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Illegal Logging in the Republic of Congo

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SUMMARY

Context

This paper presents an assessment of levels of illegal logging and related trade in the Republic of Congo, the state of forest governance, and the response from the government and private sector to the issue of illegal logging. Drawing on both primary research and secondary sources, the study examines the situation using a set of standardized indicators previously developed by Chatham House, including: an assessment of the country's policy framework and enforcement; an experts' perception survey; wood balance analysis; trade data analysis; assessment of media coverage; and an assessment of levels of certification and legality verification.

The forestry sector makes an important contribution to Congo's economy and is set to continue to do so, with 90% of the country's lowland forests designated for logging. Log production reached a record high in 2012; and although deforestation and forest degradation rates are low, they are rising rapidly.

Levels of illegal logging

The sector has serious governance problems and this is reflected in the estimated levels of illegal logging within Congo, which could be as high as 70%. There are two main types of illegal logging taking place in the country: 'informal', small-scale artisanal logging for domestic markets (estimated to represent 20% of all harvesting); and logging in breach of various regulations by large, licensed logging concessionaires. The Independent Observer of Forest Law Enforcement and Governance found breaches of regulations in every logging concession that it visited in 2011.

Currently, all logging exports from Congo should be considered 'high-risk' of being illegal, with the exception of those that have been independently verified as legal or certified sustainable. Around a quarter of the logging concession area in Congo has been independently verified as legal and/or sustainable under a voluntary third-party scheme. While this figure has remained about the same for the last six years, the proportion of log production that is verified has actually fallen.

Response to the issue

The Congolese government's response to illegal logging has been quite poor. Very few of the necessary policies and regulations needed to ensure good forest governance are currently being implemented.

There have been some recent improvements, however, with work under way to improve the legislative framework, chain of custody procedures, allocation of harvesting rights and transparency. The establishment of an independent monitor and the development and implementation of the EU Voluntary Partnership Agreement (VPA) have been the key drivers of this change. None the less, the situation remains very poor and a great deal of work will be needed before a VPA Legality Assurance System can become operational.

Those areas that are not yet being adequately addressed in reform efforts include enforcement of existing legislation, tackling corruption and improving legality in the artisanal sector.

Conclusions and recommendations

In relation to enforcement, it is essential that the government of the Congo steps up its efforts to collect forestry taxes. The higher revenues from improved tax collection should be used to increase

human and technical resources for monitoring and enforcing forest laws. Furthermore, penalties for forestry offences must be increased and fully applied so that they are genuinely dissuasive.

Efforts need to be made to 'formalize' the informal artisanal logging that is the principal supplier of timber to domestic markets in Congo.

It is likely that in the near future a large proportion of timber production in Congo will be from conversion of forests for oil palm. The first major project of this kind has already been found to be harvesting illegally. It is essential that sufficient attention is paid to conversion timber by the enforcement authorities, by importers and by the EU within the context of the VPA.

Congo and the EU must continue to work towards implementation of the Forest Law Enforcement, Governance and Trade (FLEGT) VPA, which has already brought improvements to the sector. However, they must recognize that it will take considerable time to do so effectively, and so the process should not be rushed at the expense of high standards.

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GLOSSARY OF TERMS

| | |
|----------|--|
| DGEF | Directorate-General of Forest Economy |
| EU FLEGT | European Union Forest Law Enforcement, Governance and Trade (EU programme on FLEGT) |
| LAS | Legality Assurance System (required as part of EU FLEGT VPA) |
| IM-FLEG | Independent Monitor of Forest Law Enforcement and Governance |
| RWE | Roundwood equivalent (a measure of timber volume, where actual volumes for different wood products are converted into a volume which represents the amount of logs required to produce them) |
| UFE | <i>Unité forestière d'exploitation</i> (logging concession) |
| VPA | Voluntary Partnership Agreement (bilateral agreement with the EU) |

BACKGROUND TO THE STUDY

Chatham House has developed a methodology and a series of standardized indicators for assessing illegal logging and related trade, and associated forest governance, in countries that produce, trade and consume illegally sourced timber. The indicators look at the nature and extent of the problem, the attention it receives, and the response by both the government and the private sector.

Twelve countries were assessed in 2008–09, including five producer countries (Brazil, Cameroon, Ghana, Indonesia and Malaysia). The results showed that illegal logging had declined in three of these countries (Brazil, Cameroon and Indonesia), but that it remained a serious problem in all of them. The results, published in 2010, have helped drive and target further efforts to tackle the issue.

During 2012–13 Chatham House extended the assessment to three new producer countries: the Republic of Congo, the Democratic Republic of the Congo (DRC) and Papua New Guinea. The indicators used to measure the situation in these countries include: a survey of experts; reviews of relevant media coverage; wood balance analysis to estimate illegal harvest volumes; analysis of discrepancies in trade data between exporter and importer countries; collection and analysis of enforcement and forestry tax data; collection and analysis of data on voluntary verification and certification by timber companies; and a detailed and structured assessment of the response of government, both in terms of policy and implementation. This report presents the findings for the Republic of Congo.

CONGO'S FORESTS AND TIMBER

The Republic of Congo (short form Congo), not to be confused with its larger neighbour the Democratic Republic of the Congo (DRC), is one of the world's largest rainforest nations. Congo has some 21.3 million hectares of dense forest – 65% of the land area, and more than one-tenth of the Congo Basin's total dense forests.¹ The forests are split between two areas: one in the north of the country; the other nearer the coast in the southwest. Congo has one of the largest tropical swamp forest ecosystems in the world, and has the highest gorilla densities of any African country. Although many Congolese now live in cities, the majority of the population still rely on the forest for their livelihoods.²

Like other countries in Central Africa, Congo has a relatively low recent historical deforestation rate compared with countries in Southeast Asia and Latin America, but the rate is increasing rapidly. The annual deforestation rate in 2000–05 was double the rate during the previous decade.³ Large-scale forest clearance for industrial agriculture is set massively to increase the deforestation rate in the near future.⁴

Large-scale industrial logging has existed in Congo for many years and has gradually expanded to cover the majority of the country's accessible forests. Almost 90% of Congo's lowland dense moist forests are now designated for logging,⁵ and logging is already ongoing in two-thirds of these areas⁶. This is a much higher proportion than is the case in other Congo Basin countries.⁷ Most

1 de Wasseige, C., *et al.* (2012): *The Forests of the Congo Basin: State of the Forest 2010*, Table 1.1.

2 Republic of Congo Forest Carbon Partnership Facility (FCPF), (2011): *REDD+ Readiness Preparation Proposal (R-PP)*.

3 de Wasseige, C., *et al.* (2012): *The Forests of the Congo Basin: State of the Forest 2010*, Table 1.2.

4 Rainforest Foundation UK, (2013): *Seeds of Destruction: Expansion of Industrial Oil Palm in the Congo Basin – Potential Impacts on Forests and People*, <http://www.rainforestfoundationuk.org/palmoilreport>.

5 Calculation by Chatham House using figure for lowland moist forest from de Wasseige, C., *et al.* (2012) *State of the Forest 2010*; and figure for total forest allocated for logging (Unité forestière d'exploitation – UFE) from WRI, (2011) *Situation du Découpage Forestière en République du Congo* (not counting UFE Oubangui Tanga, which is zoned for protection).

6 Based on areas of concessions allocated to logging companies that reported log production during 2011 (DGEF data for 2011, obtained and analysed by Chatham House).

7 Based on calculations from data on lowland forest and logging concessions in Congo Basin countries in *State of the Forest 2010*, Table 2.2.

forests in the south of Congo have been logged already and are now undergoing a second or third round of harvesting.⁸

Log production in Congo averaged around 0.6 million cubic metres per year during the 1990s, but doubled to 1.3 million cubic metres in the 2000s.⁹ The rate of forest degradation also doubled over the same period.¹⁰ Recent years have seen further increases in log production, with output in 2012 at the highest level in Congo's history.¹¹ Log production is set to increase substantially in the near future, as a result of conversion of a very large area of primary forest for oil palm¹² and as new logging concessions come on stream.¹³

Ten logging companies are responsible for around 90% of all licensed harvesting in the country¹⁴. About 60% of Congo's timber production is exported as logs and most of the rest is exported as sawn timber¹⁵. Very little secondary processing takes place within Congo. Although more than 80 species are harvested, two-thirds of the logs are of just two species: okoume (*Aucoumea klaineana*) and sapele (*Entandrophragma cylindricum*). The okoume is harvested in the southern forests, the sapele in the northern forests.¹⁶ China (60%) and Europe (25%) dominate the market for Congo's timber exports.

Congo's official Reducing Emissions from Deforestation and Forest Degradation (REDD+) Readiness Preparation Proposal (R-PP) of 2011 notes that unsustainable and illegal logging is a direct cause, both historical and current, of deforestation and degradation.¹⁷

Congo has had a donor-funded Independent Monitor of Forest Law Enforcement and Governance (IM-FLEG) in place since 2007. Congo has also signed a Voluntary Partnership Agreement (VPA) on Forest Law Enforcement, Governance and Trade (FLEGT) with the EU, which was ratified in 2011 and is currently under implementation.

It should be noted that while illegality is a serious problem in the forest sector in Congo, the IM-FLEG has also observed that even if logging was carried out completely within the law, much of it would still be unsustainable.¹⁸

8 FCPF, (2011): *R-PP*.

9 DGEF data for 1993–2012, obtained and analysed by Chatham House.

10 de Wasseige, C., *et al.* (2012): *The Forests of the Congo Basin: State of the Forest 2010*, Table 1.3.

11 DGEF provisional estimate for log production in 2012 (1.53 million cu m) is the highest for which records are available (1993–2012); given that the total logging area was much smaller prior to 1993, it is assumed that logging cannot have exceeded this earlier.

12 Rainforest Foundation UK, (2013): *Seeds of Destruction: Expansion of Industrial Oil Palm in the Congo Basin – Potential Impacts on Forests and People*.

