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Logging in the shadows

How vested interests abuse shadow permits to evade forest sector reforms



An analysis of recent trends in Cameroon, Ghana, the Democratic Republic of Congo and Liberia

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Global Witness investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses.

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Acronyms

ARB-AEB	Authorisations for Timber Recovery and Wood Removal Permits, commonly known as 'small titles' (Cameroon)	FWG	Forest Watch Ghana, Ghanaian NGO
CED	Centre for Environment and Development, Cameroonian NGO	JMRM	Joint Monitoring and Review Mechanism of the VPA implementation in Ghana
CONAC	National Anti-Corruption Commission of Cameroon	MINFOF	Ministry of Forest and Wildlife
DRC	Democratic Republic of Congo	NGOs	non-governmental organisations
EU	European Union	PUPs	Private Use Permits (Liberia)
EUTR	European Union Timber Regulation	REM	Resource Extraction Monitoring, NGO appointed as Observateur Indépendent in Cameroon and then in DRC
FLEGT		SAMFU	Save My Future Foundation, Liberian NGO
VPAs	Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreements, EU Programme	SDI	Sustainable Development Institute, Liberian NGO
FC	Forestry Commission (Ghana)	SIIB	Special Independent Investigating Body on PUPs in Liberia
FDA	Forest Development Authority (Liberia)	UN	United Nations
FMCs	Forest Management Contracts, Liberia's large forest concessions	US	United States of America
		VPAs	Voluntary Partnership Agreements



PUP Timber in Greenville, Liberia. Since January 2013 timber exports from Liberia have been banned under a presidential Executive Order.

Executive summary

In recent years, national governments and their international donors have poured huge amounts of money, time and resources into trying to stop the corruption and illegality that plague the forest sector. Reform efforts have focused on preserving what is left of tropical rainforests, protecting the rights of the people that depend on them, and strengthening the rule of law in producer countries. Notable examples include the European Union Timber Regulation (EUTR), the EU's Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreements (FLEGT VPAs), and the extension of the Lacey Act in the United States (US).

Yet progress is slow. None of the flagship VPAs are currently operational, and the media and non-governmental organisations (NGOs) still regularly uncover scandals involving big logging companies and corrupt officials.

This report asks why that is. Drawing on investigations and interviews by Global Witness and others over the course of the past year, it uncovers a largely hidden phenomenon undermining reform efforts. The systemic and targeted abuse of small, poorly regulated logging permits by logging companies is facilitating quick access to forests for commercial logging, in spite of tighter regulations and oversight. These 'shadow permits' are allocated in secret and subject to few controls over their operations. Their characteristics typically include low taxation, poor consultation with local people and minimal environmental requirements.

This report identifies a pattern of abuse across four countries in Africa whereby political elites, forestry officials and logging companies are colluding to maintain easy access to timber. In doing so they are systematically bypassing new laws and environmental safeguards designed to protect forests and the communities that live in them. The extensive granting of shadow permits in the Democratic Republic of Congo (DRC), Liberia, Ghana and Cameroon shows that corruption is still the main threat to tropical rainforests, and is robbing communities and local people of their livelihoods.

Originally intended to promote small, local enterprises and to meet local needs in a controlled, regulated way, shadow permits are now being allocated in their hundreds for commercial use. Once allocated, shadow permits can open the door to large-scale, intensive and exceptionally profitable logging operations due to the absence of effective oversight by the authorities. Governments and other relevant authorities have repeatedly failed to stop the abuse of shadow permits,

with the result that logging is often much more extensive and damaging to forests than originally intended.

European-led reform efforts have focused on large-scale concessions that produce timber for export but in each country shadow permits have provided a loophole to bypass tighter regulations. Weaknesses in legal frameworks, and corruption at all levels of government, have enabled companies to continue to export large amounts of timber to the EU, US and China. In some cases, shadow permits have opened the way for trade in rare or threatened species, such as rosewood and wenge.

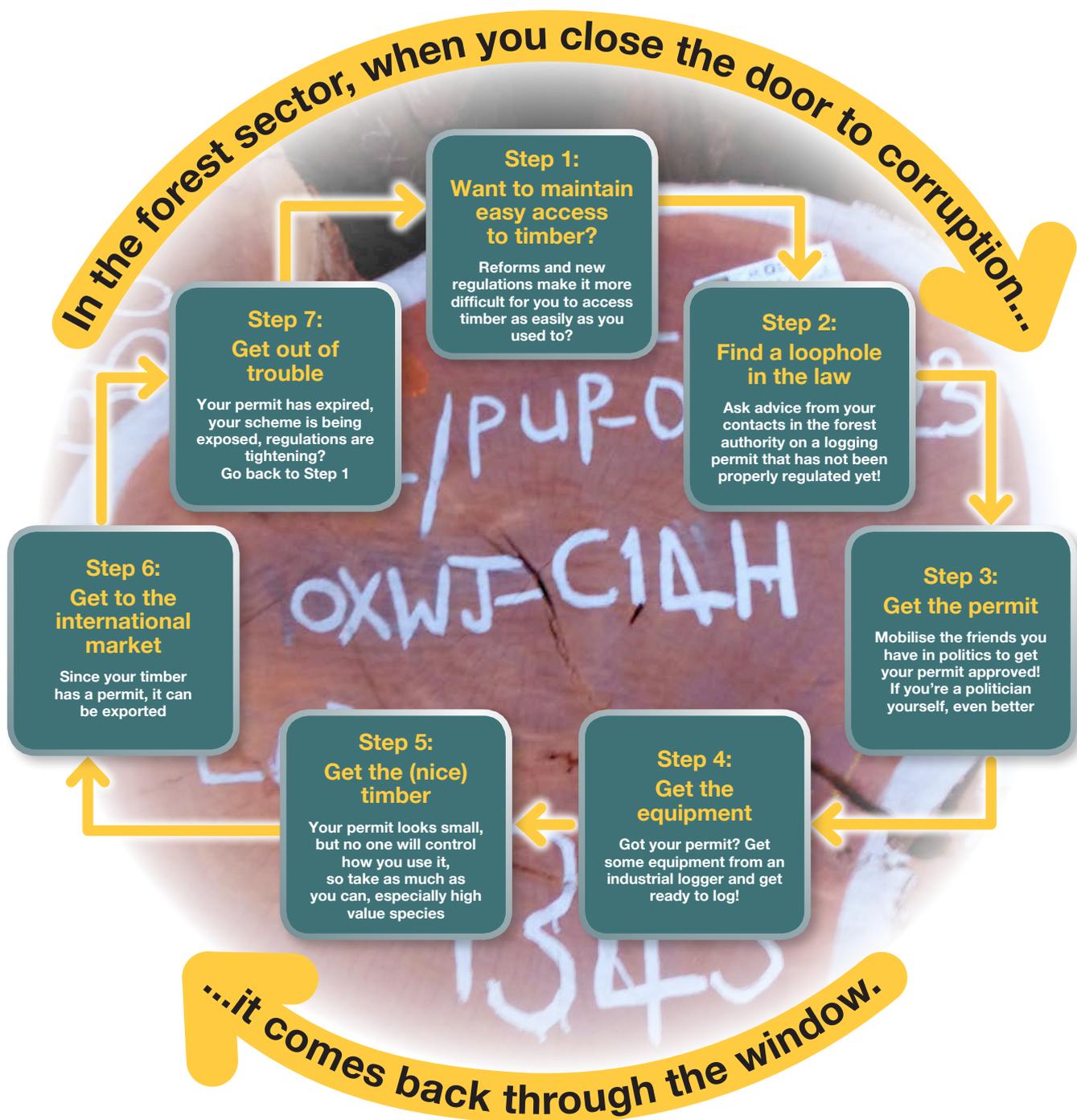
As well as giving loggers access to the forests in the first place, shadow permits add a veneer of legality to timber for export. While Independent Monitoring or civil society investigations have been successful in exposing shadow permits in all four countries, the difficulty in getting information underlines the secrecy used to allocate the permits. Furthermore, every exposé has come long after logging has started. If it takes tenacious investigations to bring the information into the public domain, it is far too late for the forests and the people that live in them.

