 2012

**3 REM reports** were published in 2012 on the application of IM-FLEG approach to fisheries, strengthening fisheries policy and the involvement of civil society in monitoring in Sri Lanka; and **1 mission report** was also released following an investigation on illegal fishing in Sri Lanka.

## Tanzania and Liberia in 2006, 2009, 2011

**3 scoping reports** were published by REM in 2006, 2009 and 2011 on the establishment of IM-FLEG projects and practical training workshops on IM-FLEG; and **1 pilot field mission report** was published following an investigation on forest illegalities in Tanzania.