13 Two logging concessions issued in 2010 and 2011 had yet to begin production in 2011 and are unlikely to have reached full production yet in 2012.

14 DGEF data for 2011, obtained and analysed by Chatham House. Taman, CIBN, ADL and SOFIL are treated as one combined company since their ultimate owner is the same.

15 DGEF data for 2011, obtained and analysed by Chatham House.

16 *Ibid.*

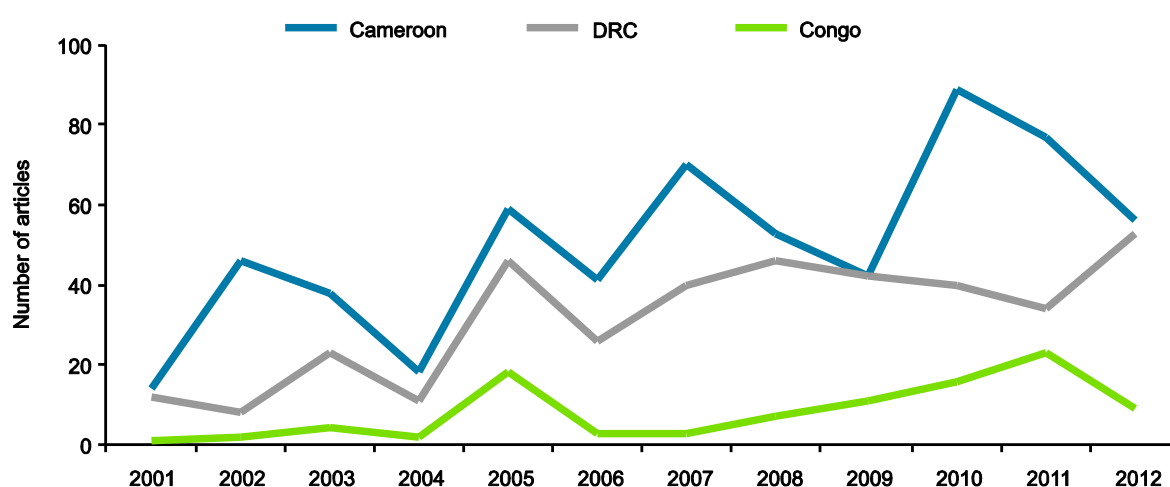
17 FCPF, (2011): *R-PP*.

18 REM, (2012): *IM-FLEG Republic of Congo, Annual Report*.

MEDIA ATTENTION

Illegal logging in the Republic of Congo has received much less attention internationally than it has in its neighbours the Democratic Republic of the Congo (DRC) or Cameroon (see Figure 1). In a typical year there are between five and 10 times more articles relating to illegal logging in the DRC or Cameroon than there are about the same problem in Congo. It is possible that part of this imbalance may reflect variations in the scale of the problem in each country. More likely is that the differences reflect varying attention on the part of donors and NGOs. The amount of coverage of the issue in Congo has increased in recent years, as a result of the exposure brought about by the negotiation and implementation of a FLEGT VPA with the EU. Coverage both within and outside Congo peaked around the time of the VPA agreement, and then declined in late 2011 and in 2012.

Figure 1: Coverage of illegal logging in Congo Basin countries in international English-language media, 2001–12



Source: Factiva.

Coverage within Congo during the period April 2010–March 2012 was also quite limited when compared with the level of domestic media attention to the issue of illegal logging seen in some other producer countries that Chatham House has examined. Studying coverage in one daily and one weekly newspaper, Chatham House found a total of 57 relevant articles over the two years (see Table 1). Most of the articles in 2010–11 related to the VPA, which was signed in that period. Most articles in 2011–12 also concerned efforts to tackle forest governance issues, including trainings and workshops. In both years most articles related to the response of the private sector were about the increased implementation of forest management plans by concessionaires, with the assistance of the French-funded *Projet d'Appui à la Gestion Durable des Forêts du Congo* (PAGEF).

While there was much coverage in the media about activities to tackle illegal logging and poor forest governance, there were no articles at all during the relevant period that discussed the problem itself – including its nature, scale and impacts. This is unusual in comparison with other producer countries studied. A likely reason may be a paucity of research and subsequent advocacy by NGOs. If the problems were well enough understood already, full political will obtained and all necessary actions under way, this would not be of much concern. However, the assessment of the government response (pp. 9-18) shows that this is not the case.

Table 1: Coverage of illegal logging in one daily and one weekly newspaper in Congo (number of relevant articles)

| Category | April 2010– March 2011 | April 2011– March 2012 |
|---|---------------------------|---------------------------|
| Extent, nature and impacts of illegal logging | 0 | 0 |
| Focus country government response (policies) | 13 | 7 |
| Enforcement | 3 | 4 |
| Focus country private sector response | 6 | 2 |
| Others/none of the above | 13 | 9 |
| Total | 35 | 22 |

Source: Review of online and hardcopy archives of *La Semaine Africaine*, a weekly newspaper, and *Les Dépêches de Brazzaville*, the country's only daily, by Chatham House consultant.

GOVERNMENT RESPONSE

Policy assessment

Chatham House uses a structured system for assessing the existence, design and implementation of those laws, policies and regulations generally considered necessary to minimize illegal logging and ensure good forest governance in high-risk countries. Around 50 policy areas are assessed and scored, gathered under 12 major headings. The assessment provides a baseline against which future progress can be measured. The results for each major heading are summarized below.

High-level arrangements

There has never been an official government review of the extent and nature of illegality in the forest sector in the Republic of Congo, but reports of the Independent Monitor (IM-FLEG) since 2008 provide a great deal of information and are endorsed by the Congolese government. Although there is no official action plan for tackling the problem, commitments contained within the FLEGT VPA signed by the government include a broad range of measures. There is no formal process in Congo for ensuring coordination among relevant government agencies on the issue; however, the Legality Assurance System (LAS) being implemented under the VPA does require increased coordination.

In the past, there was little or no multi-stakeholder involvement in decision-making on forests, but in recent years the VPA has changed this. The process of negotiation of the VPA involved systematic and meaningful multi-stakeholder involvement; and a joint working group, involving representatives from government, private sector and civil society, has been established to oversee implementation of the VPA, including revisions to forest legislation and regulation. The process has not been without difficulty, however. Civil society organizations recently voiced complaints about a lack of consultation on revisions to the Forest Code, for instance.

In terms of forest governance-related activity under the banner of REDD+, a UN-REDD programme for Congo was approved in late 2012. This includes a component for setting up systems to monitor 'safeguards', including monitoring forest governance, but there has been little progress in this regard thus far.

Legislative framework

Congo scored quite well in the Chatham House assessment in terms of the overall legislative framework when compared with other countries. Forest legislation is generally coherent and unambiguous, and forest laws are consistent with other laws affecting forests. The inconsistencies and gaps that do exist are currently being addressed as part of the EU VPA.

The Forest Code is currently being revised, partly in order to bring it into better alignment with a 2011 law on the rights of indigenous peoples. Various revisions to forest laws and regulations were promised as part of the EU FLEGT VPA, to allow for (among other issues) increased involvement of communities and civil society organizations in the development of forest management plans, increased involvement of civil society in the allocation of harvesting rights, and a new framework for environmental impact assessments.

Checks and balances

Anti-corruption legislation exists in Congo, and includes potentially serious penalties, but to date no forest officials have ever been prosecuted and it is not clear if any have even been investigated. There is no internal inspectorate within the Forest Department tasked with monitoring its own performance and detecting and preventing corruption. There is also no independent oversight of the forest agency by the Congolese legislature.

Congo does have in place one key form of 'check and balance': the IM-FLEG has been in place since 2007 and is operated by the UK NGO Resource Extraction Monitoring (REM). Although this has had some beneficial effects (as documented elsewhere in this report), its impact has been disappointing, especially in terms of addressing underlying issues. While the government has often taken action in response to specific infractions, it has failed to address systematic governance problems identified by the IM-FLEG. The monitor has provided forestry-related training to officials from the two agencies responsible for combating corruption, but it has been unable to secure these organizations' meaningful long-term engagement in the sector.

Congolese forest legislation includes broad discretionary powers for senior officials and these are regularly abused in a serious manner. For instance, unlimited discretionary power exists for the forests minister to reduce the value of the largest fines levied on timber companies. The minister can also unilaterally authorize exemptions to controls on log exports, or modify contractual agreements (such as by delaying the date by which a forest management plan is required). There is also evidence that the minister has used his powers inappropriately to hand out logging concessions to his and the president's relatives (see p. 11).

International engagement

Congo has signed a wide-ranging agreement on tackling illegal logging with the EU, the second largest market for the country's timber exports. The VPA – the first in the Congo Basin – was concluded in 2009 and signed in 2010, but was not ratified until July 2012 and did not enter force until March 2013. A draft legality definition has been developed through a consultative process and has been field-tested. The VPA is very thorough: Congo has agreed to include *all* timber production, exports, imports and transit within its LAS, including domestic consumption and exports to non-EU destinations. It has also decided to include all wood products in the LAS, not just those required as a minimum by the EU.

Implementation of the VPA has been very slow, and recent studies have shown that most logging concessions are a long way from meeting the necessary standard (see p. 27). The National Traceability System, originally intended to have been completed and tested by 2012, is still in development. Various changes to forest legislation and regulations were agreed as part of the VPA, but none has yet been implemented and, in most cases, consultation and drafting has only just started. Despite this slow progress, however, a large majority of experts surveyed believe the VPA is already having a positive effect on forest governance (see pp. 24-25).

Supply and demand

Congo does not require evidence of sufficient supplies of legal timber as part of the licensing process for the country's timber mills. Almost all mills are directly associated with logging concessions, however, and total processing capacity is far below the level of legal log production. Excess production capacity is unlikely to be an important driver of illegality in Congo in the foreseeable future.

