How much do communities get from logging?

Summary

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

This report is a summary of the report: *How much do communities get from logging? Social obligations in the logging sector in Cameroon, Ghana, Liberia and Republic of Congo*

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<td>ACAT</td>
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<td>CE</td>
<td>Convention d’Exploitation (Exploitation Agreement), Cameroon</td>
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<td>CFA</td>
<td>Communauté Financière Africaine¹</td>
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<td>CRL</td>
<td>Community rights law with respect to forest lands, Liberia</td>
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<td>CSO</td>
<td>Civil society organisation</td>
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<td>CTI</td>
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<td>EITI</td>
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<td>FDL</td>
<td>Fonds de développement local (Local Development Funds), RoC</td>
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<td>FGDH</td>
<td>Forum pour la Gouvernance et les Droits de l’Homme, RoC</td>
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<td>FLEGT</td>
<td>Forest Law Enforcement, Governance and Trade</td>
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<td>FMC</td>
<td>Forest Management Concession, Liberia</td>
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<td>FOB</td>
<td>Free on board, the standard way of expressing international timber prices</td>
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<td>FODER</td>
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<td>Ministère de l’Economie Forestière (Ministry of Forest Economy), RoC</td>
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<td>Ministère de l’Economie Forestière et du Développement Durable (Ministry of Forest Economy and Sustainable Development), RoC</td>
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<td>MINEF</td>
<td>Ministère de l’Environnement et des Forêts, Cameroon</td>
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<td>National Forestry Reform Law, Liberia</td>
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<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>OASL</td>
<td>Office of the Administration of Stool Lands, Ghana</td>
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<td>OCDH</td>
<td>Observatoire Congolais des Droits de l’Homme (Congolese Human Rights Observatory, RoC)</td>
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<td>PVRI</td>
<td>Procès-verbaux de réunions d’information (Information meeting minutes), Cameroon</td>
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<td>RFA</td>
<td>Redevance forestière annuelle (Annual forestry royalty), Cameroon</td>
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<td>RoC</td>
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<td>SDI</td>
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<td>Social Responsibility Agreement, Ghana</td>
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<td>US</td>
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<td>VC</td>
<td>Vente de coupe (sale of standing timber), Cameroon</td>
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<td>VPA</td>
<td>Voluntary Partnership Agreement</td>
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¹ US$ figures given in the text are, where necessary, converted at the average exchange rate for the period concerned, using [http://fxtop.com](http://fxtop.com). The current exchange rates are US$ 1 = 6.15 FCFA or 4.18 GH¢.
Executive summary

This study looks at the benefits gained by local communities from the logging industry in Cameroon, Ghana, Liberia and the Republic of Congo and was carried out with support from and on request of local NGOs in these countries.

We use the term ‘social obligations’, rather than ‘benefits’, to reflect the fact that logging companies and the state have a range of legal obligations towards communities. These include the redistribution of revenues collected by the state, direct cash payments to communities, payments in kind agreed in social agreements, development of social infrastructure, and codes of conduct.

The first conclusion of the study is that the amounts redistributed to local communities are relatively small. In Liberia – the best case scenario – 30 per cent of area-based tax is available to the communities adjacent to where logging takes place. In addition, these communities receive a fixed ‘cubic metre fee’ direct from the logging company. This means that in theory Liberian communities should receive at least some 26 per cent of logging revenues. In all other countries the proportion is much less.

Apart from 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 between 45 per cent (in Ghana, redistributed to local government and traditional authorities combined) and 70 per cent (in Cameroon, to local government).

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 and traditional authorities – to stand in the way of the community members most affected by logging operations and to 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 rightfully theirs.

The study also shows there are large 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 that 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 and Liberia, and in securing payments into a community fund in RoC.

For social obligations to contribute successfully 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 misappropriation by local elites. The NGOs in the four countries are all working to this end.

*A summary of recommendations is included at the end of this document.*
Introduction

Cameroon, Ghana, Liberia and the Republic of Congo all have laws that ensure that some of the profits of the logging industry go to communities and/or local authorities. The industry also has rights and responsibilities towards affected communities. In other words, they have legally binding social obligations that should ensure that the forestry sector contributes to development and poverty alleviation.

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 logging concessions are handed out – with communities negotiating their share of income generated on their land. In reality, most states do not recognise community ownership to forest land, and the best that communities can hope to get is some form of ‘benefit-sharing’ arrangement so that some money from a profitable industry can be used towards social development.

