Implementation of the right to benefit-sharing from forestry exploitation: comparative study in the provinces of Woleu-Ntem, Ogooué-Ivindo, and Ngounié

Mise en œuvre du droit au partage des bénéfices issus de l'exploitation forestière : étude comparative dans les provinces du woleu□ntem, de l'ogooue-ivindo et de la ngounie

PROJECT: "GREENS THE RESPECT FOR HUMAN RIGHTS IN THE CONGO BASIN" Conducted by Navratilova OYE OBAME (Lawyer) And Martial DJINANG (Lawyer) June 2018 IMPLEMENTATION OF THE RIGHT TO BENEFIT SHARING FROM FOREST EXPLOITATION: A COMPARATIVE STUDY IN THE PROVINCES OF WOLEU-NTEM, OGOOUE-IVINDO AND NGOUNIE

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Page 2 of 33 Acronym ALEFI: Support for the Fight Against Illegal Logging CCC: Contractual Specifications CDG: Dan Gabon Company CFAD: Sustainable Forest Management Concession CGSP: Project Management and Monitoring Committee COMIFAC: Central African Forest Commission CPAET: Provisional Convention for Management-Exploitation-Transformation EFQ: Quentin Forest Exploitation GMM: Gabon Modern Furniture FDL: Local Development Fund NGO: Non-Governmental Organization PFA: Associated Forest Permit

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Page 3 of 33 Summary of the study This comparative study focuses on the evaluation and improvement of the framework for implementing the right to benefit sharing from forest exploitation in the Gabonese Republic. It was conducted in collaboration with several local communities near the forest permits of CDG, KHLL FORESTRY SA, PAT TIMBER, GABON MEUBLES MODERNES, and QUENTIN FOREST EXPLOITATION. This study also involved the participation of other members of the Project Management and Monitoring Committees, established under Order No. 105 instituting a model of Contractual Specifications regarding benefit sharing with local communities of forest concessions. The study describes the international foundations of the right to benefit sharing in the management of natural resources, particularly regarding forest exploitation; presents the national legal framework related to it; analyzes the practical implementation of this right by highlighting the experiences of local communities in 3 areas. The study also evaluates the impact of the implementation of this right on some beneficiary communities. Several elements have thus allowed for the identification of the geographical framework of this study, namely: the importance of forest exploitation, the presence of beneficiary local communities of the right to benefit sharing, the location of these processes in the priority intervention areas of Brainforest, and the presence of 5 forest concessionaires with national and international capital. In general, the study reveals that under the impetus of civil society in some cases or under their own impetus, local actors have effectively engaged in the application of Order No. 105. This analysis also shows that open collaboration and mutual support among actors are crucial for the success of the process. The main challenges observed are the capacity of communities to develop projects, the distribution of FDL based on village lands, confusion regarding the portion of lands retained for the calculation of the FDL, and difficulties in accessing the FDL. The achievements at this stage are limited. Of the 10 signed Specifications, only four are currently being executed at the time of the study. At this stage, it remains difficult to assess the positive impact of forest revenue on the daily lives of local communities. Based on the observed challenges, the study concludes with recommendations to improve both the various questioned processes and the legal framework of the right to benefit sharing from industrial forest exploitation.

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Page 4 of 33 I. Introduction As the second largest tropical forest mass in the world after the Amazon, Central Africa is the region of the continent where the most significant changes are taking place in terms of sustainable forest management. Thus, under the pressure of financial institutions, such as the World Bank, and environmental advocacy organizations, significant reforms have been undertaken by timber-producing countries in Central Africa, through a overhaul of their forestry codes. In Gabon, in particular, forestry companies have been subjected to the introduction of management constraints and new industrial requirements with the obligation to locally process the harvested wood. Furthermore, the introduction of specific forms of social responsibility regarding the sharing of revenues from the exploitation of natural resources, whether financial or not, with communities, through the Convention on Biological Diversity in 1992, has imposed new obligations on forest concessionaires in the context of their exploitation activities. What is the situation in the Gabonese Republic? Located on either side of

the Equator, Gabon, a Central African country, has an area of 267,667 km² with a population of 1,811,079 inhabitants. Approximately 87% of this population is found in Libreville (the capital) and in cities with significant economic activities such as Port-Gentil, Franceville, or Lambaréné. The rest of the population lives in rural areas. This includes local and indigenous communities whose survival is closely linked to the use of lands and forests, which are considered common goods, accessible and usable without restriction. Following Gabon's adherence to various international recommendations and commitments, the legislator, through the adoption of a new forestry code in 2001, integrated several provisions aimed at recognizing customary usage rights for local communities, reducing the impact of forestry activities, and compensating for the impacts on communities. This last aspect takes the form of a right to benefit sharing provided for in Article 251 of Law No. 16/2001 of December 31, 2001. It indeed states that "To promote the social aspect of sustainable forest management policy, a contribution, particularly financial, is established, funded by the holders of these concessions to support collective interest development actions initiated by said communities. The nature and level of this contribution are defined by the contractual specifications related to each concession. The management of this contribution is left to the discretion of the representative assemblies of the concerned communities."