Shadow permits are the product of a political economy that privileges power, patronage and vested interests above wider society and the environment. Bad behaviour by self-serving and unaccountable elites undermines citizens' confidence in government and stifles the growth of sustainable local economies. In the absence of a functioning permit system for local use, forest-dependent communities are forced to meet their timber needs illegally, further undermining the rule of law.

This is a systemic problem that must be addressed if VPAs and similar initiatives are to meet their reform objectives. To address illegality in the forest sector, and promote more sustainable logging, producer and consumer governments must address the way in which decisions are made about allocation of resources. Unless the root causes of corruption and deforestation are addressed, Europe's VPAs and other initiatives will fail to drive reform of the global timber trade, and the world's tropical rainforests will remain at risk of extinction.

This report examines the shadow permit systems of four African countries that have VPA initiatives with the EU:

- The DRC: between 2010 and 2012, dozens of *Artisanal Logging Permits* were allocated, mostly to foreign industrial companies, violating DRC's forest laws in at least ten different ways.



- Liberia: companies have abused licences known as *Private Use Permits* (PUPs) to buy up a quarter of the country's total land mass in just two years, placing Liberia's forests and the people who depend upon them under severe threat and risking the collapse of the country's fragile post-conflict reform efforts.
- Ghana: the Forestry Commission (FC) secretly granted more than 400 Salvage Permits while assuring civil society and the EU that it would "ensure a satisfactory conclusion to the matter".¹

- Cameroon: throughout 2011, the former Minister of Forests granted dozens of 'small titles',^a a long-standing byword for illegal logging, while pretending to regulate them.

These countries were the focus for *Making the Forest Sector Transparent*, a four-year programme to improve transparency and accountability, which concluded in March 2013.

^a 'Small titles' is a generic term to refer to two types of permits (in French, ARB and AEB respectively): Authorisations for Timber Recovery and Wood Removal Permits

Summary recommendations

Full recommendations are on page 30. In summary, Global Witness strongly recommends that:

- The EU and governments of producer countries involved in efforts to improve the legality of the timber trade address all types of permits as a matter of priority. An open, transparent, and competitive allocation process is essential to ensure that a fair price is paid for access to resources, and to maintain trust and accountability in the forest authorities and loggers.
- Until then EU and US importers should consider timber logged under any of the shadow permits covered by this report as high risk and potentially illegal. Importers need to exercise sound due diligence for timber logged under any permit, and not

assume that timber is legal because it has a permit. Traders need to ascertain the precise location from which timber originated as well as whether each permit allocation followed due process.

- All timber-tracking systems implemented under FLEGT must be linked to a publicly accessible web portal to make key information public, including all permits, their location, area, social agreements, contract documents, production, tax liability, and other payments or arrears.
- Efforts to provide a meaningful legal framework for community-based approaches to forest management, and to devote adequate resources to its implementation, need to increase dramatically so that forest-dependent people are not disenfranchised but can enjoy proper control over their own resources.



From 2010 to 2012, dozens of artisanal permits were allocated in violation of the DRC's forest laws, mostly to foreign loggers

Forest governance reform at stake

Vested interests and resistance to reforms

Over the past decade, in the face of increased logging, worsening deforestation, persistent illegality, and outdated laws, several forest-rich African countries have begun to reform the way they manage their forests. Their efforts are based on sound principles: regulating large-scale logging concessions, recognising community rights, and sharing the benefits of logging. But the reforms have been consistently undermined by corruption. Political elites, loggers, and forestry officials frequently collude to protect their power base and vested interests.

In Cameroon, concerns over enforcement of the forest law led to the establishment of Independent Forest Monitoring missions (Observateurs Indépendants) in 2000 to oversee permit and contract allocations and investigate systemic illegality. However, more than a decade later, corruption continues to pervade the highest levels of the administration.² In a recent report, the National Anti-Corruption Commission described a “sector rotten with corruption and contributing less and less to Gross Domestic Product”.³

In Ghana, the Forest and Wildlife Policy (1994) and the Timber Resource Management Act (1997) were supposed to introduce open competitive bidding for concessions to ensure the best price for the resource and to help counter corruption, but the reforms have still not been fully implemented.⁴ As a result, millions of dollars in potential revenue have been lost, and the vast majority of timber production in the country still does not follow due process.