Local NGOs FODER (Cameroon), SDI (Liberia), Civic Response (Ghana) and FGDH (Republic of Congo) have all identified that a better understanding of the legal requirements that logging companies have towards communities and local authorities is a priority for their work. This report presents a summary of key findings.

The full report is available at www.fern.org
Terminology

Social obligations: Given the diverse legal frameworks it is important to adopt a common term even if the term has a different meaning in different countries. This study uses the term ‘social obligations’ rather than ‘benefit sharing’ to emphasise the logging companies’ legal requirements. 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.

Fiscal terms: Each country also uses fiscal terms in different ways, but the main terms used are as follows:

— Taxes: monies demanded by the state, such as the area tax or volume tax (stumpage).

— Royalties: 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. For example in Liberia 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 in a competitive process. Once the contract is won, payment of the bid premium is obligatory.

— Revenue: all income from the forest sector. In this report the term revenue is used to cover all forms of tax and bid premiums.

Social infrastructure: The legal framework in each country gives guidance on what this means, but typically it can include roads, bridges, health centres and medicines, schools, water supply, electricity supply, sports or cultural facilities, reforestation projects etc. Specific projects are often to be negotiated between the communities and the logging company.
Cameroon

Cameroon's forest sector is mainly governed by the 1994 Forest Law\(^2\) and its implementing text.\(^3\) In addition there are two legal instruments regulating the social aspects of logging.\(^4\) The revenue share from logging distributed to communities, however, is determined by separate financial legislation, and hence can change every year. The forest classification and permit system is rather complex.\(^5\) These include, inter alia: (1) long-term logging concessions in a specific forest management unit (unité forestière d'aménagement, UFA) in State Forests. These typically have a duration of up to 30 years and a maximum size of 200,000 ha. (2) Sales of standing timber (vente de coupe, VC) for use in Communal Forests that are granted to extract timber in a 2,500 hectare area, over a three-year period, and (3) Community Forests (forêts communautaires) that communities can manage for 25 years once the community has obtained a full management agreement.

**Social obligations**

There are four mechanisms through which communities can get benefits from logging:

- A percentage of the area-based Annual Forestry Royalty (redevance forestière annuelle, RFA) should be redistributed back to communities.

- A proportion of some volume-based taxes (taxe d'abattage, or stumpage) that is designated for the benefit of local communities.

- 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.

- 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 are other taxes, but these have never been intended for redistribution to communities.

**Area-based royalties (RFA)**

The rates are 1,000 CFA Francs and 2,500 CFA Francs per hectare per year for UFA and sales of standing timber respectively.\(^6\) In 2011 the RFA collected was US$ 24 million and the total contracted area was 5.6 million hectares, so the average RFA was US$ 4.3 per hectare.

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\(^{5}\) See full report [www.fern.org](http://www.fern.org) pp.9-11 for details.

The redistribution formula at the time would indicate the relevant local municipality should have received 40 per cent, and local communities 10 per cent. The 10 per cent share for communities was dropped in the 2015 Finance Law, and only after active lobbying from local NGOs was it reinstated in 2017, with 6.75 per cent being allocated to development projects run by local communities.

**Volume-based royalties**

Timber production in 2011 amounted to 2.2 million m³ – about the average for the previous ten years – and generated US$ 10.5 million, 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 payments have historically been a small element of revenue redistribution compared to RFA, although between 1996 and 2001, 1,000 CFA Francs per m³ harvested in a sale of standing timber permits was paid to affected communities. Currently local communities do not receive any share of stumpage from UFAs, but in Municipal Forests municipalities should allocate 30 per cent to the development of infrastructure for local communities.

**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 and that describes the social infrastructure companies are required to build. Although the legal framework is clear that social clauses must be in place, and specifies the sort of social infrastructure that companies are expected to commit to construct, there is no indication of how to achieve this. The modalities state that the minutes of the information meeting are an integral part of the terms and conditions, but there is little evidence of serious engagement. In practice the minutes are not even always attached to the contract. Furthermore, logging contracts are not publicly available, making it difficult to know what commitments to social infrastructure might have been made, let alone fulfilled.

**Legal recourse**

There is no provision in the forestry legislation on compensation for damage caused to private or community property. Although there is some provision in environmental law, communities can only access this if they are a legal entity.

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7 Eba’a Atyi et al., 2015, Étude de l’importance économique et sociale du secteur forestier et faunique au Cameroun, pp 70 and 62, www.minfof.cm/documentation/ 
9 MININF et al., 2013, op. cit., Article 5. 
10 FODER, personal communication, November 2016.
The VPA requires a dispute management system that makes it possible to deal with complaints concerning the operation of the FLEGT licensing scheme, when operational. It is as yet unclear how this will provide recourse for citizens with grievances relating to their rights or benefits.