Tenure and use rights

The law does require that the boundaries of logging concessions are made public and that boundaries are clearly marked at ground level. Although the boundaries are defined in publicly accessible logging contracts, the requirement for boundary marking is rarely complied with by companies in the sector.¹⁹ There are no mechanisms in place for resolving conflicting property rights and there have been recent cases of disputes resulting from overlapping rights.

The Congolese Forestry Code recognizes customary user rights, but concessionaires' management plans may limit these rights in areas assigned for logging, and users are only allowed to use these rights for their own needs and not for commercial purposes.

Article 31 of Law N° 5-2011 on the promotion and protection of the rights of autochthonous populations also states that: 'The autochthonous populations have collective and individual rights to property, possession, access and use of land and natural resources which they occupy or use traditionally for their subsistence, medicine and work.' Thus far, however, the necessary subsidiary regulations have yet to be enacted that would enable this law to be implemented, and which will be crucial in determining the scope of the law in recognizing the rights of indigenous peoples.

Chain of custody

The system of chain of custody for timber in Congo was initially established and run by a third-party organization, *Société Générale de Surveillance* (SGS), but has since been handed over to the government. The agency involved remains semi-autonomous, however. The system is quite robust, involving computerized databases and barcoded tags. Although the system does include checks for discrepancies between declared and actual timber volumes, any discrepancies are rarely followed up by the authorities. Furthermore, the system is geared solely towards checking timber at the point of export; and there are few meaningful checks during transport between concession and port, or of timber that is consumed domestically.

Transparency

Congo's VPA agreement with the EU commits the government to publishing, as a matter of course, a wide range of very detailed forestry- and timber-related information. This includes, *inter alia*, lists and maps of logging concessions, information related to granting of logging rights, information on volumes of timber produced and exported, and information on taxes owed and paid. Two important types of information are omitted from the list, however: approved forest management plans and information related to forest enforcement (aside from information on fines). These VPA transparency requirements only entered into force in March 2013 and for most types of information this is the first time that transparency has been legally required, so it remains to be seen whether the government will abide by the new commitments. None the less, even before this agreement came into force, transparency has been relatively good in a number of important areas when compared with other countries that Chatham House has assessed, partly as a result of the work of the IM-FLEG. Both the independent monitor and the World Resources Institute (WRI) international NGO have stated that transparency has improved, although it remains poor in some areas. The authorities were very open in providing information to Chatham House for this assessment. Poor internal information management systems (see p. 13) may currently be presenting a greater constraint on transparency than are a lack of regulation or willingness.

Allocation of rights to harvest

Legislation and regulations governing allocation of rights to harvest in Congo are relatively robust on the face of it, but they contain important weaknesses and are rarely followed. Concessions are supposed to be issued through a competitive tendering process, but it does not appear that any of the most recently issued logging contracts went through this mechanism. The law allows the forests minister wide discretionary powers with regard to allocation of rights to harvest, and detailed information about how decisions are reached is not transparent, so it is unclear how much these

¹⁹ According to information collected by Chatham House partner.

powers are used. It is certainly of serious concern that of the five most recent new logging concessions allocated, two were issued to a company owned by the daughter of the Congolese president.²⁰ More recently, two existing logging concessions that had been handed back to the government by the licensees were reallocated to another logging company without the proper tendering procedures having been followed.²¹ Meaningful good governance requires changes to the law in order to preclude bids from companies with a poor track record, to ensure full transparency in the tendering process, to restrict the discretionary powers of the minister and to prohibit nepotism.

Since 2011 Congolese law has required that local indigenous populations are consulted prior to development projects likely to have an impact on them. Arguably, this process should occur prior to logging concessions being allocated, but Chatham House understands that it is being interpreted as a requirement that takes place as part of the development of the forest management plan. Implementation of the new law has thus far been very poor, with the exception of some certified concessions in the north of the country. Congolese forest law has also required since 2000 that the subsistence use rights of local people are protected or compensated for when logging takes place; the details of this are supposed to be enshrined in the each logging concession's forest management plan. As the large majority of logging companies still do not have the legally required management plan (see p. 25), these protections are very rarely implemented in practice.

Congo has committed, as part of the VPA, to revising forest legislation to improve transparency and accountability in the allocation of harvesting rights, including through public auctions and the involvement of civil society in decision-making. A World Bank co-funded project started in 2013 also aims to improve procedures for allocating harvesting rights.

Law enforcement

Congo recorded very low scores with regard to institutional and operational factors in forest law enforcement – lower than for any of the original five producer countries assessed by Chatham House. Maximum penalties for illegal logging defined in Congolese law are dissuasive, but the actual penalties imposed are a fraction of the possible maxima and are not at all dissuasive. While some offences can potentially lead to prison sentences and large fines, the law allows for penalties to be 'settled' for much less than the legal maximum through negotiation. This is only supposed to be possible for fines of less than about \$30,000, but in practice all cases, including the largest ones, are settled at levels far below what would be dissuasive. No court cases are known to have taken place during the last five years; not one person has been imprisoned; and no logging licence has ever been revoked. Penalties 'in kind' are also minimal, since very few illegal logs are ever seized. Even those fines that are levied are often not paid (p. 10). As a result, during its five years of monitoring the IM-FLEG has observed numerous cases in which logging companies have continued to breach the same regulations despite having been caught and fined.

Monitoring and enforcement of forest law is hugely under-resourced in Congo. Budget constraints mean that the level of monitoring falls far below that required by law, and far below that necessary to ensure compliance. The law requires that each logging concession is visited at least once every three months, or four times a year. Not a single provincial forest office achieved this target in 2011, and 27 of the 46 logging concessions (59%) were not visited at all during that year. Budgets did increase by almost 50% in 2011, but the IM-FLEG estimates that the amounts are still less than two-thirds of what is needed to fulfil the legally required level of monitoring.²² There is a severe shortage of trained technical staff, often meaning that untrained administrative staff are used for field investigations. Budgets for running and maintaining vehicles are also insufficient. The new government timber legality verification unit (part of the VPA) received no money at all in 2011. Budgets improved even further in 2012, as did the numbers of properly qualified staff and the

²⁰ Copies of all concession contracts have been obtained by Chatham House. These show that the five most recent new (not previously attributed) logging concessions issued between 2010 and 2012 were UFA Mbama, UFA Tsama, UFA Ntombo, UFA Makoua and UFA Mougouma. UFAs Tsama and Mbama were both issued to the company 'Enterprise Christelle'. The contract for UFA Tsama in August 2010 makes clear that the sole shareholder of the company is Kelly Christelle Sassou-Nguesso.

²¹ UFAs Mayoko and Tsinguidi were assigned to Asia Congo Industries without a tender being issued.

²² REM, (2011): *IM-FLEG Republic of Congo, Annual Report*.

availability of suitable transport, but the amounts still fall short of what is required and in 2012 the proportion of logging concessions inspected actually fell (see Table 2).²³

There is no formal coordination in forest law enforcement in Congo between forest agencies and other relevant parts of government. Efforts have been made to engage anti-corruption agencies in the coordination mechanisms set up to oversee the FLEGT VPA, but these have not yet been successful. No specific training is provided to judges or prosecutors on forest legislation and forest crime. Customs officials are not trained in timber-specific regulations governing harvesting, transport and export, although this is arguably less important given that a separate, specific agency, *Service de Contrôle des Produits Forestiers à l'Exportation* (SCPFE) is responsible for monitoring timber exports and is present at the major ports.

Table 2: Data on logging inspections, 2009, 2011 and 2012

| | 2009 | 2011 | 2012 |
|---|-------------|-------------|-------------|
| Logging concessions inspected during year (%) | 84 | 41 | 33 |
| Total legally required inspections undertaken (%) | 25 | 10 | 20 |

Source: OI-FLEGT Republic of Congo, Annual Reports.

The forestry authorities in Congo do not make use of any systematic methods for identifying illegal activities remotely, such as satellite remote sensing, or analysis and comparison of different kinds of reported and recorded data on timber harvesting and trade.

Information management

Management of forest-related information in Congo is poor, but is improving. In 2009 the extensive *Système d'Information et de Gestion Forestière* (SIGEF – Forestry Information and Management System) was established within the Directorate-General of Forest Economy (DGEF). However, SIGEF has remained a prototype and has not yet been deployed nationwide. Chatham House's country partner experienced major problems in accessing key data from the relevant authorities. A great deal of information is supposed to be collected by provincial authorities, but this is often not passed on to the central administration in a timely manner. In order to obtain information on timber seizures and fines for this study, the central authorities had to telephone each province individually and write down the data using pen and paper.

The National Traceability System and Legal Verification System currently being implemented as part of the VPA incorporate a lot of relevant information and will serve to improve the situation. A large new, World Bank-supported forest programme, starting in 2013, also includes numerous activities to help improve collection and management of forest-related information.

Financial management

The IM-FLEG has exposed major flaws in the way in which financial information is managed by the forestry administration in Congo.²⁴ Although a system to manage financial information related to forestry exists, it is both poorly designed and poorly implemented. The system is mostly not yet computerized, and this leads to errors in calculations of taxes due and a failure to identify discrepancies between different sets of data. Taxes and fines are often paid in cash, making financial management difficult and facilitating corruption. Under the VPA, a new software system is planned. Currently, there are no financial audits of the forest administration in Congo. The poor data management systems and lack of independent audits are two of the reasons why the country has such a poor record in collecting forestry revenues (see pp. 15-18).

23 REM, (2012): *IM-FLEG Republic of Congo, Annual Report*.

24 Cerutti, P, et al., (2010): *Le parcours des données forestières en République du Congo: L'exemple de la taxe d'abatage. Un rapport de Forests Monitor et Resource Extraction Monitoring, REM/Forests Monitor*.

Perceptions survey

In order to inform its assessment of the extent of illegal logging and the response of both the private sector and government in producer countries, Chatham House carries out perceptions surveys of a sample of relevant experts. A general survey is targeted at government, private sector, NGO and other respondents, while separate special surveys obtain information from the private sector and industry associations. The surveys were carried out in Congo in late 2012 and early 2013. A total of 27 responses were received to the main survey: eight from government respondents, seven from private sector respondents, and 12 from NGO/other respondents.

