Simplified Guide to External Independent Observation of Forests and Non-Forest Investments

Guide Simplifié d'Observation Indépendante externe des forêts et des investissements non forestiers

1 SIMPLIFIED GUIDE to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs.

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General information on the context of the document's writing, the authors, the donors This document is the first version of the guide for independent external observation of forests and non-forestry investments in the forestry sector in Gabon. It is produced as part of the project "Acting on the challenges of the FLEGT: illegal logging and changes in forest cover in the context of non-forestry investments," and is funded by the FAO FLEGT Programme. The objective of this project is to reduce the risks of illegal logging in the context of large investments (agro-industry, mining, infrastructure) by strengthening the efficiency of all parties involved in monitoring these investments. The project is implemented by a consortium of NGOs from the Congo Basin, led by the Centre for Environment and Development (Cameroon) and with the participation of the following organizations: Congolese Observatory of Human Rights (Congo-Brazzaville), House of the Child and Pygmy Woman (Central African Republic), and Brainforest (Gabon). The content of this publication is the sole responsibility of Brainforest and cannot be considered as reflecting the official policies and opinions of the various partners and donors. This guide was prepared by

Consultant Léon LOLA, under the supervision of Martial DJINANG and with the contribution of the NGO FLAG. © Brainforest September 2017 Simplified guide to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 5

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Presentation of the guide This guide is primarily aimed at local communities living in logging areas or large investments leading to timber harvesting. It is also aimed at Civil Society Organizations (CSOs) interested in community rights in the context of forest management: village associations and non-governmental organizations (NGOs). To facilitate its understanding and use, it is written in a question-and-answer format and is structured around the following sections: - Who is this guide for? - Why this guide? - What is independent external observation? - Why conduct independent external observation? What is the importance of legality in general and the importance of legality for communities? - What are the limitations of IE? - What are the legal bases of IE in Gabon? - What does illegal wood mean? - How is independent external observation conducted? - What should be observed? Case of regulatory forestry permits Case of abandoned logs Case of conversion timber - How is a denunciation made? Simplified guide to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 6 6

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1/ WHO IS THIS GUIDE FOR? This guide is intended for the following groups: Civil society organizations Village associations Non-Governmental Organizations (NGOs) Simplified guide to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 7 7

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2/ WHY THIS GUIDE? This guide has been prepared to provide local communities and CSOs with a tool enabling them: - To conduct effective monitoring of their forests themselves, - To identify and report illegalities in forestry activities. This guide, in other words, should help these targeted actors to carry out independent external observation of forests (IEO) and large investments that affect these forests. It should guide them in their monitoring of logging and activities related to large investments affecting the forestry sector. 3/ WHAT IS INDEPENDENT EXTERNAL OBSERVATION? Simplified guide to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 8 8

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It is the monitoring of logging activities and the oversight of compliance with all that the law provides regarding the exploitation of these natural resources. This monitoring and oversight are carried out by individuals or organizations that do not have an official contract, also called a "mandate" with the State. It involves collecting data or administrative and technical information related to the management processes of natural resources and for which it is believed that the law has not been respected or has been poorly respected. Subsequently, these collected elements on suspicious or potentially illegal logging activities are transmitted to the competent authorities and organizations, with a view to improving the effectiveness of forest control operations and, in general, the good management of natural resources. The observer does not aim to replace the agents of Water and Forests and the mandated actors1 (OIM) working on these issues based on a contract or agreement signed with the administration in charge of forests. It is also important to state that in the context of observation, positive points related to the observed activities must be documented and used either to encourage society in its good

practices or for experience sharing with other actors. 4/ WHY CONDUCT INDEPENDENT EXTERNAL OBSERVATION? WHAT IS THE IMPORTANCE OF LEGALITY IN GENERAL AND THE IMPORTANCE OF LEGALITY FOR COMMUNITIES? In general, good management of forest resources is of great importance both for the government and for rural populations. It is important for promoting socio-economic well-being and protecting biodiversity and is essential for combating climate change. It could also represent a significant source of national revenue. Illegal logging is responsible for the loss of significant amounts of forest resources and poses serious risks on the economic, environmental, and social fronts, including impoverishment of biodiversity, or the destruction and degradation of ecosystems and the livelihoods of populations dependent on forests. It is well known that forest-dependent communities rely heavily on them for their livelihoods and social well-being. This is true in light of the various goods and services that this forest provides them. For communities, helping to ensure good resource management allows 1 Example of a mandated actor in Gabon: NGO Conservation Justice Simplified guide to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 9 9