The legal framework for the penal code encourages citizens to alert authorities to infringements of the law, but appears to be more about protecting the state against rogue individuals or companies than asserting community rights or benefits.
Ghana

Ghana's forest sector is governed by some twenty pieces of legislation. The most relevant laws are the 1998 Timber Resource Management Act (Act 547),\(^1\) (amended in 2002 by Act 617\(^2\)) and the 1998 Timber Resources Management Regulations, which were enacted through Legal Instrument (LI) 1649\(^3\) and amended in 2003 by LI 1721.\(^4\) In July 2012 a new LI (2184) was passed to provide a legal basis for FLEGT licensing and establish a Timber Validation Committee.\(^5\)

The Constitution infers that the state does not own resources on Stool Land, but that local communities, as represented by their stools, do.\(^6\) The main forest management permit is the Timber Utilisation Contract (TUC) which has a duration of up to 40 years and a maximum size of 12,500 ha. Other types of logging documents include salvage permits for removal of trees in areas undergoing some form of development, be it agriculture expansion or infrastructure development. Their maximum duration is one year, although this can be extended. A new LI has been drafted to create a new small-scale TUC, for areas that do not qualify for the granting of the current size of TUC.\(^7\)

Social obligations

In Ghana the term ‘social obligations’ has a specific meaning, similar to ‘social infrastructure’ in Cameroon, but in this report we use the term to cover the mechanisms, provided for by law, by which logging companies are obliged to make payments, in cash or in kind, to local recipients. These include:

- A proportion of the area-based tax, or Annual Rent, is redistributed to local government and traditional authorities.
- A proportion of stumpage is redistributed to local government and traditional authorities.
- Social Responsibility Agreements (SRAs) are negotiated between each affected community and the logging company.
- 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.

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\(^7\) MLNR, 2016, Memorandum: Timber Resources Management and Legality Licensing Regulation, draft dated 17 July 2016, Regulations 21 (1) (c.i) and 78 (2) (a).
There are other taxes, but these are not redistributed to local entities. The most significant of these are the Timber Rights Fees.

**Area-based royalties**

In 2013 the state collected US$ 75,000 in Annual Rent, and reported having approximately 1.6 million hectares of forest under logging permits. 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 (see next section), but is not as significant as stumpage as it comprises less than 2.5 per cent of the total revenue redistributed. Annual Rent is a fixed amount, quoted in cedis (GHC 0.10–0.12, depending on location). So it is difficult to update it to compensate for cedi depreciation or land value appreciation without revising a whole regulation.

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18 FC and OASL, 2013, Stumpage/Rent Disbursement spreadsheet.
20 FC and OASL, 2010-2015, Stumpage / Rent Disbursement spreadsheets, for the relevant periods.
21 MLF, 1998, op. cit., Schedule 4 (relating to Regulation 27). Note rates were originally in Ghana old cedis: GHS 1,200 and 1,000 respectively.
Volume-based royalties

In 2012 the state collected US$ 3.3 million in stumpage. The Forestry Commission cites independent estimates that the annual timber production that year was about 3.5 million m³. This suggests that stumpage was approximately US$ 0.95 per m³.

The redistribution of stumpage is the most significant mechanism for revenue-sharing with local recipients, although redistribution is to local institutions, not directly to communities. In Ghana the redistribution is, in line with the constitution, to the local government entity (24.75 per cent, to the District Assembly), 11.25 per cent to the local chieftaincy (Stool), and 9 per cent to the chieftaincy group (Traditional Authority) of which the Stool is a member.

Prior to redistribution the Forestry Commission retains 50 per cent of stumpage (but not annual rent) as some form of management fee. Some argue that legally speaking the Forestry Commission should only retain one third of stumpage. Contrary to a requirement that stumpage fee rates are revised quarterly, they have been revised only once since 2003. They are calculated from international timber prices and currently range between US$ 2.3 and US$ 30 per m³.

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 under SRAs.