Overall findings on government response

Most industry and NGO respondents felt that the response of the Congolese government to illegal logging had been middling or worse. Very few respondents, and even a minority of government respondents, believed that the government response had been above average in effectiveness.

The most important impediments to an effective government response were considered by respondents to be corruption, lack of transparency, limited enforcement capacity and poor enforcement effectiveness. However, inadequate laws, lack of political will and poor data management were also cited as contributory factors by a majority of respondents.

In all, 85% of respondents felt there had been at least a slight improvement in the response of government during the last year under review; a third of all respondents thought this improvement had been significant. The positive assessment was shared by NGOs and private sector respondents. Nine of the 12 NGO respondents recorded some improvement. More than 85% of respondents felt that political will to address illegal logging had improved during the last year. Strength and cohesion of laws was also considered by most to have improved, while enforcement capacity and enforcement effectiveness were felt by a large majority to have remained unchanged.

Importance of EU FLEGT VPA in driving improvements

Around 90% of respondents felt that the EU VPA had been a factor in driving improvements in all aspects of the government response. The VPA was considered to have been a particularly strong factor in improving political will; it was also felt to have been important in driving improvements in laws and regulations and in information management. It was felt to be slightly less important in bringing about improvements in enforcement capacity or effectiveness. It is likely that this is because the IM-FLEG was viewed as more influential in this regard. The survey also revealed a very strong belief among all respondent types that the VPA had already resulted in a wide range of improvements in forest governance, including improved regulation and control in the forest sector, improved participation of non-state actors in decision-making, improved transparency and increased strength of civil society. Every single respondent felt that the VPA had at least increased understanding of the illegal logging issue among stakeholders.

Enforcement data

Although each province collects relevant enforcement data in Congo, this information is not currently sent to or collated by the central ministry. For the purposes of the Chatham House research, forest ministry staff contacted officers in each province and obtained relevant data for 2011 and 2012 by telephone. Data were obtained for all provinces except two, neither of which is an important centre for timber production. Additional data on fines and cases are collected by the IM-FLEG and have also been analysed.

Seizure data

Seizure volumes are very small compared with total production. Total recorded licensed production in 2012 was 1.6 million cubic metres, while a further 0.4 million cubic metres of illegal artisanal production is estimated to have occurred (see pp. 22-23). Yet fewer than 1,500 cubic metres were seized – less than 0.1% of the total harvest (see Table 3). Even if all licensed production is assumed to be legal (and we know it is not), fewer than one in 200 illegal logs is being seized. If illegalities in licensed volumes are factored in, the proportion is much lower still – most likely nearer one in 800.

The seizure data show a decline in seized volumes between 2011 and 2012, but this is unlikely to reflect a change in levels of enforcement or in the amount of illegal logging. The overall trend is caused solely by an especially large seizure or seizures in Likouala, one of the northernmost departments, in 2011. Seizures in the south of Congo, where illegal logging is at its highest levels, actually increased fivefold in 2012 as a result of substantial seizures in Niari and Kouilou, the two major centres of industrial timber production in the south. The largest volume of seizures during 2012 was in Niari, where the Asian logging companies Taman (including associates ADL, CIBN and SOFIL) and Asia-Congo are responsible for about 85% of all log production (2011 figures). Both companies have recently been accused by the IM-FLEG of illegal logging and illegal exports. The seizures from these companies appear to have stemmed from the independent monitor's findings.

Table 3: Timber seizures in Congo, 2011 and 2012

| Region | Department | Volume seized (cu m) | | Value seized (\$)* | |
|--------------|------------------|----------------------|--------------|--------------------|----------------|
| | | 2011 | 2012 | 2011 | 2012 |
| North | Lékoumou | 5 | 231 | 2,360 | 2,048 |
| | Cuvette Ouest | 0 | 0 | 0 | 0 |
| | Sangha | 0 | 0 | 0 | 0 |
| | Likouala | 3,360 | 0 | 100,748 | 0 |
| | Cuvette | 4 | 9 | 386 | 742 |
| | <i>Sub-total</i> | | <i>3,369</i> | <i>240</i> | <i>103,495</i> |
| South | Pool | Not available | | | |
| | Plateaux | 13 | 44 | 2,073 | 6,402 |
| | Pointe Noire | 114 | 57 | 21,835 | 11,457 |
| | Kouilou | 117 | 330 | 16,984 | 33,024 |
| | Niari | 11 | 787 | 1,988 | 28,962 |
| | Bouenza | Not available | | | |
| | <i>Sub-total</i> | | <i>255</i> | <i>1,219</i> | <i>42,880</i> |
| Total | | 3,624 | 1,459 | 146,375 | 82,635 |

Source: Directorate-General of Forest Economy (DGEF).

* CFA franc values converted to \$ at prevailing rates.

Fines issued and collected

Fines issued for illegal logging are tiny compared with the probable value of the illegal harvest. According to data supplied by the government to Chatham House, in 2012 a little over \$100,000 in fines were issued, half the figure from the previous year (see Table 4). According to data supplied by the forestry authority, fine collection rates were good in 2011, with the exception of Plateaux

department, where only 8% were collected. Collection rates for 2012 were lower at the time when the data was collected, but this could be because some fines were issued towards the end of the year and not long prior to data collection.

Table 4: Fines issued and collected for illegal logging in Congo, 2011–12 (as reported by DGEF to Chatham House)*

| | No. of fines | Value (\$)** | % collected*** |
|------|--------------|--------------|----------------|
| 2011 | 90 | 198,216 | 76 |
| 2012 | 73 | 105,243 | 73 |

Sources: DGEF; information from individual provinces collated by Chatham House.

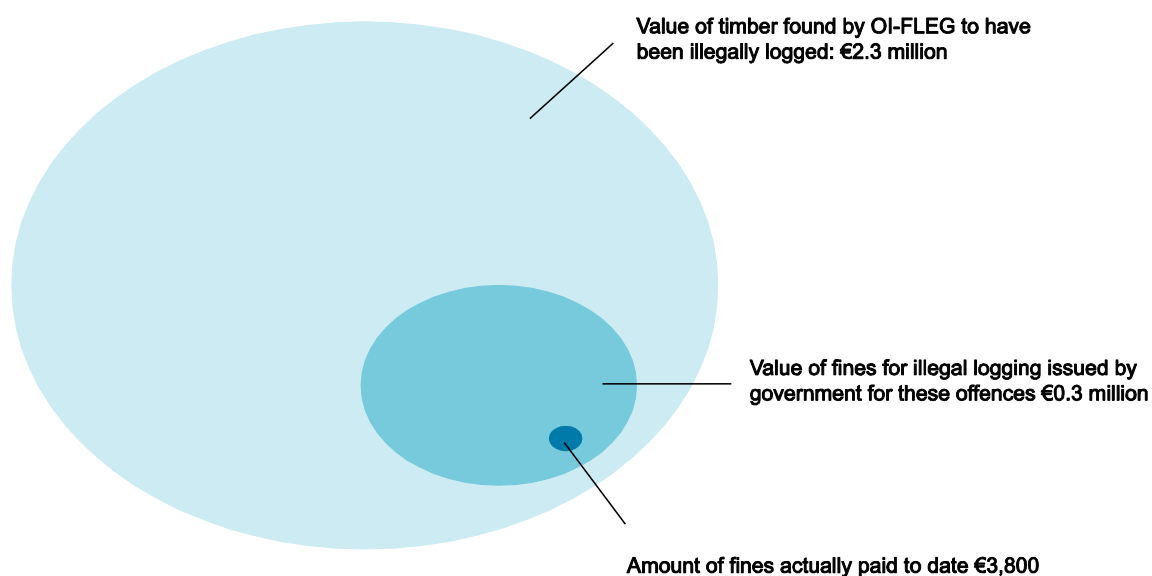
* No data were available for Bouenza department 2011 and 2012 or for Pool in 2012; no value data were available for Lékoumou for either year; fine collection data were not available for Likouala for 2011 or for Sangha for 2012.

** CFA franc values converted to \$ at prevailing rates.

*** Collection rate for each year is calculated only from those provinces for which both fine value and payment data were available.

The data supplied to Chatham House are, however, contradicted by the findings of the IM-FLEG. Over the course of two years (2011 and 2012), the independent monitor identified, officially recorded and reported on illegal logging cases (mostly overlogging certain species, logging in excess of permitted volumes, and logging protected tree species) involving timber worth around €2.3 million. Yet, according to data collected by the IM-FLEG during the same period, the government issued fines for these offences totalling just €0.3 million, and to date only €3,800 of these fines had actually been paid (see Figure 2).

Figure 2: Illustration of enforcement data related to illegal logging cases detected by IM-FLEG, 2011–2013 (circle areas proportionate to values)²⁵



²⁵ Figure produced by Chatham House based on data from REM, (2012): *IM-FLEG Republic of Congo, Annual Report*.

The amount of fines recorded by the IM-FLEG as having been issued during the period is substantially larger, and the amount paid a great deal smaller, than the levels recorded in the government data supplied to Chatham House (see Table 5). The reason for the discrepancy is unclear, but, given known difficulties with data management in Congo and since the IM-FLEG is much better placed than is Chatham House to verify data, it is likely that the IM-FLEG records are more reliable. It is also possible that the authorities only provided data to Chatham House for illegal artisanal logging by individuals, and did not include case data for companies.

Table 5: Comparison of data on fines for 2011 supplied to Chatham House and collected by IM-FLEG

| | No. of fines issued | Total value of fines (\$)* | % paid |
|--|---------------------|----------------------------|--------|
| Data supplied by DGEF to Chatham House | 90 | 198,000 | >77 |
| Data collected from DGEF by IM-FLEG | 173 | 478,000 | 8 |

Sources: DGEF data supplied to Chatham House; IM-FLEG Annual Reports.

* CFA franc values converted to \$ at prevailing rates.