among other things to protect the species and resources that are useful to them on a daily basis. Independent observation allows for an external perspective on forest management. It also provides support to the administration that has the power of control in this area. It generally contributes to enforcing or respecting laws regarding forest management. - To summarize, we can say that IE allows to: - protect the rights of communities; - Ensure local development; - Preserve the environment and biodiversity; - Ensure social justice and combat corruption; - protect forest areas and improve their management including in land conversion processes and large investments; - Enable communities and civil society organizations to "better" participate in the protection and management of forests and traditional spaces of communities; - help ensure good management of forests and their resources. However, it should be noted that IE alone will not stop illegal logging of forests. It is simply a tool alongside several others such as forest control, the FLEGT, etc. - Simplified guide to independent external observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 10 10

5/ WHAT ARE THE LIMITS OF THE OI? In general, the limits depend on the type of OI that one wishes to conduct. The table below presents some difficulties that we may encounter depending on the type of OI adopted. Access to information Litigation monitoring Publication Political weight OIM Limited frequency of field missions Not binding for prosecutions Subject to validation Need for support from donors OIE Difficult access to official information Limited legal technical capacity for monitoring, treatment Publication of information rarely verified Vulnerability due to lack of political support 6/ WHAT ARE THE LEGAL BASES OF OI IN THE GABONESE REPUBLIC? To date, no legal text expressly provides for the possibility of conducting OI of forests and non-forest investments in the forestry sector. However, this activity can rely on provisions that generally allow for the consultation, participation, and involvement of local communities and CSOs in environmental protection. Indeed, Law No. 007/2014 relating to the protection of the Environment in the Gabonese Republic provides in its article 7 that: "Everyone has the right to a healthy environment conducive to their development. The protection, defense of the environment, and promotion of quality of life are a duty for all and for the State." Relying on this provision that invites everyone to protect and preserve the environment, local communities and CSOs can carry out several activities in this direction, including independent observation. Also in this text, it is specified that environmental protection associations participate in the mission of general interest of protecting the environment, living conditions,

and health (Article 13). These two articles from the environmental code can serve as a basis for the practice of OI activities by communities and CSOs in the Gabonese Republic. Simplified guide to external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 11 11

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7/ WHAT DOES ILLEGAL WOOD MEAN? Wood is said to be illegal when its exploitation has been carried out in violation of the legal texts that must be respected in this context. Very often, these are texts related to forests, the environment, labor, transportation, taxation, etc. Example: wood cut outside the limit or below the diameter, wood cut by a company that does not have a forestry exploitation title or does not have a forestry operator status, etc. 8/ HOW IS EXTERNAL INDEPENDENT OBSERVATION CONDUCTED? Before presenting the different steps, it is important to specify that depending on the context and the abilities of the different actors, certain actions can be carried out either by local communities, or by CSOs, or by both parties. Simplified guide to external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 12 12

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8-1. Planning and Preparation of an Observation Mission This involves defining the objectives, the methodology to follow, identifying the areas, and describing the profile of the sites to be visited during the mission. It also includes preparing the mission schedule. It answers the questions: Where to go? When to go? How? With whom? Field missions take time and are expensive? Therefore, we must ensure, before leaving, that we have all the necessary documents and information with us. 8-2. Information/Data Collection Data is collected using the triangulation method, which combines three sources, namely: documents, field observations, and people (testimonies). Information collection from documents There is a wide variety of documents to verify, including: - Legal/regulatory documents specific to forestry companies (e.g., title, annual permits, maps); - Documents used to record information that companies use to record information related to logging, transportation, processing, and export. These documents are regularly submitted to the administration for control. They should be available at the company’s offices; - Statistical documents that companies produce based on data provided in documents related to the production, processing, and export of wood. These documents are required by law and are generally submitted regularly to the administration. They should be available at the company’s offices and the administration; - Documents from the administration, concerning the payment of taxes and fines or the established reports, mission reports, activity reports, meeting minutes...; - Documents concerning other uses of forest space, which may include maps detailing protected areas, community development zones, or mining exploitation permits, etc. A list of basic standards should be drawn up to guide the observer in examining the documents. Access to this information is not easy in the context of an EIO, so communities and CSOs can rely on collecting information from field missions. Simplified guide to external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 13 13