Social Responsibility Agreements (SRAs)

SRAs are negotiated between each affected community and the logging company and witnessed by the Forestry Commission, Traditional Authorities, and the District Assembly representatives. It is a condition of each TUC that an SRA is agreed prior to the finalisation of the contract. The SRA comprises two parts: a code of conduct that lists the rights and interests of communities that must be respected by the logging company, and a list of materials and services the logging company agrees to provide to the communities. This latter section of the SRA must be equal in value to five per cent of the stumpage fees a company pays. It typically includes schools, health facilities, the provision of water and electricity, and the construction of palaces for traditional rulers and of community centres.
The SRA is supposed to be 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. There is, however, no consolidated guide on how the community should be represented in these negotiations, nor are there good 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 to be legal.29

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 five per cent of the value of stumpage as required. The VPA has strengthened the rule of law regarding SRAs by including as a criterion for legal timber the statement that ‘the logger executed and complied with the relevant Social Responsibility Agreement.’30

**Legal recourse**

Legal recourse mechanisms include:

- Compensation for damage to crops, the rates for which should be one of the clauses in the code of conduct section of the SRA.

- Dispute resolution mechanisms exist or are planned at many levels: the local offices of the Forestry Commission, the Forest Services Division, the official Independent Monitor, the Timber Verification Department, and the Timber Verification Committee that oversees the work of the Timber Verification Department.

- A possibility for citizen’s suits and civil enforcement is provided in the ‘Sample SRA’31

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29 FC, 2013, op. cit.
Liberia

Liberia’s forest sector is mainly governed by the 2006 National Forestry Reform Law (NFRL) \(^{32}\) and its ten core regulations (2007). \(^{33}\) Other key legal texts are the 2009 Community Rights Law with respect to forest lands (CRL), \(^{34}\) which lays out the means by which communities can obtain collective management rights over forest land, and its 2011 and 2016 implementing regulations. \(^{35}\)

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 correlates to these categories, and the permits in current use are:

- **On state land**, long-term **Forest Management Contracts** apply to areas between 50,000 and 400,000 hectares and have a typical duration of 25 years. \(^{36}\) A shorter **Timber Sale Contract** ‘for the purpose of allowing forest land to be cleared for agriculture or for the establishment of plantations’ \(^{37}\) is 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. \(^{38}\) According to the CRL the area under a Community Forestry Management Agreement must be between 5,001 and 49,999 hectares, \(^{39}\) and in order for logging by a third party to occur, a **Commercial Use Contract** between the community and company is required. \(^{40}\)

**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:

- The re-distribution of a proportion of forest **Area Fees** and **Contract Administration Fees** to Districts and communities.

- A **Cubic Metre Fee** based on the volume of timber cut and payable directly to the affected community.

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35 FDA, 2011, Regulations to the community rights law with respect to forest lands; www.fda.gov.lr/download/107/laws/2367/community-rights-law-regulations-printed-version.pdf. These regulations were revised in 2016 as Regulation to the community rights law of 2009 with respect to forest lands, public consultation draft of 12 October 2016.
36 GoL, 2006, NFRL, op. cit., Section 5.3, Clause h.
39 Ibid., Chapter 6.
— **Social Agreements** negotiated between the logging company and affected communities, as part of the ‘major pre-felling operations’ to provide payments in kind.

— **Legal recourse** includes compensation payable where damage to private property, including crops, occurs, and **dispute resolution mechanisms** included in the Social Agreements.

There are other taxes, but these are not redistributed to local recipients. The most significant is the Land Rental Bid Fee (abolished in 2013).

Contextual points important to understand social obligations in Liberia include that 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.\(^{41}\) Subsequently a new legislative framework was devised and new concessions were allocated between 2008 and 2010. More recently, 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.\(^{42}\) It is one of only a handful of African countries to have a Freedom of Information Act\(^ {43}\) and the timber sector is included in Liberia’s EITI, requiring it to make concession contracts publicly available.\(^ {44}\)

**Area Fees**

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.\(^ {45}\) The payment rates are US$ 1.25 or US$ 2.50 per hectare per year, depending on the permit type.\(^ {46}\) The 2006 Forest Law stipulated for the first time that a proportion of revenues was to be given back to affected communities. Since then 30 per cent of area fees is returned to communities, and 30 per cent shared amongst Liberia’s 15 county administrations. All affected

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\(^{42}\) 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/10180/662381/Liberia-EU+4th+%26+Aide+Memoire+%28%28%28Annexes.pdf/6e9026-fa8d-81c5-33e5-56a0a122.


\(^{45}\) Letter from FDA to SDI in response to a request for information in order to complete this report, 19 April 2016.

\(^{46}\) FDA, 2007, op. cit., Regulation on certain forest fees, Regulation 107-07, Section 33.
communities must be represented by an elected Community Forestry Development Committee, which submits applications for funds to a National Benefit Sharing Trust Fund. However, in the first eight years of logging, no money earmarked for communities was paid into the National Benefit Sharing Trust Fund, despite the obligation to make quarterly payments. 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 a further US$ 250,000 has been deposited in 2016. Subsequently the modalities for communities to apply for funds, and the supervision of the Fund by a National Benefit Sharing Trust Board have been developed. By late 2016 some US$ 700,000 had been redistributed to communities for projects.