Illegal logging cases & prosecutions

Data from the IM-FLEG show that the number of forest infraction cases being opened by the Congolese authorities has been rising over the last five years. In 2012 almost three times as many cases were opened as in 2007 (see Table 6). While the number of cases against artisanal loggers has increased at the fastest rate, numbers of cases brought against companies have also risen. It is unlikely that the higher numbers of cases reflect increased illegal logging. More likely, the higher numbers reflect in part the influence of the IM-FLEG (in terms of identifying cases), and in part the increased budgets and capacity of the enforcement authorities (indirectly influenced by the IM-FLEG) (see pages 11-12).

Table 6: Illegal logging case tracking data from IM-FLEG (collated by Chatham House)

| | No. of cases | Of which against companies | % settled out of court | Total settlement amount (\$)* | % paid total / (% paid companies) |
|-------------|--------------|----------------------------|------------------------|-------------------------------|-----------------------------------|
| 2007 | 127 | ND | 100 | 994,000 | 7 (21) |
| 2008 | 112 | ND | 100 | 297,000 | ND (9) |
| 2009 | ND | ND | 100 | 550,000 | 22 (5) |
| 2011 | 173 | 92 | 100 | 478,000 | 8 (ND) |
| 2012 | 337 | 202 | 100 | 2,018,180 | 8 (5) |

Source: IM-FLEG Republic of Congo, Annual Reports.

Note: ND= No data available. Not all types of data are recorded in each IM-FLEG report; there are also no published data for 2010.

* CFA franc values converted to \$ at prevailing rates.

Unfortunately, the influence that the increased numbers of cases being brought is having on the prevalence of illegal logging in Congo is probably very limited. No case has ever gone to court: all have been settled out of court on the payment of a fine. The value of these settlements is not

sufficient to be dissuasive (see pp. 12-13), and even these low fines are rarely paid (see Table 6 and pp. 15-17). The proportion of fines being paid by companies found guilty of forestry offences has remained stubbornly low. On one slightly more positive note, the IM-FLEG records that the proportion of illegalities it observed that are followed up by the authorities has increased over the years in which it has operated.²⁶

Revenue collection rates

Data and analysis regarding revenue collection rates for 2006–11 is contained in the annual reports of the IM-FLEG. Data for 2011 and 2012 were also collected direct by Chatham House from the DGEF. Trends are impossible to map precisely because the IM-FLEG does not report consistent forms of data, and because the data that are available often fail to separate taxes due and paid from previous years and amounts due and paid for current years.

Available data for the two main forestry taxes (stumpage fees and area taxes) do demonstrate that failure to pay taxes has been a major problem since at least 2006, and probably long before that. This is despite the IM-FLEG raising this issue every year and repeatedly recommending action by the government. As additional taxes fail to be paid each year, the cumulative amount owed by the logging companies has until very recently continued to mount. In 2011 €6.9 million of stumpage and area taxes remained unpaid at the end of the year, compared with €5.7 million owed at the end of 2008 and €5.6 million at the end of 2009.²⁷

The IM-FLEG reported falling collection rates between 2007 and 2008, but this does not appear to be a long-term trend. In the most recent year for which data are available (2012), there has been some minor improvement. This was the first year since at least 2008 in which the cumulative amount of stumpage and area taxes remaining unpaid actually declined (from €6.9 million to €6.5 million).²⁸ The situation remains poor, however. In 2012 only two of 26 logging companies ended the year with all their taxes paid, and 11 of the 26 had paid less than half the amount owed.²⁹

The IM-FLEG has recommended that the government use available coercive powers – such as blocking exports – to force companies to pay due taxes, but to date it has not done so.

²⁶ REM, (2012): *IM-FLEG Republic of Congo, Annual Report*.

²⁷ REM, (2012): *IM-FLEG Republic of Congo, Annual Report*.

²⁸ Calculated by Chatham House from data in REM, (2012): *IM-FLEG Republic of Congo, Annual Report*.

²⁹ *Ibid.*

PRIVATE SECTOR RESPONSE

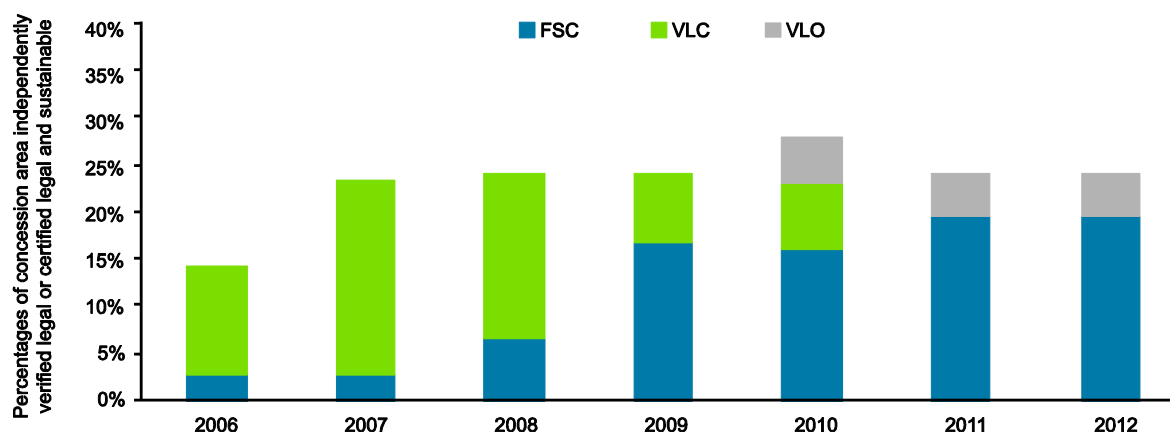
Voluntary verification and certification

In order to demonstrate that they are harvesting legally, logging companies in high-risk producer countries can seek to obtain independent third-party verification of legality, or certification of both legality and sustainability, under one of a number of established schemes. Data on successful voluntary verification and certification are used by Chatham House as an indicator of the response of the private sector to illegal logging. Data are collected and calculated on the areas verified and certified to different standards over time under different schemes; the proportion this represents of total logging area; and (where this can be estimated from other sources) the proportion of total log production verified or certified. For further information on the various systems, please see Chatham House's 2010 illegal logging indicators report.³⁰

2006 saw the first concessions to be independently verified legal or certified sustainable in the Republic of Congo. Concessions controlled by two major European timber companies (Danzer and DLH) and representing almost a quarter of the licensed logging area in the country were verified legally compliant (VLC) by SGS in 2006. The same concessions gradually attained Forest Stewardship Council (FSC) certification between 2006 and 2011. A concession controlled by a third European company, Rougier, achieved the lower, verified legal origin (VLO) SGS standard in 2010.

Overall, the proportion of Congo's concession estate verified in some manner has remained roughly static since 2006, at around a quarter (see Figure 3). This is second only to Cameroon in the Congo Basin. Analysis of detailed log production figures obtained by Chatham House shows that the proportion of production is somewhat higher (see Figure 4). In 2011 a third of Congo's licensed log production was certified or verified. On a less positive note, analysing the situation according to log production shows that the proportion verified has actually declined slightly in recent years, from a peak in 2007. This is partly because the certified concessions are producing less, and partly because production elsewhere (particularly in the south of the country) has increased.

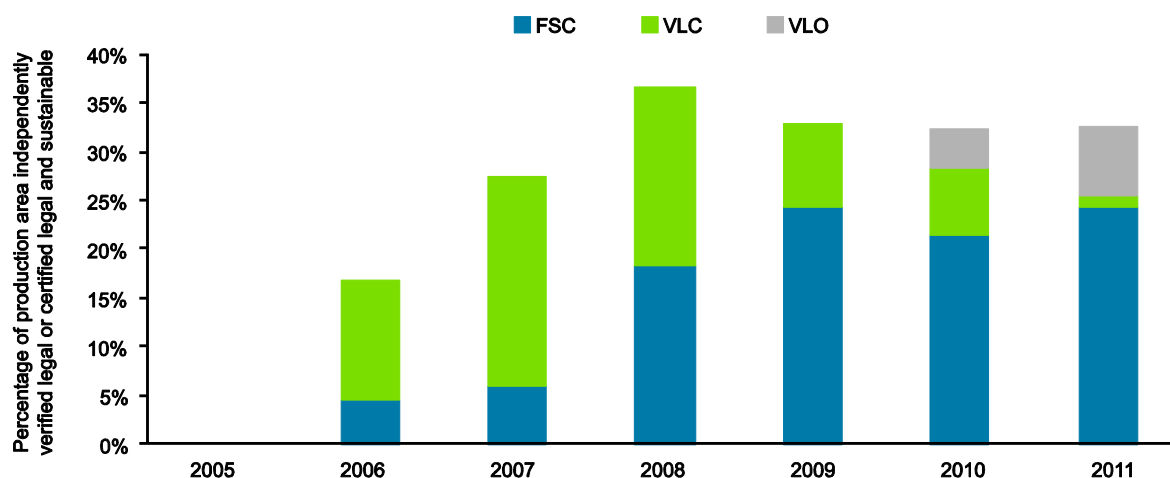
Figure 3: Proportion of Congolese concession area independently verified legal or certified legal and sustainable



Source: Chatham House analysis of data from SGS, FSC and DGEF.

³⁰ Chatham House, (2010): *Illegal logging and Related Trade: Indicators of the Global Response*, London: Chatham House, Section 4.2, pp. 70–78.

Figure 4: Proportion of Congolese log production area independently verified legal or certified legal and sustainable



Source: Chatham House analysis of data from SGS, FSC and DGEF.

This national picture masks a wide disparity between the logging concessions in the north and south of the country. Two-thirds of log production from the concessions in the north (which export via Cameroon and are geared towards EU markets) was verified or certified in 2011, but none of the production from the southern concessions (which export via Pointe-Noire and are geared towards China) has been assessed under any scheme.

