The background of the entire page is a photograph of a logging truck driving on a dirt road. The truck is heavily loaded with large logs, and a large amount of dust is being kicked up by the tires, creating a hazy, orange-tinted atmosphere. The truck's wooden frame and metal components are visible, and the logs are stacked high on the back.

HOW MUCH DO COMMUNITIES GET FROM LOGGING?

Social obligations
in the logging
sector in
**Cameroon, Ghana,
Liberia and
Republic of Congo**

All financial data are shown in the original currency and converted to US\$ at the exchange rates applicable at the time. This means that in some instances conversion of the same original figure at different periods produces slightly different US\$ equivalents. All figures are rounded.

Acknowledgements

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Abbreviations

AEB	Autorisation d'Enlèvement des Bois (Harvested Timber Removal Licence), Cameroon
APC	Autorisation de Récupération des Bois (Salvage Licence), Cameroon
CAT	Convention d'aménagement et de transformation (Management and Processing Agreement), RoC
CE	Convention d'Exploitation (Exploitation Agreement), Cameroon
CFA	Communauté Financière Africaine
CRL	Community rights law with respect to forest lands, Liberia
CS-IFM	Civil Society-led Independent Forest Monitoring
CSO	Civil society organisation
CTI	Convention de transformation industrielle (Industrial Processing Agreement), RoC
EU	European Union
FDA	Forestry Development Authority, Liberia
FDL	Fonds de développement local (Local Development Funds), RoC
FEICOM	Fonds spécial d'équipement et d'intervention intercommunale, Cameroon
FGDH	Forum pour la Gouvernance et les Droits de l'Homme, RoC
FLEGT	Forest law enforcement, governance and trade
FOB	Free on board, the standard way of expressing international timber prices
FODER	Forêts et Développement Rural, Cameroon
GoC	Government of Cameroon
GoG	Government of Ghana
GoL	Government of Liberia
GoRoC	Government of the Republic of the Congo
LI	Legal Instrument, Ghana
MEF	Ministère de l'Economie Forestière (Ministry of Forest Economy), RoC
MEFDD	Ministère de l'Economie Forestière et du Développement Durable (Ministry of Forest Economy and Sustainable Development) Republic of the Congo
MINEF	Ministère de l'Environnement et des Forêts, Cameroon
MINFOF	Ministère des Forêts et de la Faune, Cameroon
MLNR	Ministry of Lands and Natural Resources, Ghana
MoP	Manuals of Procedure
NFRL	National Forestry Reform Law, Liberia
NGO	Non-governmental organisation
OASL	Office of the Administration of Stool Lands, Ghana
OCDH	Observatoire Congolais des Droits de l'Homme (Congolese Human Rights Observatory), RoC
PS	Permis spécial (Special Permit), Cameroon and RoC
PVRI	Procès-verbaux de réunions d'information (Information meeting minutes), Cameroon
RFA	Redevance forestière annuelle (Annual forestry royalty), Cameroon
RMSC	Resource Management Support Centre, Ghana
RUDEYA	Rural Development and Youth Association, Ghana
SDC	Série de développement communautaire (community development series, RoC)
SDI	Sustainable Development Institute, Liberia
SRA	Social Responsibility Agreement, Ghana
SGS	Société Générale de Surveillance
TUC	Timber Utilisation Contracts, Ghana
UFA	Unité forestière d'aménagement (forest management unit), Cameroon and RoC
UN	United Nations
US	United States
VC	Vente de Coupe (Sale of Standing Timber), Cameroon
VPA	Voluntary Partnership Agreement

1 Introduction

Background

Tackling deforestation through linking REDD and FLEGT was a three-year forest governance project (approximately 2014–2016), primarily implemented by leading national NGOs in four countries: FODER in Cameroon, Civic Response in Ghana, SDI in Liberia and FGDH in the Republic of the Congo (RoC).

The forest sectors in all these countries include large-scale logging concessions, and a legal framework that requires some form of ‘benefit sharing mechanism’ in respect of the fact that communities should benefit from income generated by industrial logging.

In an ideal world, all states would recognise community ownership over the land. This would mean that communities would have much greater decision-making power over the consent they give before handing out logging concessions, and that communities would be able to negotiate their share of the income generated on their land. In reality, however, most states do not recognise community ownership, and the best that communities can expect is some form of ‘benefit sharing’ arrangement to redirect money from a profitable industry towards social development.

In 2015 our project partners identified the provision of and respect for social obligations as a priority for monitoring and advocacy activities. This reflects widespread concerns that the existing frameworks and practices are inadequate, insufficiently transparent or not being implemented. That is why we need to understand more about how social obligations systems are meant to work in each country.

Terminology

Given the diverse legal frameworks, and the common and civil law systems studied, we have adopted the term ‘social obligations’, even though this term has different meanings in different countries. These social obligations have been defined for each country in the relevant sections below.

In Cameroon and RoC, the contractual (legal) bases for many of these obligations are referred to as *clauses sociales des cahiers de charges*, or ‘social clauses in the terms and conditions’ of a logging permit. In Ghana they are called Social Responsibility Agreements (SRAs), while in Liberia they are ‘Social Agreements’. But they are all legal obligations. In all countries the obligations include direct arrangements between logging companies and the communities affected, via the redistribution of volume-based or area taxes, fees, and bid premiums that are initially collected by the state, or as a result of compensation or legal recourse where communities

In the best case scenario – Liberia – 30 per cent of area-based tax is available to the communities adjacent to where logging take place. In addition, these communities receive a fixed ‘cubic metre fee’ directly from the logging company.

affected by logging operations have grievances (see below for definitions). The VPAs of all four countries state that the company must comply with its social obligations.

This study uses the term ‘social obligations’ rather than ‘benefit sharing’, to emphasise that these codes of conduct and payments are a legal requirement for logging operations, not an optional corporate act of social responsibility by the companies involved. Whilst the focus is on affected communities as local recipients, the study also covers redistribution to local government authorities and traditional authorities. The study does not extend the concept of social obligations to issues such as labour rights, or health and safety in the workplace, although these issues are described in the same sections of the legal frameworks of some countries.

Each country uses fiscal terms in different ways, but the main terms are as follows (see [Figure 2](#)) to cross-reference some of the terms used in each country):

- *Taxes*: monies demanded by the state, such as the area tax or volume tax (stumpage).
- *Royalties*: those taxes that are justified on the basis that owners of a resource should receive an income from its utilisation.
- *Fees*: typically, those taxes that are not considered royalties. However, this is not consistent. In Liberia, for example, the area tax is called the Area Fee and is redistributed as a royalty, whereas in Ghana the Timber Rights Fee is a type of bid premium, and is not treated as a royalty.
- *Bid premiums*: the amount a company bids in order to win a logging contract. These are not taxes, but an amount volunteered, or bid in a competitive process. Once the contract is won, payment of the bid premium is obligatory.
- *Revenue*: all income from the forest sector, some of which is redistributed to local recipients. In this report the term revenue is used collectively to cover all forms of tax, bid premiums and fees.

Who is this report for?

This comparative study primarily seeks to inform national, regional and international advocacy carried out by project partners and other civil society organisations (CSOs) to help communities to get the best deal. It is also of value to policy-makers who wish to compare their context with that in other countries.

Improving the delivery of social obligations should also increase the engagement of forest-fringe communities with the commercial forest sector, and encourage them to start ask fundamental questions such as about customary rights to land and resources.

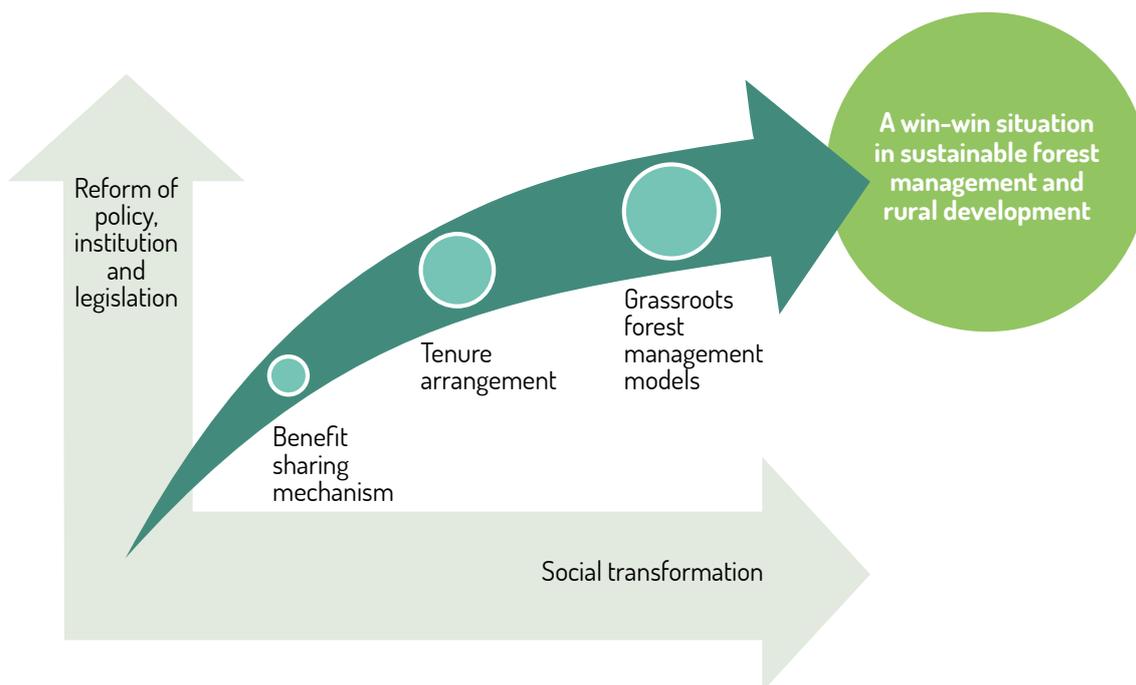
Work on social obligations has been seen in other parts of the world as a vehicle to push for more dialogue, participation, transparency and ultimately for sustainable solutions to forest management, people’s rights and legal tenure reform (see [Figure 1](#)).

These themes align closely with the REDD+ (Reducing Emissions from Deforestation and Forest Degradation) and FLEGT (Forest Law Enforcement, Governance and Trade) processes. A major strength of each VPA is that it ‘looks beyond trade to consider development and environmental issues, as well

as how policies affect local populations!¹ The VPAs have to date prioritised the construction of systems that deliver legal timber to EU markets. FLEGT has rightly been commended for enhancing procedural rights, such as increasing participation and transparency.² It must now do more to secure substantive community rights, including benefit sharing and other social obligations that lead to genuine development gains, and to give communities management control over forests in customary ownership. The recommendations from this study (contained in [Section 8](#), below), if implemented, should help communities to assert these rights.

The distribution of co-benefits from REDD+ schemes, and governance of REDD+ initiatives and the Safeguard Information Systems, all involve obligations to local communities and indigenous peoples. These include ensuring community rights, participation, access to information, dispute resolution and providing tangible rewards to encourage involvement in a REDD+ scheme. All of these have yet to be developed in the four countries. This study aims to take experience from the FLEGT initiative concerning social obligations, and seeks to ensure that REDD+ initiatives will build on the gains from FLEGT.

Figure 1: Model for Participatory Forest Management in China³



1 EU FLEGT Facility, *About the EU FLEGT Action Plan*; www.flegt.org/evaluation, accessed February 2017.

2 See for example Fern, 2016, *Do FLEGT VPAs Improve Governance?*; www.fern.org/sites/fern.org/files/impactreport_lowres.pdf.

3 Liu and Innes, 2015, *Participatory Forest Management in China: Key Challenges and Ways Forward*, *International Forest Review*, Vol. 17 No. 4.

2 Methodology and report structure

The study seeks to compare the different systems in the four countries, highlighting the positive and negative elements of each system. It documents and analyses best practices and highlights the fact that social obligations systems in the four countries have some common issues of concern to civil society.

For each country, we undertook an extensive review of the legal framework as it pertains to social obligations, along with a brief literature review to ascertain what similar studies already exist. We worked closely with the project partner in each country, in order to produce four country-specific sections, below.

We tried to obtain data on actual contributions in a specific year directly from the forest authorities, but only the Forest Development Authority in Liberia responded, so for the other countries we looked elsewhere for data. This was in effect a test of the commitment to transparency of each country's forest authority, as well as providing practical insights into the relationship that individual project partners felt they had with their forest authority.

Section 7 compares the rules around social obligations between countries. It aims to show what has and has not worked in the past, in order to highlight issues in the design and implementation of social obligations.

The final section highlights areas of best practice to date, and gives detailed recommendations. Because each country has different contexts and structures, there is no single best case scenario, but the recommendations indicate how policy and practice could be reformed in order to move forward.

In RoC, the FDI originally came about in those concessions seeking FSC certification as a mechanism for local multi-stakeholder engagement and to finance micro-projects of community interest. The VPA now includes it as a legality criterion and it is increasingly regarded as mandatory for all concessions.

3 Cameroon: legal framework for social obligations

3.1 Terminology

In Cameroon the sector authority is the Ministry of Forests and Wildlife (*Ministère des Forêts et de la Faune*, MINFOF). From 1992 to 2005 it also had responsibility for environmental issues, as the Ministry of Environment and Forests (*Ministère de l'Environnement et des Forêts*, MINEF).

3.1.1 Main legislation

Cameroon's forest sector is mainly covered by Law No. 94-01 of 20 January 1994, governing the system of forests, wildlife and fisheries.⁴ The principal implementing text is Prime Ministerial Decree No. 95/531/PM of 23 August 1995.⁵

In addition, there are two key legal instruments regulating the social aspects of logging. One is Joint Order No. 076 of 26 June 2012, issued by the ministries of local administration and decentralisation, finance, and forests. This *Arrêté* (Order) dictates the conditions, use, and revenue management from the exploitation of forest and wildlife resources by municipalities and village communities.⁶ The second instrument is *Arrêté* No. 222 of 25 May 2001, issued by the Ministry of Forests, on forest management plans.⁷

Whilst these legislative pieces lay out the overall rules, the precise tax and redistribution rates are determined by sequential financial legislation. This means that the revenue share distributed to communities can be changed with each new annual Finance Law and related implementation texts.⁸ This is discussed further in [Section 3.3.2](#) below.

3.1.2 Forest classification and timber rights

Production forests in Cameroon are classified as permanent forest domain (*domaine forestier permanent*, DFP), made up of land allocated to forest, and non-permanent forest domain (*domaine forestier non-permanent*, DFNP), made up of forest land which may be allocated to uses other than forestry.⁹ Within these two domains there are a number of classifications, as shown in [Table 1](#).

In State Forests and Council Forests (also translated as Municipal Forests), land and forest resources are owned as their respective names suggest. Communal Forests are typically previous farm and fallow areas

4 GoC, 1994 (hereinafter labelled as Forest Law 1994), *Loi No. 94-01 du 20 janvier 1994 - Portant régime des forêts, de la faune et de la pêche*; http://apvcameroun.cm/doc/Loi_94_01.pdf.

5 GoC, 1995 (hereinafter labelled as Décret 95/531), *Décret du Premier ministre No. 95/531/PM du 23 août 1995 Fixant les modalités d'application du régime des forêts*; http://apvcameroun.cm/doc/Decret_dapplication_regimes_forets.pdf.

6 MINFOF et al., 2013 (hereinafter labelled as Arrêté 076), *Arrêté conjoint No. 076 MINATD/ MINFI/ MINFOF du 26 juin 2012 Fixant les modalités de planification, d'emploi, et de suivi de la gestion des revenus provenant de l'exploitation des ressources forestières et fauniques, destinés aux communes et aux communautés villageoises riveraines*; available in http://minfof.cm/legales/Guide_explicatif_Arrete_conjointv076.pdf.

7 MINEF, 2001, *Arrêté No. 0222/A/MINEF/ du 25 mai 2001, Procédures d'élaboration, d'approbation, de suivi et de contrôle de la mise en œuvre, des plans d'aménagement des forêts de production du domaine forestier permanent*; <http://apvcameroun.cm/doc/arrete222-25mai.pdf>.

8 See for example GoC, 2016 (hereinafter labelled as Finance Law 2017), *Finance law of the Republic of Cameroon for the 2017 financial year*; Law No. 2016/018 of 14 December 2016; www.minfi.gov.cm/images/documents/loi_de_finances_2017_anglais.pdf.

9 Forest Law, 1994, Article 34.

that have reverted to forest, whereby the state claims ownership of the forest resources.¹⁰ In Community Forests, the land belongs to the state, and the forest resources to the local community.¹¹

3.1.3 Permit types

Cameroon has a complex range of permit types, depending on the forest classification and nature of the logging operations, as follows. The VPA provides a useful cross-reference of which permits are permissible in which forest classifications,¹² although not all those shown in [Table 1](#) feature in the VPA.

Long-term logging agreements (concessions) are only for use in a specific Forest Management Unit (*unité forestière d'aménagement*, UFA) in State Forests (Forêt domaniales). These typically have a duration of up to 30 years (15 years, renewable)¹³ and a maximum size of 200,000 ha.¹⁴ The actual permit document is called an exploitation agreement (*convention d'exploitation*, CE).

Sales of standing timber (*vente de coupe*, VC) for use in Communal Forests (*forêts du domaine national*) are granted to extract timber in a 2,500 hectare area, over a three-year period.¹⁵ In the case of State Forests, sales of standing timber are limited to Cameroonian operators, for one year, non-renewable,¹⁶ and do not appear to be covered by the VPA.¹⁷

Permits for Community Forests (*forêts communautaires*) are granted by the state, initially through a Provisional Management Agreement (*Convention provisoire de gestion*) that allows the community to harvest and sell timber for a period of two years in order to generate revenue to fund the design of a Simple Management Plan.¹⁸ Once this plan is approved a community may obtain a full Management Agreement (*Convention de gestion*) lasting 25 years.¹⁹ The community can conduct logging operations directly, or contract a logging company.²⁰

Various 'small permits' (*permis d'exploitation*) are for production not exceeding 500m³, for one year, available only to Cameroonian operators and destined only for the domestic market.²¹ The VPA notes that legality definitions for some of these permits – for private forests, Lumber Permits (*permis de bois d'oeuvre*, PBO), and Personal (non-commercial) Timber Licences (*autorisations personnelles de coupe*, APC) – have yet to be developed.²² Some other small permits were defined in 2006²³ and again in 2009, and have been included in the VPA legality definition. These include Harvested Timber Removal Licences (*autorisation d'enlèvement des bois*, AEB) and Salvage Licences (*autorisation de récupération des bois*,

10 Ibid, Article 35.

11 Ibid, Article 37.

12 European Commission and Government of Cameroon, 2009 (hereinafter labelled as Cameroon VPA), *Voluntary partnership agreement between the European Union and Republic of Cameroon on forest law enforcement, governance and trade in timber and derived products to the European Union (FLEGT)*, p.24; www.euflegt.efi.int/documents/10180/23384/Voluntary+Partnership+Agreement+between+the+European+Union+and+the+Republic+of+Cameroon+on+forest+law+enforcement%2C%20governance+and+trade+in+timber+and+derived+products+to+the+European+Union+%28FLEGT%29/1b625aff-2242-4761-af85-c79e82e619c8.

13 Forest Law, 1994, Article 46(2).

14 Ibid, Article 49.

15 Ibid, Article 55.

16 Ibid, Article 45.

17 Cameroon VPA, Annex II, *Legality Matrices*, p.24. The grid does not provide for *vente de coupe* in *Forêts domaniales*.

18 MINFOF, 2009 (hereinafter labelled as MINFOF MOP), *Manual of procedures for the attribution and norms for the management of community forests*, p.23; http://carpe.umd.edu/Documents/2009/Revised-Community_Forestry_manual_Eng_Cameroon_2009.pdf.

19 MINFOF MOP, p.24.

20 Ibid, p.44.

21 Forest Law, 1994, Article 56.

22 Cameroon VPA, Annex II, *Legality Matrices*, p.25.

23 MINFOF, 2006, *Lettre Circulaire No. 0131 LC/MINFOF/SG/DF/SDAFF/SN relative aux procédures de délivrance et de suivi d'exécution des petits titres d'exploitation forestière de 22Mars 2006*.

ARB).²⁴ Salvage Licences must be associated with a development or infrastructure project. Following authorisation for the development project from the relevant authority, MINFOF must make an inventory of the timber and then invite buyers. For areas over 100 hectares an environmental impact assessment is also required. Harvested Timber Removal Licences are for the recovery of timber abandoned in the forest, on roads or along the coast, and confiscated timber. As with salvage operations, the timber must be inventoried and sold at public auction. There are also Special Permits (PS in Table 1, below), for example for cutting ebony.

Table 1: Cameroon forest and logging permit classifications

French		Titres d'exploitation possibles	
Domaine forestier permanent	Forêts domaniales	<ul style="list-style-type: none"> • Convention d'Exploitation for a Unité Forestière d'Aménagement • Autorisation d'Enlèvement des Bois • Vente de Coupe 	<ul style="list-style-type: none"> • CE / UFA • AEB • VC
	Forêts communales	<ul style="list-style-type: none"> • Exploitation en régie • Permis Spécial 	<ul style="list-style-type: none"> • PS
Domaine forestier non-permanent	Forêts du domaine national	<ul style="list-style-type: none"> • Vente de Coupe • Autorisation d'Enlèvement des Bois • Autorisation de Récupération des Bois • Permis Spécial • Permis du Bois d'Œuvre • Autorisation personnelle de coupe) 	<ul style="list-style-type: none"> • VC • AEB • ARB • PS • PBO • APC
	Forêts communautaires	<ul style="list-style-type: none"> • Exploitation en régie • Convention provisoire de gestion/Convention de gestion • Autorisation d'Enlèvement des Bois 	<ul style="list-style-type: none"> • AEB
	Forêts de particuliers	<ul style="list-style-type: none"> • Exploitation en régie 	
English		• Possible permits	
Permanent forest domain	State Forests	<ul style="list-style-type: none"> • Exploitation Agreement for a Forest Management Unit • Harvested Timber Removal Permit • Sale of Standing Timber 	<ul style="list-style-type: none"> • CE / UFA • AEB • VC
	Council/Municipal Forests	<ul style="list-style-type: none"> • Logging conducted by the municipality • Special Permit 	<ul style="list-style-type: none"> • PS
Non-permanent forest domain	Communal Forests	<ul style="list-style-type: none"> • Sale of Standing Timber • Harvested Timber Removal Licence • Salvage Licence • Special Permit • Lumber (firewood/building poles) Permit • Personal (non-commercial) Timber Licence 	<ul style="list-style-type: none"> • VC • AEB • ARB • PS • PBO • APC
	Community Forests	<ul style="list-style-type: none"> • Logging conducted by the community • Provisional Management Agreement/Management Agreement • Harvested Timber Removal Licence 	<ul style="list-style-type: none"> • AEB
	Private Forests	<ul style="list-style-type: none"> • Logging conducted by the owner 	

24 MINFOF, 2009 (hereinafter labelled as Lettre Circulaire 924C), *Lettre Circulaire No. 924C LC/MINFOF/SG/DF relative aux procédures de délivrance et de suivi des autorisations de récupération de bois et des autorisation d'enlèvement des bois de 23 Septembre 2009*; in www.oicameroun.org/index.php?option=com_docman&task=doc_view&qid=42&Itemid=35.

3.1.4 Social obligations

In Cameroon the social responsibilities of logging companies are commonly considered to cover two topics. The first relates to obligations stemming from labour law applicable to forest sector and which covers relations between a company and its employees; the second governs relations between logging companies and communities neighbouring the concession. This paper only considers the second of these. In the case of Cameroon there are four such mechanisms (detailed in [Section 3.2](#)):

1. A percentage of the area-based Annual Forestry Royalty (*redevance forestière annuelle*, **RFA**) should be redistributed back to communities.
2. A proportion of some volume-based fees or taxes (*taxe d'abattage*, or **stumpage**) is designated for the benefit of local communities.
3. Social infrastructure should be included in the **Social Clauses** of the Terms and Conditions (*clauses sociales des cahiers de charges*) of those logging permits that require them, in which case the Social Clauses are agreed at an information meeting signed by local MINFOF and government representatives.
4. Legal recourse through **compensation** for damage to private or communal property, a **complaints management system** to be established under the VPA, and the duty to exercise civil **enforcement**.

There is also one mention of compensation in Cameroon's forest law, as follows:

*The classification of a national forest takes into account the social environment of the native population who keep their normal use rights. However, these rights can be limited if they are contrary to the objectives of said forest. In this latter case, the indigenous populations benefit from compensation on terms set by decree. ... The classification of a forest can only occur with compensation for those who have made investments in the area concerned, before the start of the administrative procedure for classification.*²⁵

Whilst this is an obligation in favour of communities who may lose out to the logging sector, it is not a payment by the logging companies, and there is little information on it taking place. Therefore it has not been included in the analysis below.

There are other taxes, but these have never been intended for redistribution to communities. One of these is a component of stumpage, whereby 2.5 per cent of the FOB value of the timber is collected for the central government.²⁶ Another applies to Salvage Permits, whereby 13 per cent of the price obtained by auctioning the timber is paid into a Special Forests Development Fund, in lieu of the 'right of access to the resource that is the equivalent of the area tax paid for conventional titles.'²⁷ It is payable for UFA and Sales of Standing Timber.²⁸ The Special Forests Development Fund is for planting and forest protection activities.

In Cameroon,
logging contracts
are not publicly
available, making
it difficult to know
what commitments
to social
infrastructure might
have been made, let
alone fulfilled.

25 Forest Law, 1994, Articles 26–27.

26 GoC, 2014 (hereinafter labelled as Tax Code 2015), *Code général des impôts*, as of 1 January 2015, Article 243; www.impots.cm/uploads/Telechargement/code_general_impots2015.pdf. FOB – Free on board – is the standard way of expressing international timber prices.

27 Lettre Circulaire 924C, Article 19.

28 Forest Law, 1994, Article 66.

In addition to RFA and stumpage, the VPA mentions 'local development taxes (*taxes de développement local*) or other forestry taxes if stipulated in the terms and conditions.²⁹ This is a general tax paid to the local municipality by businesses and salaried individuals to cover municipal services such as street lighting, sanitation, garbage collection, ambulances, water supply, and electrification.³⁰ As such it is not a sector-specific revenue stream and is not covered in this paper.

3.2 Summary of legal provisions

Table 2 below summarises the social obligations under each of these mechanisms.