The Land Rental Bid is an area-based amount that a winning bidder in the course of a competitive concession allocation process pledges to pay 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 and has generated almost US$ 10.5 million per year – more than four times that from area fees. However, the bids were generally considered to be unrealistically high compared to the value of the timber and frequently not paid leading to arrears of US$ 42 million by 2013. The Land Rental Bid Fees were abolished in 2013.

Volume payments: the Cubic Metre Fee

In 2015, US$ 760,000 was paid directly by companies to communities as Cubic Metre Fees, on a total production of 390,000 m³; an average of US$ 1.9 per m³. A further US$ 2.5 million in stumpage was collected centrally (an average of US$ 6.4 per m³); however, there is no redistribution of stumpage. As in Ghana, stumpage tax rates have not been revised as required by law. Stumpage rates in Liberia are between 2.5 and 10 per cent of the international timber price, depending on species.

The rate for Cubic Metre Fees is negotiated as part of each Social Agreement, but is typically US$ 1.5 per m³. Over the period from 2008 to 2015, three Forest Management Contracts studied generated between US$ 77,000 and US$ 330,000 each in Cubic Metre Fees, but 65 per cent of this 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.

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 five per cent of the Cubic Metre Fees and the Area Fees received by the community are to fund independent monitoring.

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47 FDA, 2007, op. cit., Regulation on major pre-felling operations under forest resources licenses, Regulation 105-07, Section 62, Clause b.  
48 FDA, 2010, Procedures to access and manage funds on behalf of affected communities by Community Forestry Development Committees, Regulation 114-10, Section 15; www.forns.net/system/files/Microsoft%20Word%20-%20NBST%20-%20Regulation%20114%20of%202010%20-%20Revised%2030%20June%202011_penultimate.PDF.  
49 FDA, 2007, op. cit., Regulation on benefit sharing, Regulation 106-07, Section 32.  
50 NBSTB, 2017, Technical Project Review Committee payment chart list for CEFDC’s Land Rental Fees Received, 6 January 2017.  
51 Letter from FDA to SDI, 2016, op. cit.  
52 FDA, 2007, op. cit., Regulation on certain forest fees, Regulation 107-07, Section 3.  
53 Ibid, Section 22 (b).  
55 Ibid.  
56 FDA, 2007, op. cit., Regulation on major pre-felling operations under forest resources licenses, Regulation 105-07, Section 34.
Social Agreements

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 after being awarded the contract and before any logging takes place. The community is represented in the Social Agreement negotiations by the elected Community Forestry Development Committee. Social Agreements should contain (1) a code of conduct for community members and logging company personnel; (2) a description of the financial benefit communities will receive (i.e. the Cubic Metre Fee); (3) a practical mechanism for resolving disputes, and (4) any other terms tailored to the local context.

Following concerns about the process of negotiating Social Agreements, and the content of the final document, a Social Agreement template was developed in 2014. Whilst the template and guidelines have no legal force in themselves 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 titled the ‘Forestry Development Authority shall …’ The VPA process anticipates that the verification protocol will be updated to include the provisions of the new Social Agreement template.

As yet there is no system for monitoring the fulfilment of infrastructure or other contributions in kind, nor for supervising the projects.

Legal recourse

Landowners are eligible for compensation for damage to property. The term ‘landowner’ is not defined, however, so it is unclear if customary or collective owners, or farm tenants, are eligible. A dispute resolution mechanism exists for negotiating the Social Agreement and a similar mechanism is recommended to handle disputes in the implementation of the agreement. There is some doubt as to whether these mechanisms will be sufficient to cover the redistribution of Area Fees, or compensation claims, both of which fall outside the remit of the Social Agreement. 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 to comply with the law, to sue the government for non-compliance; or in response to official fraud or a failure to collect taxes.

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

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58 FDA, 2007, op. cit., Regulation on major pre-felling operations under forest resources licenses, Regulation 105-07, Section 36.
59 Ibid, Section 33, Clause a(1).
60 Concerns were documented in a number of CS-IFM briefings, principally the Liberia Social Audit 2012/13: assessing the forestry sector; http://loggingoff.info/wp-content/uploads/2015/09/752.pdf.
Republic of Congo

The forest sector is governed by the Forest Code (2000), although this is currently being substantially revised. The principal implementing text for this law is the 2002 Decree No. 2002-437, laying down the conditions of forest management and use. All timber rights are vested in the state with the exception of private plantations or forests.