Similarly, in Liberia, where timber revenues financed civil wars which lasted 14 years, the United Nations (UN) has shown that lack of compliance in concession allocation and a tax collection rate of just 15% have resulted in production and revenues far below government projections. Reforms of the timber sector are being circumvented, including those designed to avoid conflict financing.⁵

Meanwhile, in the Democratic Republic of Congo (DRC), progress in implementing the 2002 Forest Code has been extremely slow, and logging has continued in earnest with minimal oversight. The first annual report from the DRC’s Observateur Indépendant describes a “deep dysfunction of legislative, executive and judicial power”, and warns that the failure to implement reforms “creates major legal voids opening the door to irregularities of all types and on a large scale”.⁶

Shadow permits: below the EU’s radar

In an effort to revive and scale up flagging reform attempts, in 2003 the European Union (EU) launched the Forest Law Enforcement, Governance and Trade process. The FLEGT Action Plan “is the start of a process which places particular emphasis on governance reforms and capacity building”.⁷

Under FLEGT, Cameroon, Ghana, Liberia and the DRC have all sought to negotiate binding bilateral agreements with the EU designed to protect forests. These potentially groundbreaking Voluntary Partnership Agreements (VPAs) aim to harness consumer power to boost demand for legally sourced timber – both for domestic use and export – and conversely to deter illegal timber production. Since 2010, Ghana and Cameroon have ratified VPAs with the EU, Liberia’s has been signed but is awaiting ratification, and the DRC has commenced negotiations.

The focus of VPAs has been on large-scale concessions on which timber is predominantly cut for export, and on paper there has been notable progress. The allocation process has become much more open and the conditions under which companies are required to operate are more stringent, requiring greater professionalism and transparency.⁸ However, the reality is that with so little forest left after decades of industrial scale logging, and with few companies able to satisfy the new requirements, the allocation of these large-scale ‘sustainable management’ concessions has effectively stopped in each country.

Instead, different types of permits that allow logging on a smaller scale or for a shorter period of time are increasingly being taken advantage of by export-oriented companies (see Table 1). In spite of originally being intended for use by local communities or artisanal loggers, these so-called ‘shadow permits’, have become a significant source of commercial timber, concentrated in the hands of relatively few industrialists who have – often with the collusion of governments – subverted them for their own gain.

Shadow permits are generally subject to less regulation and scrutiny than permits for larger-scale, commercial logging. This has long created problems. In Cameroon for example, Observateurs Indépendants have documented illegality and corruption associated with the so-called small titles,⁹ while in Ghana, the

proliferation of Salvage Permits has caused the loss of millions of dollars and reportedly left the Forestry Commission (FC) nearly bankrupt in 2004.¹⁰ The use of shadow permits to evade tighter regulation of other permits is now an escalating trend, which should concern policy makers and environmental campaigners worldwide. It poses a particular threat to the new European Union Timber Regulation (EUTR), designed

to prevent import of illegal timber, which will prove ineffective if it is unable to exclude timber cut under such permits from European markets.

This report focuses on four examples of shadow permits: Cameroon's small titles, the DRC's Artisanal Logging Permits, Ghana's Salvage Permits, and Liberia's Private Use Permits (PUPs). It is highly likely that similar shadow permits exist in countries not covered here.

Table 1: Key characteristics of shadow permits in each country

	 Cameroon	 DRC	 Ghana	 Liberia
Name of the permit	Commonly known as 'petits titres' but actually Authorisation for Timber Recovery and Wood Removal Permit	Permis de Coupe Artisanaux (Artisanal Logging Permits)	Generally Salvage Permits but also given the broader description 'administrative permits'	Private Use Permits
Legal basis	Articles 56 and 73 of the 1994 Law on Forest, Wildlife and Fishing. ¹¹ Four new regulations from 2006 to 2009 and another being drafted ¹²	Article 112 of the Forest Code ¹³ and subsequent regulations n.035 ¹⁴ and 105 ¹⁵ on logging operations	Article 38 the 1998 Timber Resources Management Regulations ¹⁶	National Forestry Reform Law ¹⁷ , article 5.6. PUPs are the only type of permit for which no regulation exists
Basic rationale	For timber cut as part of development project or abandoned	Small scale logging in community forests	For the salvage of trees from an area undergoing development	To allow commercial use of forest resources on private land
Delivering authority	Minister of Forests and Wildlife	By the provincial governor	FC – chief conservator of forests	Forestry Development Authority (FDA), with approval of the Head of the FDA board
Where?	On land allocated to a development project or where timber is abandoned	In a community forest (this designation is not codified until the community forestry decree is passed)	On land allocated to a development project (roads, farming)	Private land, with permission of the land owner and consistent with the classification of the land
Permit holder	To anyone certified to harvest wood in agreement with the project developer	Must be a person of Congolese nationality, registered artisanal logger, using a pitsaw or a chainsaw	To any registered logger	No regulation, but presumed to registered logger.
Size limit	1000 hectares (ha) and for a precise volume of wood. Presumption is clear-fell (for development)	50ha. Presumption is sustainable logging under community management	A specified number of trees. Presumption is clear-fell (for development)	None in the law but for the Land Commission it should be the same as Public Use Permits, i.e. 1,000ha ¹⁸
Maximum number of permits?	No	Yes, two per year	No	No
Time limit	6 months	One year	No regulation, in practice permits are for a few months	No regulation, in reality up to 30 years
Renewable?	Yes (in reality quasi systematic)	Not specified	No regulation, but in effect yes	No regulation, so by default yes



Originally intended to promote small business, shadow permits are now being used widely for commercial markets