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 Information collection from field observations The field observation sheet used depends on the type of activities on which the investigations are based. Although it is not always necessary to design a distinct observation sheet for each type of illegal activity, multiple field information collection sheets will need to be produced. Field observations should be recorded in such a way that they allow for comparison with the data presented in the documents. Simplified guide to external independent observation of forests and large-scale investments in the forestry sector

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This observation can also be done outside of scheduled missions. Indeed, in the context of daily activities (Plantations, hunting, fishing, initiation rites, etc.), populations in their movements may notice cases of non-compliance with laws and rules by the concerned companies. Information collection from exchanges These exchanges can be made with community members or anyone working for the concerned companies. It can also be done with people who have a good knowledge of the issues or points on which the observation should take place. 8-3. Documentation These cases of irregularities must be documented as much as possible: report, collection sheet, photo taking, location plan, GPS coordinates, audio recording. In the particular case of communities, because they do not always have the tools mentioned, they can make denunciations through phone calls, oral exchanges, or even by letters of denunciation that are sufficiently explanatory of the facts observed on the ground. Notes taken in this context must be sufficiently clear. The observer must be flexible enough to adapt to the data collection context. 8-4. Analysis and Verification of Information The results of the observations must be analyzed to better understand the problems that arise or the violations of the relevant law. Let us recall that OI is not a control tool, but rather a diagnostic tool, which allows competent authorities to link with the reality on the ground. Cross-verification is the process by which it is verified that the data is accurate. You could defend your position well if what you assert is verified by multiple sources of information, based on tangible and verifiable facts and evidence. Let’s take the example of a field observation reporting illegal logging outside the limits of a concession. In many exporting countries, the ability to produce an accurate map with the boundaries of a concession may be limited and lead to confusion about the precise location of the boundaries. The questions related to this problem that you will need to ask during the verification process are as follows: what map was used to verify the boundaries of the concession? Is the scale at which the map was produced appropriate? Are there other maps or GIS data that can be used to verify the location of the boundaries of the concession? GPS coordinates often present a degree of error; how far was the GPS point from the boundary? The analysis of the results is done by comparing what is observed on the ground or the information from different sources such as informants or documentation with what is provided for in the law and contracts. 8-5. Denunciation The documents, properly filled out, must be transmitted, accompanied by a letter of denunciation (proof of illegal activity) or suspicion (suspicion of illegal activity), to trigger a control mission by the administration. When the denunciation is made through a report, it must be objective, clear, precise, and accessible to a wide audience. It must also provide relevant recommendations whose implementation can be followed or verified. 8-6. Follow-up It is necessary, following the denunciation that has been made, to ensure with the CSOs and the competent administrative authorities that the observed illegal activity has been stopped or corrected, and that the concerned company has taken the necessary measures to correct its mistakes. 9/ WHAT SHOULD BE OBSERVED? 9-1. Case of regulatory forestry permits The forestry code recognizes three (3) types of forestry permits: the sustainable management forest concession (CFAD), the associated forestry permit (PFA), and the negotiated permit (PGG). The operator does not contribute to local development Ref Art The contractual specifications are not signed or not respected 12 The operator does not pay its financial contribution to feed the Local Development Fund of the villages concerned by forestry exploitation activities 1 251 Simplified guide to external independent observation of

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The operator does not respect customary usage rights Ref Art The operator prohibits villagers

from enjoying their customary usage rights 1 2 14, 252, 253 3 The community was not involved in the physical identification of sites to be protected (plantations, fishing areas, hunting areas, graves, ritual temples, camps,...) The mapping resulting from the identification of sites to be protected has not been validated by the community The operator does not respect the environment Ref Art The operator has not conducted an environmental impact study 1 21, 226 The community was not involved in the environmental impact study 17 2 The environmental impact study is not signed by the Minister of the Environment 17 5 The operation disrupts the environment (disruptions of rivers, toxic spills, ...) 16 18 12, 36 6 The operator does not rehabilitate degraded sites 1 6 66 Waste, oils, and used filters are abandoned on the site 16 19 36 3, 4 Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 17 17