The two main logging permits are: (1) Industrial Processing Agreement (convention de transformation industrielle, CTI). This is a timber sales concession for use in a specific UFA. CTIs typically have a duration of up to 15 years, renewable. (2) Management and Processing Agreement (convention d’aménagement et de transformation, CAT). This is also for use in a specific UFA, but in addition the concessionaire must carry out reforestation activities. CATs have a duration of up to 25 years, renewable, and there is no minimum or maximum size.

Social obligations

In Congo the term social obligations has a specific meaning, similar to ‘social infrastructure’ in Cameroon, but in this report we use the term to cover the mechanisms, provided for by law, by which logging companies are obliged to make payments, in cash or in kind, to local recipients. These include:

— The redistribution of a proportion of forest area tax (taxe de superficie) to départements.

— Where forest is cleared for other development, the redistribution of a proportion of the deforestation tax (taxe de déboisement) to municipalities.

— Local Development Funds (Fonds de développement local, FDL) for communities.

— 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.

— Opportunities for access to justice include compensation payable in the event of the destruction of fruit trees and damage to crops.

There are other taxes, but these are not redistributed to local recipients.

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67 Ibid, Article 67.
Area tax

One estimate states that over 12 million hectares were devoted to logging in 2014, from which US$ 9.6 million was collected in area tax.\(^69\) Meaning an average area tax per ha of 0.8 US$. In different parts of the country the rate is 250, 350 or 500 CFA Francs per hectare per year.\(^70\)

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.\(^71\) Hence, there is a perception that this area tax is not a ‘social obligation’. Furthermore, there has never been any provision for the redistribution of this tax to local communities. The draft new Forest Code is said to reiterate that the area tax should be allocated to a Development Fund.

Volume payments and the Fonds de Développement Local (FDL)

The FDL originally came about in CAT concessions seeking FSC certification,\(^72\) as a mechanism for local multi-stakeholder engagement in those parts of the concession with a community focus (known as the Série de développement communautaire (community development series), and in particular as a scheme to finance micro-projects of community interest. Logging companies have paid 200 CFA Francs per m\(^3\) into the respective FDL for each concession.\(^73\) Although there is not yet an overarching legal obligation, the FDL is increasingly regarded as mandatory.\(^74\)

The VPA legality definition now includes it as a criterion and the revised Forest Code, triggered by the VPA, is expected to integrate the FDL as a component of the Social Clauses.

Until the new law and its implementing regulations are passed, it is not clear if the USD 0.4 rate will be universal or negotiable, above a minimum, but it has been noted that other countries in the region pay five to ten times higher rates per volume of wood.
harvested or marketed in equivalent schemes. A study of four UFAs with FDL indicated that typical annual incomes per community from FDL range from US$ 590 to US$ 3,200.

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

Social Clauses in the cahiers des charges particuliers

Each concession contract must include a cahier des charges, or terms and conditions including general and particular sections. The ‘Social Clauses’ are part of the ten aspects of cahiers des charges particuliers. The current legal framework does not provide for representation of local communities and indigenous peoples in the negotiation of Social Clauses so 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. Although there is an expectation in the legal framework that the management plan must include the establishment of a Management Committee – comprising members of the local population and non-governmental organisations alongside the administration, operator and donors – the modalities for doing so are not specified. This leads to wide variations between concessions. There is ‘no governance structure to monitor performance’ of the Social Clauses, leading to low level of achievement of planned contributions. This situation is expected to change as a result of the VPA, in the context of the new Forest Code, which is reportedly stipulating a ‘model’ or template for Social Clauses. Whereas the Social Clauses typically cover social infrastructure, the financing and construction of which is by the logging company, the FDL is intended to finance income-generating activities carried out by community members.

Legal recourse

Whilst there is no direct reference to compensation in the 2000 Forest Code, a 1986 Decree predates the law and does provide for compensation. 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.’ The sharp devaluation of the CFA Franc in 1994 means, however, that compensation rates set in 1986 are now valueless. 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.