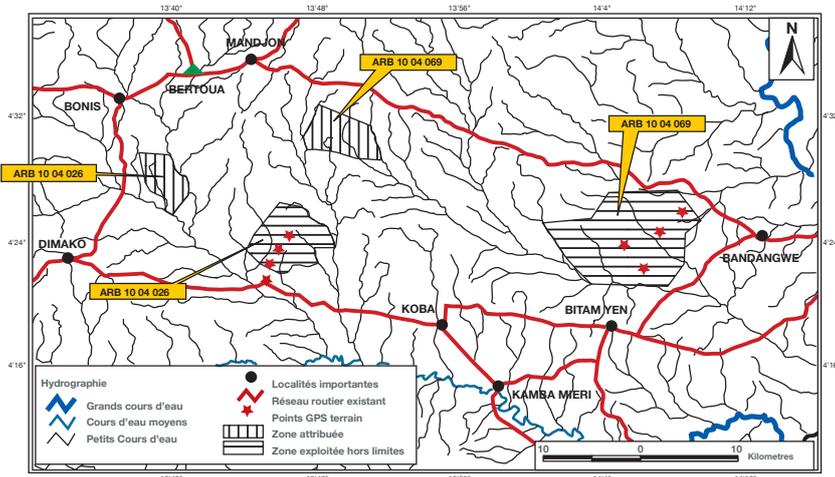
Case study: Cameroon's 'small titles'

Cameroon's forest sector has long suffered from corruption,¹⁹ and efforts to improve governance have historically been undermined by lack of attention to smaller permits.²⁰

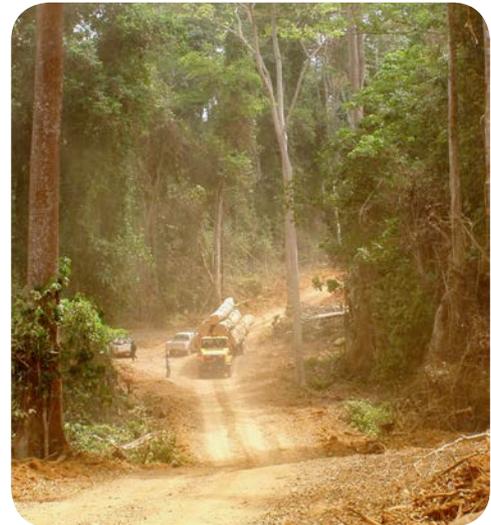
Small titles were designed to benefit small-scale loggers who salvage abandoned timber. In reality, political elites have colluded with logging companies to use the permits to get access to the forest, in breach of Cameroonian forest law. The abuse is so widespread that the permits have become known as 'political titles' because they are controlled by political elites with links to logging companies. The Ministry of Forests (MINFOP) often allocates small titles without analysing the sustainability or viability of the development projects they are associated with. These

titles are then systematically renewed over the years, and are often used to justify logging in different areas or for other purposes.

This issue has been highlighted repeatedly by both civil society organisations and the successive Observateurs Indépendants. To date, efforts to combat the problem have seen dozens of small titles cancelled over 2011, but this progress has been undermined by the simultaneous renewal of several other permits. Since December 2011, the latest Minister of Forests has refused to allocate any new small titles until new, stronger regulations are in place. This action is welcome, but its impact will be limited without action to stop the spread of similar irregularities to other title categories, such as the sales of standing timber.



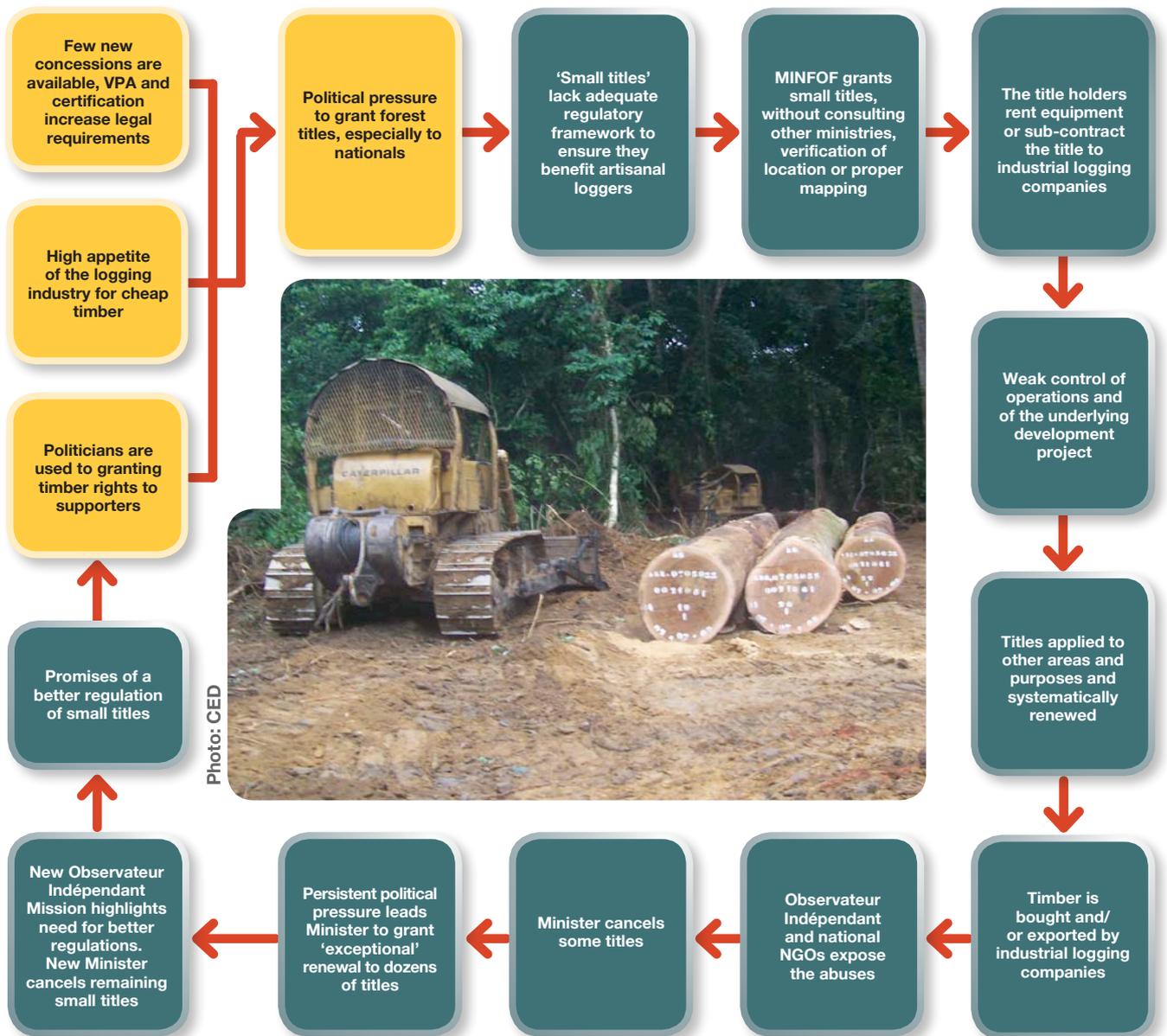
Map showing the relocation of small titles between the area granted (vertical lines) and the area effectively logged (horizontal lines)³³