Table 2: Legal basis for social obligations in Cameroon

Area-based cash payments	
How is the money raised?	How is it redistributed?
<p>Annual Forestry Royalty (RFA) is a combination of a flat-rate area tax and the price offered by a concessionaire in the bidding process.¹</p> <p>In UFA, the flat-rate is 1,000 CFA Francs (US\$ 1.8) per hectare per year.² The RFA averages 2,800 CFA Francs (US\$ 4.6) per hectare.³</p> <p>For Sales of Standing Timber the flat-rate is 2,500 CFA Francs (US\$ 4.6) per hectare per year.⁴ The RFA averages 17,600 CFA Francs (US\$ 29) per hectare.⁵</p> <p>RFA is not payable with other types of logging permit.</p> <p>For UFA, i.e. in Permanent Domain State Forests it is payable to the state in three instalments through the year. For Sales of Standing Timber, i.e. in Non-Permanent Domain Communal Forests, it is payable to the state as single sum.</p>	<p>The redistribution formula for the RFA is stipulated in the annual finance law and the associated circular from the Director General of Taxes. As a result, changes have been made in recent years.</p> <p>The law applicable to 2017 applies a 50–20.25–18–6.75–5 formula, namely:⁶</p> <ul style="list-style-type: none"> • 50 per cent is retained by the state. • 20.25 per cent is redistributed to the municipality in which the logging takes place. • 18 per cent is provided to the Special Council Support Fund for Mutual Assistance (Fonds spécial d'équipement et d'intervention intercommunale, FEICOM). This agency is responsible for redistributing funds between different municipalities to 'equalise' their resources. • 6.75 per cent is redistributed to the municipality in which the logging takes place, but is to 'be allocated exclusively to development projects run by local populations.' • 5 per cent is also retained by the state for 'assessment and collection costs for the administrations concerned'.⁷
<p>There is also an area-based fee for hunting permits in concessions and some protected areas.</p>	<p>Revenue from hunting fees is similarly divided 40 per cent for the municipality and 10 per cent for the community.⁸</p>
Volume-based cash payments	
How is the money raised?	How is it redistributed?
<p>For Sales of Standing Timber in Communal Forests, a proportion of stumpage is to be paid to local communities.⁹ Between 1996 and 2001 this obligation was backed by a ministerial circular that stipulated a rate of 1,000 CFA Francs (US\$ 1.9) per m³, to be paid to the affected community.¹⁰</p>	<p>Payment terms for this are to be included in the Social Clauses.¹¹ As discussed in Section 3.3.2, the ministerial circular ceased to be applied in 2001.</p>
<p>Municipalities can generate their own income from logging in Municipal Forests.¹² Operations are overseen by a Municipal Management Committee (Comité communal de gestion) and should be in line with the Municipal Development Plan.¹³</p>	<p>30 per cent of the forest income for municipalities should be allocated to the development of infrastructure for local communities, and 70 per cent is for development of the entire municipal jurisdiction.¹⁴</p>
<p>Similarly, Community Forests can generate their own income from logging operations.¹⁵</p>	<p>The entire income is for the benefit of the communities, and there are there are detailed directives on the representation, procedures and accountability of the different kinds of legal entity (e.g. Association, Cooperative, Common Initiative Group) that run community forests. Expenditure should be planned for in the Simple Management Plan for the forest. Plans and reports have to be provided to the Municipal Council each year.¹⁶</p>
<p>Salvage Licences (other than in Municipal or Community Forests): up to 2,000 CFA Francs (US\$ 3.8) per m³, to be paid to the municipality.¹⁷</p>	<p>30 per cent must be used for development projects in the local community, and 70 per cent retained by the municipality for development projects in the wider area.¹⁸</p>

29 Cameroon VPA, Verifier 2.5.2, under Legality Matrices 1 and 5.

30 GoC, 2009 (hereinafter labelled as Local Taxation Law, 2009), *Loi No. 2009/019 du Décembre 15 2009 portant fiscalité locale*; Article 57(2); www.cdr-cvuc.cm/index.php/en/document/doc_download/342-loi-n-2009-019-du-15-dec-2009-portant-fiscalite-locale.



Contributions in kind	
How are contributions in kind determined?	How are contributions in kind fulfilled?
<p>All logging contracts, with the exception of Harvested Timber Removal Licences and Special Permits, or logging in Community Forests, must include Terms and Conditions. These include 'general clauses' relating to technical aspects of logging, and 'special clauses', covering financial obligations, processing facilities, and social infrastructure (Social Clauses).¹⁹</p> <p>The Social Clauses are documented in the minutes of 'information meetings' between the communities and the logging operator, and signed by 'all the stakeholders',²⁰ although typically signed by MINFOF and the Prefect in that locality.</p> <p>The legislative framework suggests roads, bridges, health centres and medicines, schools, water supply, electricity supply, sports or cultural facilities, reforestation projects are all possible investments.²¹</p>	<p>Community infrastructure provided for in the Social Clauses is normally expected to be built by the logging company but the legal provisions can also be interpreted such that financial contributions may be given to communities who then do the construction work.²²</p> <p>Field research has found different practices between logging companies. Some build the social infrastructure themselves while others provide communities, through the Municipality, with the money to do the work.²³</p> <p>The VPA includes as a verifier of legality 'Reports on the realisation of the social projects laid down in the terms and conditions' but provides no further detail on who should generate such reports, how often, or with what level of detail.²⁴</p>
Legal recourse	
What mechanisms for legal recourse exist?	How are channels for legal recourse fulfilled?
<p>The Penal Code provides a general clause for damages arising from any offence to be paid.²⁵</p> <p>The Framework Environment Law recognises the right for local communities to sue for damages in case their direct or indirect interests are affected.²⁶</p> <p>The VPA requires the establishment of publicly accessible complaints management systems that deal with complaints made against the verification body or the Independent Auditor.²⁷</p> <p>In addition, guidelines on the field operations of MINFOF officers state that 'officials must, upon request, assist the holder of a logging title to reach an equitable settlement of its differences with neighbouring populations'.²⁸</p> <p>Citizens have a duty of civil action, to report infractions to the authorities.</p>	<p>We could find no system implementing this part of the law, nor any evidence that it has been used.</p> <p>Whilst references to dispute resolution are outlined on the left, there is no system for cases, or their outcome, so it is hard to assess the impact of these obligations.</p> <p>We could find no system implementing this part of the law, nor any evidence that it has been used.</p>

Footnotes for table

- Finance Law 2017, Article 243.
- Tax Code 2015.
- Calculated from MINFOF, 2015 (hereinafter labelled Titres d'Exploitation 2015), *Titres d'Exploitation Attribués aux Exploitants Forestiers: situation du 30 Mars 2015*.
- Tax Code 2015.
- Calculated from Titres d'Exploitation 2015.
- Finance Law 2017, Article 243.
- MINFI, 2015 (hereinafter labelled as Circulaire 0000909), *Circulaire No. 0000909/IC/MINFI of 31 December 2015, Instructions relating to the Execution of Finance Laws, the Monitoring and Control of the Execution of the Budget of the State, Administrative Public Establishments, Regional and Local Authorities and other Subsidised Bodies, for the 2016 financial year*, Article 166(b); www.impots.cm/uploads/Telechargement/2016%20Budget%20Execution%20Circular.pdf.
- Arrêté 076, Article 8.
- Décret 95/531, Article 85.
- MINEF, 1996 (hereinafter labelled as Lettre Circulaire 370), *Lettre Circulaire No. 370/LC/MINEF/CAB du 22 février 1996 instituant les 1000 FCFA /m³ de bois exploité à verser aux populations riveraines*.
- Décret 95/531, Article 85(1).
- Arrêté 076, Article 1 lists the possible income sources for Municipal Forests.
- Ibid, Articles 9–11.
- Ibid, Article 5.
- Ibid, Article 1 lists the possible income sources for Community Forests.
- Ibid, Article 7.
- Ibid, Article 6. Local Taxation Law, 2009, Article 113.
- Arrêté 076, Article 6.
- Forest Law, 1994, Article 61. Cameroon VPA Legality Indicator 4.2.
- Cameroon VPA, Legality Indicators 4.2 under Legality Matrices 1, 2, 3 and 5.
- Forest Law 1994, Article 61; Arrêté 076, Article 16(2).
- Ibid, Article 66(1) referring to Article 61(3).
- FODER, personal communication, June 2016.
- Cameroon VPA, Verifiers 4.2.2 under Legality Matrices Legality Matrices 1, 2, 3 and 5.
- GoC, 2016 (hereinafter labelled Penal Code 2016), Law No. 2016/007 of 12 July 2016 relating to the penal code, Article 42(6); www.prc.cm/en/multimedia/documents/4721-law-n-2016-007-of-12-july-2016-relating-to-the-penal-code-en.
- GoC, 2009 (hereinafter labelled Environmental Framework Law, 1996), *Loi No. 96/12 du 5 aout 1996 portant loi-cadre relative à la gestion de l'environnement*, Chapter II, Article 8(2); www.minep.gov.cm/index.php?option=com_docman&task=doc_download&gid=11&Itemid=33.
- Cameroon VPA, Annex VIII, *Criteria for evaluation of the legality assurance system*, pp. 109 and 111.
- MINEF, 1998, *Normes d'intervention en milieu forestier*, p.6; <http://apvcameroun.cm/doc/Normes-exploitation.pdf>.

3.3 Discussion

The discussion below elaborates on how effective in practice is the legal framework for Cameroon summarised above. It is divided into the same four sections as in other countries: area-based payments, volume-based payments, social agreements and payments in kind, and access to justice.

3.3.1 Area-based royalties: contested local control

Since 2013 MINFOF has included data on RFA in hard-copy annual reports.³¹ It has been quoted as stating that in 2014 the RFA generated a little over 18 billion CFA Francs (US\$ 29 million).³² The redistribution formula in force at the time would indicate the local municipality should have received 3.6 billion CFA Francs (US\$ 5.8 million, i.e. 20%) and local communities 1.8 billion CFA Francs (US\$ 2.9 million, i.e. 10%).

Other analyses of official data indicate that total RFA collected in 2011 was 11.8 billion CFA Francs (US\$ 24 million), which was also the average for the previous seven years.³³ The total contracted area in 2011 was 5.6 million hectares,³⁴ so the average RFA was US\$ 4.3 per hectare.

The Finance Law and General Tax Code stipulate the RFA system and rates. A new Finance Law is passed every year, and the associated and General Tax Code is also updated, so adjustments can be made more frequently than in countries where these rules are laid down in the forest law. This could be an advantage, adjusting rates to changing exchange rates and other circumstances, but in Cameroon the trend has been to reduce the share earmarked for communities:

- A Decree in 1996 provided that ‘the benefits from the allocation of Communal Forest land either as a concession or as lease are distributed at 40 per cent to the state, 40 per cent to the local municipality and 20 per cent to the affected communities’.³⁵
- The 1998 Finance Law, and a joint *Arrêté* from the finance and local government ministries two months earlier changes this redistribution of the RFA to a 50–40–10 formula, whereby the state received 50%, and the local municipality received both 40 per cent for themselves and 10 per cent for village communities neighbouring the logging area.^{36,37}
- In 2012 a joint *Arrêté* from the forest, finance and local government ministries modified the redistribution formula to allow a share for all the rural municipalities, through a Special Council Support Fund for Mutual Assistance (*Fonds spécial d’équipement et d’intervention intercommunale or FEICOM*). Henceforth redistribution followed a 50–20–20–10 formula, clarifying that 20 per

31 For example, MINFOF, 2014, *Forêts et faune du Cameroun: faits et chiffres*.

32 Earth Cameroon, 23 November 2015 (hereinafter labelled Earth Cameroon), reposted from integration.org, 23 November 2015, *Redevance Forestière: Comment la Primature se Joue des Communautés*; <http://rural-info.net/?p=1180>, accessed February 2017.

33 Eba’a Atyi et al., 2015 (hereinafter labelled Eba’a Atyi, 2015), *Étude de l’importance économique et sociale du secteur forestier et faunique au Cameroun*, p.60; www.minfocm/documentation/Etude_MINFOF_2013.pdf.

34 Derived from WRI, 2012, *Interactive Forest Atlas of Cameroon, Version 3.0 – Overview Report*, p.8; www.wri.org/sites/default/files/pdf/interactive_forest_atlas_of_cameroun_version_3_0.pdf.

35 GoC, 1976, Décret No. 76-166 du 27 avril 1976, fixant les modalités de gestion du Domaine National; <https://yaounde.eregulations.org/media/D%C3%A9cret%2076-166%20du%2027%20avril%201976%20fixant%20les%20modalit%C3%A9s%20de%20gestion%20du%20domaine%20national.pdf>.

36 GoC, 1998, Loi No. 98/009 du 01 juillet 1998 portant loi de finances de la république du Cameroun pour l’exercice 1998/1999; Article 12; www.gfbcam.com/download/GBFC/Loi%20des%20finances%201998.pdf.

37 MINEFI, 1998, *Arrêté conjoint No. 00122, MINEFI/MINAT du 23 avril 1998, fixant les modalités d’emploi et de suivi de la gestion des revenus provenant de l’exploitation des ressources forestières et fauniques destinés aux communes et communautés villageoises riveraines*; cited in Yamo, 2015, *Représentation locale compromise dans la gestion de la rente forestière communautaire au sud-est du Cameroun*; <https://portals.iucn.org/library/sites/library/files/documents/RFGI-WP-012.pdf>.

cent went to the local municipality and 20 per cent to FEICOM. The *Arrêté* also provided extensive directives on the representation, procedures and accountability of both municipal committees and community committees who manage these funds. Generally, expenditure must be in line with a Municipal Development Plan or Local Development Plan. The same *Arrêté* stated that 'All earlier contrary provisions ... are repealed', thus overruling the 1996 Decree awarding a 20 per cent share to communities.³⁸ A typical Social Clause from 2014 states that 3 million CFA francs a year (US\$ 6,200; presumably 10 per cent of the total RFA) a year will be given to 'the villages concerned for the realization of socio-economic works'.

- The 10 per cent share for municipalities to use for the benefit of communities was dropped in the 2015 Finance Law, which instead consolidated it to municipalities, making their (including FEICOM) share 50%, with the remaining 50 per cent retained by the state.³⁹ In 2015 the Director General of Taxes also redirected 10 per cent of the municipalities' share to those charged with collecting the tax,⁴⁰ resulting in a 50–22.5–22.5–5 formula for the state, local municipality, FEICOM and to support the cost of collection, respectively.
- Following lobbying by CSOs and parliamentarians,⁴¹ this arrangement was modified slightly, so that for 2016 the redistribution is 50–27–18–5: 50 per cent retained by the state, 27 per cent for the local municipality, 18 per cent for FEICOM, and 5 per cent to support the cost of collection.⁴² This was formalised in the 2016 Finance Law.⁴³
- Sustained civil society pressure, including a petition, led to the finance law for 2017 being revised so that a quarter of the 27 per cent due to the local municipality, i.e. 6.75%, is 'allocated exclusively to development projects run by local populations.'⁴⁴

The implication of the 2012 *Arrêté* was that the share of RFA is public money and that management must be participative, bringing together the municipality and communities (through their Village Management Committees, *Comités villageois de gestion*). Each Municipal Committee comprises, among others, the mayor (as chair) and four representatives of communities (including one elected by the committee as vice-chair and one representing traditional authorities). But field research suggests this does not happen in practice, and that the members are appointed through municipal by-laws signed by the mayor.⁴⁵

The finance laws in 2015 and 2016 redefined these joint roles, resulting in the Village Management Committees being disempowered or even rendered obsolete. Simultaneously the laws strengthened the power of the State, FEICOM and the municipality to manage the RFA.⁴⁶ The changes in the 2017 law

38 Arrêté 076.

39 GoC, 2014, *Portant loi de finance de la République du Cameroun pour l'exercice 2015*; Loi No. 2014/026 du 23 Décembre 2014, Article 243; www.minfi.gov.cm/images/documents/loi%20des%20finances%202015.pdf.

40 MINFI, 2014, *Circulaire 00000683/C/MINFI de 31 décembre 2014 Portant instructions relatives à l'exécution des lois de finances, au suivi et au contrôle de l'exécution du budget de l'état, des établissements publics administratifs, des collectivités territoriales décentralisées et des autres organismes subventionnés, pour l'exercice 2015*; Article 162(b); www.chambrecomptes.net/images/stories/CDCdocs/circexecutionbudget2015.pdf.

41 FODER, 2015, *Une campagne pour exiger la restauration des 10% de la Redevance forestière des communautés*; <http://forest4dev.org/index.php/8-menu/105-redevance-forestiere-annuelle>, accessed February 2017.

42 Circulaire 0000909.

43 GoC, 2015, *Law No. 2015/019 of 21 December 2015, Finance Law of The Republic of Cameroon for the 2016 Financial Year*, Article 243; www.impots.cm/uploads/Telechargement/LoiFinances2016_ENGBis2.pdf.

44 Finance Law 2017, Article 243.

45 Antang Yamo, personal communication, November 2016.

46 Ibid.

improve the allocation to communities, but according to some in civil society it still 'gives them no power in the management of this income'.⁴⁷

The rationale for the 5 per cent allocated for the administrative cost of the tax is difficult to justify as the revenue is comparatively easy to collect. The basic information – permit holder and permit area – is well known by the authorities and changes little from year to year, and logging companies pay at the start of each year. Tax collectors do not need to visit the forest or scrutinise volumes of detailed documentation to secure this revenue, and one tax official been quoted as saying that it is 'the easiest tax to collect because it gives very little opportunity for companies to cheat'.⁴⁸

A list of valid titles published in April 2015 shows that RFA rates vary between 1,050 and 8,050 CFA Francs (US\$ 1.7–13) per hectare in UFA concessions, and 2,500 to 90,000 CFA Francs (US\$ 4.1–145) per hectare for Sales of Standing Timber.⁴⁹ By comparison, the flat rate (or floor price) area tax is 2,500 CFA Francs (US\$ 4.6) per hectare per year for Sales of Standing Timber, and 1,000 CFA Francs (US\$ 1.8) per hectare per year for UFA.

There are many issues concerning the management of the redistributed RFA by municipalities, and a number of court cases regarding misappropriation are pending. For example:

- A generator, a corn mill, televisions, plastic chairs and a chainsaw collectively purchased by a community using RFA funds were first confiscated by the local committee and then clandestinely sold. A case has been filed against the chair of the committee, and while it remains pending, the chair is at large and taunting those who filed the complaint.⁵⁰
- A community was informed in 2009 that it had benefitted from more than 125 million CFA Francs (US\$ 267,000) for the construction of social projects, but this money was subsequently diverted by municipal authorities. Again, local citizens have filed a complaint but, four years later, the case is still pending.⁵¹
- A municipality that annually received between 700 million and 1.3 billion CFA Francs (US\$ 1.2–2.1 million) under the RFA over many years still has no proper road, electricity is rationed to daytime hours, the town hall site has been abandoned for years, and municipal officials are often months without wages. A mayor of this municipality is also currently detained for reasons relating to the management of the RFA.⁵²

3.3.2 Stumpage: varied fortunes

In Cameroon, timber production in 2011 amounted to 2.2 million m³ – about the average for the previous ten years – and generated 5 billion CFA Francs (US\$ 10.5 million) in volume-based stumpage,⁵³

47 La Voix du Paysan, 29 December 2016, *La redevance forestière des communautés locales toujours problématique*, <http://new.lavoixdupaysan.net/cameroun-redevance-forestiere-communautes-locales-toujours-problematique/>, accessed February 2017.

48 Earth Cameroon, 2015.

49 Titres d'Exploitation 2015.

50 Yamo, 2015 (hereinafter labelled Yamo, 2015), *Représentation locale compromise dans la gestion de la rente forestière communautaire au sud-est du Cameroun*, Working Paper 12, *Initiative pour la gouvernance démocratique des forêts (RFGL), Soutien aux moyens d'existence tirés des forêts par la représentation locale*, p.20; <https://portals.iucn.org/library/sites/library/files/documents/RFGL-WP-012.pdf>.

51 Ibid, p.20.

52 Investir au Cameroun, 12 November 2015, *Les riverains des forêts réclament la restauration de leur 10% sur la redevance forestière*; www.investiraucameroun.com/gestion-publique/1211-6880-cameroun-les-riverains-des-forets-reclament-la-restauration-de-leur-10-sur-la-redevance-forestiere, accessed February 2017.

53 Eba'a Atyi, 2015, pp.70 and 62.



Village Baka resettlement in a community forest area, Cameroon

so the average was US\$ 4.8 per m³. The rate is 2.5 per cent of the international timber price for different species. Volume-based stumpage has historically comprised only a small element of revenue redistribution compared to RFA. Nonetheless it has been subject to a similar series of reversals regarding the amounts that should be received at the local level. Currently local communities do not receive any share of stumpage.

In the late 1990s, following a Circular from MINEF,⁵⁴ there was an obligation to pay 1,000 CFA Francs (US\$ 1.9) per m³ harvested in a Sale of Standing Timber permit to affected communities. This was implemented through the Social Clauses (see Section 3.3.3), but ceased to be applied in 2001, when the Sale of Standing Timber permits was suspended. Despite the reintroduction of this type of permit two years later, the 1,000 CFA Francs per m³ payment was not reinstated.⁵⁵ The principle that local village communities should receive a share of stumpage is in the 1995 Decree,⁵⁶ and reportedly the

54 Lettre Circulaire 370.

55 Oyono & Efoua, 2006 (hereinafter referred to as Oyono & Efoua, 2006), *Qui représente qui ? Choix organisationnels, identités sociales et formation d'une élite forestière au Cameroun*; in *Afrique et Développement*, Vol. XXXI, No. 2; p.156 ; www.codesria.org/IMG/pdf/7_oyono-efoua.pdf?711/3f27919f9f8e6c1cb64ef3c0002261c86bb4b63d.

56 Décret 95/531, Article 85 (1).

purpose of this Circular was to clarify and formalise a system whereby 'loggers – under pressure from the villagers – had begun to pay this cash to the communities affected by the Sale of Standing Timber'; and it 'was reassuring for local communities, who could finally have direct access to financial benefits from the exploitation of their forests'.⁵⁷ Others have suggested that popular pressure to claim this tax was not as strong as it might have been, because the Circular coincided with communities being offered 'pre-emption rights' to have potential Sale of Standing Timber areas classified as Community Forests. This could have given communities much greater control than simply a cash benefit-share.⁵⁸

Rather than giving payments to the communities themselves, the municipalities – i.e. the owners of the Communal Forest – were expected to use this money for socio-economic infrastructure for the benefit of local communities.⁵⁹ However, as with the RFA (see [Section 3.3.1](#)), decision-making roles were not clear, resulting in a 'lack of information on the amounts received at the municipality and the diversion of money from the tax'.⁶⁰

3.3.3 Social Clauses in the cahiers de charges

The term Social Clauses refers to a section in the terms and conditions of the main types of logging contracts that originate from an information meeting held between the logging company and affected communities.

The terms and conditions in a logging contract also cover technical aspects of logging, financial obligations and processing facilities. The French term *cahiers des charges* is used in different contexts in the literature to refer to the full terms and conditions and to the specific Social Clauses.

While the legal framework, now reiterated in the VPA, clearly states that Social Clauses must be in place, and specifies the sort of social infrastructure that companies ought to construct,⁶¹ there is no specific text that indicates how to achieve this in practical terms. MINFOF has yet to clarify the modalities for setting and achieving social contributions in kind, and it continues to experience challenges in ensuring that logging companies take communities properly into account in the management of concession areas.

A 'contribution to social and economic infrastructure' is included in a list of possible municipal and community income in the key legal instrument covering the conditions, use and revenue management from the exploitation of forest and wildlife resources by municipalities and village communities.⁶² However, this text gives no guidance regarding the required information meetings. As a result, the minutes of these meetings (*procès-verbaux de réunions d'information*, PVRI) are unlikely to include any useful information about the company's commitments to the communities affected,⁶³ to which it can subsequently be held to account.

57 Oyono & Efoa, 2006.

58 Poissonnet, 2005, *Mise en Œuvre de la Gestion Forestière Décentralisée au Cameroun : Impacts Politiques, Socio-Economiques et Environnementaux d'un Processus en Apprentissage*; p.32; https://agritrop.cirad.fr/525856/1/document_525856.pdf.

59 FODER, 2015, *Droits et Responsabilités des Communautés dans la Gestion des Forêts*; p.15; www.forest4dev.org/images/documents_pdf/droits%20et%20responsabilite%20des%20communautes%20web%20.pdf.

60 Milol & Pierre, 2000, *Impact de la Fiscalité Décentralisée sur le Développement Local et les Pratiques d'Utilisation des ressources forestières au Cameroun, Volet Additionnel de l'Audit Economique et Financier du Secteur Forestière*; cited in Poissonnet, 2005, *Mise en Œuvre de la Gestion Forestière Décentralisée au Cameroun : Impacts Politiques, Socio-Economiques et Environnementaux d'un Processus en Apprentissage*; p.32; https://agritrop.cirad.fr/525856/1/document_525856.pdf.

61 Cameroon VPA, Legality Indicator 4.2.

62 Arrêté 076, Article 1.

63 FODER, 2016 (hereinafter referred to as FODER, 2016), *Cadre et méthodologie de suivi du respect des obligations sociales des entreprises forestières et de la gestion par les municipalités des revenus forestiers destinés aux communautés*, p.8; <http://loggingoff.info/fr/document/foder-cadre-de-suivi/>.

There is a standard form of the terms and conditions, in that these follow a similar structure in each logging contract, but typically they have only a single clause covering Social Clauses. This merely states that the minutes of the information meeting are an integral part of the terms and conditions. Unfortunately in practice the minutes are not even always attached to the contract, as these documents are written at different times, by different people. The contracts are signed at the national level, while the minutes are signed at the local level, and the local officials who have the minutes often do not have a copy of the contract nor the other terms and conditions.⁶⁴ In addition, logging contracts were excluded from the VPA commitment to transparency, making it even more difficult to read the contents of the terms and conditions, and to know what commitments to social infrastructure might have been made, let alone fulfilled.

Negotiation

From the few references to the methodology for establishing Social Clauses, is it clear that the information meetings are neither consultations nor negotiations. In the case of the long-term UFA concessions, the information meeting is supposed to take place during the three-year start-up period under the temporary operating agreement, the *convention provisoire d'exploitation*.

There is a wide range of opportunities for participation and representation, as meetings 'take place directly between the parties or under the mediation of the administrative authorities (prefect, sub-prefects or head of district) and forestry (departmental delegates, forestry posts chiefs)'.⁶⁵

Information meetings are regarded by many logging companies as a formality, and there is little evidence of serious engagement. As a result, local officials and the company are generally cursory in their discussions, for example telling communities that the company has already paid all the necessary taxes to the state. Although the legal framework names the kind of social infrastructure that the logging company should consider contributing to, in reality it is more common to give items such as machetes, footballs, sportswear, or contributions to local income-generating activities such as chicken farming or cocoa farm establishment. It is also unclear whether the logging company will undertake the work itself, or will give funds to the community who will in turn do the work.

There is also little information on how frequently these meetings will or should take place, given that in the course of a 30-year concession it is appropriate to renew the Social Clauses on a regular basis.

Supervision of implementation by communities

There is no good quantitative data available on the delivery of community infrastructure through Social Clauses, nor any common standard for community supervision of implementation. Management Committees exist in some communities, but these are generally ad hoc.

A study of small permits noted: 'Several cases of abandonment of wood in construction sites were found during the field visit. These abandonments are usually caused by: ... 1. conflicts between the operator and local residents following the non-fulfilment of the Social Clauses or because of land conflicts particularly in the context of agricultural projects initiated by individuals.'⁶⁶

64 FODER, personal communication, November 2016.

65 Agreco and CEW, 2011 (hereafter labelled Agreco and CEW), *Rapport Etude sur les petits titres d'exploitation forestière au Cameroun à la lumière de la lettre circulaire 924/JC/MINFOF/SG/DF du 23 septembre 2009*, p.33; www.oicameroun.org/index.php?option=com_docman&task=doc_view&qid=42&Itemid=35.

66 Agreco and CEW, 2011, p.32.

Supervision of implementation by the authorities

To date there is no system for monitoring the fulfilment of infrastructure or other contributions in kind. The detachment of the Social Clauses (the minutes of the information meetings) from the rest of the contract or terms and conditions makes monitoring all the more difficult. In its analysis of the key elements of the VPA that communities and civil society might want to monitor, FODER noted 'a weakness in the monitoring and control of these clauses, and in management of revenues from logging for the communities by the competent authorities. ... Also the legal and regulatory provisions on social obligations in the FLEGT VPA legality grids lack sufficient detail to objectively assess whether the obligations contained in the terms and conditions have been met within a reasonable time and to acceptable standards.'⁶⁷

3.3.4 Legal recourse: a right or a duty?

Compensation for damage

There is no specific provision in forest legislation for compensation to be levied on logging companies that damage private or community property. One basis for compensation can be found in environmental law, which recognises the right for local communities to sue for damages if their direct or indirect interests are affected.⁶⁸ In order to exercise this right, however, the community concerned needs to be constituted as a legal entity or have the traditional leader act on their behalf. The same environment law is referred to in the VPA text, but not in the context of access to justice.

Dispute resolution

Under Cameroon's VPA a dispute management system is required for both the verification body and the Independent Auditor. The latter is described as 'a mechanism for handling complaints and disputes that arise from the independent audit. This mechanism makes it possible to deal with any complaint relating to the operation of the licensing scheme.' It must also comprise 'a documented mechanism for handling complaints that is available to all interested parties', which makes it 'clear how complaints are received, documented, escalated (where necessary) and responded to.'⁶⁹ No further details are provided. Therefore it is unclear how this will provide recourse for citizens with grievances relating to their rights or benefits.