Page 5 of 33 Until 2014, this article had not been the subject of implementing texts to such an extent that its implementation was limited and varied according to different concessionaires. In the absence of regulatory precision, the amount of the financial contribution as well as its allocation modalities to the communities were determined at the discretion of the logging operator, sometimes to the detriment of the communities. The adoption of an implementing text for Article 251 of the Forest Code, namely Order No. 105/MEFPRN/SG/DG/DDF/SACF setting the model for contractual specifications, on May 6, 2014, improved and clarified the legal framework governing benefit sharing by proposing a formal model of Contractual Specifications (CS). This is the contract under which logging concessionaires participate in the development of communities through financial support allocated to the realization of community interest projects initiated by the latter. Order No. 105 also determines the amount of the financial contribution, set at 800 FCFA per cubic meter of harvested wood. This formalism offers greater contractual balance and legal security. Moreover, after the adoption of Order No. 105 in May 2014, the province that committed to a process of signing CS, based on the said order, was Ogooué-Lolo, the seventh province of Gabon. In 2015, the province of Ogooué-Ivindo, supported by NGOs ClientEarth and Brainforest, initiated a process of signing CS based on the related Application Guide. Several other processes initiated by various concerned actors have been launched in this framework. After four years of implementing the model proposed by Order No. 105, it is necessary to question the current framework by identifying aspects that can be capitalized on and those that require adjustments. It is in this perspective that the present comparative study is situated. II. Problematic and Objective of the Study Based on the experience of each actor involved in the implementation of the right to benefit sharing, this study aimed to assess the effectiveness and impact of this right on the communities that are its main beneficiaries. Specifically, it aimed to: 1. Present the model developed by Order No. 105 and document its implementation in a comparative manner among the riparian communities of 3 forest concessions; 2. Question the capacity of the different actors to fulfill their obligations in this framework; 3. Question the socio-economic impact of ongoing processes, particularly regarding the improvement of living conditions for the populations; 4. Formulate concrete proposals aimed at improving the current framework of the right to benefit sharing with local communities in the forestry sector.

Page 6 of 33 III. Presentation of Key Actors: Members of the CGSP of Haut-Ntem, Ivindo, and Tsamba-Magotsi Although the focus is on the riparian communities and the economic operators operating in their areas, for efficiency reasons, all members of the Project Management and Monitoring Committees (CGSP) of the three visited departments were also involved. 1. The Consulted Communities As part of this study, the consultation work was conducted with 15 communities, namely 12 villages and 3 groups of villages concerned with the management of benefits from forest exploitation. These communities were chosen due to their location in areas of high forest exploitation.

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Page 7 of 33 Department Haut-Ntem Villages Metou Evela Doumassi Ngome Mitebe Logging Company: Company Dan Gabon (CDG) Chief: Edouard Messi Population: About 200 Ethnicity: Fang Chief: Awaiting designation Population: Not reported Ethnicity: Fang Chief: Awaiting designation Population: About 200 Ethnicity: Fang and Pygmies Chief: Adèle Amouyeme Population: About 400 Ethnicity: Fang Chief: Norbert EyaghaMvé Population: Over 200 Ethnicity: Fang Department Ivindo Villages Indombo Mohoba (Group of 2 villages) Pont-Zadié Ekobakoba Logging Company: KHLL FORESTRY SA Chief: Ngoubou Marguerite Population: about 350 Ethnicity: Kota Chiefs: Jean Raymond Ndondo & Dieudonné Mouanabiyaka Population: about 800 Ethnicity: Samaï Chief: Jean-Pierre Anisoke Population: about 120 Ethnicities: Kota and Kwélé Population: about 350 Ethnicity: Kota Villages Mbomo Tsiété Mbondou Logging Company: PAT TIMBER Chief: Barthélémy Mbazibadi Population: about 300 Ethnicity: Kota Chief: Jules Mvoumoutou Population: about 300 Ethnicity: Kota Chief: Daniel Bobo Population: about 600 Ethnicity: Kota