The operator does not respect management, forestry, and intervention standards in forest areas Ref Art The boundaries of the permit are not visible 1 120 The stems to be protected and the stems to be cut are not marked 1 122 The felled trees have diameters smaller than the authorized diameters or exceed two (2) meters 1 2 37, 124 38 The operator cuts down trees that are not on the list of exploitable species or does not have the authorization to exploit 1 8 32 Logs, stumps, and culms do not bear the operator's hammer, the permit number, or the forest number 1 128 There are logs abandoned on the site 1 134 The logging truck operates with wood without waybills 1 135 The operation takes place beyond the limits of the permit 1 The operation is carried out in a protected area (buffer zone, national park, ...) 9 2 The same AAC has been exploited two (2) times in less than twenty (20) years 2 36 The same AAC has been exploited for more than three (3) years 1 2 48 41 The operator has more than three (3) AACs open simultaneously 2 41 The volume exploited from the AAC exceeds 20% of the planned harvest 2 52 The volume exploited from the UFG exceeds 15% of the planned harvest 1 2 41 59 The operator does not respect workers' rights Ref Art Workers are not registered with the CNSS 21 5 Workers are not hired after two (2) fixed-term contracts 20 23, 24 Workers are paid below the monthly minimum wage of 150,000 FCFA in Gabon 22 The operator does not have exploitation rights Ref Art The operator does not have an exploitation authorization 1 14, 121 The attribution of the CFAD title is not a decree signed by the Prime Minister 2 47 The operator does not have a professional license 1 102 The operator continues to work despite the suspension decided by the Water and Forests 15 10 Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 18 18

The operator engages in poaching Ref Art The operator or their staff kill protected species 1 Specific case of the PGG Ref Art The operator has harvested more than fifty (50) feet 1 95 A person who does not permanently reside in the village was considered a beneficiary 13 13 The beneficiary is a foreign national 1 95 A person has benefited from more than one (1) PGG during the year 13 15 The PGG has been ceded, transmitted, or transferred to another 1 150 9-2. cases of abandoned logs Ref Art The operator has an authorization for recovery by decree signed by the Minister of Forests 14 6 The operator has the title of acquisition following a sale by mutual agreement or by auction 14 10 9-3. cases of conversion wood Conversion wood is wood from sites other than forestry operations that require cutting down or uprooting. This includes works for the creation and maintenance of roads, establishment of factories, construction of dams, mining, development of agro-industrial plantations,... In the aforementioned cases, there is no specific regulation for the acquisition of this wood. However, the ministry in charge of forests issues recovery authorizations to operators wishing to acquire

it, allowing the traditional forestry exploitation circuit not to be respected: - special authorization - ministerial instruction note - ... Here, the observer will be required to verify that the operator has a recovery authorization, and that this recovery is done according to forestry regulations and the operator's specifications.. However, the operator will be required to respect all rules or provisions regarding the following points: social rights of communities, environmental preservation, respect for workers' rights. It may also be interesting to check what is provided as obligations at the international level in the relevant sector. For example, for a Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 19 19

palm oil sector company, RSPO standards will also serve as a model for the elements to be observed. 10/ HOW TO MAKE A REPORT? 10-1. Who to report to? The report aims, initially, to alert the authorities and CSOs about observed irregularities so that they can initiate appropriate procedures to correct or sanction their authors. Direct report (evidence of illegality) - The head of the competent Water and Forests administration or directly concerned (district, brigade, provincial service), - The Prefect of the locality, - Indirect report (suspicions of illegality, anonymity) - CSOs. 10-2. How to follow up on a report? The follow-up of a report is done through field visits, monitoring of litigation, and follow-up with local administrative authorities. The consideration of our report may manifest through the following elements: the initiation of a control mission by Water and Forests, the summoning of the economic operator by the Prefect or the Governor in case of non-compliance with the Contractual Specifications, the imposition of a transactional fine or the opening of legal proceedings by the Public Prosecutor, the cessation of illegal activity or, in extreme cases, the closure of the operation and the departure of the economic operator. Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 20 20