Citizen enforcement

The legal framework for the penal code encourages citizens to alert the authorities to infringements of the law, but the emphasis appears to be more on protecting the interests of the state, against officials or companies that act improperly, than on community rights. For instance, it is stated that 'Any person who has knowledge of an infraction qualifying as a crime or offence, shall immediately and directly notify either the Public Prosecutor or any police officer or, failing that, any local administrative authority.'⁷⁰ This is backed up by a clause on the failure to report: 'Any citizen who in time of peace fails to inform the defence, administrative or legal authorities, as soon as he comes to know of it, of any activity liable to injure the defence of the nation shall be punished.'⁷¹

67 FODER, 2016p.8.

68 Environmental Framework Law, 1996 Chapter II, Article 8(2).

69 Cameroon VPA, Annex VIII, *Criteria for evaluation of the legality assurance system*, p.111.

70 GoC, 2005, *Loi No. 2005/007 du 27 Juillet 2005 portant Code de Procédure Pénale*, Article 135 Clause (2) ; www.ilo.org/dyn/natlex/docs/ELECTRONIC/71813/89563/F-236841017/CMR-71813.pdf.

71 Penal Code 2016, Article 107.

4 Ghana: legal framework for social obligations

4.1 Terminology

The sector authority is the Forestry Commission (FC), constituted under an Act in 1999, and under the auspices of the Ministry of Lands and Natural Resources (MLNR),⁷² previously constituted as the Ministry of Lands, Forests and Mines (MLFM) and the Ministry of Lands and Forests (MLF).

4.1.1 Main legislation

Ghana is the only country in this study whose constitution lays out the formula for the redistribution of royalties.⁷³ Ghana's forest sector is governed by some 20 pieces of legislation, of which the most relevant here are the 1998 Timber Resource Management Act (Act 547),⁷⁴ (amended in 2002 by Act 617⁷⁵), which introduced the current logging permit system along with a competitive bidding process. The 1998 Timber Resources Management Regulations were enacted through Legal Instrument (LI) 1649⁷⁶ and amended in 2003 by LI 1721.⁷⁷ In July 2012 a new LI (2184) was passed to provide a legal basis for FLEGT licensing and to establish a Timber Validation Committee.⁷⁸ There are also over 300 pages of Manuals of Procedure, last updated in 2013.⁷⁹ Other relevant texts are:

- The Concessions Act, 1962 (Act 124).⁸⁰
- New Procedures for Stumpage Collection and Disbursement, a press release from the Forestry Commission circa 2007.⁸¹
- Stumpage/rent disbursement reports covering six-month periods and jointly published by the Office of the Administrator of Stool Lands (OASL, an agency under the MLNR responsible for administering land revenue allocated to traditional leadership and land structures, or stools, consulting and co-ordinating matters relating to administration and development of stool lands)⁸² and the Forestry Commission.⁸³

72 GoG, 1999, Act 571, *Forestry Commission Act*; www.fcghana.org/library_info.php?doc=44&publication:Forestry%20Commission%20Act,%201999%20Act%20571%20&id=15.

73 Constitution of the Republic of Ghana, 1992, (hereinafter labelled as Constitution), Article 267 (6); www.politicsresources.net/docs/ghanconst.pdf.

74 GoG, 1998 (hereinafter labelled as Act 547), Act 547, *Timber Resource Management Act, 1997 (Date of Assent 17 March 1998)*; www.fcghana.org/library_info.php?doc=45&publication:Timber%20Resource%20Management%20Act,%201997%20-%20Act%20%20547.

75 GoG, 2002 (hereafter labelled Act 617), Act 617, *Timber Resources Management (Amendment) Act, 2002 (Date of Assent 8 April 2002)*; [www.fcghana.org/library_info.php?doc=52&publication:Timber%20Resources%20Management%20Act%20617%20\(Amendment\)%20Act,%202002](http://www.fcghana.org/library_info.php?doc=52&publication:Timber%20Resources%20Management%20Act%20617%20(Amendment)%20Act,%202002).

76 MLF, 1998 (hereinafter labelled as LI 1649), LI 1649 *Timber Resources Management Regulations, 9 November 1998*; www.fcghana.org/library_info.php?doc=46&publication:L.I.%201649%20-%20Timber%20Resources%20Management%20Regulations,%201998.

77 MLF, 2003 (hereinafter labelled as LI 1721), LI 1721 *Timber Resources Management (Amendment) Regulations, 14 February 2003*; [www.fcghana.org/library_info.php?doc=48&publication:L.I.%201721%20Timber%20Resources%20Management%20\(Amendment\)%20](http://www.fcghana.org/library_info.php?doc=48&publication:L.I.%201721%20Timber%20Resources%20Management%20(Amendment)%20).

78 MLNR, 2012, LI 2184 *Timber Resources (Legality Licensing) Regulations, 20 June 2012*; <http://faolex.fao.org/docs/pdf/gha143421.pdf>.

79 FC, 2013 (hereinafter labelled as FC MoP 2013), *Manuals of Procedure for Forest Resource Management Planning in the High Forest Zone of Ghana*; www.fcghana.org/assets/file/Publications/Manuals/MOP.pdf.

80 GoG, 1962 (hereafter labelled Act 124), Act 124, *The Concessions Act*; <https://faolex.fao.org/docs/pdf/gha3110.pdf>.

81 FC and OASL, c.2007 (hereinafter labelled as FC press release 2007), *New Procedures for Stumpage Collection and Disbursement*; www.fcghana.org/library_info.php?doc=55&publication:New%20Procedure%20for%20Stumpage%20Disbursement%20.

82 See www.mlnr.gov.gh/index.php/agencies/2015-06-12-08-37-10, accessed February 2017.

83 FC and OASL, 2010-11 (hereinafter labelled as Disbursement Reports), *Stumpage / Rent Disbursement Reports*; www.fcghana.org/library_info.php?doc=53&publication:Stumpage%20/%20Rent%20Disbursement%20Report.

4.1.2 Forest classification and timber rights

Timber can be produced from a Forest Reserve, an unreserved area, usually called 'off-reserve' forests, or from a plantation (on- or off-reserve). Off-reserve areas include secondary forests and timber trees on farmlands. The Constitution infers that the state does not own resources on Stool Land, but that local communities, as represented by their stools, do.⁸⁴ This is reiterated with specific reference to Forest Reserves in the 1927 Forest Ordinance, which states that 'the ownership of land within a proposed forest reserve shall not be altered by its constitution as a forest reserve'.⁸⁵ The 1962 Concessions Act further clarifies that rights to naturally occurring trees are vested in the state in trust for and on behalf of these stools, regardless of their on- or off-reserve status.⁸⁶

4.1.3 Permit types

Ghana has one principal forest management permit,⁸⁷ the Timber Utilisation Contract (TUC). These typically have a duration of up to 40 years and cover a maximum area of 12,500 ha.⁸⁸ There are other types of logging documents, including salvage permits, special permits, timber leases, certificate of purchase, and timber utilisation permits, but these does not necessarily connote legality.⁸⁹ A salvage permit is for removal of trees in areas which are undergoing some form of development, be it agriculture expansion or infrastructure development. They last for a maximum of one year (although they are at times extended), and – along with certificates of purchase for abandoned and confiscated logs – are the only permits other than TUCs recognised by the VPA.⁹⁰

4.1.4 Social obligations

In Ghana, the term 'social obligations' has a specific meaning (see Table 3, under Contributions in kind). However, for the purposes of this study the term has a broader meaning, as described in Section 1, which identifies four mechanisms in Ghana, provided for by law, by which logging companies are obliged to make payments, in cash or in kind, to local recipients:

1. A proportion of the area-based tax, or **Annual Rent**, is redistributed to local government and traditional authorities.
2. A proportion of **stumpage** is redistributed to local government and traditional authorities.

In Ghana, the Constitution infers that the state does not own resources on customary land, but that local communities, as represented by their traditional leadership structures, do.

84 Constitution, Article 267.

85 GoG, 1927 (hereinafter labelled as Cap 157), *Forest Ordinance Act*, Cap 157, Clause 18, paragraph 5; <http://faolex.fao.org/docs/pdf/gha40761.pdf>.

86 Act 124, Section 16(4).

87 Act 547, Section 1.

88 Act 617, Section 6A.

89 See for example Client Earth, 2013 (hereinafter Client Earth, 2013), *The distribution of benefits derived from Forest resources*, www.clientearth.org/external-resources/ghana/other-resources/The-distribution-of-benefits-derived-from-Forest-resources-janv2014.pdf and Global Witness, 2013, *Three quarters of Ghana's logging permits could break Europe's new timber law*, www.globalwitness.org/sites/default/files/gw_ghana_logging_permits.pdf.

90 European Commission and Government of the Republic of Ghana, 2009 (hereinafter labelled as Ghana VPA), *Voluntary partnership agreement between the European Community and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community*, Annex II, Principle 2 (pp.24–25); www.euflegt.efi.int/documents/10180/23388/Voluntary+Partnership+Agreement+between+the+European+Community+and+the+Republic+of+Ghana+on+forests+law+enforcement%2C%20governance+and+trade+in+timber+products+into+the+Community/45efbd36-deff-4ebf-b09d-19d1099cd599.

3. Social Responsibility Agreements (**SRA**s) are negotiated between each affected community and the logging company.
4. Opportunities for legal recourse include **compensation** payable by logging companies if they damage crops or property, **dispute resolution mechanisms**, and **civil enforcement** where authorities can take action stemming from reports by citizens.

There are other taxes, but these are not redistributed to local entities. These include Timber Rights Fees (see [Section 4.3.1](#)), export levies, air-dried export lumber levy and corporate taxes.

4.2 Summary of legal provisions

Table 3 below summarises the legal obligations under each of these mechanisms.

Table 3: Legal basis for social obligations in Ghana

Area-based cash payments			
	How is the money raised? How is it redistributed?		
<p>Annual Rent: GHC 0.12 (US\$ 0.03) per hectare per year for forest reserves and GHC 0.1 (US\$ 0.025) for off-reserve areas.¹</p> <p>It is to be paid to the Administrator of Stool Lands², as one of a number of rents and royalties payable to landowners³.</p>	As a royalty, annual rent is subject to a redistribution formula enshrined in Ghana's Constitution, which in effect is: ⁴		
	Paid to	In the Constitution	In effect
	The office of the Administrator of Stool Lands	10%	10%
		<i>of the remainder:</i>	
	The relevant Stool	25%	22.5%
	The relevant Traditional Authority	20%	18%
	The relevant District Assembly	55%	49.5%
Total		100%	
Volume-based cash payments			
How is the money raised?	How is it redistributed?		
<p>Stumpage fee: representing 'royalties which provide a basic return to the landowner and contributes to the cost of forest management and timber regulation'.⁵</p> <p>Stumpage fee is calculated as = Tree volume x Timber price x Stumpage rate, where Timber price is 35 per cent of FOB value of air-dried lumber (i.e. estimated roundwood equivalent), and Stumpage rate is 'determined by the Minister in consultation with the Commission and the Administrator of Stool Lands, having regard to the market demand and inventory levels of timber species'.⁶</p> <p>Stumpage fees are payable within 30 days of billing, following measurement of the timber at stump.⁷</p> <p>According to the Constitution, it is to be paid to the Administrator of Stool Lands,⁸ but 'under a special arrangement' it is collected by the Forestry Commission.⁹</p> <p>The most recent list of stumpage fees dates from March 2014.¹⁰</p>	As a royalty, stumpage fees are subject to a redistribution formula modified ¹¹ from that enshrined in Ghana's Constitution: ¹²		
	Paid to	In the Constitution	In effect
	The Forestry Commission		50%
	The office of the Administrator of Stool Lands	10%	5%
		<i>of the remainder:</i>	
	The relevant Stool	25%	11.25%
	The relevant Traditional Authority	20%	9%
	The relevant District Assembly	55%	24.75%
Total		100%	
The share of stumpage and rent redistributed to the Stool and the Traditional Authority combined is regarded as a 'community share'. The stumpage/rent disbursement reports clearly indicate which District Assembly, Traditional Authority, and Stool has received how much money in a six-month period. ¹³			



Contributions in kind	
How are contributions in kind determined?	How are contributions in kind fulfilled?
<p>It is a condition of each TUC that a SRA is agreed between the contractor and local communities prior to the finalisation of the contract.¹⁴</p> <p>The SRA comprises two parts:¹⁵</p> <ul style="list-style-type: none"> • A Code of Conduct that lists the rights and interests of communities that must be respected by the logging company. • Social Obligations, a list of materials and services the logging company agrees to provide to the communities. <p>It is accepted practice that 'local communities' are those within a 5km radius of operations, and so those eligible to benefit from an SRA changes during the period of the TUC, as forest operations work through the concession area.</p> <p>The Social Obligations section of the SRA must be equal in value to 5 per cent of the stumpage fees a company pays.¹⁶ They typically include 'schools, health facilities, the provision of water and electricity, and the construction of palaces for traditional rulers and of community centres'.¹⁷</p> <p>A Sample SRA provides space to estimate annual stumpage to assist communities in knowing how much the 5 per cent requirement is likely to be in real terms.¹⁸</p>	<p>The District Forest Offices have a facilitatory role in negotiating SRAs and helping the beneficiary communities to determine the real value of the 5 per cent of stumpage. It then has a duty to ensure compliance with the terms of the SRA, including the application of sanctions.¹⁹</p> <p>Community infrastructure provided for in an SRA is normally expected to be built by the logging company.</p> <p>In some cases, the logging company deposits money into a community fund.²⁰ There may also be a community development committee that solicits proposals from eligible communities, approves them and either funds them (if a community fund exists) or passes them to the logging company for implementation.²¹</p>
Legal recourse	
What mechanisms for legal recourse exist?	How are channels for legal recourse fulfilled?
<p>Compensation for damage to crops must be laid out in the terms and conditions of the TUC document.²² The compensation rate should be one of the clauses in the Code of Conduct section of the SRA.²³</p> <p>There are – or planned to be – dispute resolution mechanisms at many levels:</p> <ul style="list-style-type: none"> • The local offices of the Forestry Commission, the Forest Services Division. • The official Independent Monitor. • The Timber Verification Department. • The Timber Verification Committee that oversees the work of the Timber Verification Department. <p>In addition, the legality grid ensures that for off-reserve areas, a prerequisite to any community consent to allow logging is that any land tenure disputes are resolved by 'arbitration', and that the process is documented.²⁷</p> <p>A possibility for Citizen's suits and civil enforcement is provided in the Sample SRA: 'if the company fails to comply with the above responsibilities as agreed within the period ... of contract, the community shall be compelled to inform the Forestry Commission to take immediate action or institute sanctions specified in the Timber Resources Management Act'.²⁹</p>	<p>The District Forest Offices have a duty to conduct damage assessments²⁴ and to ensure compensation is paid,²⁵ and timber should not be removed from the forest until any compensation due has been paid.²⁶</p> <p>Most of these mechanisms exist in draft form and are a consequence of the VPA, so to date there is no experience of their practical operation.</p> <p>The Manual of Procedures recommends that the indicators of achievement of a forest reserve management plan include 'the number of disputes between the Forest Service and the communities and any contractors [has] been kept to an acceptable level and [is] showing no annual increase'.²⁸ However, there is no indication that disputes or their outcome have been monitored systematically, so it is hard to assess the impact of these obligations.</p> <p>Whilst scope for citizen's suits is outlined on the left, there is no experience of their practical operation or outcome, so it is hard to assess the impact of this provision.</p>

Footnotes for table

- LI 1649, Schedule 4 (relating to Regulation 27). Note rates were originally in Ghana old cedis: GHS 1,200 and 1,000 respectively.
- Ibid, Regulation 27. (If the land is privately owned instead of Stool Land it is paid to the owner.)
- Ghana Land Administration Project website (hereinafter referred to as LAP website), *Mandate to Collect Stool Land Revenue*; www.ghanalap.gov.gh/index.php/fees, accessed February 2017.
- Constitution, Article 267 (6). FC press release 2007. Disbursement Reports.
- LI 1721, Regulation 3, Clause 21(3) (substituting for Regulation 21 Clause (2) of LI 1649).
- Ibid, Clause (1) (substituting for Regulation 21, Clause (1) of LI 1649).
- LI 1649, Regulation 25, Clause (1), and Regulation 23, Clause (3).
- Constitution, Article 267 (2) (b).
- FC press release 2007.
- FC, 2014 (hereinafter referred to as FC, 2014), *Stumpage fees review* (Effective March 1, 2014); www.fcghana.org/assets/file/News/NEW%20STUMPAGE%20FEES.pdf.
- FC press release 2007. Disbursement Reports.
- Constitution, Article 267 (6).
- Disbursement Reports.
- LI 1721, Regulation 1, Clause 13(12)(b) (substituting for Regulation 13, Clause (1)(b) of LI 1649).
- FC MoP 2013, Instruction Sheet C3.2 *Timber Operational Specifications and Social Responsibility Agreements*, p.2.
- LI 1721, Regulation 1, Clause 13 (12)(b) (substituting for Regulation 13, Clause (1)(b) of LI 1649).
- Ayine, 2008 (hereinafter referred to as Ayine, 2008), *Social Responsibility Agreements in Ghana's Forestry Sector*, published by IIED, p.21; <http://pubs.iied.org/pdfs/12549IIED.pdf>.
- Resource Management Support Centre, 2004 (hereinafter RMSC, 2004), *Guidelines on Social Responsibility Agreement Negotiations (draft)*, Annex: Sample TUC-SRA Form; www.kwcgh.org/wp-content/uploads/2013/02/SRA-Guidelines.pdf.
- FC MoP 2013, Instruction Sheet C4.4, *Supervision and Monitoring Responsibilities of the Forest Service for On-reserve TUCs*, p.2.
- Civic Response, personal communication, August 2016.
- Ayine, 2008, p.21.
- Act 547, Section 8 Clause (e).
- FC MoP 2013, Instruction Sheet F3.2, *The Consultation Process*, p.4.
- Ghana VPA, Legality Criteria 3.7.
- FC MoP 2013, Instruction Sheets C4.3, *Compartment Logging Plan, p.2 and C4.4, Supervision and Monitoring Responsibilities of the Forest Service for On-reserve TUCs*, p.2.
- FC MoP 2013, Instruction Sheet F4.1, *Overview of the Processes for Timber Harvesting Off-Reserves*, p.3.
- Ghana VPA, Legality Criteria 1.2.
- FC MoP 2013, Instruction Sheet A2.11, *Forest Reserve Management Plans*, p.3.
- RMSC, 2004, Annex: Sample TUC-SRA Form.

4.3 Discussion

The discussion below elaborates on how effective Ghana's legal framework, summarised above, is in practice. It is divided into the same four sections as in other countries: area-based payments, volume-based payments, social agreements and payments in kind, and access to justice.

4.3.1 Annual Rent: the demise of the timber rights fee

According to Forestry Commission data, in 2015 the state collected GH¢ 110,000 (US\$ 29,000) in Annual Rent, compared to GH¢ 154,000 (US\$ 75,000) in 2013.⁹¹ Ghana reported having approximately 1.6 million hectares of forest under logging permits in the latter year.⁹² This implies that Annual Rent averages US\$ 0.05 per hectare.

Annual Rent is distributed following the formula laid out in the country's constitution, but in real terms this is not as significant as stumpage as it comprises less than 2.5 per cent of the total revenue redistributed,⁹³ so its redistribution is discussed in the section on stumpage, 4.3.2.

The recipients – District Assemblies, Traditional Authorities and Stools – are periodically given their shares as single income streams, whereby the royalties from other sectors (notably mining) as well as stumpage, are combined into a single cheque for each recipient group. Thus recipients are unable to know how much they have received from logging compared to other natural resources.

Annual Rent is a fixed amount, quoted in cedis. So it is difficult to update it to compensate for cedi depreciation or land value appreciation without revising a whole regulation. The Ghana Land Administration Project suggests that these sorts of rates should be revised every five years.⁹⁴

Timber Rights Fee

The Timber Rights Fee is the amount a winning bidder for a TUC pledges to pay in order to win the contract.⁹⁵ In Ghana this is a fee, distinct from the Annual Rent (which is a royalty), so it not subject to the constitutional royalty redistribution formula. There is no redistribution beyond the Forestry Commission transferring it to the Consolidated Fund of the government.⁹⁶

Since its introduction in 2002 the competitive bidding and Timber Rights Fee system has never been fully implemented, notably due to the failure to convert pre-1998 Leases to TUCs. A benchmarking study of forest fiscal regimes in six West and Central African countries noted that, in Ghana, 'the scaling up of the competitive bidding process to the auctioning of natural forest timber has been resisted since 2005 by the large scale companies.'⁹⁷

According to data published by the Forestry Commission in March 2013, there were at that time some 327 permits operating, divided into 124 TUCs, 184 'Leases', 16 'Letters' and three 'Alienations', but only seven of these were listed as being obtained through competitive tender.⁹⁸ The failure to convert all

91 OASL and FC, 2016 (hereinafter labelled as Disbursement Spreadsheets), *Stumpage / Rent Disbursement spreadsheets for the respective periods*.

92 FC press release, 12 March 2013 (hereinafter FC press release 2013), *European Union Trade Regulation (EUTR) Out*; www.fcghana.org/news.php?news=57. See also https://docs.google.com/spreadsheets/d/1lSn8DsUclq8F5xyVlqA-8tBfvkPxluSnCeyWwor0I_E/edit#gid=0 accessible from this news item, accessed February 2017.

93 Disbursement Reports, p.3.

94 LAP website.

95 LI 1721, Regulation 1, Clause 13(9) (substituting for Regulation 13 of LI 1649).

96 Client Earth, 2013.

97 Indufor Oy and LTS International, 2012, *Forest Sector Fiscal Review, conducted for the European Forest Institute*.

98 FC press release 2013.

valid permits to TUCs is a major stumbling block for compliance with the legality requirement in the VPA, which states that the logging company must hold 'a TUC issued by the Minister and ratified by Parliament following the specified competitive process'.⁹⁹ As was highlighted by civil society in 2004 and again in 2013,¹⁰⁰ this failure amounts to a huge loss of revenue for the state. It is likely to have had a knock-on effect in that the state would be less willing to redistribute stumpage and annual rent in a timely way and in line with the constitution while it was failing to collect the Timber Rights Fee as a major revenue stream for the public purse as a whole.

Whereas company indebtedness (as reported in disbursement reports) may be explained in part by the cycle of invoicing and receiving payments, the Auditor General reported in 2014 that the total debt from timber companies at the end of 2013 stood at GH¢ 11.9 million (US\$ 5 million). The report acknowledged that these are effectively bad debts, to be written off, as some debts date back to 2003, and in every case 'contractors are not willing to pay'.¹⁰¹

There has recently been consensus around changing the Timber Rights Fee from an annual payment to a single bid at the time of the award of the TUC, and a draft LI is to be tabled in parliament to this effect. The same draft Regulation proposes that older permits may be converted to TUCs in return for the payment of a one-off timber rights fee. It also creates a new type of permit, a Small Scale TUC, for areas that do not qualify for the granting of the current size of TUC, both in forest reserves and off-reserve.¹⁰²

4.3.2 Stumpage: redistributed to local elites?

According to Forestry Commission data in 2015 the state collected GH¢ 14.5 million (US\$ 3.9 million) in stumpage, compared to GH¢ 6.4 million (US\$ 3.3 million) in 2012.¹⁰³ The Forestry Commission cites independent estimates that the annual timber production in 2012 was about 3.5 million m³.¹⁰⁴ This suggests that stumpage was approximately GH¢ 1.8 (US\$ 0.95) per m³.

The redistribution of stumpage is the most significant mechanism for revenue-sharing with local recipients in Ghana, although redistribution is to local institutions, not directly to communities. In Ghana the redistribution is, in diminishing proportions, to the local government entity (the District Assembly), the local chieftaincy (Stool), and the chieftaincy group (Traditional Authority) of which the Stool is a member (see [Table 3](#)). There is no revenue-share directly to any other community group, so the system of SRAs (see [Section 4.3.3](#)) has been developed to provide for this.

Prior to redistribution, the Forestry Commission retains 50 per cent of stumpage (but not annual rent) as some form of management fee (see [Table 3](#)). However, an analysis by Client Earth states that 'it is unclear where the legal backing for this retention lies and one could question whether this practice is in accordance with article 267 (2) (b) and 267 (6) of the Constitution'.¹⁰⁵ The legal framework established in

99 Ghana VPA, Legality Criteria 2.1.

100 Forest Watch Ghana statement in the Daily Graphic, 8 October 2004, *Ghana Loses c900 Billion (\$100 million Dollars) Annually from Uncollected Timber Rights Fees!*; www.salvaforeste.it/documentazione/Ghana_forest_watch2.pdf. Global Witness, 2013, Three quarters of Ghana's logging permits could break Europe's new timber law, www.globalwitness.org/sites/default/files/gw_ghana_logging_permits.pdf.

101 Ghana Audit Service, 2014, Report of the Auditor-General on the Public Account of Ghana – Public Board, Corporations and other statutory institutions for the period ending 31 December, 2013, pp.303–6; http://www.ghaudit.org/gas/site/reports/download_report/506.

102 Ministry of Lands and Natural Resources, 2016 (hereinafter labelled MLNR, 2016), *Memorandum: Timber Resources Management and Legality Licensing Regulation*, draft dated 17 July 2016, Regulations 21 (1) (c.i) and 78 (2) (a).

103 Disbursement spreadsheets for the respective periods.

104 FC, 2013, *Ghana and the European Union Annual Report 2012 Implementing the Ghana–EU Voluntary Partnership Agreement*, p.2; www.euflegt.efi.int/documents/10180/23025/Implementing%20the%20Ghana%E2%80%93EU%20Voluntary%20Partnership%20Agreement.%20Annual%20Report%202012.

105 Client Earth, 2013, p.10.

1927 that one third of stumpage could be retained by the Forestry Commission.¹⁰⁶

Despite a requirement that stumpage fee rates should be revised quarterly, they have only been revised once since 2003,¹⁰⁷ even though there has been a change in the basis for calculation, from set stumpage rate percentages (in 1998)¹⁰⁸ to an element of ministerial discretion (in 2003).¹⁰⁹ This should have allowed under-used species that became more popular to move up to a higher rate band. This opportunity to keep pace with changing circumstances did not happen until 2014.¹¹⁰

Furthermore, when the Forestry Commission conducted the revision in 2014,¹¹¹ it informed the logging companies that the increases would be in three phases: 50 per cent of the new rates from 1 March 2014; 75 per cent from September 2014; and the full new rate from January 2015.¹¹² Yet there is no evidence that these phases have been implemented, nor that quarterly reviews have taken place. And in the last two years the cedi has continued to depreciate against the US dollar, resulting in a further reduction of stumpage rates in real terms by 35%.¹¹³

A study of the impact of the failure to keep stumpage rates up to date for around a decade estimated the loss to be 'approximately US\$16 million, equivalent to four times the potential contribution of the timber industry to forest communities' welfare under SRAs'.¹¹⁴ The study showed that overall the losses are related more to cedi depreciation than with changes in FOB prices, but that the situation varied on a species by species basis. Subsequently the revised stumpage rate doubled for some species, but for rosewood it increased from GH¢ 2.39 to 52.64 (approximately US\$1 to US\$20), and for ebony from GH¢ 2.39 to 74.58 (US\$1 to US\$30) per m³.

The Constitution implies that data on the amount of stumpage and annual rent redistributed will be made available,¹¹⁵ and this commitment to transparency is supported in the joint EU–Ghana Monitoring and Reporting Mechanism for the VPA, which requires 'regular joint missions to [assess] making publicly available information about ... harvest related payments'.¹¹⁶ Six-monthly Disbursement Reports have been produced since 2002, and in the past these have been made available between six and 18 months later. The Disbursement Report for January to June 2009, for example, was published in September 2010, though recently these times have been cut. Whilst printed copies continue to be available, only three reports are currently available online: January–June 2010, July–December 2010 and January–

In Ghana, a study of the impact of the failure to keep stumpage rates up to date for more than a decade estimated the loss to be "approximately US\$ 16 million, equivalent to four times the potential contribution of the timber industry to forest communities' welfare".

106 Cap 157, Clause 18, paragraph 5.

107 LI 1649, Schedule 3 (relating to Regulation 22, Clause (2)). Birikorang, 2015 (hereinafter labelled Birikorang, 2015), *Why don't we make the loggers pay? Stumpage value and policy failure in Ghana's forest sector*, p. 13; <http://pubs.iied.org/pdfs/135761IED.pdf>.

108 LI 1649, Regulation 21 Clause (2).

109 LI 1721, Regulation 3 (substituting for Regulation 21 of LI 1649).

110 Birikorang, 2015, p. 14.

111 FC, 2014.

112 Letter from the Chief Executive of the Forestry Commission to forest industry associations, 18 February 2014.

113 Stumpage rates in Ghana are quoted in cedis. These US dollar equivalents are taken from www.xe.com/currencytables/ for 1 March 2014 and 1 March 2016.