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Page 10 of 33 2. The Involved Companies To develop a comprehensive analysis, 5 concessionaires were approached, namely: - COMPAGNIE DAN GABON, located in the Haut-Ntem department. - KHLL FORESTRY SA and PAT TIMBER, located in the Ivindo department. - GABON MEUBLES MODERNES and EXPLOITATION FORESTIERE QUENTIN, located in the Tsamba-Magotsi department. The logging companies surveyed are specialized in the production and processing of logs. With the exception of PAT TIMBER, which locally sells its production to another logging company called Xi Wang Bois SARL (XWBS) under a convention, the other companies export their products mainly to Asia and Europe. Targets Type of permit Origin Exploitation areas Company Dan Gabon (CDG) Concession Forestry under Sustainable Management Start of exploitation: 2014 then interruption Resumption of exploitation: 2016 Chinese Head office: Oyem KHLL Forestry SA Concession Forestry under Sustainable management: Start of activity: 2014. Chinese Head office: Makokou (PK18 Makokou-Ovan axis) State of exploitation: Bélinga Mouniandji Number of villages impacted: 8 PAT TIMBER Start of exploitation: 2014 Annual cutting area under a Provisional Management- Exploitation-

Transformation National capital Head office: None State of exploitation: Stopped Number of villages impacted: 5

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Page 11 of 33 GABON MEUBLES MODERNES (GMM) Permit Forestry Associated n° 13/11 Area: 48,953 ha Start of exploitation: August 23, 2017 Chinese Head office: Libreville State of exploitation: Mamiengue Nzemba Exploitation Forestière QUENTIN (EFQ) Permit Forestry Associated n° 25/13 Start of exploitation: April 13, 2016 Gabonese Head office: Fougamou State of exploitation: Mandilou

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Page 12 of 33 3. The Other Members of the Consulted Project Management and Monitoring Committees For efficiency reasons, other members of the CGSP were also consulted. This includes the Ministry of the Interior represented by the prefects of the Haut-Ntem, Ivindo, and Tsamba- Magotsi departments, decentralized communities represented by the Presidents of the Departmental Councils and Mayors, as well as local officials from the Ministry in charge of forests. Thus, all actors involved in the implementation of the right to benefit sharing in these three departments were consulted and thus contributed to the preparation of this report. IV. International Foundations of the Right to Benefit Sharing Before addressing the national legal framework related to the right to benefit sharing, it is important to refer to the international texts ratified by Gabon that enshrine the right to benefit sharing from the exploitation of natural resources. To this end, we focused on two international texts: the Convention on Biological Diversity and the sub-regional guidelines of COMIFAC on the participation of local and indigenous populations and NGOs in the sustainable management of forests in Central Africa. 1. The Convention on Biological Diversity It is based on 3 fundamental principles: - The conservation of biological diversity - The sustainable use of its elements - The fair and equitable sharing of benefits arising from the use of genetic resources. The CBD recognizes in its preamble that “a large number of local communities and indigenous peoples depend closely and traditionally on the biological resources on which their traditions are based and that it is desirable to ensure the fair sharing of benefits arising from the use of knowledge, innovations, and practices of traditional relevance to the conservation of biological diversity and the sustainable use of its elements.” In Article 8 (j) of the Convention, the Parties have therefore committed to respect, preserve, and maintain the knowledge, innovations, and practices of indigenous and local communities relevant to the conservation of biological diversity and to promote their wider application with the approval of the holders of this knowledge and to encourage the fair sharing of benefits arising from the use of biological diversity.

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Page 13 of 33 2. Sub-regional guidelines on the participation of local and indigenous populations and NGOs in the sustainable management of forests. As part of its sub-regional strategy for the participation of local and indigenous populations, COMIFAC has developed guidelines. Principle 5 of these guidelines is dedicated to access and benefit-sharing from forest management, biodiversity conservation, and environmental services. COMIFAC indicates that States should: Develop, adopt, and implement legislation and regulations in which a specific percentage of the financial benefits derived from logging and biodiversity conservation is allocated to local and indigenous communities living near the exploited or conserved forests; Establish an appropriate mechanism for the return, management, and control of these financial resources by indigenous populations; Develop and implement regulations on the social aspects of the specifications of forestry companies; Establish monitoring and evaluation mechanisms for the implementation of the social aspects of the specifications and communicate

the results to local and indigenous populations. This brief presentation allows us to understand that the sharing of benefits from the management of natural resources is a right that finds its foundations at the international and sub-regional levels. What about at the national level? V. National foundations of the right to benefit-sharing: the legal framework It was during the adoption of the Forestry Code in 2001 that Gabon established the right to benefit-sharing for the communities affected by logging. Indeed, the Forestry Code in its Article 251 states that forestry concessionaires must contribute to the actions of collective interest initiated by rural communities. Article 251 alone constitutes the legal basis for the right to benefit-sharing in the Gabonese Republic. In addition to Article 251 of the Forestry Code, the national legal framework related to the right to benefit-sharing has gradually evolved between 2001 and 2014 and relies on two other fundamental instruments, one binding and the other non-binding, namely: Decree No. 105/MEFPRN/SG/DG/DDF/SACF of May 6, 2014, setting the model for "contractual specifications" which The Application Guide for Decree No. 105 of May 6, 2014. It is Chapter V titled: "Economic, financial, and social provisions" of the Forestry Code that addresses in its Article 251 the issue of benefit-sharing from logging.