Timeline: 6 years of 'effets d'annonces'

Official documents on small titles are incomplete and highly unreliable when it comes to the area and volume concerned. Yet, those documents made available to Global Witness show that authorities issued successive statements without taking any real action.





February 2011	March 2011	August 2011	December 2011	February 2012	April 2012
MINFOF press release mentions will to reduce small titles to a minimal level. ²⁷	The Minister of Forests cancels 61 small titles and lists nine that are still valid. ²⁸	The Minister writes to the Prime Minister on small titles, reaffirms his determination to regulate the problem, cancels 15 more small titles (including seven of the nine still valid in March), lists two still valid (none of which were valid in March). ²⁹	New list shows that 35 titles were extended and are valid on 31 December. 359,411 m ³ could potentially be harvested under these titles. ³⁰	Workshop to study the new regulation proposed by the Observateur Indépendant – the new Minister of Forests says it is not possible not to have small titles, and yet that no small titles will be granted until they are regulated. ³¹	The new Minister cancels a further 14 small titles. ³²

Case study: the DRC's Artisanal Logging Permits

Decades of weak laws and government have allowed logging companies in the DRC to exploit its forests with scant regard for the human or environmental cost, and with little benefit to the country's development.

The 2002 Forest Code created Artisanal Logging Permits to enable small-scale loggers to work in community-owned forests. However, the absence of a meaningful legal framework on community forestry left them very open to abuse, resulting in the allocation of over a hundred permits to industrial logging companies in 2010-11. The permits break Congolese law in up to 10 different ways, while companies using them are effectively able to bypass the country's freeze on new

concessions and access large areas of forests with little regard for sustainability requirements. Protected species such as wenge are particularly targeted, primarily for export to China for processing and sale to on the global market.

Global Witness' and other NGOs' investigations into this problem brought some initial reactions by the new Minister of Forests in late 2012. However, so far the response has fallen short of regulating the artisanal sector, with only a few permit cancellations and evidence that loggers have continued their operations and exports.



Sources told Global Witness that between 60,000m³ and 75,000m³ can be found in Kinshasa's various ports

Timeline

2009

Greenpeace report states that less than 50 artisanal permits are allocated.³⁴

2010

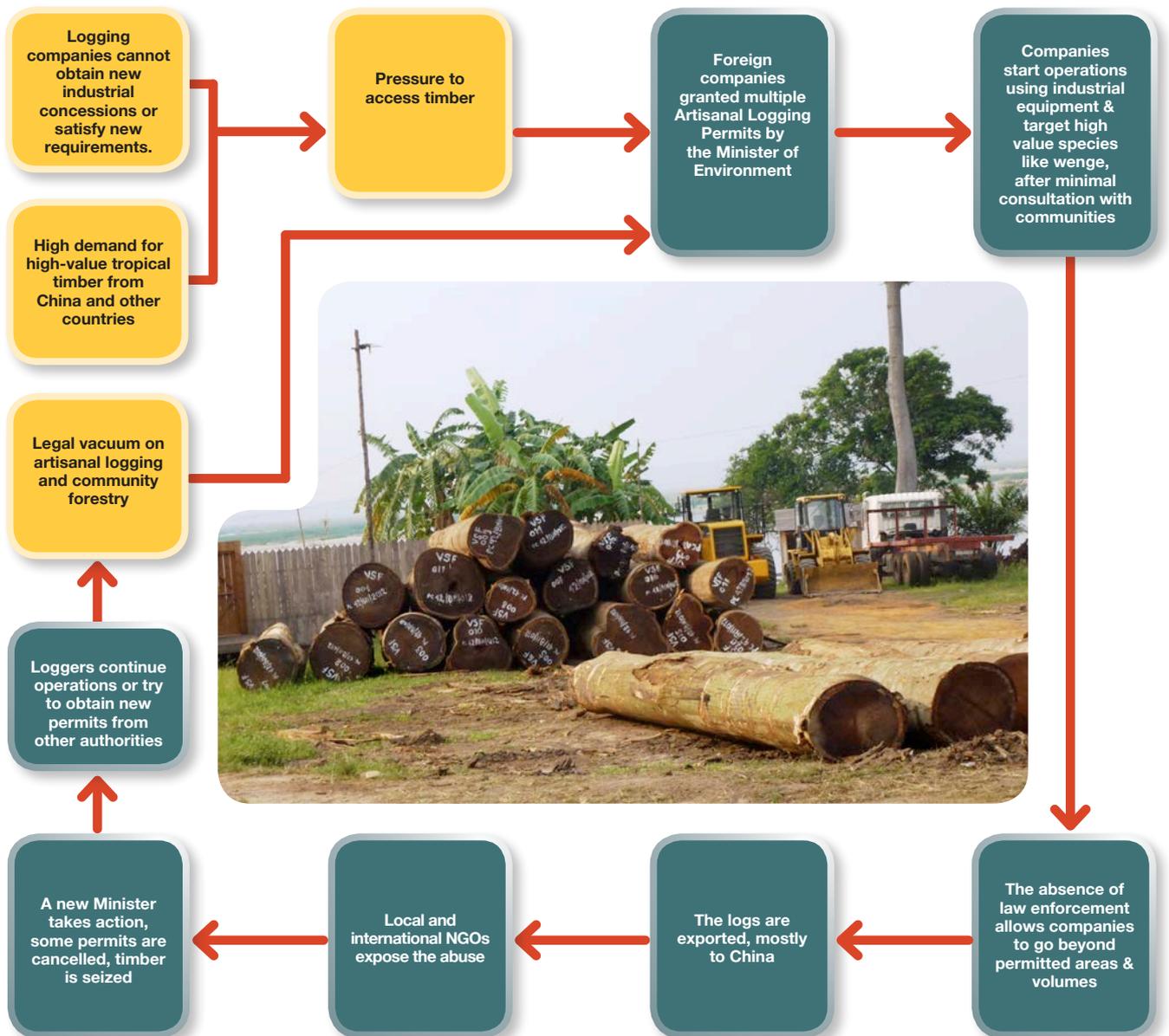
The Observateur Indépendant, REM, lists 93 permits (90 illegal), producing 33,3878 m³.³⁵