In general, the elements that allow verification or confirmation of the control mission of Water and Forests are as follows: - Report - Minutes of the infraction observation - Corrective measures to be respected by the operator to be obtained through the Water and Forests administration, or CSOs, the operator: payment of penalties, documented corrective actions. 11/ ANNEXES - Example of a report letter - Example of a suspicion letter - Example of an observation report - References to regulatory texts - Directory of some CSOs working on monitoring illegal logging Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 21 21

Report letter (example) Moutouyeni, May 4, 2017 To Mr. Head of the Water and Forests District – Koula-Moutou – Subject: report of illegal logging activity Mr. Head of the District, We, the community of the village Moutouyeni, have the honor to come to your benevolence to report the illegal logging activity carried out by the company SGEF, whose forestry operations are taking place near our village territory. Indeed, we have observed the felling of several monumental trees, as presented in our attached observation report. Knowing the importance you attach to respecting forestry legislation and preserving the environment, we felt it necessary to inform you. We remain at your disposal for any additional information you may deem necessary. Please accept, Mr. Head of the District, the expression of our deep respect. For the community the Village Chief Mr. LAMBA Attachment(s): - report of denunciation Copy(ies): - Departmental Council of Lolo-Bouenguidi - Prefecture of Koula-Moutou - Brainforest Simplified guide for external independent observation of forests and large-scale investments in the forestry sector

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Suspicion letter (example) Moutouyeni, May 4, 2017 To Mr. Head of the Water and Forests District – Koula-Moutou – Subject: suspicion of illegal logging activity Mr. Head of the District, We, the community of the village Moutouyeni, have the honor to come to your benevolence to share our suspicion of illegal logging activity carried out by the company SGEF, which is logging the forest near our village. Indeed, we have observed that since April 26, trucks loaded with logs have been leaving our forest around two (2) in the morning. This very concerning situation leads us to request a control mission for the aforementioned facts. We appreciate your interest in the strict respect of the forestry code in Gabon, as well as the preservation of our forest heritage. We remain at your disposal for any additional information you may deem necessary. Please accept, Mr. Head of the District, the expression of our deep respect. For the community the Village Chief Mr. LAMBA Copy(ies): - Departmental Council of Lolo-Bouenguidi - Prefecture of Koula-Moutou - Brainforest Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for local communities and CSOs 23 23

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C Observation Report (example) External independent observation report of forests Illegal logging activity Village: Moutouyeni Date: 03/05/17 Incriminated domain(s): Technical standards Customary usage rights Social Workers' rights Environmental Administrative procedures Wildlife and hunting Incriminated Company/Person: GOR BP 111 Koula – Moutou 09.20.99.87 (Mr. Alfred) Permit: CFAD Wagna Details of the observation: - Three (3) stumps of Kevazingo measuring more than two (2) meters in diameter The bases of the trees exceed more than two (2) times my wingspan I measure 1m76 - Crossing a river to extract Kevazingo feet The operator filled the river with earth in order to pull the wood The river has not been reopened after the wood extraction - GPS coordinates of the river filling, and the Kevazingo stumps (recorded with my smartphone) River crossing: E 12° 09’ 33” – N 00° 59’ 32” Kevazingo 1: E 12° 10’ 34” – N 00° 59’ 34” Kevazingo 2: E 12° 10’ 34” – N 00° 59’ 35” Kevazingo 3: E 12° 11’ 35” – N 00° 59’ 35” The observer Stecy PEMBA (09.60.52.68) Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 24 24

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References to regulatory texts Reference Designation Water and Forests 1 Law 16/01 on the forestry code in the Gabonese Republic 2 Technical standards for sustainable management and planning 3 Regulations on other forest products 4 Community forest 5 Customary rights 6 Regeneration, rehabilitation of degraded sites 7 Administrative DME 8 Exploitable species 9 Buffer zone 10 Repression modalities 11 Conditions for permit allocation 12 Contractual specifications 13 Conditions for permit allocations 14 Vacancies – recovery of abandoned wood 15 Repression modalities Environment 16 Environmental code 17 Environmental impact study 18 Discharges of certain products 19 Recovery of used oils Labor and social security 20 Labor code 21 Health insurance and social guarantee 22 Minimum monthly income Simplified guide for external independent observation of forests and large-scale investments in the forestry sector for the use of local communities and CSOs 25

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