 This article announces the "contribution" of the logging operator for the benefit of the communities living near its operation, without presenting the modalities to define the nature of this contribution and the mechanisms to make it effective. This legal vacuum allowed for a very approximate application of Article 251 for nearly 13 years. It was finally on May 6, 2014, that an implementing text was adopted to facilitate the implementation of this provision. As an implementing text of Article 251, Decree No. 105 of May 6, 2014 introduces a model of CCC based on which any benefit-sharing agreement must be concluded. An annex document to the decree, the CCC model provides that the identification of local communities benefiting from the CCC must rely on participatory mapping carried out by the forestry concessionaire. This participatory mapping must also serve in the distribution of the Local Development Fund (FDL) among communities based on the areas impacted by logging. In case of difficulties related to the execution of the CCC, the CCC model contains a unique provision stating that "any dispute arising from the interpretation or execution of the contract is, if possible, settled amicably between the parties. In the absence of an arrangement, the parties agree to submit the dispute to the CGSP. If the dispute persists, the dissatisfied party may refer the matter to the competent court." Furthermore, the CCC model mentions that the benefit-sharing agreement must be concluded within a CGSP comprising representatives from various administrations, the concessionaire, and the affected communities (Articles 17 and 18). The CGSP is responsible for managing the Local Development Fund (FDL) funded by the financial contributions of the concessionaire (Article 5) and distributing it among local communities based on the area of their impacted land (Article 6). To access it, communities must develop projects (Article 7). The financial contribution from companies is set at 800 FCFA per cubic meter of wood cut (Article 6). In its composition, the CGSP includes representatives from the Ministry of the Interior (2), local communities (2), the forestry administration (1), the concessionaire(s), and the affected local communities (one representative per village) (Articles 17 and 18). The CGSP meets twice a year. The first semester is dedicated to deciding on the approval of the budget and projects. In contrast, the second semester is devoted to evaluating (assessing) the achievements of the projects (Article 18). The CGSP is also competent to address disputes that may arise between the concessionaire and the communities (Article 17 of the final provisions). The decree, however, remains silent on the procedure for signing the CCCs. To fill this gap, an Application Guide has been developed by the Ministry in charge of forests in collaboration with civil society and forestry operators. This guide proposes a procedure for concluding and implementing benefit-sharing agreements based on three main steps: a preparatory phase, a negotiation and contract

conclusion phase, and a project development, implementation, and monitoring phase. Although the guide is validated by the administration, it does not have binding value. Responsibilities of actors in the implementation of the right to benefit-sharing

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Page 15 of 33 Referring to the aforementioned texts, it appears that the benefit-sharing mechanism is conducted within the CGSP. However, specifically, each actor must play the following role: The Prefect, as the representative of the Governor, must: initiate the process by identifying, informing stakeholders, and establishing the CGSP; convene the various CGSP meetings during which aspects of validating village lands, developing internal regulations, determining operational costs, registering village representatives, negotiating and signing the CCCs, validating projects, funding the FDL, managing conflicts, and monitoring are addressed. The Local representative of the Ministry in charge of forests: He/she ensures the secretariat of the CGSP and validates the production statements of logs presented by the forestry concessionaire. Local communities through their representatives: They must participate in the validation of village lands, organize to designate their representatives, initiate and submit project proposals considering the general interest criterion, submit requests for occasional support respecting the retained percentage, participate in various CGSP meetings, monitor funded projects, and report back to their communities. The forestry concessionaire: He/she is responsible for conducting participatory mapping with local communities or certifying the lands, assisting local communities in determining their lands, signing the CCC with the communities, funding the FDL, and consequently financing the various projects approved by the CGSP. The Departmental Council: It participates in the consultation of communities on the choice of common projects (involving several villages) and in monitoring the implementation of all projects validated by the CGSP. The Mayor or representative of the Municipal Council: He/she is responsible for monitoring community interest projects validated by the CGSP. Criteria for selecting community projects To benefit from funding from the Local Development Fund, the Application Guide provides that projects must comply in form and substance with specific criteria and must be oriented towards the sectors of health, education, agriculture, livestock, fishing, road infrastructure, village hydraulics, or community forestry activities. In substance, projects submitted for consideration and validation by the Project Management and Monitoring Committee must have a community and sustainable character. In form, projects must consist of a logical framework, a budget, and the minutes of the project's adoption by the representative assembly of the community.