114 Birikorang, 2015, p. 7.

115 Constitution, Articles 267 (2)(b) and 267 (7).

116 Ghana VPA, Article 20, Clause 2, p.13.

June 2011.¹¹⁷ Prior to this, reports were online but as html pages (which have since been removed), not downloadable pdf files. The Making the Forest Sector Transparent project that ran between 2008 and 2013 was instrumental in persuading the Forestry Commission to switch the publication format to a pdf in order to facilitate reprinting and wider distribution than the Forestry Commission alone had funded. But these online publications seem to have stopped at around the time this project ended, suggesting that sustained pressure from civil society is required to keep these publications available in this format.¹¹⁸

There is very little reported evidence about how each of the three beneficiary groups – District Assembly, Stool, and Traditional Authority – use their share. Nor are there any guidelines on how this should be done, for example investing in community infrastructure or sharing revenue between community members. The money is typically transferred some months or years in arrears, and the unpredictability lends itself to poor use of the funds. There is anecdotal evidence that the OASL holds the money until a beneficiary group presents a proposal for the use of their funds, and such proposals could be for anything, including recurrent costs or unforeseen expenditure. Work by the Ghanaian NGO Centre for Indigenous Knowledge and Organisational Development with Brong Ahafo Regional House of Chiefs improved a commitment to accountability and transparency around the Traditional Authority's use of royalties, pledging that 'communities receive and benefit equitably'.¹¹⁹

4.3.3 Social Responsibility Agreements

Negotiation

SRAs are negotiated between the logging company and affected communities, and witnessed by the Forestry Commission, Traditional Authorities, and the District Assembly representatives. However, the Forestry Commission has a role in consulting with communities and outlining some key aspects of the SRA in a social proposal prior to allocation of a TUC. Discussions at this early stage often involve the chief but not the wider community, and are documented on a *Timber contract area advertisement consent form for on-reserve and off-reserve* that provides space to note:¹²⁰

- Areas to be excluded from the Timber Contract Area
 - Cultural areas (sacred groves/sites etc.)
 - Admitted farms or areas where operations are to be restricted because of farming considerations (e.g. cocoa farms).
- Special conditions for inclusion in the Timber Operational Specifications of the advertisement:
 - Code of Conduct (taboo days etc.)
 - Support for social infrastructural development (if any).

The Manual of Procedures states that the SRA is a mechanism for ensuring that all TUC operations are carried out in a socially responsible manner with due respect for the rights of the landowners. It is a schedule of the TUC and is legally binding.¹²¹ There are few regulations or procedures for Salvage Permits, but in practice an SRA is discussed and agreed with communities before harvesting starts and the company is expected to deliver on the agreement before finishing their logging operations.

117 See Disbursement reports.

118 Global Witness website for *Making the Forest Sector Transparent project*. See www.foreststransparency.info/ghana/2012/themes/17/125/ for a summary of progress on access to data on the distribution of forestry royalties and incentives, accessed February 2017.

119 Brong Ahafo Regional House of Chiefs, 2012, *Charter on management of our natural and socio cultural resources*; www.foreststransparency.info/cms/file/589.

120 FC MoP 2013, *Contract Area Identification Form (FS/CAI/1)*, Appendix C3.

121 FC MoP 2013, Instruction Sheet C3.2, *Timber Operational Specifications and Social Responsibility Agreements*, p.1.

Community representation

There is no firm guidance on how the community is represented in these negotiations, beyond the phrase ‘with local communities’ in the regulations,¹²² and a line in the Manual of Procedures stating that ‘as far as possible the chief and the elders of each stool should be present, as well as the assemblymen, unit committee members and representatives of each of the affected communities.’¹²³ This manual is likely to be most widely available to officials in the Forestry Commission; copies of the manual may also possibly be provided to the logging companies. It is likely to be least widely available to the communities. This means that there will be a significant burden on the Forestry Commission to ensure that the community is fully informed prior to negotiating the SRA. As discussions on a social proposal between the Forestry Commission and chief are held prior to the allocation of the permit to a company (see section above), then wider consultation at this later stage lends itself to further negotiation, based on local realities and a more accurate estimate of the value of the 5 per cent stumpage figure, which may or may not vary from what was agreed earlier. Civil society has in recent years sought to fill this gap by producing a facilitator’s handbook and a training manual.¹²⁴

Research in 2008 published by the International Institute for Environment and Development found that ‘negotiations leading to the conclusion of the nine agreements examined followed a rather top-down approach, whereby community leaders purported to *represent* the interests of their communities. ... In none of the cases examined were wider community consultations held.’¹²⁵ Earlier analysis by the same organisation commented that legislation in 1998 ‘requires logging companies operating on customary land to negotiate SRAs with local communities (not just the chiefs); and then during negotiations ‘the purpose of SRA as part of TUC is explained and the community as a whole is asked to propose particular conditions.’¹²⁶ The ‘Sample SRA’ provides for three community representatives to sign, with others as witnesses.¹²⁷ More recently, an evaluation of Ghana’s legality assurance system noted that ‘there is varying understanding on the requirements of SRA within the staff of the [Forestry Commission] and the private companies and that there are instances where the SRA processes are not managed in a way that benefits the affected communities as required by the statutes in force. This is prevalent in areas where SRAs are signed with paramount chiefs without awareness and involvement of fringe communities.’¹²⁸

Content of the SRA

Any company interested in a TUC must include ‘proposals to assist in addressing social needs of the communities’ in its application.¹²⁹ Once the application is approved but ‘before the [contract] is granted ... the conclusion of a Social Responsibility Agreement with local communities’ is required.¹³⁰ Thus there is a distinction between the social proposal in the TUC agreement and the SRAs which are subsequently negotiated on a compartment by compartment basis as logging moves through a concession area. At this more local point the company is required to open negotiations, and the real needs of affected communities, perhaps added to the amalgamated proposal, are expected to be addressed. So, while the proposal covers the entire permit area, a stool chief, possibly living outside any of the forest compartments, who has agreed an SRA with the logging company may subsequently demand fulfilment

122 LI 1721, Regulation 1, Clause 13 (12) (b) (substituting for Regulation 13 of LI 1649).

123 FC MoP 2013, Instruction Sheet C3.3, *The Consultation Process*, p.2. The equivalent Instruction Sheet for off-reserve areas, F3.2, describes a sequence of consultations with District Assemblies, Landowners (i.e. Traditional Councils) and Caretakers Chief / Alienation holders.

124 Civic Response, 2012, *Forest Forum Facilitators Handbook*; <http://civicresponsegh.org/wp-content/uploads/2016/12/forest-forum-facilitators-handbook.pdf>. Katako, 2016, *Training Manual: Social Responsibility Agreements and Compensations*.

125 Ayine, 2008, p.22 (his emphasis).

126 Mayers and Vermeulen, 2002 (hereinafter ILED, 2002), *Company-community forestry partnerships: from raw deals to mutual gains?*, published by ILED, p.80, 77 and 80 respectively. This report includes a real example of parts of an SRA (p.79); <http://pubs.iled.org/pdfs/9132ILED.pdf>.

127 RMSC, 2004, Annex: Sample TUC-SRA Form.

128 Baffoe and Lounasvuori, 2014, *A joint evaluation of Ghana legality assurance system*, published by the European Forestry Institute and the European Commission, p.68.

129 Act 547, Section 3 Clause (3)(e).

130 LI 1721, Regulation 1, Clause 13 (12)(b) (substituting for Regulation 13 of LI 1649).

Table 4: Guidance in the Manual of Procedures on code of conduct for social agreements in Ghana

	Code of Conduct recognises that the following rights of the land owning communities be respected		Contractual conditions in Code of Conduct	Issues to be discussed during consultations
	Forest Reserves ¹	Off-Reserves ²	Off-Reserve ³	Forest Reserves ⁴
Elements common to all guidance	Respect for: <ul style="list-style-type: none"> cultural norms, taboo days right to consultation on logging roads local infrastructure, minimising the wear and make good any damage right of access to forest products; all sacred sites, non-timber forest product areas, springs 	Respect for: <ul style="list-style-type: none"> cultural norms right to consultation during planning local infrastructure local rights to non-timber forest products 	<ul style="list-style-type: none"> ensure company staff are courteous. respect cultural norms, taboo days respect the right of the communities to be consulted during the planning respect community infrastructure respect sacred sites, water collection points and non-timber forest products areas 	<ul style="list-style-type: none"> taboo days possible conflicts: cultural sites, prime non-timber forest products areas expected problems from the movement of logs on local roads rights to collect non-timber forest products
Elements not shared by all guidance	<ul style="list-style-type: none"> right to receive prompt share of revenues 	<ul style="list-style-type: none"> farming operations, minimise disruption and damage right of farmers paid for tree tending right to receive share of revenue right of landowners to receive prompt rent and royalty 	<ul style="list-style-type: none"> ensure all operations minimise disruption to agricultural activities agree on payment for tree-tending fees agree compensation rates; make good payments recognise that the TUC gives no rights to non-timber forest products 	<ul style="list-style-type: none"> any infra-structural support complaints procedure. proportion of local labour mutual assistance for fire control

Footnotes for the table

1. FC MoP 2013, Instruction Sheet C3.2, *Timber Operational Specifications and Social Responsibility Agreements*, p.2.
2. Ibid.
3. Ibid, Instruction Sheet F3.2, *The Consultation Process*, p.4.
4. Ibid, Instruction Sheet C3.3, *The Consultation Process*, p.2.

of this proposal SRA. In essence companies agree an SRA with a higher authority chief, but implement the SRA with another set of beneficiaries.

The Sample SRA – for use as the logging company works through the concession – provides a number of lines in which to write a Code of Conduct. Although these lines are completely blank, there is guidance in the Manual of Procedures, including four lists of potential content, summarised in Table 4 (above). The guidance notes that the primary land use of Forest Reserves and off-reserves areas is timber production and farming, respectively.

Efforts have been made to improve the sample SRA. A model SRA published in 2008 made suggestions for social infrastructure projects, included a number of detailed legal clauses, and outlined a dispute resolution mechanism, as well as recommended priority is given to employ local labour.¹³¹ The suggested projects include constructing and equipping a medical clinic and a water pump/storage system. Furthermore it makes clear in a clause entitled ‘Limitation on investment’ that all items provided by the company should equal 5 per cent of stumpage annually. This model does not appear to have been adopted, but a more recent initiative of the Resource Management Support Centre of the Forestry Commission is revising the sample SRA.¹³²

131 Ayine, 2008, Appendix A: Model SRA.

132 RMSC, 2015, *Improving Social Responsibility Agreements in support of a functional VPA*; www.flegt.org/map-of-projects/?origin=f7987efe-5402-4696-a635-bc89240667e9#countries/GHA/theme/4.

Availability of SRAs

We lack proper data on how many SRAs exist, despite the fact that by law at least one SRA must be negotiated for each of the 327 long-term logging permits stated by the Forestry Commission to be legal, as well as all the short-term Salvage Permits.¹³³ Whilst there is no stated legal obligation that SRA documents should be public, by the nature of the negotiation process copies of the signed SRA are supposed to be kept by the community, the local office of the Forestry Commission, the timber company and the local District Assembly.¹³⁴ However, they are not held in a central, public location, and an evaluation of Ghana's legality assurance system observed: 'A number of SRAs were not made available to the evaluation team while a few of those made available to the team had not been signed by the appropriate communities.'¹³⁵

Civil society has long advocated for access to information about the species-volume total for timber being removed, so that independent assessments can be made of whether they amount to 5 per cent of the value of stumpage as required. Although there is a place in the sample SRA to provide an estimate, this does not appear to be being used, and although there are a number of other ways that communities could obtain this information, again there is little evidence of the take-up of these opportunities. In Asankragua Forest District, the Forest Office is reportedly giving copies of the 'Yield Allocation' (species-volume permitted to be felled) to the local communities and chiefs to inform them of the total stumpage to be expected, and more broadly the Resource Management Support Centre can provide this information. However, not all trees are useful to the logger or in demand, so the expectation that the full yield allocation will be cut may not be fulfilled.¹³⁶ In another example, where a logging company deposits money into a community fund, it makes the calculation at this time. In off-reserve areas, pre-felling identification of the timber trees is carried out by a group including representatives of the logger, the District Forest Office, the Stool, the local Unit (sub-District) committee and any farmer on whose farm the proposed felling will take place, and a copy of the documentation is provided to the Unit Committee for community consultation.¹³⁷ In addition, once logging operations are under way, a community could in theory request copies of Tree Information Forms from the logging company.

Implementation of SRAs

As royalties are shared with the District Assembly, the Stool and the Traditional Authority, the SRA is primarily for the benefit of the local community itself, to the extent that in areas where migrants have settled and do not fit into the traditional chieftaincy structure for that area, this is a way for them to see some of the proceeds of logging. In a sense SRAs seek to formalise, democratise and regulate a situation – which nonetheless prevails – whereby 'any profits returned to the area, through ad hoc agreements with the company, had gone to the stool chief or elders rather than to ordinary residents. Some people conceded that they had benefited to some extent by charging timber contractors fees not authorised by law. They had also benefited in kind to some extent, through receipt of building materials like cement, roofing sheets and electricity poles, construction of roads, and access to employment.'¹³⁸

The VPA has provided important new impetus to see that SRAs are implemented, and that this is verified, by reaffirming the legal requirements to do so and the responsibility of the Forestry Commission to

133 FC press release 2013.

134 Ayine, 2008, p.25.

135 Baffoe and Lounasvuori, 2014, *A joint evaluation of Ghana legality assurance system*, published by the European Forestry Institute and the European Commission, p.35.

136 Civic Response, personal communication, September 2016.

137 FC MoP 2013, Instruction Sheet F4.1, *Overview of the Processes for Timber Harvesting Off-Reserves*, p.2.

138 IIED, 2002, p.80.

'report on compliance of the SRA'.¹³⁹ This is an important step forward, as to date there is no good quantitative data on the delivery of community infrastructure through SRAs. There is anecdotal evidence that despite the Forestry Commission's guidance that 'the benefits arranged as part of the social obligations are paid/delivered to the land owning communities and not to the office of the stool chiefs',¹⁴⁰ SRA benefits often serve a narrow interest: 'One Social Responsibility Agreement for instance makes provision for a monthly payment of US\$ 600 to the paramount chief of the traditional area as "living expenses"'.¹⁴¹ In the absence of clear guidelines alongside an enforced SRA template, there is a perceived need for a senior traditional authority to sign the agreement, opening the opportunity for this sort of special treatment.

Where a company has opted to pay the 5 per cent into a community fund,¹⁴² there may be issues regarding the control of this fund. This is convenient for the timber company as it enables it to avoid negotiating with all the communities involved, instead dealing with a single fund set up by community representatives. However, problems may arise with fund management by the community representatives. Community governance of SRA funds has not been extensively developed in Ghana. What is the disbursement formula? How are funds disbursed? What accountability/transparency systems are in place? Does the fund serve as a revolving fund to provide further dividends for other social interventions? There needs to be more research, including into similar schemes in other countries.¹⁴³

Supervision by communities

The Code of Conduct section of the SRA is expected to 'specify how the two parties have agreed to ensure these rights are respected',¹⁴⁴ but as there is no common standard for community supervision of SRA implementation, the extent to which this happens is mixed. Some places appear to have community supervisory committees, but these are generally ad hoc and it is hard to make generalisations as only a tiny proportion of SRAs are available. Different NGOs have noted:

- 'The four Samartex agreements contain provisions establishing a "development committee" tasked with administering the services or benefits to be provided for the beneficiary communities', in marked contrast to the other SRAs reviewed in the same study.¹⁴⁵
- The Rural Development and Youth Association (RUDEYA) and other Ghanaian NGOs have supported SRA committees to identify pertinent community needs that the SRA could help to meet. There have been efforts to include representatives of different interest groups: older people and youth, women and men, chiefs, people with disabilities, traditional authorities and trade associations.
- In one example SRA, the Code of Conduct describes a committee 'to ensure compliance of the terms and provisions of this agreement, and to settle disputes',¹⁴⁶ made up of local officials and elites.

The lack of a common standard for community supervision of SRA implementation undermines not only the ability to verify compliance with the SRA, but also hinders the development of a more general community platform to represent people's collective interests on forest issues. Whereas Forest Forums

139 Ghana VPA, Legality Criteria 3.6. European Commission and Government of Ghana, 2015 (hereinafter labelled as 7th Aide memoire), *Aide memoire seventh mission of the joint monitoring and review mechanism*, Accra, 4–6 June 2015; <http://loggingoff.info/document/aide-memoire-7th-ghana-eu-jmrm>.

140 FC MoP 2013, Instruction Sheet C3.2, *Timber Operational Specifications and Social Responsibility Agreements*, p.2.

141 Ayine, 2008, p.21.

142 Ibid.

143 Civic Response, personal communication, August 2016.

144 FC MoP 2013, Instruction Sheet C3.2, *Timber Operational Specifications and Social Responsibility Agreements*, pp.2-3.

145 Ayine, 2008, p.21.

146 IIED, 2002, p.79.

go some way to create local platforms dedicated to discussions on forest issues, there are limited legal or institutional grounds for sustaining them. Alongside this, renewed emphasis through the VPA process on the performance of SRAs suggests that a more representative and formalised system of SRA committees could become the norm. Such committees would represent their communities in discussions with the logging company, they would facilitate collective decisions about how to use the community share of proceeds from logging benefits, and discuss general issues around the forest concession.

Supervision by the authorities

Despite the SRA being a contract between community and company, it is the Forest Services Division that 'has a duty to ensure that the contractor is abiding to the terms of the SRA. ... Non-compliance to the agreements drawn up with respect to the provision of infra-structural developments should also be noted. ... Continual failure by the contractor to meet the terms of the agreement should be reported', i.e. to the Regional Forest Office.¹⁴⁷ This section goes on to give the Forestry Commission the power to prevent the company from operating by suspending 'renewal of the concessionaires property mark', or for the minister to suspend the contract in its entirety.

The VPA has strengthened the rule of law regarding SRAs by including the clause 'the logger executed and complied with the relevant Social Responsibility Agreement' as a criterion for legal timber.¹⁴⁸ It has also sought to strengthen transparency; the joint EU–Ghana Monitoring and Reporting Mechanism for the VPA requires 'regular joint missions to [assess] making publicly available information about ... social responsibility agreements'.¹⁴⁹ Furthermore, in implementation, the parties to the VPA have identified weaknesses in the SRA legal framework, noting in June 2015 that a 'priority is the development of clear criteria against which compliance with the requirements for negotiation and implementation of SRAs with communities affected by logging operations can be verified'.¹⁵⁰ Subsequently, the Resource Management Support Centre in collaboration with NGOs has produced a draft SRA audit checklist that has been added to the working documents of the Timber Verification Department.¹⁵¹

4.3.4 Legal recourse: multiple dispute resolution mechanisms

Compensation for damage

The legal framework contains many references to compensation, from the 1962 State Lands Act to the VPA. The State Lands Act concerns the compulsory acquisition of land in the national interest, whereby compensation or land of equivalent value is agreed, and the state may subsequently grant a lease or a licence on that land acquired.¹⁵² It applies mainly to the mining sector, however, and its use for logging concessions is unheard of.

Compensation for damage to farms and other property is a particular concern in relation to logging in off-reserve areas where timber trees are closely intermeshed with cocoa and other farms. The VPA regards 'compensation was paid to affected farmers in respect of crop damage if any' as one of the criteria for determining the legality of timber, and the Forest Services Division has a responsibility to conduct damage assessments and ensure the appropriate compensation is paid.¹⁵³ Furthermore the

147 FC MoP 2013, Instruction Sheet C4.4, *Supervision and Monitoring Responsibilities of the Forest Service for On-reserve TUCs*, p.2.

148 Ghana VPA, Legality Criteria 3.6.

149 Ibid, Article 20, Clause 2, p13.

150 7th Aide memoire.

151 RMSC, 2015, *Draft SRA audit checklist*, produced for discussion on 19 May 2015.

152 GoG, 1962, *Act 125, State Lands Act*, Section 4; <https://faolex.fao.org/docs/pdf/gha3105.pdf>.

153 Ghana VPA, Legality Criteria 3.7 and associated procedures, p.64.



Working at a lumber yard, Ghana

© Curt Carnemark / World Bank / Flickr.com/CC

joint EU–Ghana Monitoring and Reporting Mechanism for the VPA requires ‘regular joint missions to [assess] making publicly available information about ... crop damage compensation awards.’¹⁵⁴

The Manual of Procedures provides that the SRA Code of Conduct should ‘agree on compensation rates for damage to agricultural crops prior to commencing operations and make good payments to farmers for compensation for crop damage on the spot.’¹⁵⁵ It also states that payment of compensation for damage to crops is a precondition to issuing authorisation to transport logs, and it outlines a dispute resolution mechanism: ‘The [District Forest Office] should also be aware of the situation regarding the payments of compensation and tree-tending fees to individual farmers. A contractor that refuses to meet his obligations should not be given further felling approvals in the next annual coupe, until the matter is properly sorted out. Any complaints about inadequate compensation payments should be brought to the attention of the Forest Service staff. Conveyance Certificates should be withheld if there appears to be substance to the complaints.’¹⁵⁶

154 Ibid, Article 20, Clause 2, p.13.

155 FC MoP 2013, Instruction Sheet F3.2, *The Consultation Process*, p.4.

156 Ibid, Instruction Sheet F4.1, *Overview of the Processes for Timber Harvesting Off-Reserves*, p.3.

Despite this wealth of clear obligations, there are few SRAs available, and little evidence about rates of compensation agreed in the SRA or actually paid, of District Forest Offices meeting their responsibilities, or of problems and contestations. One recent study, based on interviews with 50 farmers across six Districts, presented evidence that crop damage happens often in off-reserve areas, and essentially the relative bargaining skills of the protagonists are what prevail. These are some of the findings:¹⁵⁷

- 71 per cent of farmers interviewed said loggers were never, or only occasionally, careful not to destroy crops.
- 48 per cent of community respondents indicated that compensations were paid. The same number replied 'don't know'. However, no respondents had documentation on such payments.
- All farmers said that compensation was by negotiation, and only 16 per cent said they were satisfied by the final value. 22 per cent complained that compensation was not paid promptly.
- Compensation varied significantly, between GH¢ 2 and 30 (US\$ 0.5–8) per cocoa tree destroyed.

Such revelations drive the debate around tree tenure, as it does not make sense to farmers in important cocoa-growing areas to nurture young timber trees if they cannot be sure of ownership – or of the right to dispose of their assets – or of receiving adequate benefit when trees are logged, or of receiving fair compensation if their cocoa farms are damaged when the state issues a permit to fell these trees.

Dispute resolution mechanisms

A model SRA, published by IIED in 2008, outlines a dispute resolution mechanism, suggesting that if disagreements on the implementation of an SRA cannot be resolved through negotiations between the community and company, 'either party hereto [may] proceed to protect and enforce its rights either by suit in equity and/or by action at law, or by other appropriate proceedings, whether for the specific performance of any covenant or agreement contained in this agreement or for an injunction against a violation of any of the terms hereof'.¹⁵⁸ However, this model does not appear to have been adopted. An earlier examination of SRAs, also published by IIED, asks: 'What will happen in the case of serious dispute? Are courts the most likely (or most appropriate) bodies for either side to seek redress? Is the wording of the SRAs specific enough to support legal debate and settlement?'¹⁵⁹

The Forest Services Division – the local offices of the Forestry Commission – claims a key role as the first point for dispute resolution, with a complaint mechanism which addresses disputes at the local level, for example those arising from compensation, SRA and other community concerns. This mechanism is not well documented, however, and in what might be considered a response to the rhetorical question from IIED, the VPA has triggered the development of a full range of dispute resolution mechanisms:

- The Timber Verification Department models its work on that of auditors, including the practice of a complaints handling system, to cover the conduct of Forest Services Division staff, its own auditors, and disputed audit reports.
- The official Independent Monitor is mandated to examine the system, including the procedure

157 The Sustainable Forest Management Partnership-Ghana (a consortium of six civil society organisations), 2016, *Improving Off-Reserve Logging in Support of a Functional VPA in Ghana: Baseline Study Report*; www.sfmghana.org/reports/orl/SFMGP-Ghana-Baseline%20Study-Report.pdf.

158 Ayine, 2008, Appendix A: Model SRA.

159 IIED, 2002.

for resolving disputes, but not to arbitrate. It can therefore deal with cases escalated from an unsatisfactory resolution by the Timber Verification Department or the Forest Services Division.

- Conversely, concerns about the conduct of the Independent Monitor can be raised with the Timber Verification Department through its audit compliant mechanism. The establishment of a mechanism 'for handling complaints and disputes that arise from independent monitoring' is required by the VPA.¹⁶⁰
- The Timber Verification Committee has also developed a complaint mechanism with regard to anything that compromises the integrity and work of the Timber Verification Department, providing they relate to (i) the issuance of FLEGT licences, or (ii) the conduct of one of the Department's auditors.¹⁶¹ This implies that issues regarding compliance with many social obligations cannot seek remedy from the Timber Verification Committee.

In the absence of clear guidelines on the complaints mechanism operated by the Forest Services Division, civil society has advised communities to thoroughly document any complaints they have. Recent work by a consortium of six such organisations has produced a 'Do and Don't' booklet of off-reserve logging operations that emphasises (amongst other things):¹⁶²

- *To communities:* **Do** send complaints to the Forest Services Division if a logger fails to meet the terms of the signed SRA, or if the chief imposes a SRA package that is not to the benefit of the community; and **Do** complain to the FSD if compensations are not negotiated or paid in full, and/or on time.
- *To loggers:* **Do** negotiate and agree on a compensation package for crop damage and document (signed by both parties) before operations start, using the recommended compensation estimation framework tool; and **Do** ensure that agreed and documented packages for crop damage are paid before extracting timber.
- *To forestry officials:* **Do** demand for a copy of the proof of compensation negotiation; **Do** ensure that additional damage caused by loggers during logging operations is fairly compensated for; and **Do** receive, document, verify and follow up complaints received when logging operations are under way.

In its analysis of access to justice opportunities in Ghana, Client Earth identified a number of channels at the national and international level, but these did not relate specifically to infractions regarding benefit sharing with communities (in cash or in kind).¹⁶³

Civil enforcement

The law provides that 'The Minister, acting on the recommendations of the Commission may suspend or terminate ... where (a) the holder has breached any of the terms or conditions of the contract.'¹⁶⁴ The same law states that non-payment of royalties, annual rent, fee or charges is grounds for termination of a logging contract.

160 Ghana VPA, Annex VII, *Criteria to assess the operational legality assurance system of Ghana*, Clause 5.1.4, p.97.

161 Ghana VPA, Annex V, *Legality Assurance System*, Section 5.5, p.73.

162 The Sustainable Forest Management Partnership-Ghana, 2016, *Off-Reserve Logging: Do's and Don'ts Booklet*, pp. 17, 22, 28 and 29; [www.sfmghana.org/reports/orl/FINAL%20DO'S%20AND%20DON'TS%20\(VPA\)%20%20August%202016.pdf](http://www.sfmghana.org/reports/orl/FINAL%20DO'S%20AND%20DON'TS%20(VPA)%20%20August%202016.pdf).

163 Client Earth, 2013, *Access to Justice*; <http://www.clientearth.org/external-resources/ghana/other-resources/Access-to-Justice-janv2014.pdf>.

164 Act 547, Section 15 Clause 1(a).

5 Liberia: legal framework for social obligations

5.1 Terminology

The sector authority is the Forestry Development Authority (FDA), constituted under an Act in 1976 and subsequent amendments.¹⁶⁵

5.1.1 Main legislation

The Liberia forest sector is mainly governed by the National Forestry Reform Law of 2006 (NFRL).¹⁶⁶ The principle implementing texts for this law are the Ten Core Regulations of 2007.¹⁶⁷ Of these, the most relevant to this study are Regulation 105-07 on pre-felling operations (including social agreements); Regulation 106-07 on benefit sharing; and Regulation 107-07 on certain forest fees.