Congo produced 360,000 cubic metres of FSC-certified logs in 2011, and exported 314,000 cubic metres roundwood equivalent (RWE) volume of logs, sawn timber and veneer to the EU in the same year. It is therefore likely that all, or very nearly all, of the EU's imports of Congolese timber are already FSC-certified. This is likely to be one of the main reasons why the growth of voluntary verification and certification in Congo has stalled: the sensitive markets driving it have been fully catered to. The remaining concessions are supplying only less sensitive markets in Asia and the Middle East, and are under no pressure to verify their production.

Perceptions survey

This conclusion is supported by local experts. While large-scale concessionaires and manufacturer/exporters serving sensitive markets were felt by the large majority of the respondents to the perceptions survey to have already taken some action in response to the illegal logging problem, the opposite was true for smaller concessionaires and those supplying less sensitive markets. Almost all respondents felt that exporters supplying less sensitive markets had not improved their response at all during the last year under review. Most respondents considered that companies supplying less sensitive markets were not yet under any pressure to act. This last is despite the VPA implementation, which covers all production and exports; and despite the entry into effect in March 2013 of the EU Timber Regulation (EUTR), which should influence Chinese importer/re-exporters of Congolese wood.

Sensitive market share

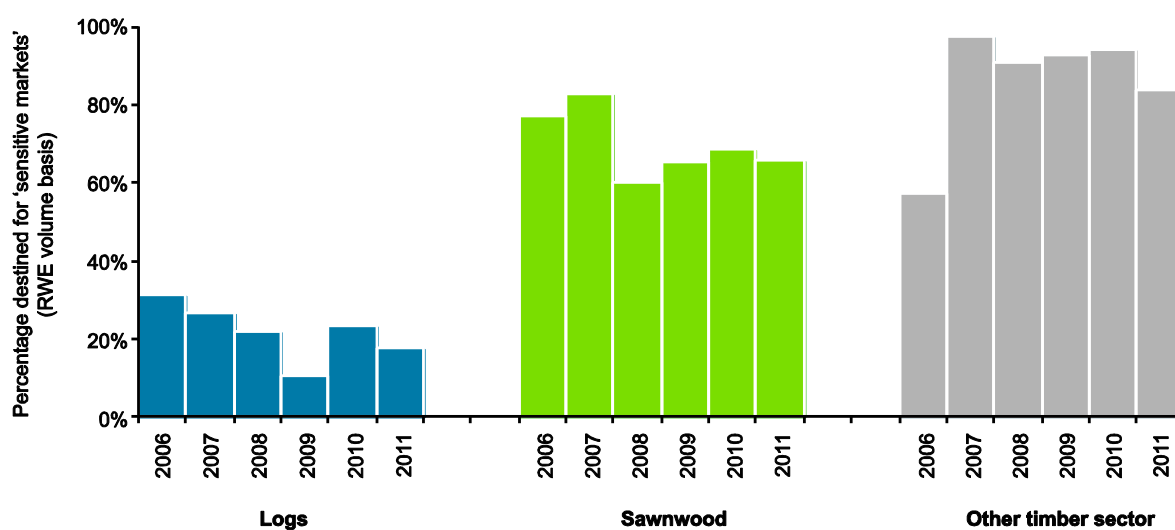
There is a danger that the potential impact of efforts to prevent imports of illegally sourced wood in some consuming countries may be undermined by 'leakage', whereby the wood is simply diverted to less sensitive markets. Equally, shifts in trade towards less sensitive markets (even if driven by other factors) can serve to undermine the influence that more sensitive markets have. For these reasons, Chatham House tracks the proportion of exports from producer and processing countries

that are destined for sensitive markets, examines the extent to which any changes may be due to increased sensitivities over legality, and analyses what changes in sensitive market share may mean in terms of the response to the problem.

The apparent lack of response on the part of Congolese companies supplying less sensitive markets (see p. 20) is of particular concern, given that analysis by Chatham House shows that the proportion of Congo’s timber exports destined for sensitive markets (Europe, North America and Australia/New Zealand) has been falling rapidly in recent years. In 2007 just over half (51%) of all exports (in terms of RWE volume) were destined for sensitive markets. By 2011 the share had fallen to less than a third (31%). The proportions are falling for all major products, although the baseline is higher for sawnwood and veneer than it is for logs (see Figure 5).

While other factors are no doubt important in driving the trend (not least increased demand in China), it is also of interest that around 60% cent of the respondents to the Chatham House survey believed that Congolese exports were shifting to less sensitive markets at least in part as a result of growing sensitivities over legality and sustainability of production in more sensitive markets. In a small way, this trend might therefore represent a form of leakage resulting from past demand-side initiatives (before the VPA and the EUTR). The VPA has a key role to play in countering this leakage, by blocking exports of illegal wood to less sensitive markets (through the planned inclusion of all exports in the Legality Assurance System – LAS). The EUTR (and, to a lesser extent, equivalent legislation in the United States and Australia) can also play a role by blocking markets for products made from illegal Congolese wood in third countries.

Figure 5: Share of Congolese timber exports destined for ‘sensitive’* markets, 2006–11



Source: SCPFE data reported in DGEF Annual Reports, converted to RWE.

* ‘Sensitive’ markets are assumed to be Europe, North America and Australia/New Zealand.

LEVELS OF ILLEGAL LOGGING

Wood balance analysis

One of the most commonly used methods by which to estimate illegal logging is wood balance analysis, whereby the difference between total wood consumption and legal supply is calculated in order to measure the extent of unlicensed logging, in both volume and percentage terms. Chatham House has carried out the first such analysis for the Republic of Congo, using source data collected for the purpose. The results, covering the years 2005–12, are shown in Table 7.

Table 7: Wood balance estimates of illegal (unlicensed) logging in Congo, 2005–12 (all figures in cubic metres, unless otherwise stated)

| | Approved production | Legal Supply | | | Total Consumption | | | B minus A (=Un-licensed logging) | |
|-------------|---------------------|--------------------------|-----------------|-----------|-------------------|----------------------|-----------|----------------------------------|---------------|
| | | Actual legal harvest (1) | Imports RWE (2) | Total (A) | Exports RWE (3) | Domestic use RWE (4) | Total (B) | Un-licensed logging | Un-licensed % |
| 2005 | | 1,369,211 | 12,523 | 1,381,734 | 1,032,958 | 319,280 | 1,352,238 | -29,496 | -2.2 |
| 2006 | | 1,329,696 | 7,924 | 1,337,620 | 995,462 | 359,029 | 1,354,491 | 16,871 | 1.2 |
| 2007 | | 1,203,384 | 6,394 | 1,209,778 | 957,451 | 353,527 | 1,310,978 | 101,200 | 7.7 |
| 2008 | | 1,212,188 | 5,444 | 1,217,632 | 899,437 | 326,450 | 1,225,887 | 8,255 | 0.7 |
| 2009 | 1,310,642 | 974,529 | 4,643 | 979,172 | 764,141 | 446,872 | 1,211,013 | 231,841 | 19.1 |
| 2010 | 1,202,659 | 1,314,281 | 8,674 | 1,322,955 | 1,083,333 | 417,566 | 1,500,899 | 177,944 | 11.9 |
| 2011 | 1,994,376 | 1,462,990 | 12,380 | 1,475,370 | 1,188,098 | 452,537 | 1,640,635 | 165,265 | 10.1 |
| 2012 | 2,304,693 | 1,582,825 | 13,500 | 1,596,325 | 1,069,999 | 461,733 | 1,531,732 | -64,593 | -4.2 |

Sources: (1) Licensed and actual production: DGEF Annual Reports; production figure for 2012 is official estimate; (2) Imports: UN COMTRADE data from source countries for primary wood products only (logs, sawn, veneer and ply); volumes estimated from values and weights; figure for 2010 adjusted to account for missing Cameroon data; figure for 2012 estimated; (3) Exports: DGEF Annual Reports (adjusted to RWE); figure for 2012 is estimate based on data for Jan–Nov; (4) Domestic Consumption: Domestically produced ply and sawn timber consumption calculated from production and exports of individual mills in DGEF Annual Reports; urban chainsaw lumber consumption based on figures drawn from surveys for two largest cities in 2009 (Cerutti, P., et al, *The domestic market for small-scale chainsaw milling in the Republic of Congo*, CIFOR, 2011), adjusted to account for other large cities and extrapolated to other years based on population changes and GDP per capita changes. Note: All RWE figures calculated using x1.8 for sawn, 1.9 for veneer and 2.5 for plywood.

Note: Eucalyptus production and exports are excluded from all parts of the equation, as are pulp and paper, and secondary wood products.

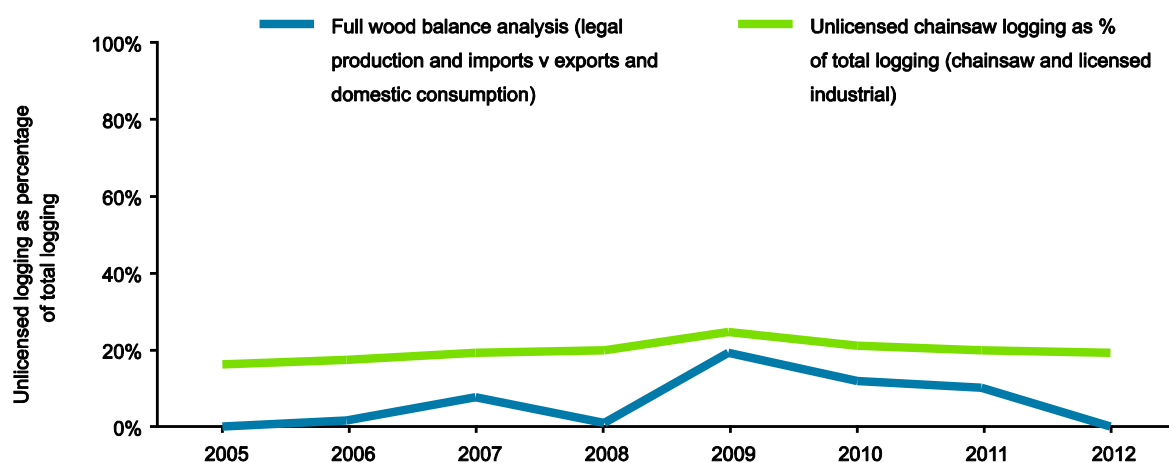
The results suggest that unlicensed logging is a relatively small problem in Congo. Over the eight-year period, they indicate that only about 6% of harvesting was unlicensed. The percentage shows an increase (mostly as a result of increased domestic use) from less than zero in 2005, peaking in 2009 at 19%, before falling back again (as a result of increased legal harvesting). These figures compare favourably with other countries that Chatham House has studied, such as Indonesia (where 40% of logging was estimated to be unlicensed in 2006).