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Page 16 of 33 VI. Implementation and impacts of the right to benefit-sharing in the 3 target departments of the study. This section aims to provide an overview of the various processes by questioning their initiation, functioning, and the challenges they face. A. In the Haut-Ntem department: Survey on the permit of the Dan Gabon Company (CDG) Initiation of the process and technical support received In the Haut-Ntem department, the process of implementing the Contractual Terms of Reference started with significant delays. Indeed, 4 years after the signing of decree 105, the process is still in its preparatory phase. The main reason cited is the necessity for all actors involved in the implementation of the right to benefit-sharing to familiarize themselves with the legal and regulatory framework related to it in Gabon. Thanks to the technical support from the NGOs Conservation Justice and Brainforest, provided within the framework of the “ALEFI” project, as well as the willingness of the new administrative authorities led by the Prefect of the Haut-Ntem department, we witnessed the revitalization of the process at the beginning of 2018. This technical support initially focused on establishing a functional CGSP through the development of the basic texts of the Committee, and on strengthening the

capacities of all actors regarding the legal framework and communities on the following aspects: how to form an association and appoint its representatives, how to identify and develop collective interest projects. Establishment and functioning of the CGSP In February 2018, the CGSP of the Haut-Ntem department was established by the Prefect of this administrative district, in the presence of all actors concerned with the implementation of the right to benefit-sharing, with the joint involvement and facilitation of the local services of the Ministry of Water and Forests and civil society. As provided for by regulatory provisions, the CGSP is established during a meeting convened by the Prefect. It is therefore he who triggers and facilitates the process at the departmental level. At his request, all actor members of the CGSP, local communities, and administrations designate their representatives. It should be noted that for the communities, this designation is made after consultation and is formalized by a record of designation. To date, apart from the establishment meeting, the committee has held its first semi-annual meeting. It focused on the adoption of the internal regulations and the formal installation of the Permanent Bureau of the CGSP. In addition to these meetings, the CGSP has conducted several other activities such as raising awareness about the village lands in the villages impacted by the CDG permit. Also, a first participatory mapping exercise was carried out with the financial support of the operator under the supervision of the Provincial Directorate of Water and Forests to identify and determine the village lands. In the absence of a funded development fund and to enable the CGSP to carry out its missions and revitalize the entire process, the committee decided by consensus to request pre-financing from the forest concessionaires in the department based on a well-defined amount, pending the signing of the CCC and the funding of the FDL, of which 3 to 5% of the total amount is allocated to the functioning of the CGSP. Choice, Financing, and Impact of community projects In accordance with the provisions of Article 105, the CGSP of Haut-Ntem entered in May 2018, into the phase of identifying and validating the village lands with the communities. The next steps are the calculation of the production of the forest operators, the calculation of the FDL to be allocated to each community, the submission, validation, and monitoring of community projects. Therefore, it is not possible to analyze the impact of the projects, as the process is in its initial phase. Challenges faced For the Prefect of the department, the greatest

challenge is to see community projects come to fruition. He also mentioned the need for the involved administrations to maintain their independence and freedom of action, staying clear of any form of compromise. Furthermore, he noted the low capacity of communities to formulate collective interest projects. B. In the Ivindo department: Survey on the permits of KHLL FORESTRY and PAT TIMBER Initiation of the process and technical support received For the launch of the process of signing the CCC in the Ivindo department, the involved actors benefited from technical support from the NGOs ClientEarth and Brainforest between June 2015 and March 2017. This technical support particularly focused on capacity building regarding the legal and regulatory framework of the right to benefit-sharing, the steps to follow, and the various responsibilities of the CGSP members. This work revealed the low capacity of communities to develop projects, hence the provision of simplified project development forms by the support structures. Beyond the dynamics initiated within the framework of this process, this technical support served as a pilot experience in implementing the right to benefit-sharing based on the initial version of the Application Guide. Following this, an improved version of the guide was produced and subsequently validated by the actors involved in forest resource management in Gabon.

 Establishment and functioning of the CGSP It should be noted that its establishment and functioning were also carried out with the technical support of the NGOs