Other key legal texts are:

- The Community rights law with respect to forest lands (CRL), 2009.¹⁶⁸ This lays out the means by which communities can obtain collective management rights over forest land, and until the draft Land Rights Bill is passed it is the only way to secure collective land tenure.
- Regulation 114-10, Procedures to access and manage funds on behalf of affected communities by Community Forestry Development Committees, 2010.¹⁶⁹
- The implementing regulations of the community rights law, 2011 and 2017.¹⁷⁰

5.1.2 Forest classification and timber rights

Under the National Forest Management Strategy, forests in Liberia are classified as permanent (comprising 'closed and open dense forest' and 'agriculture degraded forest'), and non-permanent ('mixed agriculture and forest').¹⁷¹ The two main logging contracts (see next section) must have been identified in the National Forest Management Strategy and go through a validation process.¹⁷²

165 GoL, 1976, *Act creating the Forestry Development Authority*; <http://faolex.fao.org/docs/pdf/lbr3219.pdf>. See http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL&rec_id=001935 for a summary and a note of amendments.

166 GoL, 2006 (hereinafter labelled as NFRL 2006), *National Forest Reform Law*; www.fda.gov.lr/wp-content/uploads/2015/07/20National-Forestry-Reform-Law-2006.pdf.

167 FDA, 2007 (hereinafter labelled by Regulation number), *Ten Core Regulations*; www.fda.gov.lr/wp-content/uploads/2015/07/FDA-TEN-CORE-REGULATIONS.pdf.

168 GoL, 2009 (hereinafter labelled as CRL 2009), *Community rights law with respect to forest lands*; www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-of-2009-with-Respect-to-Forest-Lands.pdf.

169 FDA, 2010 (hereinafter labelled as Regulation 114-10), Regulation 114-10: *Procedures to access and manage funds on behalf of affected communities by Community Forestry Development Committees*; www.fornis.net/system/files/Microsoft%20Word%20-%20NBST%20-%20Regulation%20114%20of%202010%20-%20Revised%2030%20June%202011_penultimate.PDF.

170 FDA, 2011 (hereinafter labelled as CRL Regulations, 2011), *Regulations to the community rights law with respect to forest lands*; www.fda.gov.lr/wp-content/uploads/2015/07/Community-Rights-Law-Regulations_Printed-Version.pdf. These regulations were revised in February 2017 as *Regulation to the community rights law of 2009 with respect to forest lands but at the time of finalising this report they were not published. A consultation draft was made available to the public on 12 October 2016 and this is hereinafter labelled as Draft CRL Regulations, 2016*.

171 FDA, 2007, *National Forest Management Strategy*.

172 NFRL 2006, Section 5.3 for Forest Management Contracts and Section 5.4 for Timber Sale Contracts.

Forest ownership, and thus timber rights, falls into three categories: forest land controlled by the state, private forest land, and community forests. The permit system (see next section) correlates to these categories. The 2013 Land Policy recommends a new and clear division between Government Land (including protected areas) and Public Land (including logging concessions). It also advocates a clear definition of Customary Land, and states that ‘Ownership of Customary Land is equally protected as private ownership, such that the community and its members, groups, families, and individuals within the community are entitled to the full bundle of land rights’.¹⁷³ There is a draft Land Rights Act to provide legal force to the policy currently under consideration by the legislature.

5.1.3 Permit types

There are four permit types:

- On Public Land, long-term **Forest Management Contracts** are the principal concession type. These apply to areas of between 50,000 and 400,000 hectares, and have a duration that tallies with the approximate length of a forest rotation.¹⁷⁴ The seven contracts issued to date have all been for 25-years, and the VPA also states a 25 duration for these contracts.¹⁷⁵ The purpose of these contracts is ‘sound, long-term forest management’ and contracts require the holder to undertake environmental impact assessments, a business plan, a social agreement with local forest-dependent communities, inventories, preparation of management plans, and annual operations plans.¹⁷⁶
- A shorter **Timber Sale Contract** on Public Land, typically ‘for the purpose of allowing Forest Land to be cleared for agriculture or for the establishment of plantations’.¹⁷⁷ These are limited to three years and a maximum area of 5,000 hectares.
- **Community Forestry Management Agreements** apply to community forests and are not in themselves logging contracts. They have a renewable 15-year term.¹⁷⁸ According to the CRL the area under a Community Forestry Management Agreement must be between 5,001 and 49,999 hectares,¹⁷⁹ and the implementing regulations cover different arrangements for areas between 1 and 5,000 ha, 5,000–49,999 ha, and above.¹⁸⁰ In order for logging by a third party to occur, a Commercial Use Contract between the community and company is required.¹⁸¹
- On private land, **Private Use Permits** are the applicable logging licence.¹⁸² Following widespread misuse of these permits on collectively held land in 2010–12, all Private Use Permits have been cancelled and no new permits have been issued since that time.¹⁸³

173 GoL, 2013, *Land Rights Policy*; www.landlib.org/doc_download/Land%20Rights%20Policy%20Final%20Final%20Final.pdf.

174 NFRL 2006, Section 5.3, Clause h.

175 European Commission and Government of the Republic of Liberia, 2012 (hereinafter labelled as Liberia VPA), *Voluntary partnership agreement between the European Union and the Republic of Liberia on forest law enforcement, governance and trade in timber and derived products to the European Union, Legality Indicator 4.1*; [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22012A0719\(01\)&qid=1469775707338&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22012A0719(01)&qid=1469775707338&from=EN).

176 NFRL 2006, Section 5.3, Clauses b.iii to b.vi.

177 Ibid, Section 5.4, Clause i.

178 CRL Regulations 2011, Chapter 7, Section 6. This was revised in 2016 to 25 years; Draft CRL Regulations 2016, Section 7.6.

179 CRL 2009, Section 2.3, Clause a.

180 CRL Regulations 2011, Chapter 1, Section 2 and Chapter 9, Sections 1-3. Draft CRL Regulations 2016, Sections 1.2 and 10.2-10.4.

181 CRL 2009, Chapter 6.

182 NFRL 2006, Section 5.6.

183 See De Witt, 2012, *Land Rights, Private Use Permits and Forest Communities*; https://eeas.europa.eu/delegations/liberia/documents/press_corner/20130916_01.pdf.

5.1.4 Social obligations

In Liberia there are four mechanisms, provided for by law, by which logging companies are obliged to make payments in cash or in kind to local recipients:

1. The redistribution of a proportion of forest **Area Fees** and **Contract Administration Fees** to Districts and communities.
2. A **Cubic Metre Fee** based on the volume of timber cut and payable directly to the affected community.
3. **Social Agreements** negotiated between the logging company and affected communities, as part of the 'major pre-felling operations' to provide payments in kind.
4. **Legal recourse** includes **compensation** payable where damage to private property (including crops) occurs, and **dispute resolution mechanisms** included in the Social Agreements.

The legal obligations for these are detailed in the table below. First, there are other contextual points important to understand social obligations in Liberia:

- All logging concessions were abolished in 2005, in response to the imposition of UN sanctions on the timber sector following evidence that the logging was fuelling Liberia's conflict.¹⁸⁴ Subsequently a new legislative framework was devised and new concessions were first allocated in 2008.
- Since 2007 the FDA has subcontracted Chain of Custody Management Contract to Société Générale de Surveillance (SGS). Thus a reasonably effective timber tracking mechanism, including tracking forest revenue flows, has been in place since the current concessions started. The SGS contract has now been expanded to build and transfer to the FDA a Legality Verification Department under a project called LiberTrace.¹⁸⁵
- Liberia is one of only eleven countries in Africa – and the only one in this study – to have a Freedom of Information Act.¹⁸⁶ The public's right to access forest sector information is also enshrined in the NFRL.¹⁸⁷ The timber sector is included in the Liberia EITI, requiring it to make concession contracts publicly available.¹⁸⁸

There are other taxes, but these are not redistributed to local recipients. The most significant is the Land Rental Bid Fee, discussed further in [Section 5.3.1](#). Stumpage taxes are also not redistributed, but there is a cubic metre fee (item 2, above) that is. Other taxes include Bid Document Fees, the Annual Coupe Inspection Fee, Waybill Fee, Timber Export Licence Fee, Log and Wood Product Export Fees.¹⁸⁹ These are mainly retained by the central government.

184 GoL, 2006, *Executive Order No. 1: GOL forest sector reform*; www.emansion.gov.lr/doc/EXECUTIVE%20ORDER%20_%201%20-%20Forest%20Sector%20Reform.pdf.

185 Bambridge, 2013, *LiberTrace: Establishing and operating a Timber Legality Verification Department (LVD) within Liberia's Forestry Development Authority (FDA) and building capacity within FDA*, presentation at Forest Governance Forum, Monrovia, 12-13 December 2013; http://forestgovernanceforum.com/wp-content/uploads/2014/02/DAY-ONE_SESSION-1_2_BAMBRIDGE.pptx.

186 UNESCO website; www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-africa/ accessed February 2017.

187 NFRL 2006, Section 18.15.

188 GoL, 2009, *An Act establishing the Liberia Extractive Industries Transparency Initiative (LEITI)*, Clause 4.1 (f); www.leiti.org.lr/uploads/2/1/5/6/21569928/act.pdf.

189 Regulation 107-07, *Regulation on certain forest fees*.

5.2 Summary of legal provisions

Table 5 below summarises the social obligations under each of the four mechanisms listed above.

Table 5: Legal basis for social obligations in Liberia

Area-based cash payments	
	How is the money raised? How is it redistributed?
An Area Fee of US\$ 1.25 or US\$ 2.50 per hectare per year is levied for the long-term Forest Management Contracts or the shorter Timber Sale Contracts, respectively. ¹ It is collected annually at national level, in conjunction with the SGS chain of custody system.	30 per cent of the Area Fee is to be redistributed to affected communities and 30 per cent to counties, with the remaining 40 per cent retained by the central treasury. ² The proportion for communities is to be transferred to a National Benefit Sharing Trust fund on a quarterly basis. ³ All communities within three kilometres of the logging area, ⁴ as well as certain others, ⁵ are regarded as 'affected communities' eligible for benefit-shares. The 30 per cent due to counties is to be divided equally between Liberia's 15 counties and paid annually, into each County Forestry Development Fund. ⁶
For Commercial Use Contracts the Area Fee is US\$ 1.25 or US\$ 2.50 per hectare per year, depending on the size of the contract area. ⁷	In community forests, 55 per cent of the Area Fee is redistributed to the community owning the forest, irrespective of the scale of operations. ⁸ These funds are managed by a Community Forest Management Body, established along similar lines to the Community Forestry Development Committee for concessions. ⁹
An annual Bid Premium, the amount a winning bidder in the course of a competitive concession allocation process pledges to pay in addition to the Area Fee in order to win the contract, was applicable between 2008 and 2012. ¹⁰ It was levied once annually at national level, in conjunction with the SGS chain of custody system.	The bid premium has never been redistributed and the law is ambiguous about whether it should have been. In the case of community forests the entire bid premium should have been paid to the community, ¹¹ but to date no competitive bidding procedures have been used in the allocation of Commercial Use Contracts.
The Contract Administration Fee is US\$ 1,000 per contract per year, and collected at the national level. ¹² It is collected once annually at national level, in conjunction with the SGS chain of custody system.	The Contract Administration Fee is classed as a type of Land Rental Fee, to be distributed as the Area Fee above. ¹³
Volume-based cash payments	
How is the money raised?	How is it redistributed?
A Cubic Metre Fee is to be negotiated through the Social Agreement, but must be at least US\$ 1 per m ³ harvested in each concession. ¹⁴ It is to be paid quarterly by each logging company into an escrow account held by the company on behalf of the community. ¹⁵ The US\$ 1 rate can be divided across more than one community.	For Cubic Metre Fees the Community Forestry Development Committee must request in writing to the logging company to make payments to the community's bank account. The FDA must authorise these transactions. ¹⁶
Regarding the Stumpage Fee , all timber species are assigned Class A, B or C based on rarity. There are three stumpage rates calculated as a percentage of the estimated market value of the timber, 2.5 per cent (for class C), 5 per cent (B) and 10 per cent (A) of the estimated market value. ¹⁷ It is collected at the national level, in conjunction with the SGS chain of custody system. The estimated market values are to be recalculated at least once every year. ¹⁸	10 per cent of the Stumpage Fee is to be redistributed to Protected Forest Areas Network. ¹⁹
Contributions in kind	
How are contributions in kind determined?	How are contributions in kind fulfilled?
Forest Management Contracts, Timber Sale Contracts and Private Use Permits require the establishment of a Social Agreement that defines communities' rights, roles, obligations, and benefits. ²⁰ They are a pre-felling requirement. ²¹ Social Agreements should contain (i) a code of conduct for community members and logging company personnel; (ii) a description of the financial benefit communities will receive (i.e. the Cubic Metre Fee); (iii) a practical mechanism for resolving disputes, and (iv) any other terms tailored to the local context. ¹¹ The elected Community Forestry Development Committee represents the community in the negotiation of the Social Agreement with the logging company, which is then attested by the FDA. ²³ Guidance on Social Agreements is provided in a 'template'. ²⁴	The social agreement template makes it clear that the company and community should both describe how they will abide by terms and conditions of Social Agreement. ²⁵ The template requires the logging company, Community Forestry Development Committee, wider community, and FDA to meet at various frequencies to address any grievances and to discuss each annual operating plan for logging. ²⁶ Social Agreements have a five-year term in Forest Management Contract areas and a three-year term under Timber Sale Contracts. ²⁷



Legal recourse	
What mechanisms for legal resource exist?	How are channels for legal recourse fulfilled?
<p>Compensation for damage should be payable where a logging company causes damage to the private property of a land owner. This must first be resolved through informal negotiation.²⁸</p> <p>Where informal negotiation fails, and within 30 days, a land owner may make a claim to the FDA, including the monetary estimate of damage. The Managing Director will arbitrate, and where compensation is required, it must be paid within ten days. Where arbitration fails, the case is taken to the courts.²⁹</p> <p>Logging companies must make a request for any rights of way across private land required to access the forest, and the Managing Director will again arbitrate this, including the compensation to be paid for any damage arising.³⁰</p>	<p>Whilst the steps for obtaining compensation are outlined on the left, there is no system for monitoring compensation cases, or their outcome, so it is hard to assess the impact of this scheme.</p>
<p>Social Agreements are required to include a dispute resolution mechanism.³¹ The social agreement template provides guidance on this, recommending that a neutral third party initially assists disputing parties to resolve differences, then a local leader (District Commissioner, Paramount Chief, Clan Chief, or Town Chief) plays this role. Where this fails, Commercial Arbitration Rules apply and the case may be taken to court.³²</p>	<p>Whilst the dispute resolution mechanism is outlined on the left, there is no system for monitoring compensation cases, or their outcome, so it is hard to assess the impact of this scheme.³³</p>
<p>The potential for citizen's suits and civil enforcement covers five areas (with conditions):³⁴</p> <ol style="list-style-type: none"> 1. Anyone harmed by violation of any provision in the Law, Regulations, or other code, may bring an action against any responsible person, except officials. 2. Anyone harmed by violation of any condition or requirement of the main logging permits may bring an action against the permit holder. 3. Anyone may bring an action against the government to compel it to comply with the Law, Regulations, and other procedures. 4. Anyone may sue the government for non-compliance with the Law. 5. In response to official fraud or a failure to collect all taxes and fees, a third party may bring an action to compel payment. 	<p>Whilst the means for citizen's suits and civil enforcement are outlined on the left, there is no evidence to date that any of them have been used, so it is hard to assess the impact of this type of legal recourse.</p>

Footnotes for the table

1. Regulation 107-07, Section 33.
2. NFRL 2006, Section 14.2, Clause e.(ii).
3. Regulation 106-07, *Regulation on benefit sharing*, Section 32.
4. Liberia VPA, Legality Indicators 2.1 and 3.1. Further information on the identification of affected communities is provided in Regulation 105-07, Section 32, Clause b.
5. Regulation 105-07, *Regulation on major pre-felling operations under forest resources licenses*, Section 32, Clause b(E).
6. Regulation 106-07, Sections 22-23.
7. CRL 2009, Section 6.5.
8. Ibid, Section 3.1(d). Draft CRL Regulation 2016, Sections 11.2-11.4.
9. CRL Regulations 2011, Section 7. Draft CRL Regulations 2016, Chapter 4.
10. The area-based bid premium was first used in the 2008 round of permit allocations, until its abolition by the *Act to abolish the payment of annual land rental bid premium on contract area and merging of export taxes into stumpage/production fee in the forestry sector of Liberian economy*, 17 September 2013 (hereinafter labelled as Abolition Act); www.fda.gov.lr/images/liberty/fda%20docs/An%20Act%20to%20Abolish%20the%20Payment%20of%20Land%20Rental%20Bid%20Premium%20-%20Final%20Draft.pdf.
11. CRL 2009, Section 6.5.
12. Regulation 107-07, Section 32, Clause a.
13. Ibid, Section 32.
14. Regulation 105-07, Section 34.
15. Ibid, Section 33, Clause a.(3).
16. Ibid, Clause a.(4).
17. Regulation 107-07, Sections 21-22.
18. Ibid, Section 3.
19. NFRL 2006, Section 14.2, Clause e.(i).
20. Ibid, Section 5.1 Clause f.(ii); Section 5.3, Clause b.vi; and Section 5.6, Clause d.vi. Regulation 105-07, Section 31.
21. Regulation 105-07, preamble.
22. Ibid, Section 33, Clause a.(1).
23. Ibid, Sections 62 and 36.
24. FDA, 2014 (hereinafter labelled as Social Agreement Template), Consolidated version: updated social agreement template: final of 15 December 2014.
25. Social Agreement Template, pp.3 and 6.
26. Ibid, pp.3, 4 and 7.
27. Regulation 105-07, Section 31, Clause b.
28. Regulation 110-07, *Regulation on rights of private landowners*, Section 22.
29. Ibid, Section 23.
30. Ibid, Section 31.
31. Regulation 105-07, Sections 33, Clause a.(5) and 37.
32. Social Agreement Template, p.7.
33. See CS-IFM / NGO Coalition, 2016, *Sing Africa Plantations Liberia Incorporated – is community forestry working for the people of Bluyeama Clan?* (Briefing 7) for one example of an apparent dispute between a community and logging company – which has subsequently ceased operations – for which there appears to be no documentation; <http://loggingoff.info/wp-content/uploads/2016/12/CS-IFM2016-SingAfrica-IsCommunityForestryWorkingPeopleBluyeama07.pdf>.
34. NFRL 2006, Section 20.10.

5.3 Discussion

The discussion below elaborates on how effective the legal framework for Liberia summarised above is in practice. It is divided into the same four parts as the other country sections: area-based payments, volume-based payments, social agreements and payments in kind, and access to justice. This is prefaced by three issues specifically regarding Liberia.

Permit system

Whilst the law states that the two main logging contracts must have been identified in the National Forest Management Strategy,¹⁹⁰ the 2013 draft legality audit checklist states only that Timber Sales Contracts must be awarded in line with this Strategy.¹⁹¹ Nor does it stipulate an independent check against the Strategy document.

The Timber Sale Contracts are for three years, and although there is no clause in the legal framework controlling extensions, it is possible that some individual contracts have allowed for extensions to be agreed. Of the ten Timber Sale Contracts (all of which were issued between 2008 and 2010), many have been operating for significantly longer.¹⁹² Delays in the sharing of revenues have arisen, and the affected communities have yet to receive all the Cubic Metre Fees or the share of Area Fees due to them, but in the meantime the relevant Timber Sale Contract has expired.

Land Rental Bid

The Land Rental Bid is the amount that a winning bidder in the course of a competitive concession allocation process pledges to pay in addition to the Area Fee in order to win the logging contract. In the seven Forest Management Contracts and ten Timber Sale Contracts issued since 2008, this has averaged US\$ 9.38 per hectare per year (minimum US\$ 1.91, maximum US\$ 20). Across all 17 concessions it has generated almost US\$ 10.5 million per year, compared to just over US\$ 2.5 million per year from Area Fees. However, the bids were generally considered to be unrealistically high compared to the value of the timber available. It is believed that bidders did not fully appreciate the fact that this money was due every year, or that they anticipated that the system would be ignored or abolished.

There has been an ongoing dispute as to whether the Land Rental Bid Fee should be considered a component of Land Rental Fees and therefore subject to the same redistribution formula, i.e. 30 per cent for affected communities and 30 per cent for counties.

Attention to this dispute diminished when the system of Land Rental Bid Fees was abolished in 2013.¹⁹³ A new system, basing the bid process on volume instead of area, has been promised but has not yet been devised, and stumpage rates have not been revised. This seems unrealistic, as the abolition act insists that any new systems must 'compensate for revenue loss associated with the cancellation of Annual Land Rental Bid Premium'. In addition, moving US\$ 10.5 million per year (which is a tax on a fixed area) onto timber production (which is a variable volume) is unfeasible, and would probably price Liberian timber far beyond international prices. Furthermore, in the period between 2008 and 2013 only US\$ 13 million in Land Rental Bid Fees was ever collected, and the arrears reached US\$ 42 million.¹⁹⁴ All arrears must be paid before timber can be regarded as compliant with the VPA legality definition.

190 Ibid, Section 5.3 for Forest Management Contracts and Section 5.4 for Timber Sale Contracts.

191 SGS, 2013 (hereinafter labelled Verification Protocol, 2013 draft), *Audit Checklist and Report* (draft, 11 December 2013), p.31, 32.

192 VPA National Multi-stakeholder Monitoring Committee meeting of 28 June 2016.

193 Abolition Act.

194 CS-IFM / NGO Coalition, 2014, *The Act to Abolish the Bid Premium & its implications for Liberia's revenue flow* (Briefing 4), <http://loggingoff.info/wp-content/uploads/2015/09/847.pdf>.

Community forestry in Liberia

No commercial logging concessions have been allocated since 2010. Instead, community forestry has been seen as the main way forward for forest management and there are over 120 Community Forestry Management Agreement applications pending approval.¹⁹⁵ For forests under community control through a Community Forestry Management Agreement, logging may be undertaken by the community itself, or through a Commercial Use Contract signed between a community and a logging company. The latter is more likely, but it raises a number of issues specific to social obligations, as follows.

The CRL says that small-scale commercial operations in community forests – which are up to the same size as Timber Sales Contracts – ‘shall not be allocated on a competitive basis’.¹⁹⁶ This risks underpricing the timber on a 5,000 hectare community forest relative to a state-controlled forest of the same area.

Medium-scale Commercial Use Contracts in community forests, on areas between 5,000 and 49,999 hectares, may be allocated on a non-competitive basis,¹⁹⁷ but draft new regulations state that the FDA ‘shall recommend that the competitive bidding process be used ... to ensure that communities are able to secure the most favourable terms’.¹⁹⁸ Thus the ability for communities to obtain the best price for rights to its timber is not wholly backed by law, and will depend on the negotiating power of a community relative to that of a company, as well as the capacity of the FDA to implement this recommendation persuasively.

Large-scale Commercial Use Contracts in community forests, above 50,000 and up to 250,000 hectares, must in effect follow the same bidding process as Forest Management Contracts on state-controlled land, namely that laid out in the Public Procurement and Concessions Act.¹⁹⁹

A major concern with the notion of competitive bidding, wherever it occurs, is that since the abolition of the bid premium (see previous section) there is no clear way by which the winning bid would be identified. Arguably it is not possible to follow the Public Procurement and Concessions Act and forest sector legislation for competitive bidding, unless and until a replacement to the bid premium is legislated for, through the usual consultative process for developing laws and regulations.

Finally, the notion of social agreements in community forest Commercial Use Contracts needs clarification. At a fundamental level social agreements should not exist as a side agreement like those under other logging permits. Instead, central to the logging agreement should be the price a company is prepared to pay the forest owner (for area rent and for stumpage), along with any contributions in kind or code of conduct the community chooses to include in the bidding process.

5.3.1 Area Fees: the first ever benefit-sharing system in Liberia

According to the FDA, in 2015, nearly US\$ 1.6 million was collected in Area Fees, on a total contracted area of 630,000 hectares, an average of US\$ 2.5 per hectare.²⁰⁰

The 2006 forest law laid down, for the first time in the history of the forest sector in Liberia, that a

195 EU and GoL, 2016, Aide memoire: Fourth meeting of the Joint Implementation Committee, Monrovia September 21–23rd, 2016, paragraph 36 (p.6); www.euflegt.efi.int/documents/10180/266285/Liberia-EU+4th+JIC+Aide+Memoire+%2BAnnexes.pdf/cfe9f026-faee-479b-81c5-ee50b0e28122.

196 CRL 2009, Chapter 6, Section 6.1.

197 Ibid, Section 6.2.

198 Draft CRL Regulations 2016, Section 10.3.

199 Ibid, Section 10.4.

200 Letter from FDA to SDI in response to a request for information in order to complete this report, 19 April 2016 (hereinafter labelled FDA letter, 2016).

proportion of revenues was to be given back to affected communities. All affected communities within a County must be represented by an elected Community Forestry Development Committee,²⁰¹ which submits applications for funds to a National Benefit Sharing Trust Fund.²⁰² However, in the first eight years of logging, no money earmarked for communities was paid into their National Benefit Sharing Trust Fund, despite the obligation to make quarterly payments.²⁰³ After intensive advocacy by local NGOs and communities, on 17 July 2015 the first US\$ 1 million was paid by the government into the Fund, and the following year a further US\$ 250,000 was deposited. Procedures have since been developed for communities to apply for funds, a National Benefit Sharing Trust Board has been set up to supervise the fund. By late 2016 some US\$ 700,000 had been redistributed to communities for projects.²⁰⁴

Regarding annual payments to Liberia's counties, the FDA is responsible for notifying the public each year about the amount of all deposits made into each County Forestry Development Fund.²⁰⁵ In turn the county authorities report to the FDA on their use of the funds, and the FDA are to report publicly on this too. There are anecdotal reports that in 2012 a one-off payment of US\$ 700,000 was made by the government to the counties, but Internet research on 'County Forestry Development Fund' does not provide any evidence of this, yet at least seven annual reports from FDA should by now be in the public domain. There is no reference to monitoring these payments in the VPA or the associated draft verification protocol.²⁰⁶

Furthermore, despite being classed as part of the Land Rental Fees, the Contract Administration Fee is not currently included in the redistribution formula to communities or counties.

5.3.2 Volume payments: the Cubic Metre Fee

In 2015, according to the FDA, US\$ 2.5 million was collected in Stumpage, and US\$ 760,000 was paid to communities as cubic metre fees, on a total production of 390,000 m³. Thus stumpage revenue averaged US\$ 6.4 per m³ and cubic metre fee income averaged US\$ 1.9 per m³.²⁰⁷

In Liberia there is no redistribution of the stumpage tax that is collected centrally. Instead, there is a parallel system of cubic metre fees, as discussed in the next paragraph. There should be a redistribution of 10 per cent of the stumpage tax to the Protected Forest Areas Network, but there is no evidence that this is happening, and neither the VPA nor the associated draft verification protocol make any reference to monitoring this.²⁰⁸ Nor do they contain any reference to the annual recalculation of estimated market values of different timber species for the purpose of revising stumpage tax rates,²⁰⁹ and there has been no report that stumpage tax rates have ever been revised in line with the law.²¹⁰ This raises the possibility that revenue to the state (and to the Protected Forest Areas Network) does not keep up with increasing international timber prices, yet the legality assurance system does not raise any alert to this.

Some logging companies have agreed to pay a higher level of cubic metre fees than the minimum

201 Regulation 105-07, Section 62, Clause b.

202 Regulation 114-10, Section 15.

203 Regulation 106-07, Section 32.

204 NBSTB, 2017, *Technical Project Review Committee payment chart list for CFDC's Land Rental Fees Received*, 6 January 2017.

205 Regulation 106-07, Section 23, Clause b.

206 Verification Protocol, 2013 draft.

207 FDA letter, 2016.

208 Verification Protocol, 2013 draft.

209 Ibid.

210 Regulation 107-07, Section 3.

stipulated in the regulations. A 2015 report by the Liberian Civil Society-led Independent Forest Monitoring (CS-IFM) team states that in all three Forest Management Contract areas they studied the rate was US\$ 1.50 per m³.²¹¹ The VPA legality grid and the draft legality audit checklist make provision for the proper payment of cubic metre fees as a condition for the verification of legal timber.²¹² However, to date there has been no systematic monitoring across the 17 concessions in Liberia, either that this money has been deposited in the escrow accounts or that it has been accessed by the communities.