The estimates for domestic consumption include figures for domestic consumption of artisanal chainsaw lumber, which is almost all harvested without a license. When these amounts are subtracted, the analysis suggests that industrial logging has not exceeded reported legal harvest volumes at any point during the last eight years.

Given this finding, a simpler and more accurate method for calculating unlicensed harvest as a percentage of total harvest involves comparing estimates of chainsaw lumber production with official industrial harvests. Such an analysis suggests that around 20% of all logging in Congo in 2012 was unlicensed – a similar situation to that found by Chatham House for Cameroon in 2007,

using a comparable methodology. This figure represents a slight decrease from a peak of 25% in 2009, but this reduction in percentage terms is misleading since it stems from a recent increase in licensed harvesting rather than from a reduction in illegality. Chatham House’s estimates of illegal chainsaw lumber production in Congo actually show a steady increase over time, in line with increases in the urban population and increasing per capita GDP. Total estimated illegal artisanal production was 380,000 cubic metres in 2012, an almost 50% increase on the figure for 2005.

Figure 6: Wood balance estimates of illegal (unlicensed) logging in Congo, 2005–12



Source: Wood balance analysis by Chatham House (see text for additional explanation and Table 7 for additional information on sources).

The results of the wood balance analysis for industrial logging in Congo appear to contradict information from the IM-FLEG. While the wood balance analysis suggests that Congo’s licensed logging companies are not exceeding reported legal harvests, and while a comparison of approved and actual production shows that in most years Congo’s loggers have cut only about 70–75% of the maximum allowable (see second and third columns of Table 7), the IM-FLEG’s field investigations in logging concessions in the country have found that logging in excess of licensed harvest is commonplace. Indeed, the IM-FLEG has described logging in excess of licensed harvests as being the most important type of illegality in the forest sector at present. One possible explanation might be that while many concessions in the south are logging more than allowed, those in the north are logging less than allowed, and the two are cancelling each other out. It is also possible that the individual provincial forest authorities are officially recording log production figures (which the wood balance assumes are legal) that are in excess of maximum allowable volumes.

Trade data discrepancies

The wood balance analysis could also be underestimating unlicensed harvesting by concessionaires because some exports are not being recorded in official figures. However, comparison of import data from destination countries does not support this. Some 95% of Congo’s RWE timber exports take the form of logs or sawn timber; 92% of the logs are destined for either China or the EU, as are around two-thirds of the sawn timber exports. Chinese recorded imports of logs and sawnwood from Congo are actually lower than Congo’s reported exports – the opposite of what would be expected if logs were being smuggled out unrecorded in large volumes. Discrepancies do exist for trade data with the EU, but these are almost certainly attributable to most exports to the EU transiting through Cameroon and being misclassified as originating there. It is very unlikely that there are significant unrecorded exports, since there are only two significant

exit points (Pointe-Noire port and the road border leading to the port of Douala in Cameroon) and since exports are monitored by an independently run and relatively well-equipped entity (SCPFE) set up by the monitoring company SGS.

Expert perceptions

Nature and extent of the problem

More than 80% of respondents to the Chatham House expert perceptions survey felt that illegal logging was either a major, or the main, driver of forest degradation in Congo, and it was also ranked as a more important driver of negative social impacts than were either legal selective logging or legal conversion of forests for agriculture. Legal conversion was felt to be a slightly more important driver of total forest loss, although illegal logging was ranked a close second.

There was a broad range of views expressed on the extent (as a percentage of all harvesting) of illegal logging in Congo. Respondents' assessments ranged from less than 10% to more than 80%. Predictably, government respondents tended to judge the problem as being less bad and NGO respondents the opposite. In all, 80% of respondents felt that at least 20% of logging in Congo is illegal. The overall estimate, averaging the broad range of views, was of an illegal logging extent of 38%.

Recent changes

A small majority of respondents felt there had been a slight improvement in the overall situation as regards illegal logging in Congo in the last year under review, while a large majority (83%), including a large majority of NGO respondents, felt there had been either a slight or significant improvement over the last five years. Most felt these improvements were restricted to illegal selective felling, and not to illegal forest clearance.

In terms of changes in different types of illegality, while a majority of respondents felt that illegal licence issuance and illegalities by concessionaires had reduced in the last year, fewer than half felt that other aspects had improved (i.e. illegal logging by individuals or unauthorized companies; illegal processing and export; and corruption). The least positive results were for artisanal logging and corruption. Almost half of the respondents considered that corruption had actually worsened in the last year, and very few thought it had reduced. More people thought that artisanal logging had worsened than believed it had improved, a view supported by the wood balance analysis carried out by Chatham House (see pp. 22-23).

Almost 90% of respondents felt that illegal industrial-scale logging had reduced recently. A majority of respondents (including a majority of NGO respondents) considered that there had been a reduction seen in all aspects of illegal logging, with the exception of corruption among the police and judiciary.

Drivers of recent improvements; impacts of VPA

Two-thirds of respondents felt that the negotiation and implementation of the FLEGT VPA was the most important factor driving improvements, while all respondents considered that it was at least a minor factor. The second most important factor identified was information supplied by local and international NGOs. Other factors regularly cited were general governance improvements and private sector demand.

Three-quarters of respondents felt that illegal industrial-scale logging had reduced at least in part on account of the VPA. More than half of respondents thought that illegal licence issuance, illegalities by concessionaires, illegal logging by unauthorized companies, illegal sawmilling and

illegal export had reduced as a result of the VPA. The areas felt to have been least impacted by the VPA thus far were artisanal logging and corruption.

A significant majority of respondents felt there had been reductions in all types of illegal logging by licensees, and in most cases a majority felt this was also attributable at least in part to the VPA. The areas considered to have been most effectively addressed by the VPA were logging outside allocated areas, logging in breach of contractual obligations and extracting more timber than authorized. The VPA was felt to have had much less impact on illegal logging in protected areas.

Some 40% of respondents thought that the VPA had already had a positive effect on livelihoods, and none felt that it had had a negative impact.

Other measures of illegality

Forest management plans

Congolese law requires that forest management plans are submitted by logging companies within three years of acquiring harvesting rights. These plans include all relevant forestry requirements, such as allowable cut, species, minimum felling diameter and volumes, as well as social obligations. Local employment, health and safety issues, the rights of local and indigenous communities, contributions to local development, and measures to minimize environmental impact and protect biodiversity must also be addressed.

As of June 2008 just three logging concessions in Congo had approved management plans as required. Three years later the number had only increased to seven, out of 44 active logging concessions. Of these seven, five were verified legal or sustainable under a voluntary scheme. In 2011 63% of Congolese industrial log production was from concessions without legally required management plans. Fortunately, however, this proportion can be expected to fall considerably over the next few years, since a major donor-funded programme (PAGEF) has been working with the remaining logging companies to assist them in developing the required management plans, and since compliance with this will be necessary as part of the LAS under the EU VPA.

Independent monitor findings

As noted on p. 10, since 2007 Congo has had in place an independent monitor. The IM-FLEG carries out field missions to logging concessions to check compliance, and also analyses government data on enforcement and revenue collection. However, while the IM-FLEG produces a lot of data and information, the way the information is collected makes it difficult to draw quantitative conclusions from it about the overall extent of illegal logging, or how it has changed over time. For instance, since the IM-FLEG visits different samples of the active concessions each year, and illegalities are known to be worse in the southern than in the northern concessions, variations in prevalence of illegalities recorded from year to year are as likely to arise from differences in the geographical spread of visited concessions as from changes in the extent of illegal logging.

Information from the IM-FLEG regarding revenue collection, enforcement data, and enforcement effort and effectiveness are discussed on pp. 12 and 14-18 above. In terms of the actual prevalence of illegalities of different types seen during field investigations to logging concessions, in 2011 the IM-FLEG visited 15 logging concessions and breaches of regulations were found in every case. In eight of the concessions (53% of those visited), these included offences of sufficient seriousness to be defined by the monitor as constituting 'illegal logging' – such as cutting outside permitted boundaries, cutting greater volumes than authorized and cutting more of specific species than authorized. The most serious case involved the illegal felling of timber worth €300,000.³¹

31 REM, (2011): *IM-FLEG Republic of Congo, Annual Report*.

Although it has not been able to quantify the practice, the IM-FLEG has documented what it describes as 'systematic' under-reporting of log harvests by concessionaires in Congo, carried out as a fraudulent means to evade taxes. Excess illegal logs are sometimes 'laundered' using duplicate log or stump numbers. If significantly more timber was being logged nationwide than is reported, this would be expected to show up in wood balance analysis. Yet it does not (see pp. 22-23). One possible explanation is that the IM-FLEG has noted that a lot of the under-reporting involves failing to declare unsaleable damaged logs and then harvesting additional trees to make up the difference. Such a practice would not show up in a wood balance analysis.