2011

REM lists 77 permits (76 illegal), producing 25,915 m³.³⁶

May 2012

Greenpeace report exposes how artisanal permits are misused for industrial logging.³⁷



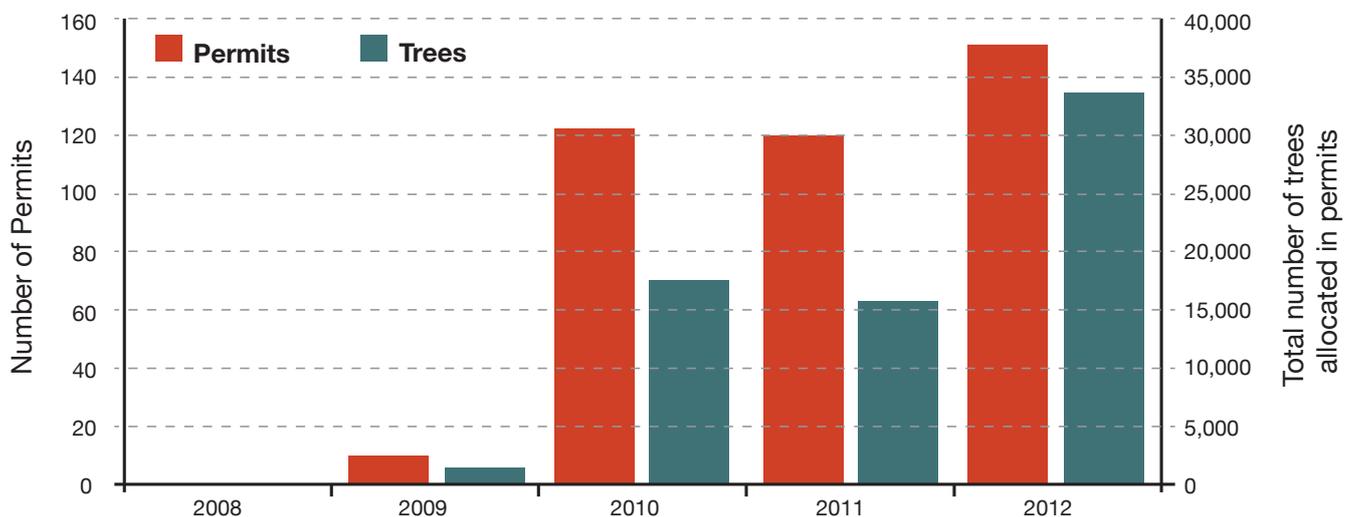
October 2012	November 2012	December 2012	March 2013
Global Witness' report <i>The Art of Logging Industrially in the Congo</i> shows that 146 permits have been granted in the Bandundu Province since 2010, mostly to foreign companies, and primarily for logging of wenge for the Chinese Market. ³⁸	The new DRC Environment Minister issued two ministerial orders that are a first step towards tackling the problem. One of these orders clarifies that Artisanal Logging Permits are not to be signed by the national Environment Minister but by provincial governors. The other order suspends artisanal or timber purchasing permits held by certain companies. ³⁹	REM lists 65 permits (56 illegal), producing 23,260m ³ , and a total of 235 (222 illegal) permits for 2010-12, for a production of 83,053m ³ , and a total harvested value that could approach 56 million Euros. ⁴⁰	New Greenpeace report shows that cancelled permits are still operating and seized timber is exported. ⁴¹

Case study: Ghana's Salvage Permits

The term 'timberisation', whereby companies have captured policymakers and removed effective regulatory restrictions to logging, was first coined in Ghana.⁴² Since 1994, systemic abuse of community rights by political elites has undermined achievement of official efforts to clean up its timber trade and protect what remains of the country's forests. Key elements of the 1994 forest policy regarding community rights and forestry have never been implemented, while reforms to ensure that bidding is competitive have foundered.

Moreover, the proliferation of small, administratively allocated Salvage Permits and Timber Utilisation Permits has further undermined efforts to regulate the forest sector.⁴³ The FC board committed to halt such practices but 2010 saw the start of a new surge of Salvage Permits allocated at the Commission's discretion. The total now stands at 430, and civil society protests have so far fallen on deaf ears.