The 2015 report the Liberian CS-IFM team described some of the challenges in accessing this fund. They saw no evidence of the existence of escrow accounts, or that the FDA exercised its duty to authorise payments to communities. Instead they show that the money is paid irregularly but directly to communities. Over the seven-year period from 2008 to 2015, the three Forest Management Contracts studied generated between US\$ 76,000 and US\$ 330,000 each in Cubic Metre Fees, but 65 per cent of this total due since 2008 had not been received by the communities at the time of the study. There was also confusion over whether the fee was calculated on the basis of volume exported (because that is when the companies receive income from timber sales), or on volume harvested as is clearly described in the regulations.²¹³ In late 2016 SGS prepared a report of Cubic Meter Fees paid to date by all logging companies, which is awaiting distribution by the FDA.²¹⁴

5.3.3 Social Agreements and Community Forestry Development Committees

The Social Agreements are not themselves an integral part of the contract or permit, but the legal framework is clear that they must be signed as part of the preparatory steps a contract holder takes in a twelve-month period (for Forest Management Contracts) or 90-day period (for Timber Sale Contracts) after being awarded the contract and before any logging takes place.²¹⁵

Following concerns about the process of negotiating Social Agreements, and the content of the final document,²¹⁶ a social agreement template, was developed in 2014. Whilst the template and guidelines have no legal force in themselves (unless incorporated into a new regulation to this effect), once each agreement has been negotiated and signed, it becomes binding on the logging company and community. It also becomes binding on the FDA to the extent that the authority must formally attest to the agreement, and the template includes a section entitled the 'Forestry Development Authority shall ...'²¹⁷ The VPA process anticipates the verification protocol will be updated to include the provisions of the new social agreement template.²¹⁸

Community Forestry Development Committees

An essential pre-requisite for a Social Agreement is the democratic establishment of a Community Forestry Development Committee to represent the communities' interests in negotiations with the logging company. Social Agreements have a finite duration and may then be renegotiated (see [Table 5](#)) and it is common practice, and implied in the social agreement template, that elections for

211 CS-IFM / NGO Coalition, 2015 (hereinafter labelled as CS-IFM Brief 5), *A study on the management & governance of Cubic Meter Fees in three FMCs* (Briefing 5), <http://loggingoff.info/wp-content/uploads/2016/03/CS-IFM2015-ManagementGovernanceM3Fees3FMCsBrief05.pdf>.

212 Liberia VPA, Legality Indicator 3.5. Verification Protocol, 2013 draft, p.30-31.

213 Regulation 105-07, Section 34.

214 VPA National Multi-stakeholder Monitoring Committee meeting of 26 October 2016.

215 Regulation 105-07, preamble; NFRL 2006, Section 6.1 Clause c.

216 Concerns were documented in a number of CS-IFM briefings, principally the *Liberia Social Audit 2012/13: assessing the forestry sector*, (hereinafter labelled as Social Audit); <http://loggingoff.info/wp-content/uploads/2015/09/752.pdf>.

217 Social Agreement Template, p.6.

218 EU and GoL, 2016, *Aide memoire: Third meeting of the Joint Implementation Committee, Monrovia January 20-22nd, 2016*, Annex 2 (p.16); www.euffegt.efi.int/documents/10180/266285/Aide+memoire+and+annexes+of+the+third+JIC+in+Liberia%2C+January+2016/db82717c-c71c-4816-a985-ee88376acc70.

Community Forestry Development Committees occur prior to each renegotiation.²¹⁹ There is one such committee per concession, or more than one if the concession spans more than one county, so 22 exist across Liberia. They have recently completed their second elections to appoint members from the communities they represent. There are clear regulations regarding the appointment and representativeness for committee members, notably that women and youth have a voice;²²⁰ and guidelines that committees must hold monthly meetings with the wider community.²²¹

The Community Forestry Development Committee must manage the revenue from two different sources, oversee its expenditure and be accountable to the wider community. The first source, Cubic Metre Fees, are an unpredictable amount (as they depend on production) and arrive at unpredictable times (either when the committee requests and the FDA approves a transfer from the escrow account, or, as is currently the case, whenever the logging company chooses to make a payment directly to the community account). There is also no management infrastructure around how decisions are made on how to spend it or how to supervise this. Cubic Metre Fee income due to communities is typically between US\$ 77,000 and US\$ 330,000 per year.²²² In contrast, there is a relatively tight set of controls in place for the second source, the community's share of Area Fees. The availability of these funds is – in theory – completely predictable as the logging company must pay them on the anniversary of its contract, and the government must pass them to the National Benefit Sharing Trust every quarter. The amount paid is constant, a function of the area of the concession in the County concerned. And the procedure for accessing the funds from the National Benefit Sharing Trust is carefully designed and tightly supervised by the National Benefit Sharing Trust Board. Of the seven Forest Management Contract areas (that range from 59,000 hectares to 254,000 hectares) this income is between US\$ 20,000 and US\$ 110,000 per Community Forestry Development Committee per year, paid by the logging companies in September or October.

As a result the two revenue streams are regarded quite differently. The structure of the National Benefit Sharing Trust system implies this should be used for capital expenditure, or 'projects', although a predictable, fixed income might also be suited to recurrent costs. On the other hand, the Cubic Metre Fees can accumulate in the escrow account until they are sufficient for an infrastructure project and are then relatively easy to access. As communities have only recently started to receive funds from the National Benefit Sharing Trust is it too early to report on its success. Regarding Cubic Metre Fees however, as the 2015 report from the Liberian CS-IFM team describes, there are a range of governance and accountability challenges in accessing this fund. In one case almost 80 per cent of the money received was handed directly to individual Community Forestry Development Committee members. In another a clinic had been constructed but it did not conform to government standards and so may not be adopted by the health service as was hoped. In a third case it was revealed that there was no written contract with a company hired to construct a community guesthouse, so disputes could not easily be

In Liberia After intensive advocacy by local NGOs and communities, in July 2015 the first US\$ 1 million was paid by the government into a community fund, and the following year a further US\$ 250,000 has been deposited.

219 Social Agreement Template, p.4.

220 Regulation 105-07, Section 62, Clause c.

221 Social Agreement Template, p.4.

222 Estimated from three cases in CS-IFM Brief 5.



Abandoned logging machinery around Zubah Town, Gbarpolu County, Liberia

© James Giahvue

resolved. There was also confusion over the control of funds, particularly where the Community Forestry Development Committee covered a large area: some saw it as primarily responsible for overseeing projects, and others simply as a conduit for channelling funds to smaller sub-committees in different localities. Of course there were also successes amongst this sample of three concessions: a school building and two meeting halls were reported as complete and in use.

10 per cent of the Cubic Metre Fees and the Area Fees received by the community are to be allocated for participatory compliance monitoring of community benefit delivery by the logging company and Community Forestry Development Committee, and 5 per cent of the Cubic Metre Fees and the Area Fees received by the community are to fund independent monitoring.²²³

Social infrastructure built by the logging companies

There are no clear obligations in the legal framework as to the type or extent of contributions in kind, with the regulations simply stating that the logging company and Community Forestry Development

223 Social Agreement Template, p.8.

Committee may 'agree to terms that are tailored to the local context'.²²⁴ However the social agreement template states that agreements should include:²²⁵

- The conditions under which the company will provide transportation.
- The proposed road-building and maintenance in and adjacent to the contract area, and how the community will use the proposed roads and how they expect to benefit from existing and planned roads.
- The extent to which timber products will be made available to the community.
- The conditions under which non-financial benefits are provided (employment and benefits in kind) to the communities.
- How the provision of so-called 'benefits in kind' are explicitly defined and budgeted against the financial timber levy revenue.
- Outline all community infrastructure benefits and include detailed timeline for implementation.

Research in 2012 showed typical contributions agreed include: clinics, schools, roads, bridges, Community Forestry Development Committee facilities, town halls, latrines, water pumps, transport, and football fields. However the study also documented very low rates of fulfilment after the first four years of the concessions operating.²²⁶

There is still no system for monitoring the fulfilment of infrastructure or other contributions in kind, defining for example a process for determining where and when these social infrastructure items should be built, who determines the size and quality, and supervises the projects. Whilst there is no reference to monitoring these in the VPA, there is scope to do so: the draft verification protocol for a legality indicator 3.3 states the required content of a social agreement,²²⁷ so it would be straightforward to expand this to cover all the bullet-points above.

5.3.4 Legal recourse: work to be done

Compensation

The regulation on compensation for damage to property presumes that only landowners are eligible. However, the term 'landowner' is not defined, so it is unclear if customary or collective owners, or farm tenants, are eligible.²²⁸ The social agreement template states that agreements should include 'how existing water collection points are protected and maintained', 'how timber operations respect the affected communities' rights to subsistence agricultural activities' and 'respect the existing cash/food crops' as well as to 'minimize effects to traditional practices such as taboo day, sacred sites, and the range of taboo animals/plants, medicinal plant sites, hunting grounds, non-timber forest products sites'.²²⁹ However, the template offers no mechanism for compensation if these community assets are damaged.

224 Regulation 105-07, Section 33, Clause b.

225 Social Agreement Template, p.3.

226 Social Audit.

227 Verification Protocol, 2013 draft, p.27.

228 Regulation 110-07, Section 22.

229 Social Agreement Template, p.3.

This was a particular issue in the 1990s under a previous Salvage Permit system that tended to allocate logging contracts on degraded forest land occupied by agriculture or tree crops. In contrast, the Timber Sales Contracts allocated since 2008 have largely been in high forest areas, so crop damage is not so common, and these have now all but expired.

Similarly, the regulations presume that the only access rights to be negotiated are with (undefined) land owners. Negotiations with farmers occupying but not owning crop or other valuable land are not mentioned. The regulation on benefit sharing states that Social Agreements must include 'The rights (including access rights) and responsibilities of members of the Affected Communities',²³⁰ but in a similar clause applicable to the logging company the phrase 'including access rights' is omitted. This implies that the company is the primary tenure-holder and communities must seek access rights.

This could become a significant issue where logging takes places under a Community Forestry Management Agreement, as these areas are likely to have a greater mix of land and forest uses in close proximity to each other, and unless there is a clear system of access rights and compensation for any damages, there could be divisive disputes within the community, as well as with the logging companies.

Dispute resolution mechanism

Disputes may occur at many points: e.g. in the negotiation of a Social Agreement, in its implementation, in the redistribution of Cubic Metre or Area Fees, or over compensation claims. Whilst the dispute resolution mechanism during Social Agreement negotiations exists,²³¹ and a similar mechanism is recommended to handle disputes in the implementation of the agreement,²³² these mechanisms may not be sufficient to cover the redistribution of Area Fees, or over compensation claims, both of which fall outside the remit of the Social Agreement. The VPA process anticipated clearer 'rules for complaints mechanisms and conflict resolution' in the social agreement template.²³³

Perhaps more important is the functioning of dispute resolution mechanisms in practice. The VPA legality indicators – and the draft verification protocols – only refer to the existence of a dispute resolution mechanism, not to whether it functions or how disputes have actually been resolved.²³⁴

Civil enforcement

The forest law makes reference to citizen's suits and civil enforcement, providing a more substantial legal framework than the other countries studied for citizens to take action: if harmed by any violation the law or logging permit; in order to compel the government comply with the law, to sue the government for non-compliance; or in response to official fraud or a failure to collect taxes.²³⁵

230 Regulation 105-07, Section 33, Clause a.(1).

231 Ibid, Section 37.

232 Social Agreement Template, p.7.

233 EU and GoL, 2015, *Aide memoire: Second meeting of the Joint Implementation Committee, Monrovia June 10-12th, 2015*, Annex 4; www.euflegt.afi.int/documents/10180/227221/Aide+memoire+second+JIC+Liberia/1ec2a35a-261c-4999-b0b5-e2a76a640269.

234 Liberia VPA, Legality Indicator 3.3. Verification Protocol, 2013 draft, p.29.

235 NFRL 2006, Section 20.10.

6 Republic of the Congo: legal framework for social obligations

6.1 Terminology

The sector authority is the Ministry of Forest Economy and Sustainable Development (*Ministère de l'Économie Forestière et du Développement Durable*, MEFDD), previously known simply as the Ministry of Forest Economy (*Ministère de l'Économie Forestière*, MEF). It has changed its name and many times since becoming separate from the agriculture ministry in 1957. At different times it has also been responsible for the environment, fisheries and water.

6.1.1 Main legislation

The RoC forest sector is currently governed by Law No. 16-2000 of 20 November 2000, the Forest Code,²³⁶ although this is currently being substantially revised. The principal implementing text for this law is Decree No. 2002-437 of 31 December 2002, laying down the conditions of forest management and use.²³⁷

Other legal texts key to social obligations are:

- Decree No. 86/970 of 27 September 1986, setting the compensation payable in the event of the destruction of fruit trees and damage to crops.²³⁸
- Decree No. 2002-434 of 31 December 2002, relating to the organisation and functioning of the Forest Fund.²³⁹
- Decree No. 2002-438 of 31 December 2002, setting the terms of the area fee for the development of *départements* (local government authorities).²⁴⁰
- *Arrêté* No. 6380 MEF/MEFB of 31 December 2002, setting the deforestation tax for natural forests.²⁴¹
- *Arrêté* No. 6382 MEF/MFB of 31 December 2002, setting the surface area tax.²⁴²

236 GoRoC, 2000 (hereinafter labelled as Forest Code 2000), *Loi No. 16-2000 du 20 novembre 2000 – Code forestier*; [www.mefdd.cg/no_cache/menu-haut/legislations/?tx_abdownloads_pi1\[action\]=getviewclickeddownload&tx_abdownloads_pi1\[uid\]=83](http://www.mefdd.cg/no_cache/menu-haut/legislations/?tx_abdownloads_pi1[action]=getviewclickeddownload&tx_abdownloads_pi1[uid]=83).

237 GoRoC, 2002 (hereinafter labelled as Décret 2002-437), *Décret No. 2002-437 du 31 décembre 2002 fixant les conditions de gestion et d'utilisation des forêts*; <http://faolex.fao.org/docs/pdf/con35744.pdf>.

238 GoRoC, 1986 (hereinafter labelled as Décret 86/970), *Décret No. 86/970 du 27 septembre 1986 fixant les indemnités dues en cas de destruction d'arbres à fruits et de dommage aux cultures*; www.apvflgtcongo.info/images/pdf/dec86-870_destructionculture.pdf.

239 GoRoC, 2002 (hereinafter labelled as Décret 2002-434), *Décret No. 2002-434 du 31 décembre 2002 portant organisation et fonctionnement du fonds forestier*; www.apvflgtcongo.info/images/pdf/cg-dec%202002-434_organisation_fond_%20forestier.pdf.

240 GoRoC, 2002 (hereinafter labelled as Décret 2002-438), *Décret No. 2002-438 du 31 décembre 2002 fixant les modalités de répartition de la taxe de superficie destinée au développement des départements*; www.clientearth.org/ressources-externes/congo/forets/decret-2002-438-fixant-les-modalites-de-repartition-de-la-taxe-superficie-destinee-au-developpement-des-departments.pdf.

241 MEF, 2002 (hereinafter labelled as Arrêté 6380), *Arrêté No. 6380 MEF/MEFB du 31 Décembre 2002, fixant la taxe de déboisement des forêts naturelles*; www.clientearth.org/ressources-externes/congo/forets/arrete-6380-sur-la-taxe-de-deboisement.PDF.

242 MEF, 2002 (hereinafter labelled as Arrêté 6382), *Arrêté No. 6382 MEF/MEFB du 31 Décembre 2002, fixant les modalités de calcul de la taxe de superficie*; www.clientearth.org/ressources-externes/congo/forets/arrete-6382-sur-la-taxe-de-superficie.PDF.

- *Arrêté* No. 5053 MEF/CAB of 19 June 2007, defining national guidelines for forest management plans and sustainable management of forest concessions.²⁴³
- Decree No. 2009-303 of 31 August 2009, setting the selection procedures of tender offers for the allocation of logging titles.²⁴⁴

6.1.2 Forest classification and timber rights

Public forests in RoC are classified as permanent forest domain (*domaine forestier permanent*), made up of land definitively allocated to forest and wildlife habitat,²⁴⁵ or the non-permanent forest domain (*domaine forestier non-permanent*), referring to 'protected forests, which have not been classified'.²⁴⁶ The Forest Code states that State Forests, and those owned by public entities, municipalities and local or regional authorities all fall into the permanent forest domain,²⁴⁷ going on to say this includes forests for protection, nature conservation, production, recreation and research.²⁴⁸ The VPA does not refer to the permanent and non-permanent forest domain; instead dividing forests into natural forest and plantations, with a legality grid for each.²⁴⁹

All timber rights are vested in the state with the exception of private plantations or forests. The Forest Code does not appear to acknowledge the possibility of collective ownership of timber resources by communities, but provides for customary rights to non-timber forest products,²⁵⁰ and an opening for community forestry in the form of usage rights.²⁵¹ Community areas within a concession area are defined in the *série de développement communautaire* (SDC, or community development series), a sub-set of the concession's forest management plan that provides for the activities of local people within a CAT concession (see next section),²⁵² but this does not constitute community forestry.²⁵³ The more recent law promoting and protecting the rights of indigenous peoples does codify customary rights to collective forest and resource ownership, and to consultation prior to expropriation for public use,²⁵⁴ but the Rights and Resources Initiative notes that 'While the statutory basis is in place for *des forêts des communes et autres*

In RoC, although the 2000 Forest Code provides that 50 per cent of the area tax should be allocated to a Development Fund for Congo's Départements, this has never happened because a later decree transferred the revenue stream to a Road Fund.

243 MEF, 2007 (hereinafter labelled as *Arrêté 5053*), *Arrêté No. 5053 MEF/CAB du 19 Juin 2007, Définissant les directives nationales d'aménagement durable des concessions forestières*; www.apvflgtcongo.info/images/pdf/cg_arr_5053_directives_d_amenagement_2007.pdf.

244 GoRoC, 2009 (hereinafter labelled as *Décret 2009-303*), *Décret No. 2009-303 du 31 août 2009 fixant les modalités de sélection des offres de soumission pour l'attribution des titres d'exploitation forestière*; <http://faolex.fao.org/docs/pdf/con93647.pdf>.

245 Forest Code 2000, Article 4-5.

246 *Ibid.*, Article 13.

247 *Ibid.*, Article 6.

248 *Ibid.*, Article 8.

249 European Commission and Government of the Republic of the Congo, 2011 (hereinafter labelled as RoC VPA), *Voluntary partnership agreement between the European Union and the Republic of the Congo on forest law enforcement, governance and trade in timber and derived products to the European Union (FLEGT)*, p.137; [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22011A0406\(03\)&qid=1469776112183&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22011A0406(03)&qid=1469776112183&from=EN).

250 Forest Code 2000, Articles 40 and 41.

251 *Ibid.*, Articles 34 and 105.

252 *Arrêté 5053*, Article 18.

253 Schmitt & Baketiba, 2015 (hereinafter labelled as Schmitt & Baketiba, 2015a), *Revue et analyse des principaux mécanismes de partage des bénéfices existants en République du Congo*, p.31; www.euredd.efi.int/documents/15552/236515/01+Rapport+m%C3%A9canismes+partage+de+b%C3%A9n%C3%A9fices_RoC.pdf. This study also differentiates between 'vertical' benefit sharing based on the concession and cahier de charge system, and 'horizontal' benefit sharing, which describes community forestry and income-generating activities for example.

254 GoRoC, 2011, *Loi No. 5 - 2011 du 25 février 2011 portant promotion et protection des droits des populations autochtones*, Section VII; <http://faolex.fao.org/docs/pdf/con105791.pdf>.

collectivités locales [municipal others under local authority forests] and *Terres des peuples autochtones* [Indigenous Peoples' lands], no area has been designated under these tenure regimes.²⁵⁵ The VPA envisages new regulations to cover the zoning process and management procedures for community forests.²⁵⁶

6.1.3 Permit types

There are four types of permit.²⁵⁷

- The Industrial Processing Agreement (*convention de transformation industrielle*, CTI). This is a timber sales concession for use in a specific Forest Management Unit (*unité forestière d'aménagement*, UFA), combined with the commitment to develop and conform to a forest management plan and process the logs in an industrial unit owned by the same concessionaire. CTI typically have a duration of up to 15 years, renewable.²⁵⁸
- The Management and Processing Agreement (*convention d'aménagement et de transformation*, CAT). This is also for use in a specific UFA, but in addition to all the provisions of a CTI the concessionaire must carry out reforestation activities. It is a long-term concession with a duration of up to 25 years, renewable, and there is no minimum or maximum size, only that CATs cover a sufficiently large area to 'conduct' forest management.²⁵⁹
- The Plantation Timber Harvesting Permit (*permis de coupe des bois de plantations*), a maximum six-month timber sales contract for use in plantations.²⁶⁰
- Special Permits (*permis spéciaux*, PS) are required for the harvesting of poles, rods, canes, bamboo, firewood, charcoal, ebony, arrowroot leaves, caterpillars, rattan, lianas, cola and honey, from common areas outside forest concessions, for which harvesting taxes are charged.²⁶¹ There are no limits in law on the quantity of timber that can be harvested through a Special Permit, as this is determined in each case by a specific ministerial order. Unlike the other permits, however, Special Permits can only be allocated to Congolese nationals.²⁶²

Various licences (*autorisations*) are integral to this permit regime:²⁶³

- Within CAT and CTI, annual licences include the harvest licence, completion licence, and clearing licence (*autorisation de coupe annuelle*, *autorisation d'achèvement*, *autorisation de vidange*).
- Installation licences (*autorisation d'installation*) are required for the construction of access routes, base camps and industrial sites in the UFA.

255 RRI, 2015, *Who owns the world's land? A global baseline of formally recognized indigenous and community land rights*, Footnote 74, citing Georges Thierry Handja, 2013, Personal Communication; www.rightsandresources.org/wp-content/themes/pushwp/download-pdf.php?link=%2Fwp-content%2Fuploads%2FGlobalBaseline_complete_web.pdf.

256 Client Earth, 2014 (hereinafter labelled as Client Earth, 2014), *Droit à la participation des communautés locales et populations autochtones à la prise de décisions (République du Congo)*, p.12, citing Annex IX of the VPA; www.clientearth.org/ressources-externes/congo/Droit-Participation-briefing-juridique-FINAL.pdf.

257 Forest Code 2000, Article 65.

258 Ibid, Article 66.

259 Ibid, Article 67.

260 Ibid, Article 69.

261 MEF, 2002, *Arrêté No. 6379 MEF/MEFB du 31 Décembre 2002, fixant la taxe sur les produits forestiers accessoires*; www.documents.clientearth.org/download/9808/.

262 Forest Code 2000, Article 70.

263 RoC VPA, Annex II, *Legality matrices for timber sourced from natural forests and forest plantations in Congo*, p.138.

- ‘Social and economic infrastructures’ (roads, hydroelectric dams, etc.) are covered by deforestation licences (*autorisation de déboisement*), although ‘these provisions do not apply to deforestation necessary for the construction of tracks and other infrastructure, provided for in the forest management plan for the forest concerned’.²⁶⁴

6.1.4 Social obligations

In RoC the term social obligations is commonly understood to mean the social infrastructure a company might provide (see Table 6), under Contributions in kind). However, for the purposes of this study the term has a broader meaning, as described in Section 1, that identifies five mechanisms, provided for by law, by which logging companies are obliged to make payments in cash or in kind to local recipients:

1. The redistribution of a proportion of **forest area tax** (*taxe de superficie*) to départements.
2. Where forest is cleared for other development, the redistribution of a proportion of the **deforestation tax** (*taxe de déboisement*) to municipalities.
3. Local Development Funds (*Fonds de développement local, FDL*) for communities.
4. Social clauses included in the specific terms and conditions (*cahier des charges particuliers*) of each concession contract, agreed between the logging company and the state.
5. Opportunities for access to justice include **compensation** payable in the event of the destruction of fruit trees and damage to crops.²⁶⁵

The legal obligations are detailed in Table 6. First, it is important to understand the FDL, social clauses, and the SDC. The social clauses are an integral part of the CAT and CTI contracts,²⁶⁶ so need to be written before the contract is finalised. They appear as an annex to the contract, alongside *cahier des charges general*, or other terms and conditions.²⁶⁷ The FDL is not yet fully legislated for, but is described in the guidelines for the development of forest management plans (which do not yet exist for all of Congo’s logging concessions) as a mechanism for multi-stakeholder engagement in the development of the SDC, in particular as a mechanism to finance micro-projects of community interest. It is generally developed after the CAT contract is signed, after approval of the management plan, and is approved through a specific Arrêté.²⁶⁸ Possible future links between the FDL, social clauses, and the SDC are discussed in Section 6.3.2.

There are other taxes, but these are not redistributed to local recipients. These include stumpage (*taxe d’abattage*), whereby 3 per cent of the FOB value of the timber is collected for the central government;²⁶⁹ a tax on forest products under special permits (*taxe sur les produits forestiers accessoires*); an export tax; and an import tax (*taxe à l’exportation et de la taxe à l’importation*). These are mainly allocated to a Forest Fund for the operational costs of MEFDD.²⁷⁰

264 Forest Code 2000, Article 31.

265 Décret 86/970.

266 Forest Code 2000, Article 72.

267 Barros, 2014 (hereinafter labelled as Barros, 2014), *Système de partage des bénéfices en République du Congo*, Slide 3; www.clientearth.org/ressources-externes/congo/Annexe-3-Presentation-Cahier-charges-particulier-et-FDL-Congo.ppt.

268 Schmitt & Baketiba, 2015a, p.31.

269 MEF, 2002, *Arrêté No. 6378 MEF/MEFB, fixant le taux de la taxe d’abattage des bois des forêts naturelles*, Article 2; www.clientearth.org/ressources-externes/congo/forets/arrete-5378-sur-la-taxe-d-abattage-des-bois-des-forets-naturelles.PDF.

270 Décret 2002-434, Article 12.

6.2 Summary of legal provisions

Table 6 below summarises the social obligations under each of these mechanisms.

Table 6: Legal basis for social obligations in the Republic of the Congo

Area-based cash payments	
How is the money raised?	How is it redistributed?
<p>An area tax (<i>taxe de superficie</i>) is levied on all CTI and CAT permit types.¹ The rate is 250, 350 or 500 CFA Francs (US\$ 0.4, 0.6, 0.8) for the Central, Northern and Southern sectors respectively.² In addition, payments include the price offered by the winning concessionaire in the bidding process.³ It is levied annually payable either at the issuance of the relevant annual operating licence, or in twelve monthly instalments.⁴ It is paid to MEFDD, who together with the finance ministry determines the tax rate and method for its calculation.⁵</p>	<p>50 per cent of the area tax should be redistributed to all Congo's <i>Départements</i>, or local government authorities on the basis of a distribution that should have been made by the government.⁶ The remainder is kept by the central treasury.</p>
<p>A deforestation tax (<i>taxe de déboisement</i>) applies to the clearance of forest and conversion of the land to other uses,⁷ including for the establishment of logging infrastructure.⁸ The rates are calculated differently for clearance of natural forest or plantations. It is paid to MEFDD, who together with the finance ministry determines the tax rate and method for its calculation.⁹ The rate for clearing natural forest is 50,000 CFA Francs (US\$ 80) per hectare where clearing is due to logging or road construction. It is 10,000 CFA Francs (US\$ 16) per hectare for converting forest to 'modern' agriculture, and 200,000 CFA Francs (US\$ 320) for conversion to mining.¹⁰</p>	<p>50 per cent of the deforestation tax is redistributed to the relevant Municipality.¹¹ The remainder is kept by the central treasury.</p>
Volume-based cash payments	
How is the money raised?	How is it redistributed?
<p>Logging companies pay 200 CFA Francs (US\$ 0.4) per m³ of merchantable timber produced in a UFA into the respective FDL for each CAT concession.¹² Payments into the FDL are due in three stages through the year, in line with annual felling operations.</p>	<p>The FDL for each CAT is formalised through a pair of ministerial orders (<i>arrêté ministériel</i>). One describes the structure and functioning of the SDC multi-stakeholder Consultative Council that oversees the FDL, and the other the organisation and functioning of the FDL.¹³ The funds are intended to finance income-generating activities, in association with a local development plan. In addition to the Consultative Council there are committees for management, technical coordination and evaluation.¹⁴</p>
Contributions in kind	
How are contributions in kind determined?	How are contributions in kind fulfilled?
<p>Social clauses are in the <i>cahier des charges particuliers</i> and thus form part of each CAT or CTI concession contract.¹⁵ They are negotiated between the logging company and the state.¹⁶ These identify the social infrastructure and other needs the community may have, and which the company agrees to provide. They might include modern housing, health centres, schools, electrification, drinking water supply, sports and leisure facilities, and food security programmes (delineation and development of cultivable areas, crops and farms planned, and 'popularization of new technologies to promote a sedentary agriculture and improve the productivity of agro-pastoral farms, input supply and the establishment of funds suited to different activities').¹⁷</p>	<p>Generally the logging company finances and supervises the construction process, rather than handing responsibility and funds to local government or communities to do so. MEFDD at <i>département</i> level is responsible for reporting to the central ministry progress in the implementation of <i>cahier des charges particuliers</i> every quarter.⁸ The VPA legality grid has respect for the social clauses as a legal requirement in CTI and CAT.¹⁹</p>





Legal recourse	
What mechanisms for legal recourse exist?	How are channels for legal recourse fulfilled?
Compensation is payable for the destruction of fruit trees and damage caused to agricultural crops. ²⁰ This is applicable to CAT, CTI, Special Permits and plantations. ²¹ The ministry of rural development is responsible for determining the compensation, in line with legal parameters. ²²	Compensation is paid directly by the perpetrator to the damaged party. ²³

Footnotes for the table

1. Forest Code 2000, Article 91.
2. Arrêté 6382, Article 3.
3. Décret 2009-303, Article 7.
4. Forest Code 2000, Article 87.
5. Ibid, Article 91.
6. Décret 2002-438.
7. Forest Code 2000, Article 31.
8. FINERGIES, 2015 (hereinafter labelled RoC EITI 2014), *République du Congo : Rapport ITIE 2014*, p.58; www.itie-congo.org/index.php/component/k2/item/46-l-itie-congo-publie-son-rapport-2014.
9. Forest Code 2000, Article 97.
10. Arrêté 6380, Article 3.
11. Décret 2002-434, Article 12.
12. Schmitt & Baketiba, 2015a, p.32.
13. Ibid.
14. Ibid.
15. Forest Code 2000, Article 72.
16. Décret 2002-437, Article 169.
17. Ibid, Article 170.
18. Ibid, Article 82.
19. RoC VPA, Legality Indicator 4.9.1.
20. Décret 86/970, Article 1.
21. RoC VPA, Legality Indicator 3.2.3 appears in both legality matrixes.
22. Décret 86/970, Article 10.
23. Ibid, Article 9.