ClientEarth and Brainforest, as the various actors were unfamiliar with the approach provided by the new texts. The Prefect, in exercising his responsibilities, triggered and facilitated the implementation of the process at the departmental level. Before the establishment of the CGSP and following the Prefect's request, the communities, after consultation, designated their representatives. The consultation of the communities allowed addressing the issue of choosing representatives but also the responsibilities attached to them, namely: consulting the base, expressing in its name, and the obligation to report back. After the representatives were designated by the various stakeholders, the CGSP was established and met several times to carry out its various missions, exceeding the number of 2 sessions provided for by the texts. This is justified by the novelty of the process and consequently its low appropriation by all concerned actors. Based on the exploitation data for the year provided by the forest operators and confirmed by the local representative of the Ministry in charge of forests, the amount of the FDL was calculated by community. The culmination of this work was the signing of the CCC for a duration of one year followed by the presentation of community projects in March 2017. Lacking project writing capacities, the communities were also assisted in this regard by the provision of simplified project development templates. The work of the CGSP and the pressure exerted by the Prefect on the forest concessionaires led to the signing of 12 CCC between 9 forestry companies and 27 communities. The logic that prevailed, for practical reasons, was to sign the CCC based on the geographical location around each concession. Thus, all communities bordering a concessionaire signed a single CCC with that concessionaire. Although contrary to the content of decree n°105 of May 6, 2014, this mechanism actually simplified the procedure. This grouping by concessionaire did not alter the amount of the FDL, which is essentially based on the production data of the logs and the extent of the village lands. The work of the CGSP also allowed the forest concessionaire to finance the operating costs and the first wave of requests for occasional support submitted by the communities. Due to the central role assigned to the Prefect, his death a few months later put an end to the dynamics initiated in this framework. In the absence of a replacement appointed or designated by the supervising administration, this situation of halt was current until March 2018, during which the Governor of Ogooué-Ivindo decided to relaunch the process by organizing a meeting of the CGSP aimed at validating the community projects submitted in March 2017. During this meeting, the projects submitted by the 7 villages impacted by the permits of KHLL FORESTRY and PAT TIMBER and concerned by our study were validated.

 Despite the observed progress, criticisms have been directed at certain representatives of the administration whose better involvement would have facilitated the proper implementation of the process. This reluctance was later explained by the difficulties in collaboration observed between the prefecture and the local services of the Ministry in charge of forests. Another difficulty arises from the little effort made by the local Water and Forests services and the forestry company regarding the realization of the participatory mapping necessary for determining village lands. In the absence of this data, the FDL was distributed on an approximate basis. Indeed, the different territories were determined based on the natural boundaries communicated by the communities to the forestry administration. Choice, Financing, and Impact of Community Projects Regarding the choice of community projects, it is important to note that this was done without hindrance, as the communities decided to respect the criterion of collective interest. This justifies the rejection of some projects due to insufficient FDL rather than non-compliance with the collective interest criterion. Based on the support received in 2015 and 2017, the communities initiated the following projects: electrification of the villages by a generator group, construction and rehabilitation of basic infrastructures (dispensaries and schools), creation of a community forest, and construction of a listening hut. The initiative taken by the Governor to ensure the interim presidency of the CGSP, as well as the appointment in

April 2018 of a new Prefect for the Ivindo department, will contribute to accelerating the process. Indeed, in June 2018, three months after the validation meeting of the community projects by the CGSP, the company KHLL FORESTRY began the execution of its specifications signed with the communities of Ekobakoba. In fact, in addition to the construction of the shed intended to house the generator, this operator, according to a correspondence addressed to the administrative authorities and shared with us during this study, planned an official ceremony for the handover of the generator on June 23, 2018. Furthermore, the KHLL company plans, according to the program communicated to the CGSP, to deliver the two classrooms intended to house the preschool of the Mohoba school by June 30, 2018, and the dispensary of the village Indombo by June 20, 2018, at the latest. Moreover, the company PAT TIMBER has still not supplied the FDL. The managers of PAT TIMBER state that it has gone bankrupt and is therefore in liquidation proceedings, hence the non-supply of the FDL in favor of the communities it impacts. The resource having been effectively withdrawn, the departure of this operator without fulfilling its social commitments will undermine the right to benefit sharing of the communities. The low enthusiasm of PAT TIMBER could find its foundation in the legal void observed at the level of sanctions for the absence of signature and implementation of the CCC. Indeed, the referral of the parties to the judicial courts as provided by the decree in case of unresolved disputes amicably is not sufficiently deterrent for these forestry concessionaires. The right to benefit sharing being a legal obligation in its own right, it is necessary that its non-compliance leads to strong sanctions on both the penal and administrative levels. At the time we are conducting this study, we cannot speak of socio-economic impacts of logging in the affected villages as no CCC has been fully executed. But it is important to note the willingness of the KHLL company to comply with the legislation based on the observed progress in respecting its social commitments. The measurable impact is one of impatience, dissatisfaction, and suspicion. The communities, while noting the advantages of the process in terms of an official and participatory framework, are surprised by the delays observed in