One other useful recent measure relates to illegal export. Congolese logging companies are required by law to process a certain proportion of their logs prior to export. In May 2012 the Congolese government announced that 13 companies had been found to be breaching their log export quotas. In response, it was announced that the 13 companies would be prohibited from exporting logs for the remainder of the year (10 May–31 December). In September of that year the IM-FLEG carried out a review of compliance with the export suspension. This showed that 10 of the 13 companies had continued to export logs during June–August, in contravention of the suspension.³² One other company was suspected of laundering logs from a concession under suspension as originating in a different concession not subject to it. Almost 110,000 cubic metres of logs were found to have been exported illegally during the three months by the 10 companies. The logs were not being smuggled, but were being processed by the relevant agencies despite the suspension. Although some official exemptions had been issued, these had not been granted legally. Chatham House analysis shows that the IM-FLEG findings suggest that 60% of all Congolese log exports during the three-month period were illegally exported and (assuming the practice continued, as evidence from the IM-FLEG and trade data both suggest) that 35% of all Congolese log exports during 2012 were illegally exported.³³

Analysis of satellite imagery by WRI

Since 2008 WRI has been producing regularly updated maps of Congo's forests and forest usage. The latest iteration, published in 2011, includes an analysis, using satellite imagery, of logging roads.³⁴ Measuring logging roads is a useful means by which to monitor industrial logging remotely and check to what extent it is remaining within the legal boundaries. The WRI analysis thus far has only sought to identify cases where logging roads have extended beyond the boundaries of concessions and into neighbouring protected areas. The analysis found two major instances in which this had occurred, both in the south of the country. In one case, evidence of logging was found in the Dimonika Biosphere Reserve. WRI also found evidence that a logging company from Central African Republic had extended logging roads more than 6 kilometres across the border into Congo. WRI intend to extend the analysis in future to include a more systematic analysis of legality, including examining the extent to which logging companies have stayed within the boundaries of annual logging coupes, and not just within the boundaries of concessions. This will provide a useful adjunct to the work of the IM-FLEG, which does not utilize satellite imagery, and may provide a useful indicator of levels of a key form of serious illegality in future.

Compliance with VPA legality definition

To help ensure that they are ready to comply with the procedures of Congo's planned LAS, in late 2012 the Congolese forestry ministry arranged 'no penalty' verification tests for all timber companies operating in the country. These verification tests involved auditing the companies against the 65 indicators in the VPA timber legality definition. The first round of tests examined 20 logging companies – about half the total number. The results of this first assessment give a sobering picture of the challenge facing Congo in implementing the VPA.³⁵ None of the 20 companies was found to be in compliance with all aspects of the legality definition; and 14 of the companies (70% of the sample) failed to comply with more than half of the indicators. Just 7% of

32 REM, (2012): *OI FLEG Republic of Congo, Mission Report No.009/REM/CAGDF/FM*.

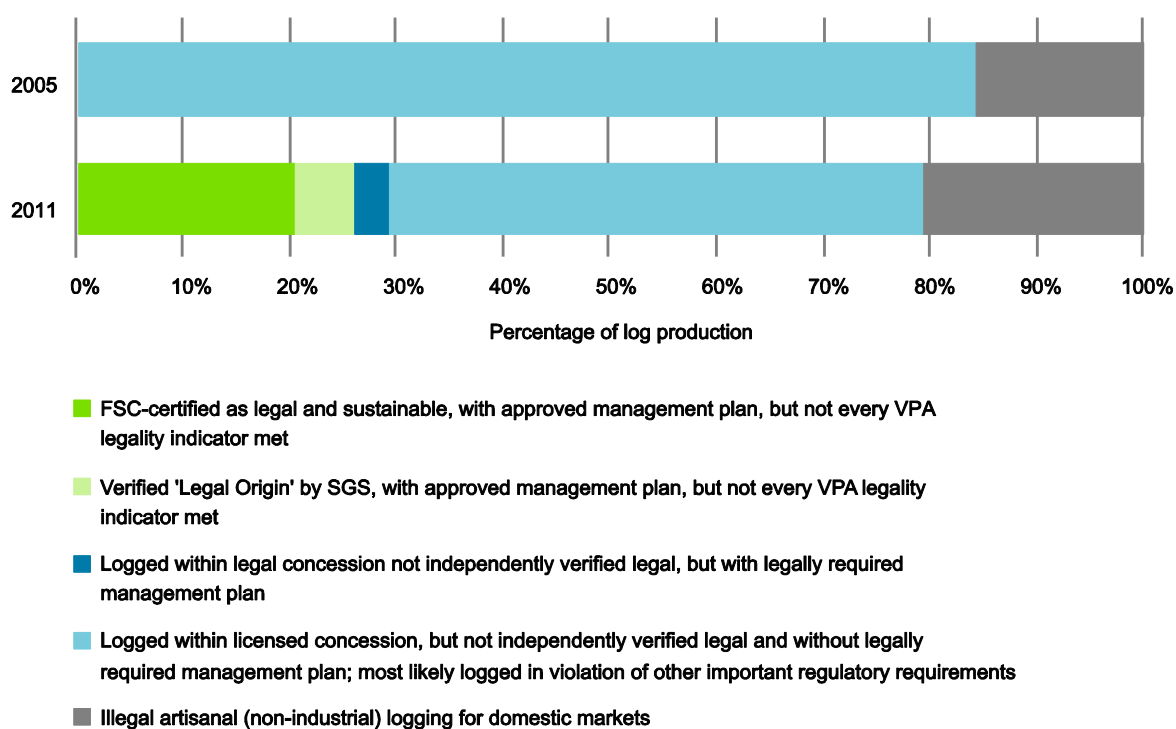
33 Based on average monthly log exports, calculated from official figures for total exports during Jan–Nov 2011.

34 WRI, (2011): *Atlas Forestier Interactif du Congo, Version 3.0, Document de Synthèse*. Washington DC : WRI.

35 TERE, (2013): *Test à Blanc de la Légalité des Entreprises Forestières et Analyse des Procédures de Contrôle Associées, République du Congo, Rapport de Synthèse des Tests dans les Sociétés*, Joensuu: EFI.

companies had carried out required environmental and social impact assessments. The only three companies that met most of the indicators were those that are already FSC-certified. All of the companies were able to meet some key requirements, such as having valid logging licences. However, some other key requirements were not met. Most companies did not have required forest management plans (see p. 25 above). In many cases, while annual felling authorizations existed, these had been issued in contravention of the law.

Figure 7: Legal and illegal log production in Congo, 2005 and 2011 (proportion of timber volume harvested)



Source: Production data by concession from DGEF Annual Reports; Chatham House estimates of unlicensed artisanal logging (see pages 21-22); information on status of certification and verification of individual concessions (see pages 18-19); information on progress with completion of forest management plans by individual concessions (see page 24).

Summary

Using all of the information collected by Chatham House, it is possible to classify timber harvesting in Congo under a number of major categories in terms of legality (see Figure 7). This suggests that around 70–75% of all harvesting in Congo is illegal in some way. Although the majority of the illegal harvest, and all of the exports, are under a legal licence, the timber is being harvested by companies that do not have required forest management plans and have failed to pay the taxes they owe. It is also very likely that a significant proportion of this timber was harvested in breach of other regulations.

While the summary figure does show that considerable progress has been made since 2005, it also demonstrates the major challenges: illegal artisanal logging has continued to expand, while almost all the remaining 'highest-risk' industrial timber production is destined for less discerning Asian markets, making further growth of voluntary certification and verification unlikely.

CONCLUSIONS AND RECOMMENDATIONS

Forest governance in the Republic of Congo is generally poor, and illegalities in the forest sector are commonplace. On the other hand, completely unlicensed industrial-scale logging and smuggling of timber are rare. There are two main types of illegal logging in Congo: 'informal', small-scale artisanal logging for domestic markets, and logging in breach of various regulations by large, licensed logging concessionaires. Different approaches are required for each. Informal artisanal logging needs to be brought under formal control, by means of the introduction and application of suitable procedures and regulations. Illegalities in relation to industrial-scale logging need to be eliminated through better governance and enforcement.

With regard to industrial-scale logging, there is also a major geographical divide in Congo, with the northern logging concessions – mostly independently verified or certified – supplying the EU, while southern logging concessions – unverified and with poor legal compliance – supply Asian markets. All exports from Congo should be considered 'high-risk' of being illegal, with the possible exception of those that have been independently verified legal or certified sustainable. It is unlikely that any unverified or uncertified timber from Congo could meet EUTR due diligence requirements.

Forest governance in Congo has been improving gradually, with the IM-FLEG and the development and implementation of the EU VPA being the key drivers. However, the situation remains very poor, and a great deal of work will be needed before a VPA LAS can become operational. Congo and the EU must continue to work towards implementation of the FLEGT VPA, which has already been beneficial. However, they must recognize that there is a very long way to go, and not water down standards or procedures inappropriately in order to accelerate the process.

There are many areas in which the government needs to improve its response. A number of important deficiencies are already being addressed, often through cooperative action under the auspices of the FLEGT VPA, but other areas are showing fewer signs of progress. It is especially important that the government increases its efforts to collect forestry taxes. It is likely that the meaningful threat of the cancellation of logging or export licences would rapidly ensure that back taxes were paid and that future taxes were paid on time and in full. The increased revenues from better tax collection should be ploughed back into the forest agency in order to increase human and technical resources for monitoring and enforcing forest laws. Penalties for forestry offences must also be increased and fully applied, so that they are genuinely dissuasive. Companies that fail to pay fines on time must have their export rights suspended.

It is likely that in the near future a large proportion of timber production in Congo will be from conversion of forests for oil palm. The first major project of this kind has already been found to be harvesting illegally. It is essential that sufficient attention is paid to conversion timber by the enforcement authorities, by importers and by the EU within the context of the VPA.

ABOUT THE AUTHOR

Sam Lawson is an independent researcher and founding director of Earthsight, an organization that specializes in researching and investigating environmental and social crime and injustice. He has been researching and investigating illegal logging and associated trade for 15 years, for various international NGOs and development agencies, and is the author of a number of influential reports on the subject. He has researched illegal logging in many countries across Asia, Latin America and Africa, and has been actively engaged with international initiatives to tackle the problem. In his role as Associate Fellow within the Energy, Environment and Resources Programme at Chatham House, he led the organization's work on illegal logging indicators between 2006 and 2013.