6.3 Discussion

The discussion below elaborates on how effective the legal framework for RoC, summarised above, is in practice. It is divided into the same four sections as in other countries: area-based payments, volume-based payments, social agreements and payments in kind, and access to justice.

6.3.1 Area tax, for roads

Although the 2000 Forest Code provides that 50 per cent of the area tax should be allocated to a Development Fund for Congo's *Départements*, this has never happened as a later decree, not co-signed by the forest ministry, transferred the revenue stream to a Road Fund.²⁷¹ Thus, whilst the improvement of roads is arguably a benefit for rural communities (depending on where such improvements take place), this diversion might well have led to a perception in local government that this is not a 'social obligation' or benefit-sharing mechanism as they have no real influence over how it might be used on priorities they identify. Furthermore, there has never been any provision for the redistribution of this tax to local communities.

The new draft Forest Code is said to reiterate that the area tax should be collected by MEFDD and transferred to the Treasury, for allocation to a Development Fund, for use by all *Départements* (not only those where the tax is generated) under modalities determined by the Council of Ministers.²⁷²

271 Ministers of Public Works, Town and Country Planning and Economic Integration, Territorial Administration and Decentralization, Coordination of Government Action, Transport and Privatisation, Economy, Finance and Budget, 2004, *Décret No. 2004-165 du 26 Avril 2004 fixant la composition, les modalités d'emploi, de recouvrement et de versement des ressources du Fonds Routier*; cited in REM, 2009, Rapport annuel janvier 2008 – mars 2009; www.forestsmonitor.org/uploads/2e90368e95c9fb4f82d3d562fea6ed8d/RSO3_REMOIF_Congo.pdf.

272 Schmitt & Baketiba, 2015a, p.29.

One estimate states that RoC had 9.7 million hectares under logging permits in 2015.²⁷³ A separate report states that an area comprising more than 12 million hectares was devoted to logging in 2014, from which 4.7 billion CFA Francs (US\$ 9.6 million) was collected in area tax;²⁷⁴ an average of US\$ 0.8 per ha. Some analysts have argued both that the tax rate should increase, and that the money should be added to the FDL.²⁷⁵ This would make the redistribution of the area tax more clearly linked to the logging areas generating the revenue, as well as increasing multi-stakeholder control over its use (see Section 6.3.2, below).

6.3.2 Volume payments and the *Fonds de développement local*

Stumpage is collected at the rate of 3 per cent of the international timber value, but it not redistributed. In 2014 this amounted to US\$ 10.8 million from a total volume harvested of 2.7 million m³; an average of US\$ 4.00 per m³.²⁷⁶

The FDL, or local development fund, originally came about in those CAT concessions voluntarily seeking FSC certification and to date has been implemented by only a few companies.²⁷⁷ Although there is not yet an overarching legal obligation – the FDL is not mentioned in Forest Code, the 2007 Arrêté that details other aspects of forest management plans, or the national forest management guidelines – it is increasingly regarded as mandatory.²⁷⁸ Each FDL is created by ministerial *Arrêtés*, and the VPA has in effect made them compulsory, as the legality definition includes as a criterion ‘the formal commitments made by the company for a better contribution to local development are respected’;²⁷⁹ with an associated indicator, ‘the company meets its obligations regarding the financing of a local development fund within the framework of the management of the community development package in accordance with the management plan’.²⁸⁰ Thus the revised Forest Code, triggered by the VPA, is expected to integrate the FDL as a component of the social clauses, and if passed in this form would make it a legal condition that concessionaires finance the FDL.

By 2015 there were 29 forest concessions in RoC, of which 15 had completed a Forest Management Plan.²⁸¹ A study of nine CATs with Forest Management Plans in the same year found six of these had operational FDLs.²⁸² The study said that the FDL system was ‘pertinent in theory but suffers from high inertia preventing it from being effective and efficient’.²⁸³ Rather than writing it off, however, the authors regard the FDL as a reasonably good mechanism if the improvements in the draft new Forest Code are enacted and implemented. A separate analysis describes FDL as funding basic infrastructure (drinking water points, health centres, schools, warehouses, abattoirs and market areas etc.),²⁸⁴ but notes that fund management is a source of conflict, and that local communities and indigenous peoples are not well supported in these development projects.²⁸⁵ The Congolese Human Rights Observatory has

273 EU and GoRoC, 2015 (hereinafter labelled as EU and GoRoC, 2015), *Rapport annuel conjoint: La République du Congo – Union européenne 2015*, p.8; www.euflegt.efi.int/documents/10180/296026/Rapport+annuel+conjoint+2015+sur+la+mise+en+oeuvre+de+l%27APV+FLEGT+entre+la+R%C3%A9publique+du+Congo+et+l%27UE/c0c1df7c-0a44-4f87-9183-f513fb9b2fef.

274 RoC EITI 2014, pp.13 and 54.

275 Schmitt & Baketiba, 2015a, Table 13, pp. 86-87.

276 RoC EITI 2014, pp.13, 54 and 105.

277 Schmitt & Baketiba, 2015a, pp.11, 32.

278 Schmitt & Baketiba, 2015 (hereinafter labelled as Schmitt & Baketiba, 2015b), *Appui au mécanisme de Fonds de Développement Local dans le secteur forestier en République du Congo*, p.8; http://pfbc-cbfp.org/actualites/items/REDD-Congo.html?file=docs/news/Juil-Aout%202015/Rapport%202015_Final_Resultats_FDL.pdf.

279 RoC VPA Legality Criterion 4.9.

280 RoC VPA, Legality Indicator 4.9.2.

281 EU and GoRoC, 2015, p.8.

282 Schmitt & Baketiba, 2015a, p.32.

283 Ibid, Table 13, p.87.

284 Barros, 2014, Slide 7.

285 Ibid, Slide 11.

also documented failures in local management of FDL, concluding that ‘in practice, it is used for the operational needs of the Consultative Council, which is the management body of this fund. These funds are squandered with impunity by [the logging company] and the Département Council.’²⁸⁶

Until the new law and its implementing regulations are passed, it is unclear if the 200 CFA Francs (US\$ 0.4) rate will be universal or negotiable, above a minimum. It has been noted, however, that other countries in the region pay five to ten times higher rates per volume of wood harvested or marketed in equivalent schemes.²⁸⁷ A study of four UFAs with FDL indicated that typical annual incomes per community from FDL are US\$ 590 to 3,200 (see Table 7, below).

Table 7: Typical volume-based community incomes from four forestry concessions in RoC²⁸⁸

UFA:	Ngombe	Pokola	Kabo	LDG
Area (ha)	1,160,000	377,000	296,000	553,000
Date FDL started	2007	2007	2006	2008
Average estimated FDL per year (CFA Francs)	31,500,000	12,500,000	10,000,000	20,500,000
FDL per year (US\$, from current exchange rate)	50,000	20,000	16,000	33,000
Communities	85	21	5	27
Estimated population per community	14,400	14,600	2,400	6,200
FDL per community per year (CFA Francs)	371,000	595,000	2,000,000	759,000
FDL per community per year (US\$, current rate)	590	950	3,200	1,200
Total number income-generating projects funded	86	32	12	32

Other aspects of negotiation and supervision by communities or by the authorities remain to be developed in legal texts, but have been documented in detail under technical assistance to support those concessions where FDL have been initiated.²⁸⁹ This elaborates the structure and functioning of the SDC multi-stakeholder Consultative Council that also oversees the FDL as well as the organisation and functioning of the FDL, and includes a management committee, technical coordination and an evaluation committee.²⁹⁰ The SDC Consultative Council is co-chaired by representatives of local government, community/indigenous people, the company and the forest authority, and the other committees include representatives from local NGOs and the community/indigenous people.²⁹¹ In 2015 a set of three manuals were developed through a consultative process to guide identification, elaboration, financial management, monitoring and evaluation of income-generating projects, as well as proposed revisions to the model *Arrêté* and associated by-laws.²⁹² To this extent, best practice appears to be ahead of policy and regulatory development.

Direct cash payments to the community

There is some evidence of logging companies making direct cash payments to communities, although

286 Observatoire Congolais des Droits de l’Homme, 2016, *Rapport annuel sur les droits humains en République du Congo, 2015*, p.56 ; http://blog.ocdh.org/public/OCDH-Rapport_annuel-fevrier_2016.pdf.

287 Schmitt & Baketiba, 2015a, p.97.

288 Summarised from Schmitt & Baketiba, 2015a, *Annex III: Tableau récapitulatif des Microprojets financés depuis le démarrage des FDL forestiers*, p.140.

289 See Schmitt & Baketiba, 2015a, *Annex II: Analyse des principaux outils et documents types développés dans le cadre des FDL forestiers, observations sur leur mise en oeuvre, et réflexions pour leur amélioration*, p.136.

290 *Ibid.*, p.32.

291 Schmitt & Baketiba, 2015b, p.10.

292 *Ibid.*, p.23.



this is not provided for in any legal text. A study of social measures in forest management in four countries of the Congo Basin notes that in RoC, in addition to FDL and social clauses, concessionaires may 'pay to the communities a percentage or a set amount per harvested cubic meter of wood'.²⁹³ However, elsewhere this is reported as simply the payment for timber cut in the SDC, and is thus owned by the community. In a one-off example, a logging company paid 1,000 CFA Francs (US\$ 2.1) per m³.²⁹⁴ The negotiation mechanism and governance structure for such payments should entail a Memorandum of Understanding with communities after agreement with the SDC Consultative Council, and the possibility of monitoring by local communities and indigenous people.²⁹⁵ However, this is insufficient to protect against logging companies offering to purchase community timber at prices significantly under market value. Furthermore, there is no information on how this money is distributed or invested within the community.

6.3.3 Social responsibility: the cahiers des charges particuliers

Each concession contract is accompanied by a *cahier des charges*, or terms and conditions. Ten aspects of *cahiers des charges particuliers* are typically included: the company's organisational chart; key staff and job descriptions; plans for hiring and training staff; logging and other equipment; sawmills or other processing facilities; social infrastructure 'in accordance with the standards set by the relevant sectors'; work management programmes; a production programme; work to be done for the benefit of the water and forests administration; and 'actions to be taken in the context of local socioeconomic development'.²⁹⁶

The current legal framework does not provide for representation of local communities and indigenous peoples in the negotiation of social clauses, and drafting is carried out by the logging company and the state. Communities are not even consulted on their needs, yet these are inserted in the social clauses.²⁹⁷ Although there is an expectation in the legal framework that the management plan must

293 Waouo et al., 2016, 'Regulation and implementation of social measures in forest management in the Congo Basin: an examination and critique of the forestry management regulations in four countries of the Congo Basin', *American International Journal of Contemporary Research* Vol. 6, No. 1, February 2016, p.149; www.ajicrnet.com/journal/index/998.

294 Schmitt & Baketiba, 2015a, Table 2, p.36.

295 Ibid, Table 3, p.37.

296 Décret 2002-437, Article 168.

297 Barros, 2014, Slide 11.

include the establishment of a Management Committee comprising members of the local population and non-governmental organisations alongside the administration, operator and donors,²⁹⁸ the modalities for doing so are not specified. This leads to wide variations between concessions as a result of negotiations being bilateral,²⁹⁹ and it is said that 'it is for the management plan itself to fix rules for local and indigenous communities' participation in management, implementation and evaluation. Local participation is envisaged in the monitoring of community development series more specifically, but not in the other series that make up the concession.³⁰⁰

Although MEFDD at *département* level is responsible for reporting to the central ministry progress in the implementation of the *cahiers des charges particuliers* every quarter,³⁰¹ there is said to be 'no governance structure to monitor performance' of the social clauses,³⁰² leading to a low level of achievement of the planned contributions.³⁰³

This situation is expected to change as a result of the VPA,³⁰⁴ in the context of the new Forest Code, which is reportedly stipulating a 'model' or template for social clauses.³⁰⁵ The VPA legality grid also includes the criteria 'formal undertakings given by the company to make a greater contribution to local development have been respected' and the associated indicator 'contractual clauses aimed at ensuring that the company contributes to the construction or improvement of social, economic and cultural infrastructures are complied with'.³⁰⁶ Consequently, a detailed definition of respect for the social clauses needs to be worked out, along with the means of verification.³⁰⁷

6.3.4 Legal recourse: predating the Forest Code

Compensation for damage

Whilst there is no direct reference to compensation in the 2000 Forest Code, a 1986 Decree predates the law and is administered by the ministry of rural development.³⁰⁸ This Decree is included in the VPA legality definition: 'The company respects the rights, customs and practices of local and indigenous populations in accordance with national legislation and regulations and international conventions', supported by the indicator: 'If property belonging to local and indigenous populations is destroyed by the company, compensation meets the requirements of applicable legislation and regulations.'³⁰⁹ The sharp devaluation of the CFA Franc in 1994 means that compensation rates set in 1986 are now valueless.

Dispute resolution

There are reports that some companies go beyond their obligations provided for in the social clauses, and for example deal with complaints or mediate conflicts with people.³¹⁰

298 Arrêté 5053, Article 20.

299 Schmitt & Baketiba, 2015a, p.30, citing ACTED, 2012, *Impact de l'exploitation forestière sur les communautés locales et les peuples autochtones*.

300 Client Earth, 2014, p.25.

301 Décret 2002-437, Article 82.

302 Schmitt & Baketiba, 2015a, Table 3, p.37.

303 Ibid, p.30, citing Resource Extraction Monitoring, 2013, *Rapport Annuel de l'OI-FLEG, République du Congo*.

304 Client Earth, 2014, p.12, citing Annex IX of the VPA.

305 Schmitt & Baketiba, 2015a, p.31.

306 RoC VPA, Legality Criterion 4.9 and Indicator 4.9.1.

307 Resource Extraction Monitoring, 2012, *Rapport Annuel de l'OI-FLEG, République du Congo, 2011*, p.25; www.observation-congo.info/documents/Rapport_annuel_2011_OIFLEG_Congo.pdf.

308 Décret 86/970.

309 RoC VPA, Legality Indicator 3.2.3.

310 Schmitt & Baketiba, 2015a, p.31.

7 Analysis and discussion

This section draws together the information from the country sections and makes comparisons between them in three areas: the redistribution of state revenue, social agreements, and access to justice. It ends with best practice features drawn from the analysis.

7.1 Revenue generation and redistribution

Volume-based and area-based taxes

All four countries provide for some redistribution of logging revenues collected by the state, but they differ significantly in approach. The choice of area- or volume-based taxes as the primary source of redistributed revenue is pertinent as the former is a relatively fixed, regular and known amount, whereas the latter varies with the production level of timber.

The justification for redistributing area-based taxes stems from the notion that customary ownership of the forest rests with the nearby communities. In effect a concessionaire is denying all others from the timber rights in that area, and so should pay a rental for the entire area, not just where it is operating in any particular year. Thus, a share of this rent should be paid to those who customarily own the forest, and who are most affected by the logging operations. Redistribution of volume-based taxes puts the recipient at the mercy of the market and other factors influencing logging productivity.

In Ghana, volume-based taxes (stumpage revenue) are the primary source of funds to be redistributed, whereas area-based taxes are the primary source in Cameroon and RoC (see [Figure 2](#)). Liberia provides significant redistribution from both sources, although volume-based taxes are paid directly by the company to the community, not through the state tax system. The FDL in RoC is a similar system as in Liberia, as it channels an agreed volume-based payment from the company to a community fund, and it has been recommended that the share of area tax money should be added to the FDL, increasing multi-stakeholder control over its use.

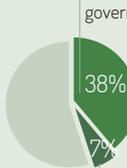
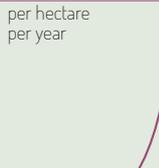
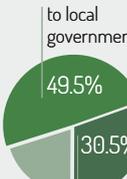
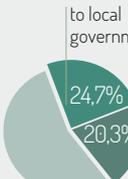
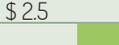
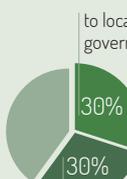
Who is the state revenue redistributed to? In Cameroon, Ghana and for area-based tax in RoC it is to local government or traditional leader institutions, and not to communities directly. In RoC the volume-based payments are to an FDL that has one community representative amongst seven members on the committee controlling the fund. In Liberia revenues are redistributed to community groups elected to represent the wider community for this specific purpose.

Rate setting

Different legal bases for the tax rates have implications for their ability to keep in line with international prices. For example, Ghana has very low rates of area-based taxes because they are enshrined in a 1998 law. Since that time the cedi has depreciated by a factor of 200,000. In contrast, in Cameroon the RFA is reviewed annually in the national budget bill, providing an opportunity to maintain it in line with other values. However, the tendency in Cameroon has been to adjust the percentage share away from communities, causing much protest,³¹¹ rather than to adjust the rates themselves.

311 Yamo, 2015.

Figure 2: Tax and redistribution labels and rates for logging concessions four countries

	Collection of area-based taxes	Collection of volume-based taxes	Redistribution of area-based taxes	Redistribution of volume-based taxes	Competitive bid price
Cameroon	<p>US \$ 4.6 per hectare per year</p>  <p>US \$ 1.8 depending on permit type</p>	<p>2.5% of the FOB value of the timber.</p>	<p>to local government</p>  <p>to community use</p>	<p>X</p> <p>none</p>	<p>US \$ 24.4 per hectare per year</p>  <p>US \$ 2.8 depending on permit type</p>
Ghana	<p>US \$ 0.03 depending on location</p>	<p>Variable rate based on species, US \$ 2.3-30 per m³.</p>	<p>to local government</p>  <p>to traditional leaders</p>	<p>to local government</p>  <p>to traditional leaders</p>	<p>US \$?</p> <p>under revision; no data available</p>
Liberia	<p>US \$ 2.5</p>  <p>US \$ 1.25 depending on permit type</p>	<p>2.5-10% of FOB depending on species.</p>	<p>to local government</p>  <p>to local communities</p>	<p>none for stumpage, but US \$ 1-1.5 per m³ is paid directly to communities</p>	<p>US \$ 20</p>  <p>US \$ 1.9 depending on permit type; previous data; none since 2013</p>
RoC	<p>US \$ 0.8</p>  <p>US \$ 0.4 depending on location</p>	<p>3% of the FOB value of the timber.</p>	<p>50%</p> <p>to local government</p>	<p>none for taxe d'abattage, but in some cases US \$ 0.4 per m³ is paid to a FDL</p>	<p>US \$?</p> <p>exists but no data available</p>

Volume-based tax rates are typically based on international timber prices (FOB) and so they should be in line with these prices and with global currencies, if they are regularly being revised. In countries such as Ghana and Liberia, where this has not happened, opportunities for rent-seeking open up, as the taxes that a logging company has to pay may drop dramatically in global trading terms. This can then be used by companies to influence policy-makers to maintain these advantageous terms.

Failure to make such adjustments can be regarded as an implicit subsidy to the logging industry, as any increase in broader land values or timber scarcity is not reflected in the price that a logging company has to pay to extract the timber. For example, not adjusting the tax in Ghana provided a subsidy to the logging companies estimated to be US\$ 8 per m³. During the same time, the total income by local government and traditional leaders was just US\$ 2 per m³, suggesting that if companies were paying

taxes in line with international timber prices then local recipients could be receiving up to five times their current income.³¹²

Competitive bidding

It is increasingly common for natural resource concessions to be awarded through a competitive process, and each of the four countries have – on paper – a process based on the price a company is prepared to offer to get the logging contract, in addition to the area-based tax. In Liberia and Ghana, however, these have recently been significantly discounted. It is important to recognise these not as taxes, but as an amount volunteered by the winning company in a bidding process. As such the rates are not imposed by the state, although subsequent collection of the bid amount is a legal obligation.

Liberia abolished the Land Rental Bid Premium in 2012, without any equivalent basis for competitive bidding being (yet) in place. Ghana's new draft Timber Resources Management and Legality Licensing Regulation replaces the annual Timber Rights Fee with to a single bid at the time of permit allocation. These changes represent losses to the state of millions of dollars over the years, and therefore increase pressure on the state to retain, rather than redistribute, other logging revenues.

Competitive bidding is important to the issue of revenue redistribution because it can affect the total amount available for redistribution. For example, even when the Land Rental Bid Premium did exist in Liberia, there were intense disputes over whether the law describes it as a component of the Land Rental Fees and is therefore subject to redistribution. Similarly the Forestry Commission in Ghana has been challenged on its retention of 50 per cent of the revenue prior to redistribution, and the Government of Cameroon has been criticised for keeping 5 per cent of the area-based tax to cover the administrative cost of the tax, when it is one of the easiest taxes to collect. These have all reduced the proportion of revenues to be passed on to local recipients, including those whose livelihoods are most affected by large-scale logging concessions.

Small permits and social obligations

Over many years there have been a series of controversies regarding the allocation of 'small permits' of various types, including ARB and AEB in Cameroon, Salvage Permits and Special Permits in Ghana, and Private Use Permits in Liberia. In each of these countries, 'small titles are typically obtained by people with the right political connections but limited or no logging capacity, who then outsource them to large companies that export the timber'.³¹³ Small permits are typically easier to obtain than larger-scale permits, and they are subject to fewer conditions and lower taxes. This allows timber from such sources to undercut timber from more legitimate sources, which in turn suppresses world prices and disguises the environmental and social costs associated with logging.

The use of small permits inevitably raises issues regarding social obligations, as normally small permit holders are supposed to conclude social agreements with affected communities. However, this rarely happens. Cameroon's officially recognised Independent Observer warned in 2011 that this condition was never respected and that the lack of consultation with communities was one of the main weaknesses of the existing legal framework, particularly with reference to small permits. The study found 'that compliance with the commitments contained in the Social Clauses is exceptional and depends primarily on the level of organisation of people and their sense of community interest'.³¹⁴

312 EcoEcon, 2015, *Public Expenditure Review of the Forestry Sector: Final Report Submitted to the Ministry of Finance*, Table 4.1, p.31; www.mofep.gov.gh/sites/default/files/reports/NREG%20Report.pdf.

313 Global Witness, 2013, *Logging in the Shadows*, p.22; www.globalwitness.org/reports/logging-shadows/.

314 Agreco and CEW, 2011, p.33.

Similarly, in RoC it has been necessary to clarify the purpose of Special Permits in the VPA : ‘the special permit for the exploitation of tree species for commercial purposes is, according to Article 70 of the Forestry Code, only granted in areas where populations have difficulty obtaining manufactured timber. These products are sold exclusively in the areas concerned, as determined by an order of the minister responsible for the forest economy.’³¹⁵ However, there is anecdotal evidence that in practice these Special Permits are granted everywhere (even in SDC) and to all types of commercial operator. This makes it easier to side-step the requirements in order to obtain the permit through a competitive process, to conform to a sustainable forest management plan, or to pay into a FDL, for example.

Ghana is due to introduce a new type of permit, Small Scale TUCs.³¹⁶ This intends to provide a permit system for forest areas where there is insufficient timber or tree stocking is too low for long-term viable timber operations, and will be valid for just two years. However, the draft new legislation says clearly that Small Scale TUCs will require Social Responsibility Agreements in the same way as other TUCs.³¹⁷

7.2 Annual revenues

Figure 3 presents the results of the individual fiscal policies in terms of actual funds raised through area- and volume-based taxes. The quality of the data is mixed, however, and few reliable sources could be found. Efforts were made to request this information directly from the forest authority in each country, but only the FDA in Liberia responded. For the other countries, data regarding area, production and income are from different sources (if at all) and so averages may not be accurate. In addition, sources do not always state what period incomes refer to. For example a US\$ 5 million annual area-based revenue in RoC was reported as comprising 42 per cent of the total amount due for 2012 plus an unspecified amount of arrears.

These caveats aside, the data on average state income per hectare is comparable with the rates listed in Figure 2. The stumpage rates vary significantly between countries, and those in Ghana are artificially low in 2012, prior to being revised in 2013. By 2015 stumpage income in Ghana averaged US\$ 1.9 per m³, still below the minimum rate of US\$ 2.3 mentioned in Figure 2, reflecting inefficiencies in collection as well as delays in implementing the increases.

7.3 Social agreements

In all four countries, many social obligations are negotiated and fulfilled – in theory – through some form of social agreement, ostensibly between the logging company and affected communities. The modalities of this vary between countries, and Section 8 presents some important aspects of best practice from these experiences. The main attributes of each country system are summarised in Table 8.