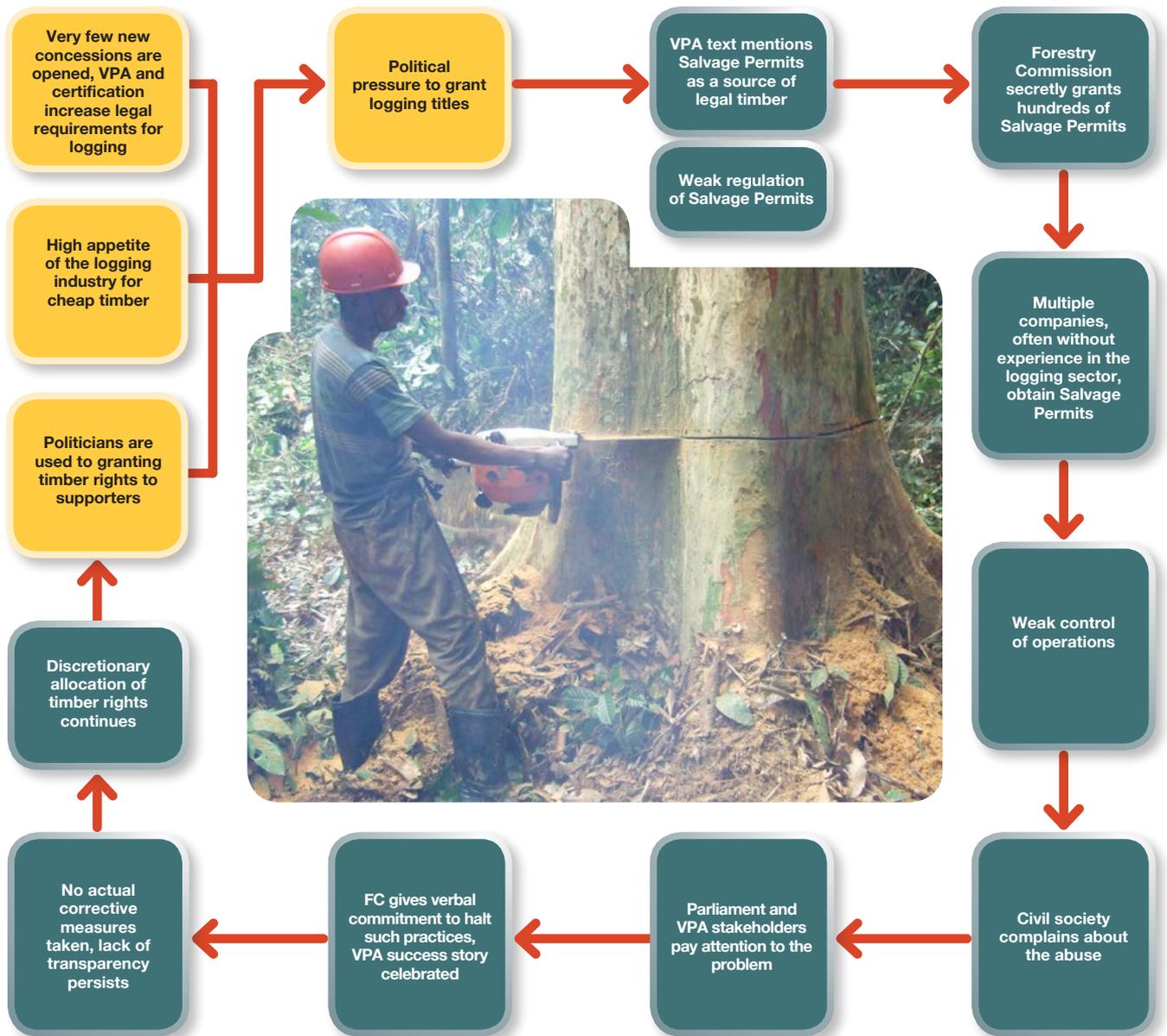
It is unlikely that timber cut under the auspices of Salvage Permits will meet the necessary requirements to be exported under the VPA, but the boom of rosewood exports from Ghana to China since late 2011 appears to correlate with the surge in Salvage Permits allocation.



The dramatic rise in Salvage Permits granted in Ghana between 2009 and 2013⁵³

Timeline





November 2011

Parliamentary Committee on Lands and Forestry examines administrative permits.⁴⁹

March 2012

JMRM Aide Memoire mentions that 'Civil Society commented that concerns (...) regarding the issuance of administrative permits have been addressed to their satisfaction'.⁵⁰

October 2012

At a meeting FC officials confirm to Global Witness that the issuance of large numbers of Salvage Permits has stopped.

February 2013

FC communicates to Global Witness a new list of permits showing that 421 Salvage Permits were granted between 2010 and January 2013, for a total of 70,000 trees.⁵¹

March 2013

FC publishes a list of valid forest titles in Ghana; no Salvage Permits are included.⁵²

Case study: Liberia's Private Use Permits

Timber from Liberia's forests financed different sides during 14 years of bloody civil wars, leading to United Nations (UN) sanctions on the export of timber from 2003 to 2006. Since then, the government of Liberia and its international donors have worked hard on reforms to ensure that Liberia's forests are managed in a way which guarantees a peaceful and sustainable future for its people.

All existing concessions were cancelled in 2005 and a new Forest Reform Law passed in 2006, but the UN Panel of Experts noted that legal loopholes, corruption and lack of legal capacity have constantly threatened to undo the fragile progress.

Private Use Permits were initially envisaged to allow private land owners to use their forest resources, but remained the only title category for which no regulation was developed. This loophole allowed officials of the Forest Development Authority (FDA) to collude with logging companies and convince communities to hand over their forests. A sudden explosion in their use saw over 40% of Liberia's forests granted to logging companies in just two years, making the permits the main source of commercial timber in Liberia.

Exposure of the abuse by Global Witness and two Liberian NGOs, the Sustainable Development Institute (SDI) and Save my Future Foundation (SAMFU) was not enough to stop the appetite of PUPs holders, who challenged an initial moratorium on PUPs in front of the Liberian Senate and Supreme Court, and then illegally exported PUP timber after the moratorium had been confirmed by the Court and the President. Further investigations also revealed illegal exports of PUP timber to ports in Turkey, South Africa, China and France.



PUP timber unloaded in Atlantic Resources Ltd Greenville Timber yard. Atlantic Resources Ltd held many PUPs close to its Greenville port.

Timeline

September 2010

Société Générale de Surveillance / Liberfor monthly Chain of Custody report lists two PUPs.⁵⁴

June 2011

John Deah, Liberia Timber Association, states at Chatham House Illegal Logging Update meeting that there are 16 PUPs.⁵⁵

October 2011

Global Witness obtains a list of 17 PUPs, covering at least 203,867ha.

December 2011

SDI obtains 25 PUP contract documents.