75 Schmitt & Baketiba, 2015a, op. cit., p.97.
81 Schmitt & Baketiba, 2015a, op. cit., Table 3, p.37.
84 Schmitt & Baketiba, 2015a, op. cit., p.31.
## Analysis

### Tax and redistribution labels and rates for logging concessions four countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Collection of area-based taxes</th>
<th>Collection of volume-based taxes</th>
<th>Redistribution of area-based taxes</th>
<th>Redistribution of volume-based taxes</th>
<th>Competitive bid price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroon</td>
<td>US $ 4.6 per hectare per year</td>
<td></td>
<td>38% to local government</td>
<td>X</td>
<td>US $ 24.4 per hectare per year</td>
</tr>
<tr>
<td></td>
<td>US $ 1.8 depending on permit type</td>
<td></td>
<td></td>
<td></td>
<td>US $ 2.8 depending on permit type</td>
</tr>
<tr>
<td>Ghana</td>
<td>US $ 0.03 depending on location</td>
<td></td>
<td>49.5% to local government</td>
<td>24.7% to local government</td>
<td>US $ ? under revision, no data available</td>
</tr>
<tr>
<td>Liberia</td>
<td>US $ 2.5</td>
<td>30% to traditional leaders</td>
<td></td>
<td></td>
<td>US $ 20</td>
</tr>
<tr>
<td></td>
<td>US $ 1.25 depending on permit type</td>
<td>30% to local communities</td>
<td></td>
<td></td>
<td>US $ 1.9 depending on permit type</td>
</tr>
<tr>
<td>RoC</td>
<td>US $ 0.8</td>
<td>50% to local government</td>
<td></td>
<td></td>
<td>US $ ? exists but no data available</td>
</tr>
</tbody>
</table>

- 2.5% of the FOB value of the timber
- Variable rate based on species, US $ 2.3–30 per m³
- 2.5–10% of FOB depending on species
- 50% of the FOB value of the timber
- None for stumpage, but US $ 1–1.5 per m³ is paid directly to communities
- None for taxe d’abattage, but in some cases US $ 0.4 per m³ is paid to a FDL
National taxes from area- and volume-based forestry sources in four countries

**Area under timber production (hectares)**
- Cameroon: 5,600,000 (2014)
- Ghana: 1,600,000 (2013)
- Liberia: 630,000 (2015)
- RoC: 12,000,000 (2014)

**Total annual area-based revenue (US $)**
- Cameroon: 24,000,000 (2011)
- Ghana: 75,000 (2013)
- Liberia: 1,600,000 (2015)
- RoC: 9,555,000 (2014)

**Average annual area-based revenue per hectare (US $)**
- Cameroon: 4.30
- Ghana: 0.05
- Liberia: 2.48
- RoC: 0.80

**Annual timber production (m³)**
- Cameroon: 2,200,000 (2011)
- Ghana: 3,500,000 (2012)
- Liberia: 390,000 (2015)
- RoC: 2,700,00 (2014)

**Total annual volume-based revenue (US $)**
- Cameroon: 10,500,000 (2011)
- Ghana: 3,300,000 (2012)
- Liberia: 2,500,000 (2015)
- RoC: 10,800,000 (2014)

**Average annual volume-based revenue per m³ (US $)**
- Cameroon: 4.80
- Ghana: 0.95
- Liberia: 6.40
- RoC: 4.00
# Key attributes to social agreements in four countries

<table>
<thead>
<tr>
<th>Negotiating parties</th>
<th>Cameroon</th>
<th>Ghana</th>
<th>Liberia</th>
<th>RoC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local forest authority and local government sign the PVRI.</td>
<td>The logging company and community members sign the SRA.</td>
<td>The logging company and community committee sign the SRA.</td>
<td>The logging company and the forest authority agree the social clauses.</td>
<td>Each FDL is under the supervision of the multi-stakeholder SDC Consultative Committee.</td>
</tr>
<tr>
<td>Witnesses to agreement</td>
<td>Community leadership and members, and the logging company, are present at the meeting.</td>
<td>Traditional leaders, local government and the local forest authority may sign as witnesses to the SRA.</td>
<td>The head of the forest authority signs to attest to the Social Agreement.</td>
<td>Not clear, no examples were available.</td>
</tr>
<tr>
<td>Community representation</td>
<td>Community management committees exist in some localities, but no legal basis.</td>
<td>SRA committees have been trialled in some localities, but no legal basis.</td>
<td>Under the law, ten elected community members must form a representative committee which must then meet with the wider community every month.</td>
<td>Not clear, no examples were available.</td>
</tr>
<tr>
<td>Gender representation</td>
<td>No guidance</td>
<td>No guidance</td>
<td>… must provide a means for all residents it represents, including women and youth.</td>
<td>No guidance</td>
</tr>
<tr>
<td>Guidelines</td>
<td>None</td>
<td>17-page guideline document, including a two-page sample (template) SRA, currently under revision.</td>
<td>13-page combined template and guidelines</td>
<td>None</td>
</tr>
<tr>
<td>Financial terms</td>
<td>None</td>
<td>Value of contributions in kind must equate to 5% of stumpage.</td>
<td>Company must agree to pay at least US$ 1 per m³ harvested to community.</td>
<td>None</td>
</tr>
<tr>
<td>Contributions in kind</td>
<td>Forest law suggests roads, bridges, health centres and medicines, schools, water supply, electricity supply, sports or cultural facilities, or reforestation projects are all appropriate.</td>
<td>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.</td>
<td>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.</td>
<td>Regulations suggest modern housing, health centre, schools, electrification, drinking water supply, sports and leisure facilities, and food security programmes.</td>
</tr>
<tr>
<td>Code of conduct</td>
<td>None</td>
<td>Procedures state that the SRA must list the rights and interests of communities that must be respected by the logging company.</td>
<td>Regulations state agreements must include a code of conduct for community members and logging company personnel.</td>
<td>Not clear, no examples were available.</td>
</tr>
<tr>
<td>Legally binding</td>
<td>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.</td>
<td>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.</td>
<td>Regulations state that agreements are a pre-felling requirement.</td>
<td>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.</td>
</tr>
</tbody>
</table>
### Footnotes for the table