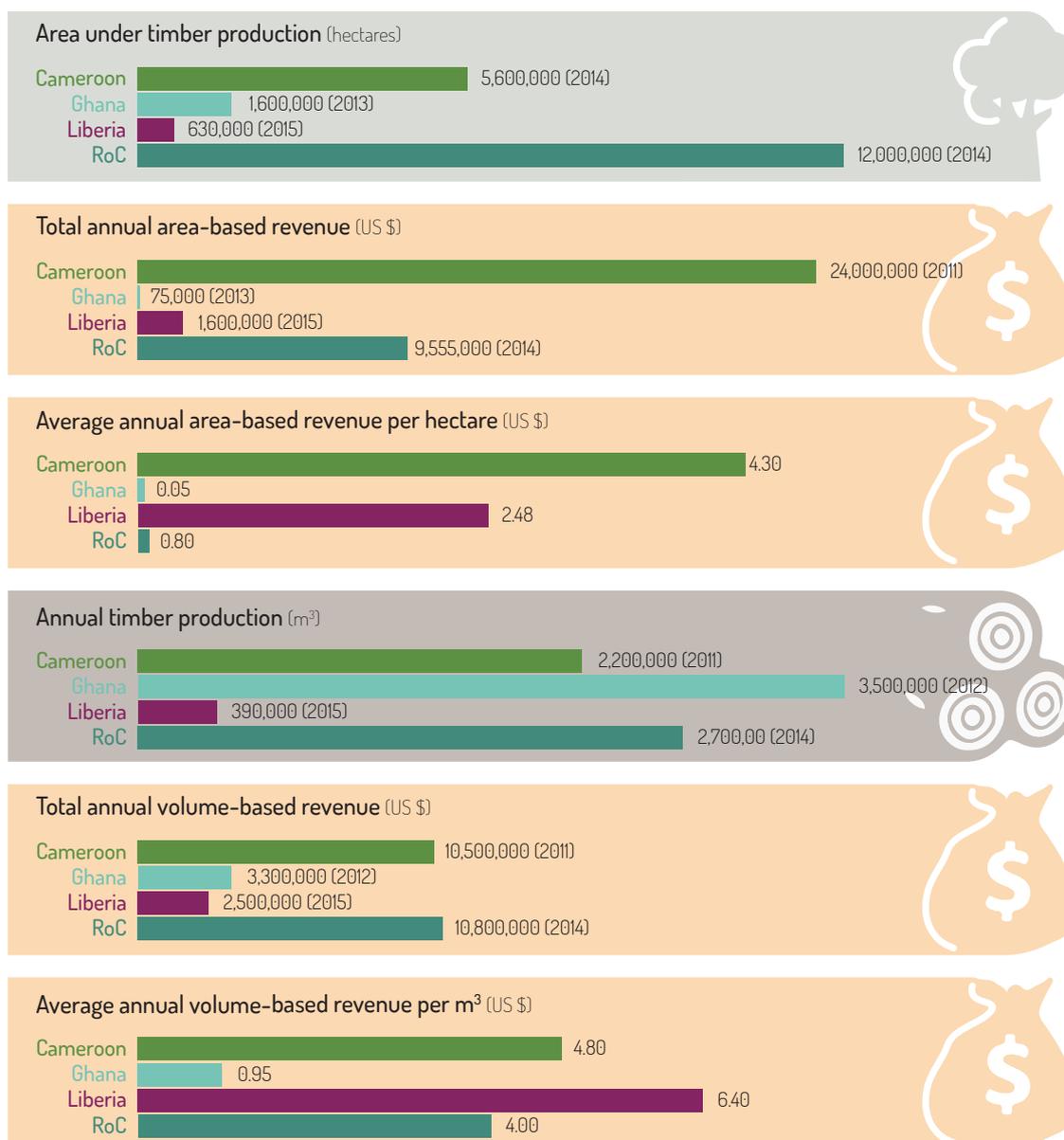
As Table 8 makes clear, no country currently has sufficient guidance on social agreements that covers all aspects of community representation, negotiations, compliance monitoring and dispute resolution. Typically, in every country those involved in social agreements, from a community, logging company, or forest authority perspective, currently need to refer to multiple legal and procedural texts in order to fully appreciate the roles and responsibilities of the different parties.

315 RoCVPA, Annex III, *Legality verification system*, p.193.

316 MLNR, 2016.

317 Ibid, Articles 16(6)(b) and 19(b).

Figure 3: National taxes from area- and volume-based forestry sources in four countries



RoC has made the greatest efforts so far to provide guidance, but at present this is only for the FDL system which is not yet universally applied. Liberia has developed legally binding guidance, but this is not implemented properly, as documented in [Section 5.3.3](#). In Ghana the presence of four different lists guiding the content of the social agreement demonstrates the need for stand-alone guidelines.

Consequently negotiations are unbalanced and badly recorded, and they produce documents that are not easily accessible by those who should have access to them. In Cameroon and RoC, community members are disenfranchised in the negotiation stages, reducing the influence that they have in the implementation and compliance monitoring processes. The regular renegotiation of social clauses tends in reality to be optional, not a legal requirement, despite the fact that in the course of a decades-long concession, which moves across a large geographical area, it would be appropriate to renew the agreements from time to time.

Table 8: Key attributes to social agreements in four countries

	Cameroon	Ghana	Liberia	RoC	
Document name	<i>Procès-verbaux de réunions d'information</i> (PVRI)	Social Responsibility Agreement (SRA)	Social Agreement	<i>Clauses sociales des cahiers des charges particuliers</i>	<i>Fonds de développement local</i> (FDL)
Negotiation					
Negotiating parties	Local forest authority and local government sign the PVRI.	The logging company and community members sign the SRA.	The logging company and community committee sign the SRA.	The logging company and the forest authority agree the social clauses.	Each FDL is under the supervision of the multi-stakeholder SDC Consultative Committee.
Witnesses to agreement	Community leadership and members, and the logging company, are present at the meeting.	Traditional leaders, local government and the local forest authority may sign as witnesses to the SRA.	The head of the forest authority signs to attest to the Social Agreement.	Not clear, no examples were available.	The <i>Arrêté</i> establishing a FDL is signed only by the minister.
Community representation	Community management committees exist in some localities, but no legal basis.	SRA committees have been trialled in some localities, but no legal basis.	Under the law, ten elected community members must form a representative committee which must then meet with the wider community every month.	Not clear, no examples were available.	Community, NGO and/or indigenous people's representatives sit on the FDL management, technical coordination and evaluation committees. ¹
Gender representation	No guidance	No guidance	'... must provide a means for all residents it represents, including women and youth...' ²	No guidance	No gender guidance on FDL committee membership, but projects it funds should 'take into account marginalised groups (gender, indigenous and poverty aspects)'. ³
Guidelines	None	17-page guideline document, including a two-page sample (template) SRA, ⁴ currently under revision.	13-page combined template and guidelines ⁵	None	Three manuals cover identification, elaboration, financial management, monitoring and evaluation.
Financial terms	None	Value of contributions in kind must equate to 5 per cent of stumpage.	Company must agree to pay at least US\$ 1 per m ³ harvested to community.	None	Agreed company contribution of US\$ 0.4 per m ³ harvested to the FDL.
Contributions in kind	Forest law suggests roads, bridges, health centres and medicines, schools, water supply, electricity supply, sports or cultural facilities, or reforestation projects are all appropriate.	Guidelines mention schools and school materials, boreholes. Others have observed schools, health facilities, the provision of water and electricity, and the construction of palaces for traditional rulers and of community centres.	Guidelines include 'benefits in kind' but do not list any. Others have observed clinics, schools, roads, bridges, committee facilities, town halls, latrines, water pumps, transport, and football fields.	Regulations suggest modern housing, health centre, schools, electrification, drinking water supply, sports and leisure facilities, and food security programmes.	FDL is mainly intended to support income-generating activities and does not emphasise contributions in kind.
Code of conduct	None	Procedures state that the SRA must list the rights and interests of communities that must be respected by the logging company.	Regulations state agreements must include a code of conduct for community members and logging company personnel.	Not clear, no examples were available, but VPA legality verifiers include respect for rights, customs and practices of local and indigenous populations. ⁶	Not applicable to the FDL.
Legally binding	PVRI is an integral part of the contract terms and conditions, but as community representatives are not signatories it is difficult for them to exercise any legal power.	Procedures state SRA must be agreed prior to finalisation of the contract, and as a schedule of this contract it is legally binding. The subsequent more detailed SRAs are also legally binding.	Regulations state that agreements are a pre-felling requirement.	Enforceable as an integral part of the contract terms and conditions, but as communities are not party to agreements it is difficult for them to exercise any legal power.	The FDL is underpinned by a ministerial <i>Arrêté</i> , so has legal force once established.
Dispute resolution mechanism	No guidance	No guidance	Agreements must include a practical mechanism for resolving disputes.	Not specific to social clauses, but VPA legality verifiers include that a mechanism is in place. ⁷	Conflict management procedures have been drafted for inclusion in each FDL <i>Arrêté</i> .



	Cameroon	Ghana	Liberia	RoC	
Document name	<i>Procès-verbaux de réunions d'information</i> (PVRI)	Social Responsibility Agreement (SRA)	Social Agreement	<i>Clauses sociales des cahiers des charges particuliers</i>	<i>Fonds de développement local</i> (FDL)
Publication	Not published	Not published, but locally available.	Available on forest authority website.	Not published	Not published, but locally available.
Duration and renegotiation	Duration unspecified. No commitment to review/renegotiation.	Based on forest compartment: duration typically 2 years then negotiated for new compartment.	Fixed 3 or 5 year duration then renegotiation.	Not clear, no examples were available.	FDLs are ongoing, but civil society membership of some committees is limited to four years.

Implementation

Supervision by authorities	No guidance	Local forest authorities have a duty to ensure compliance.	No guidance	Local forest authorities charged with monitoring.	Technical coordination and evaluation committees are chaired by officials.
Supervision by communities	No guidance	No guidance	Community committees established and funded to monitor.	No guidance	Technical coordination and evaluation committees include NGO and community/indigenous peoples.



See relevant country sections for more detail and sources.

Footnotes for the table

- Schmitt & Baketiba, 2015b, p. 10.
- Regulation 105-07, Section 62, Clause c.
- Schmitt & Baketiba, 2015b, Box 8, p. 29.
- RMSC, 2004, Annex: Sample TUC-SRA Form.
- Social Agreement Template.
- RoC VPA, Legality Criterion 3.2.
- RoC VPA, Legality Criterion 3.3.

Only in Liberia is the social agreement system prefaced by local elections for community representatives, with the specific inclusion of women, in a process that is clearly laid out in the legal framework. These representative committees are then responsible for managing the funds received by the community as well as for monitoring other aspects of the social agreements are fulfilled. Furthermore, a proportion of the community income is designated for the operational costs of the committee and for participatory compliance monitoring. This provision has contributed to the establishment of a union of the 22 community committees – which over time should be sustained by membership dues from the individual communities – to serve as a national platform for dialogue on issues relating to social obligations.

In contrast, the change in the redistribution formula in Cameroon since 2015, shifting RFA away from community recipients, has negated the role the equivalent community committees and correspondingly strengthened the powers of domination and control by the state, FEICOM and the municipalities.

VPAs: renewed attention to social agreements

The VPAs have raised the profile of social agreements,³¹⁸ e.g. by triggering new initiatives in Liberia, Ghana and RoC to improve guidance and compliance. Generally, however, the VPA texts tend to focus more on the establishment of a social agreement and not so much on its implementation (see the

318 In all four VPA texts the relevant legality principle states that the company must comply with its social obligations.

emphasised clauses in [Table 9](#)). For example, despite the detail the Liberia VPA legality grid offers in the establishment of a social agreement it is sparse on verifiers regarding its implementation. That of RoC is interesting in that social obligations fall across two different legality principles; one includes relations with affected communities and another covers respect for the social agreement. This division provides no substantive opportunity for communities to defend their own interests, and may reflect the diminished role communities have played in the past. Thus the onus is on the forest authority rather than the community to monitor implementation – but this is expected to change, as described in [Section 6.3.3](#).

Overall, the VPA legality grids fail to cover compliance with the code of conduct, outcome of disputes, where and when contributions in kind should be delivered, to what standard or size, or who is responsible for ensuring quality. This leaves the top-level commitment to comply open to wide interpretation as to what ‘compliance’ means. Whilst the verification protocols for each VPA legality grid may go some way to rectify this, they are less public and more open to revision or compromise than the VPA texts themselves.

The list of relevant verifiers reproduced in [Table 9](#) provides the starting point for the development of these protocols and the emphasis in the Table demonstrates the tendency to focus on the existence of social obligations rather than their functionality. Ghana, for example, has sought to address this by developing a SRA audit checklist for the Timber Verification Department to use, although it is unclear what legal status this checklist will have, or what sanctions will be available for non-performance. Similarly, Liberia has included significant detail in the draft verification protocol for the content of a social agreement, but in the absence of any legality indicator on compliance in implementing the same agreement there are no draft verification protocols to cover this (other than an annual check that the cubic metre fees have been paid).³¹⁹

7.4 Access to justice

A crucial element in ensuring social obligations are met is an effective mechanism to obtain recourse. Given the enhanced legal recognition of the obligation to fulfil social obligations, brought about by the VPAs, citizens now have a clearer potential to challenge either a logging company for breach of contract on the grounds of non-fulfilment of a social agreement, or the state for failure to enforce the law. Whilst all social agreements are legally binding by virtue of being incorporated into the terms and conditions of the logging permit, it is only where the social agreement is signed by community and company representatives that either of these parties have legal standing. Thus in the case of Cameroon and RoC, where social agreements are not signed by community representatives, it may be more difficult for these citizens to seek redress for non-compliance by the (more powerful) companies.

This is not to say that formal legal avenues should be the first choice for recourse, and the VPAs are proving instrumental in improving a series of sector-specific dispute resolution mechanisms. For each VPA an Independent Auditor must set up a system for receiving and dealing with complaints. The Liberia VPA legality assurance system has explicitly replicated this system – and the criteria for assessing its effectiveness – to cover complaints about the verification and FLEGT licensing functions as well as the Independent Auditor.³²⁰ In Cameroon the verification body must ‘have a fully documented management system that: ... uses a publicly accessible complaints management system.’³²¹ The

319 Verification Protocol, 2013 draft, Legality Principle 3.

320 Liberia VPA, Annex VI, *Criteria for Evaluation of the Legality Assurance System*, Sections 3.5, 4.4 and 5.1.4, pp81-83.

321 Cameroon VPA, Annex VIII, *Criteria for evaluation of the legality assurance system*, Section IIIa, p.109.

Table 9: References in VPA legality grid to social obligations (summarised)

	Principle	Criteria	Indicators	Verifiers
Cameroon		Criterion 4: Company meets its social obligations.	Indicator 4.2: Company respects social obligations.	<ul style="list-style-type: none"> • PVRI • Social clauses • Social projects realised
Ghana	Principle 3: Company complied with forest operation procedures and standards.	Criterion 3.6: Company executed and complied with SRA.	Company executes and complies with SRA.	<ul style="list-style-type: none"> • SRA document
			Forest authority reports on compliance.	<ul style="list-style-type: none"> • SRA compliance report • Local forest authority monthly reports
			Forest authority arbitrates to settle disputes.	<ul style="list-style-type: none"> • Stakeholder consultation
Liberia	Principle 3: Company is in compliance with the social obligations and benefit sharing requirements.		Indicator 3.1 Company has negotiated social agreement.	<ul style="list-style-type: none"> • Meeting advertised • Meeting minutes • No complaint of exclusion
			Indicator 3.2 Social agreement signed.	<ul style="list-style-type: none"> • Signed agreement • Date prior to logging operations • Community committee membership
			Indicator 3.3. Social agreement includes Cubic Metre Fee amount and requirement to pay quarterly.	<ul style="list-style-type: none"> • Code of conduct • Cubic Metre Fee amount • Account details • Dispute resolution mechanism established
			Indicator 3.4 Social agreement attested by forest authority.	<ul style="list-style-type: none"> • Forest authority signature
			Indicator 3.5 Cubic Metre Fees paid on time.	<ul style="list-style-type: none"> • Quarterly bank statements • Forest authority compliance audits
RoC	Principle 3: Company involves civil society and local and indigenous populations in the management of its concession and respects the rights of these populations and workers in accordance with national legislation and regulations and international conventions.	Criterion 3.1: Company involves civil society and local and indigenous populations.	<p>Indicator 3.1.1: Company has a mechanism for functional dialogue between stakeholders.</p> <p>Indicator 3.1.2: Local and indigenous populations are sufficiently well informed of their rights.</p>	<ul style="list-style-type: none"> • Minutes of meeting reviewing forest management plan • Minutes of information meeting
		Criterion 3.2: Company respects the rights, customs and practices of local and indigenous populations.	<p>Indicator 3.2.1: Company respects customs, practices and rights.</p> <p>Indicator 3.2.2: Company meets commitments with respect to local and indigenous populations.</p>	<ul style="list-style-type: none"> • Minutes of meeting reviewing forest management plan • Forest authority inspections • Social clauses
		Criterion 3.3: Company, civil society and local populations put mechanisms in place for monitoring and settling disputes.	<p>Indicator 3.3.1: Procedure for complaints established by the company.</p> <p>Indicator 3.3.2: Civil society and local and indigenous populations informed of procedures for managing disputes and involved in resolution.</p>	<ul style="list-style-type: none"> • Minutes of meetings of platforms for dialogue between the company and local populations.
	Principle 4: Company complies with legislation on environment, management, forestry, processing of timber, and tax.	Criterion 4.9: Company respects undertaking to contribute to local development.	<p>Indicator 4.9.1: Contractual clauses on social infrastructures are complied with.</p> <p>Indicator 4.9.2: Company pays into FDL.</p>	<ul style="list-style-type: none"> • Social clauses • Forest authority inspections • Proof of payment • Minutes of FDL committee meetings.
<p>Those clauses related to implementation (as distinct from negotiation) are <i>emphasised</i>.</p> <p>Note each country adopts the terminology of principles, criteria, indicators and verifiers slightly differently.</p>				

four dispute resolution mechanisms being developed in Ghana (see [Section 4.3.4](#)) suggest that this approach of multiple dispute resolution mechanisms for different VPA bodies and forest institutions is being replicated there too. Cameroon and Liberia have committed to making documentation on some complaints and their outcomes available to the public. It remains to be seen how these dispute resolution mechanisms will be implemented in practice.

To the extent that draft verification protocols are available, however, many of these seem to stop at the establishment of dispute resolution mechanisms, and do not extend to whether they function, with transparency and accountability, or to how disputes have actually been resolved. Consequently, the onus will more than likely be on communities and civil society more broadly to improve documentation and presentation of complaints, and keep written records of engagement with forestry or other officials, if they are to stand a chance of using the dispute resolution mechanisms provided for in the VPA.

With respect to social agreements it would be useful to have a 'reconciliation moment', for example at the end of a year or of the agreement's applicability, where each side has an opportunity to agree that all the expectations were fulfilled, and to see if there are any lessons to learn. This has not yet been implemented in any of the four countries, although is particularly important in a system like that in Ghana, where contributions in kind are to amount to 5 per cent of stumpage, and the total value of stumpage cannot be definitively determined until the end of the logging operations in a particular forest compartment.

The issues of compensation for damage to crops in the process of accessing timber trees is of greatest importance to Ghana, then RoC, with little attention paid to this in Liberia or Cameroon. This is reflected in the VPAs, where payment of compensation is included as a legality verifier in the former two, but not mentioned at all in the latter two. This may reflect individual national circumstances, where for example in Ghana but not in Liberia significant timber is sourced from farmland. However, the risk of damage to crops and other property may in future increase in all countries for two reasons. First, the increasing scale of agricultural concessions combined with these plantation investors' commitments to zero deforestation will heighten the possibility of logging and land use conversion in degraded forest/mixed forest and farm areas. Second, any move to increase logging operations in community forests is more likely to involve logging machinery and farmers' fields in close proximity. Thus it is important for all countries to pay attention to fair and effective compensation mechanisms for crop damage.



Box1: Company community contracts: what's included and what's missing?

Typically contracts contain the following:

- ✓ Percentage of benefit sharing
- ✓ Technical responsibilities of each side
- ✓ Inputs and who pays for them
- ✓ Terms for financial loans
- ✓ Commitments to local development by the company

Often they do not include:

- ✓ Adaptations to local conditions or individual farmers
- ✓ Contingency arrangements for defaulters or unexpected events
- ✓ Provisions for review and renegotiation
- ✓ Conditions for arbitration in case of dispute
- ✓ Specific enough wording to be legally enforceable

Since contracts tend to emerge from companies, or from government blueprints, there are few examples of properly negotiated agreements ... the resultant memoranda of understanding have vague terms and no targets or criteria to judge performance.

From IIED, 2002

8 Conclusions and recommendations for best practice

8.1 Conclusions

The first conclusion of the study is that the amounts redistributed to local communities are relatively small. In the best case scenario – Liberia – 30 per cent of area-based tax is available to the communities adjacent to where logging take place. In addition, these communities receive a fixed ‘cubic metre fee’ directly from the logging company. Overall, Liberian communities should receive at least 26 per cent of logging revenues.

Other than Liberia, only Cameroon provides for a redistribution of nationally-collected revenues to communities. This is currently 6.75 per cent of the area tax and 30 per cent of the volume based tax. However, these funds, whilst earmarked for community benefit, are controlled by municipalities. In the case of Ghana there is no redistribution of national revenues to communities. Instead, social infrastructure constructed by the logging companies is to equate to five per cent of volume-based tax.

Second, ‘local recipients’ rarely means communities themselves. Most redistribution is to local governments. The share of area tax allocated to local government – either the one nearest to the logging operations or shared amongst all local governments in the country – ranges between 30 and 50 per cent. For volume taxes, the range is 45 per cent (in Ghana, redistributed to local government and traditional authorities combined) and 70 per cent (in Cameroon, to local government). For Liberia and RoC, none of the nationally-collected volume tax is redistributed.

Third, the different social obligations systems in the four countries are complex and open to abuse at many levels, but nonetheless can successfully decentralise power. This decentralisation, however, often allows local elites – council members, government officials, traditional authorities – to stand in the way of the community members most affected by logging operations and capture most benefits.

Fourth, the social obligations systems are rarely clear, or properly implemented, leading to communities – and sometimes the state – not reaping the benefits they are owed by law. In different countries we see the build-up of huge tax arrears, the failure to keep tax rates aligned with land values or timber prices, successful lobbying by industry to reduce taxes, and above all, procedures that are too complex for communities to navigate in order to claim benefits that are rightly theirs.

The study also shows there are big variations between the four countries, in actual amounts redistributed, in control over the redistribution and use and in the balance between area- and volume- based revenues redistributed.

In Liberia, not only is the greatest share allocated to communities, but representation and decision-making power is relatively equitable and democratic – a ten person committee, including women representatives, is elected for this purpose. In Ghana a seemingly generous 90 per cent of area tax is redistributed to local recipients, compared to just 45 per cent of volume tax. But area tax constitutes only 2.5 per cent of the total revenue redistributed, making Ghana the country where the state and communities receive least from logging.

The VPAs these countries are implementing have shone a positive spotlight on the social obligation systems and provide an important opportunity to strengthen them. In all four countries improvements can be observed in the legality frameworks, where progress has been made to recognise that failure to meet social obligations is failure to comply with the law, and where access to justice is also expected to improve. The VPAs have also triggered improvements in the templates and guidance for social agreements in Ghana, Liberia and in securing payments into a community fund (FDL) in RoC.

For social obligations to successfully contribute to local social and economic development, potential abuse must be tackled through strengthening governance systems with and by local recipients, pushing for community control, and resisting local elite capture. The NGOs in the four countries are all working to this end.

The recommendations below provide guidance for those involved in VPA implementation to make the most of this process to ensure strong transparent and accountable social obligation systems.

8.2 Recommendations

The following recommendations provide some overarching points about the architecture of social obligations, and also highlight the examples of best practice from the four countries studied. A study by the International Institute for Environment and Development on social obligations in forestry and other sectors corroborates some of these and is reproduced in [Box 1](#).

1. From the outset there should be **clarity on the justification for social obligations**. For example, legal frameworks and implementing guidelines should *explain* (not simply state) the basis for using area- or volume-based revenues for redistribution, as well as any expectations around contributions in kind.
2. Across the full spectrum of social obligations from community representation to revenue redistribution, negotiation, implementation, compliance monitoring and dispute resolution, the **principles of inclusion should apply**. In RoC, for example, community, NGO and/or indigenous peoples' representatives sit on the FDL management, technical coordination and evaluation committees. The risks of not doing this are apparent: elites capture the social benefits for their own ends and communities condone informal illegal operations as they actually benefit more from them. This should include explicit gender equity and inclusion of disadvantaged groups in both the decision-making roles (as in Liberia) and as beneficiaries (as in the FDL).
3. All **taxes should be aligned with changing prices and international values**. Otherwise the amounts redistributed depreciate; loggers reap the benefits and the state and communities loose out. The legal frameworks in most of the countries provide for this, but authorities are poor in implementing this obligation. A consequence of not doing this is that state revenues decrease in real terms, making governments reluctant to honour obligations to redistribute revenues in a timely manner and in accordance with the law.

In Cameroon forestry tax rates are a part of the annual finance bill, so can be adjusted every year.

4. **Guidelines for social obligations should be clear and simple and presented in a consolidated and accessible form** (not spread across multiple legal and procedural texts) and be orientated towards different participants and processes. For example, each negotiating party in a social

agreement needs to understand its specific role; communities need to prepare themselves for a representative role (i.e. holding elections, as in Liberia); oversight is needed for implementation of social investments; and systems require monitoring and evaluation. Putting all this in a single 'catch-all' guidance document for multiple audiences may reduce accessibility and usefulness, so separate manuals (as in the Congolese FDL) might be more effective.

In RoC, a set of three manuals have been drafted to guide the FDL system.

5. Possible **contributions in kind** should be clearly described in the guidance and in the actual agreements. For example in Liberia the social agreement template includes a list of contributions – not just construction projects – that should be included (see the end of [Section 5.3.3](#)). The final agreements should be specific on the timing, location, size, quality and supervisory responsibilities of any contributions.
6. **Codes of conduct** should be part of the guidance and templates, as in Ghana and Liberia. The roles and responsibilities of communities, the forest authority and the logging company should be clearly specified. In ROC, the FDL arrangements are, once agreed, codified in ministerial *Arrêtés* in RoC, providing both an opportunity for specific internal regulations, or by-laws as well as ministerial authority for enforcement.
7. Social obligations systems should **strengthen downwards accountability, primarily to forest-dependent citizens**. For example local management committees should have a mandate to represent their communities with respect to the logging company, facilitate collective decisions about what to use the community share of proceeds from logging benefits for, and discuss general issues around the forest concession.

In Liberia, the community is represented by a ten-person elected committee, including women.

8. The **signatories to any social agreement should be those who are most directly affected** by the agreement – the forest-dependent communities (as in Liberia). The multi-stakeholder model for FDL in RoC serves an important purpose but risks diluting the power of the community as one amongst seven committee members. There should be a clear distinction between the signatories and witnesses to an agreement.
9. Social agreements should be **in the public domain** (as in Liberia). This demonstrates a commitment to transparency by all the parties involved and allows federations of community committees to offer quality control, advice on best practice and representation at the national level. Publication need not rely on the forest authority and could equally been implemented by this kind of federation, an NGO or a VPA legality assurance service provider.
10. **Formal closure of each social agreement**, and periodic reconciliation of other social obligations, should be the norm. These would be occasions for each party to agree that expectations have been met – not least that financial flows have all been completed as expected – and to learn lessons.
11. This implies that social agreements should have a **set duration and clear procedures for renegotiation** (as in Liberia) to reflect the changing locality of forestry operations as well as population centres.
12. **Access to justice should be a key element of the system**, with the mechanisms available to

reinforce the agreement or to access justice if there are grievances, ensuring quick resolution of cases whilst also fully documenting them in order to inform revisions to policies or procedures. Recent revisions to the Congolese FDL system have included drafting conflict management procedures for inclusion in each FDL ministerial *Arrêté*. 'Customer satisfaction' in the form of prompt and fair compensation or other remedies will bolster popular support and could provide important information for VPA impact monitoring.

In Ghana the VPA has instigated five tiers of dispute resolution mechanism.

13. **Mechanisms for compensation** for damage to crops or other community and individual assets should be included in the social agreements. They should also be consistent with mechanisms from other sectors, notably agricultural and mining concessions, adopting the best practice from each.
14. Communities should be enabled to conduct **civil society led independent monitoring** of the social obligations and other aspects of forest law enforcement. In Liberia – and in the FDL in RoC – a proportion of each community's fund is specifically designated to enable the community committee to function (often over long distances) and to fund independent monitoring.
15. Social obligations should be **monitored by the appropriate authorities** (as in the checklist being developed by the Ghana Forestry Commission, and the role of officials in the Congolese FDL monitoring and evaluation committees), and their proper functioning should be seen as of equal importance as other aspects of legality assurance. The VPAs provide an opportunity to press for this, as the VPA verification protocols being developed in each country can include criteria against which compliance with the requirements for negotiation and implementation of social obligations can be verified. These should aim to recognise social obligations as a critical aspect of environmental and social governance, which will ultimately impact on the sustainability of legal timber supplies.

In Ghana, a checklist for auditing the implementation of social obligations has been drafted.

16. In an effort to monitor the impact of social obligations, **annual sector reports for each country should contain data in a standard format** that shows the total area under logging concessions, the annual volume of timber produced, the total revenue invoiced and actually collected in the year from area- and volume-based state income streams, and the amounts actually redistributed to local recipients. The reports could also highlight innovative investments local recipients have made with these funds, and progressive acts by companies regarding contributions in kind. The Extractive Industries Transparency Initiative annual report for RoC provides much, but not all of this information for the forest sector and follows standard procedures laid down by the initiative internationally.

In RoC, the annual EITI reconciliation report contains key forestry production and revenue information.

In an ideal world, all states would recognise community ownership over the land and hence treat communities as owners that have to give consent before handing out logging concessions – with communities negotiating their share of income generated on their land.



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