terms of the execution timeline of the CCC, a fact that seems to be the origin of the crisis of confidence that is settling between the representatives and the communities of the villages impacted by the permit of the company PAT TIMBER. They also question the ability of the forestry concessionaires to supply the FDL for the past three years since the signing of the first CCC in 2014 (2015, 2016, and 2017) and to respect their commitments in this framework. Before this situation, the communities encountered seemed to appreciate the framework established by decree no. 105. Regarding the nature of the relationships that once existed with the forestry concessionaires, all agree that they could be conflictual, with some even leading to violent claims. With the arrival of a formal framework, relations have become significantly calmer. The current blockage situation, particularly in the case of PAT TIMBER, is likely to jeopardize these various gains. Main Challenges Observed It should be emphasized that the support received from ClientEarth and Brainforest has been decisive for the observed progress in this process in terms of knowledge and management of their responsibilities by the various actors. It goes without saying that in the absence of this support, the members of the CGSP would face more difficulties. Given the prevailing situation, additional support should be considered. Despite the effort they put in, the communities face enormous difficulties in setting up projects in the absence of external support. Similarly, it is noted that the absence of participatory mapping has allowed for an approximate determination of community lands. To address this difficulty, the authorities opted for an easy solution, namely determining the lands based on natural boundaries. This approach does not allow communities to fully play their role and take ownership of the different stages of the process. Clearly, the implementation of the right to benefit sharing of the communities depends on the dynamics of other actors. Indeed, as can be observed, as long as they do not play their roles, the communities pay a heavy price.

Page 21 of 33 C. Department of TSAMBA MAGOTSI: Survey on the permits of GABON MEUBLES MODERNES and the Forestry Exploitation QUENTIN Start of the process and technical support received Like the Haut-Ntem department, the process of implementing the right to benefit sharing is quite recent in the Tsamba-Magotsi department. Indeed, it was between December 2017 and January 2018 that the first Contractual Specifications were signed between the companies Gabon Meubles Modernes, Exploitation Forestière Quentin, and the villages of Nzemba-Mamiengue and Mandilou. In the absence of external technical support, the local NGO Muyissi Environnement has committed to following the process through its various phases. To this end, it has conducted awareness-raising among local communities about their right to benefit from the outcomes of forestry exploitation. It has encouraged the authorities to implement this process. It was following this that a place was reserved for it in this process as an observer. Despite the delays since the signing of decree 105, the local authorities, led by the Prefect, are working to ensure that the first signed CCC are executed before the end of 2018. Establishment and functioning of the CGSP The Project Management and Monitoring Committee of the Tsamba-Magotsi department has been established with the encouragement of the NGO Muyissi Environnement. In this regard, several meetings have been held alongside the meeting to establish the committee. These meetings focused either on raising awareness and informing the communities, or on signing the CCC, or on moderating misunderstandings that may arise from the execution of a specification. However, based on discussions with the various stakeholders, it appears that the CGSP of Tsamba-Magotsi is experiencing some operational difficulties. Despite the dynamism of all the authorities on the issue of implementing the right to benefit sharing, the communities seem to be kept out of the process. Indeed, they assert through their representatives that they are little involved in the activities of the CGSP. They have never participated in the project validation meeting as provided by decree 105. The communities are content, if possible, to identify a project of collective interest and submit the pro-forma to the forestry concessionaires who take charge of executing the CCC. This practice raises both the issue of supplying the FDL and the withdrawal of the operating costs of the CGSP. Furthermore, and exceptionally, the CGSP of Tsamba-Magotsi, given the low amounts of FDL from the villages of Mandilou, Nzemba, and Mamiengue (4 million 600 thousand Francs in total), decided for the year 2018 not to make any withdrawals for the operating costs of the CGSP. This once again reflects its willingness and selflessness to successfully carry out its mission.

Page 22 of 33 Choice, Financing, and Impact of Community Projects The communities of Mandilou and Mamiengue were easily able to identify the collective interest projects they wished to implement. For the village of Mandilou, whose FDL is 2,800,000 Fcfa, the CCC concerned the purchase of two tents (8mx5m), 150 chairs, 4 drums of diesel, and 10 cans of motor oil. For the village of Mamiengue, whose FDL amount is calculated at 900,000 Fcfa, it was about supplying the village dispensary with medicines. The communities of the village of Nzemba, on the other hand, are struggling to identify a project to submit. In May 2018, five to six months after the signing of the three (3) CCC, none had been executed. On May 28, 2018, the populations of the village of Mandilou officially contacted the CGSP regarding the non-consideration of their right to benefit sharing by the Concessionaire ESQ. The latter, having been reminded by the Prefect, committed to delivering the 400 liters of diesel that would allow the village group to operate within two weeks following the meeting with the Prefect. Main Challenges Observed One of the main challenges lies in the low capacity of the communities to identify and develop sustainable projects. According to the characteristics of the projects mentioned in the Guide, a project presents a logical framework and a budget. It is clear that at the village level, communities are

not sufficiently equipped to define a logical framework or even plan the implementation of a project other than infrastructure projects. Thus, without support, communities cannot adequately invest in the setup and monitoring of projects. This is an opportunity to specify that this support has been necessary for all the communities visited as part of this study. It is also important to inform them about the mechanism of one-off supports as many confuse it with the financing of collective interest projects. The communities express serious reservations about the authenticity of the log production data communicated for calculating the FDL. The silence of the administration on this issue and especially the communities' inability to confirm such data reinforce their suspicions and are likely to create a climate of distrust among the different actors.