2. FDA, 2007, op. cit., Regulation on major pre-felling operations under forest resources licenses, Regulation 105-07, Section 62, Clause c.
5. FDA, 2014, op. cit.
7. Ibid, Legality Criterion 3.3.

### Table: Dispute resolution mechanism, Publication, Duration and renegotiation, Implementation

<table>
<thead>
<tr>
<th></th>
<th>Cameroon</th>
<th>Ghana</th>
<th>Liberia</th>
<th>RoC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Document name</strong></td>
<td>Procès-verbaux de réunions d’Information (PVRI)</td>
<td>Social Responsibility Agreement (SRA)</td>
<td>Social Agreement</td>
<td>Clauses sociales des cahiers des charges particuliers</td>
</tr>
<tr>
<td><strong>Dispute resolution mechanism</strong></td>
<td>No guidance</td>
<td>No guidance</td>
<td>Agreements must include a practical mechanism for resolving disputes.</td>
<td>Not specific to social clauses, but VPA legality verifiers include that a mechanism is in place.</td>
</tr>
<tr>
<td><strong>Publication</strong></td>
<td>Not published</td>
<td>Not published, but locally available.</td>
<td>Available on forest authority website.</td>
<td>Not published, but locally available.</td>
</tr>
<tr>
<td><strong>Duration and renegotiation</strong></td>
<td>Duration unspecified. No commitment to review/renegotiation.</td>
<td>Based on forest compartment: duration typically 2 years then negotiated for new compartment.</td>
<td>Fixed 3 or 5 year duration then renegotiation.</td>
<td>Not clear, no examples were available.</td>
</tr>
<tr>
<td><strong>Implementation</strong></td>
<td>Supervision by authorities</td>
<td>Local forest authorities have a duty to ensure compliance.</td>
<td>No guidance</td>
<td>Local forest authorities charged with monitoring.</td>
</tr>
<tr>
<td></td>
<td>Supervision by communities</td>
<td>No guidance</td>
<td>Community committees established and funded to monitor.</td>
<td>No guidance</td>
</tr>
</tbody>
</table>

#### Best practice

- Most room for improvement
Recommendations

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 lose out. The legal frameworks in most of the countries provide for this, but authorities are poor in implementing this obligation.

All social obligations systems must be based on clear, simple guidelines in a consolidated and accessible form, tailored to the needs of each party: state, logging company and communities. Lack of guidance is a common problem.

Downwards accountability must be strengthened, primarily to forest-dependent communities and citizens. A key aspect of this must be that committees genuinely represent the interests of the community and protect themselves against capture by local elites.

Access to justice should be a key element of the social obligations system. This makes any system self-regulating and self-improving. VPAs are providing a good opportunity to achieve this.

Social obligations should be monitored effectively by the appropriate authorities. The fulfilment of social obligations needs to be seen as important as other aspects of legality verification, including payments by companies and the receipt and use of funds received by local recipients.

Forest authorities should annually publish data on the total area under logging concessions, the volume of timber produced, the total revenue invoiced and collected from area- and volume-based state income streams, and the amounts actually redistributed to local recipients. Better publicly accessible data should provide an impetus to make the redistribution system function better. The VPA push for transparency provides an opportunity to make this happen.

The report with a full set of recommendations is available at www.fern.org

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

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

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

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

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