 VII. Conclusion and Recommendations for Improving the Implementation Framework of the Right to Benefit Sharing While in the Haut-Ntem department, the process of implementing the right to benefit sharing is in its initial phase, in the Ivindo and Tsamba-Magotsi departments, there are indeed signed CCCs between communities and economic operators within the framework of the various CGSPs established. The main difficulties in these two departments remain the funding of the FDL and the effective financing of community projects. This study reveals a low impact, to date, of the CCCs on the communities' way of life. It also highlights the various challenges observed in the three processes, emphasizing the weaknesses inherent to all stakeholders involved in the implementation of the right to benefit sharing in the three (3) departments. Based on these three experiences, weaknesses related to the legal framework have also been highlighted. To address the shortcomings observed in the various processes and contribute to an effective implementation of the right to benefit sharing in these departments and beyond, we make the following recommendations: - Regarding the functioning of the CGSP: A capacity building of all actors who are members of the CGSP is necessary on the legal and regulatory framework related to the right to benefit sharing. Likewise, it is important that CGSPs are not the exclusive domain of local authorities; it is necessary to involve communities more, as provided for in the texts. The legal vacuum regarding the functioning of a CGSP in the absence of the prefect paralyzes the process and consequently harms the communities benefiting from the FDL, as observed in Ivindo. To this end, we make two (2) recommendations regarding the reorganization of the regulatory framework. The first would be to create a vice-president position for the CSGP, held by the Secretary General of the Prefecture, who would replace the president in case of absence, and the second would be to recognize a power of self-referral to the CGSP, particularly in the event of the president's death or prolonged incapacity to perform his duties. Thus, by a decision of ¾ of its members, the CGSP could take the initiative to continue its activities after a maximum period of one month. Such a mechanism would provide it with considerable flexibility and ensure the effectiveness of the benefit sharing process in terms of continuous operation.

 - On the determination of village lands through participatory mapping: While participatory mapping is a mandatory element of the CFAD management plan, it is not an obligation for holders of PFA or CPAET. It is therefore necessary that this obligation be attached to all types of permits. It is also important to ensure the realization of participatory mapping with the involvement of the concerned communities and neighboring communities to avoid any future conflict. - Regarding the certification of village lands: In the absence of participatory mapping, the Guide recommends proceeding, based on the concession maps, to an exceptional determination of the lands by the logging concessionaires accompanied by the local forest administration, and this, with the communities. This approach should also be favored with the involvement of neighboring communities for the signing of future CCCs to respect the texts that

recommend a distribution of the FDL in proportion to the village lands. - Regarding the confusion over the portion of land concerned by the calculation of the FDL: To avoid misunderstandings with the communities, it is important that additional work be done in terms of presenting the process and the modalities of calculating the FDL. This presentation should notably clarify that the element taken into account in the calculation of the FDL includes, among other things, the portion of the village land included in the logging concession and not the entirety of the village land as some communities encountered seem to think. - Regarding the capacity of communities to draft projects: Practically, communities must have the capacity to develop sustainable projects that can survive after the depletion of the FDL. However, this project development exercise proves to be difficult for communities in the absence of external support. To remedy this situation, we recommend the involvement and collaboration of the Municipality and the Departmental Council in this mission. This approach will also allow for the retention of projects that align with the local development plan of the area. - Regarding the calculation and access to the FDL: The Local Development Fund must be calculated transparently in the presence of all stakeholders. During this meeting, the CGSP must evaluate the amount reserved for the functioning of the CGSP, the amount of one-off support, as well as the sums intended for financing community projects. From the side of the logging concessionaire, the amount of the financial contribution is determined based on the volume of wood cut in the previous year and confirmed by the representative of the forest administration. The transfer of funds into the FDL - domiciled in the company's bank account - must be carried out after the workbooks have been validated by the administration.

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Page 25 of 33 To ensure the mandatory nature of the FDL financing by the concessionaire, the following rules could be adopted: - Provide a deadline after which the concessionaire must have submitted to the president of the CGSP proof of financing for the community projects validated by the CGSP and penalties in case of delay; - Provide local corrective and punitive measures in case of non-compliance with obligations by the concessionaire; - Involve the forest administration to compel logging operators to respect their commitments. - On corrective and punitive measures in case of non-compliance with obligations by concessionaires: In practice, in the Ivindo Department, the difficulties encountered during the signing and implementation of the CCCs could not be resolved amicably. Furthermore, the Forest Code does not contain specific punitive measures for cases of non-compliance with obligations related to benefit sharing. Thus, in the absence of sanctions, concessionaires feel no pressure or constraint. Therefore, it is important that sufficiently deterrent sanctions be provided for offenses such as the absence of signature of the CCCs or their non-implementation. In addition to criminal sanctions, it is necessary to add administrative sanctions such as the cessation of exploitation activities by the administration.

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