January 2012

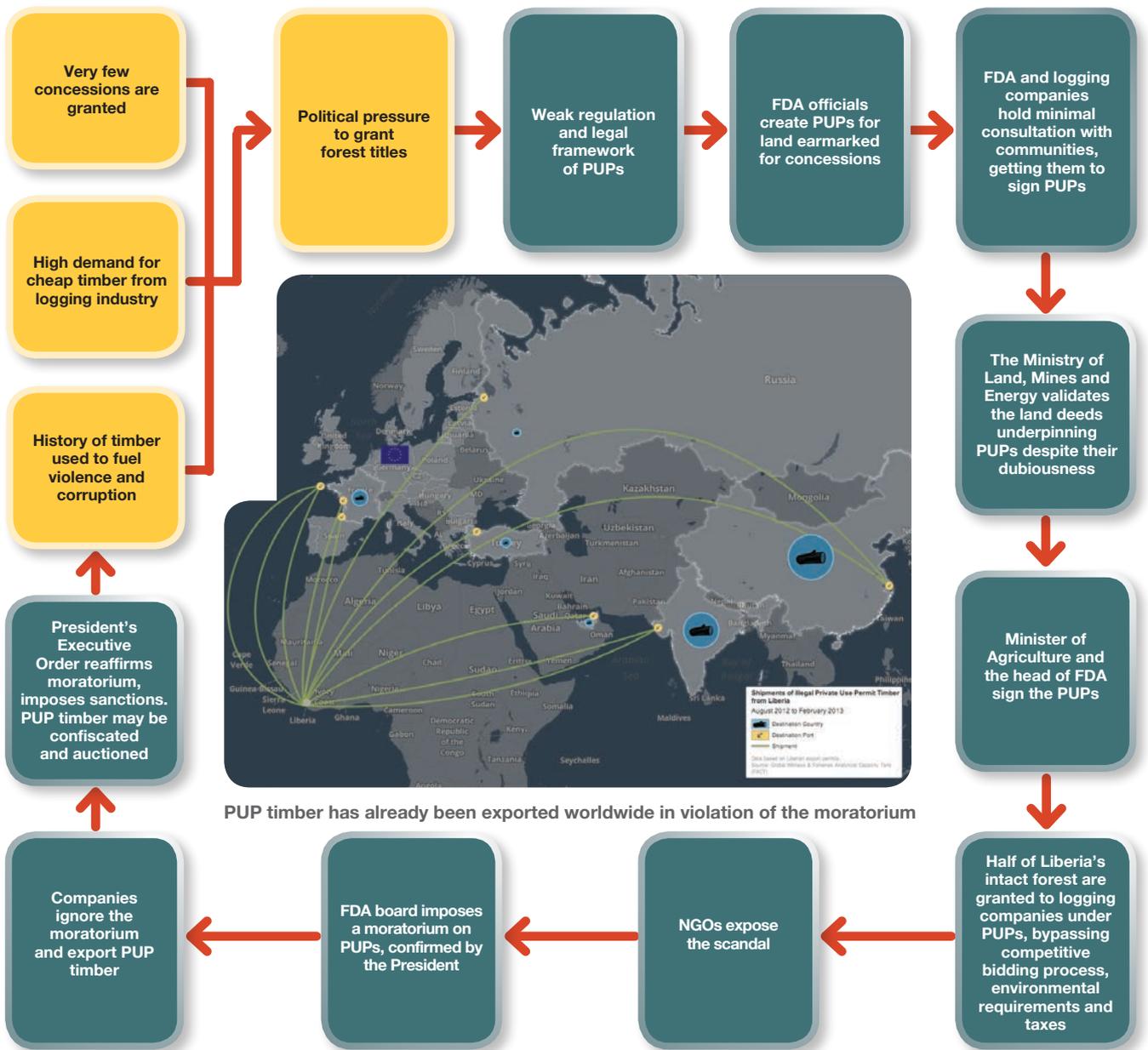
Liberia NGO Coalition writes to the EU Delegation to Liberia indicating that PUPs undermine the VPA.⁵⁶

February 2012

FDA Board of Directors reports that 55 PUPs have been issued, orders moratorium on issuance of new PUPs and recalls all inactive PUPs.⁵⁷

April 2012

Land Commission report on PUPs⁵⁸ highlights irregularities in underlying land deeds of PUPs and shows that PUPs are disenfranchising community land holders.



August 2012	September 2012	October 2012	December 2012	January 2013	March 2013
President establishes Special Independent Investigating Body (SIIB) to investigate PUPs, suspends FDA Director and reaffirms the FDA Board's moratorium. ⁵⁹	Global Witness, SDI and SAMFU report on 66 PUPs, covering 40% of Liberia forests. ⁶⁰ Justice Chamber of the Supreme Court overturns moratorium. ⁶¹	Justice Banks re-instates the moratorium. ⁶²	General Audit Commission report recommends dismissal of FDA director and reprimand of the Minister of Agriculture, chair of FDA board. ⁶³ Global Witness, SDI and SAMFU reveal that logging company Atlantic Resources Ltd has exported millions of dollars' worth of PUP timber in breach of the moratorium. ⁶⁴ SIIB concludes that all PUPs are void and recommends prosecution of those responsible. ⁶⁵	President's Executive Order reaffirms moratorium, establishes special prosecution team, and dissolves FDA Board. ⁶⁶	Global Witness finds PUP timber in French port, releases map of PUP exports worldwide. ⁶⁷

The political economy of shadow permits

In whose gift? Shadow permits' allocation process

Over the last decade, shadow permits have been allocated in very large numbers (in contrast to other forest titles, of which fewer have been granted) but until recently the allocation process was almost completely secret. Non-governmental organisations (NGOs) that suspected the role shadow permits were playing in poor forest governance did much to uncover the truth, however it is still a murky world with new loopholes opening as others are closed.

In all cases, the regulation of shadow permits is weak – generally limited to a simple clause in the main forest law without further regulatory or procedural detail. Permit allocation in each country studied is centralised, either by law or in practice; as in the case of the DRC, where the Environment Minister arrogated this responsibility from provincial governors.

The weak legal framework leaves the process open to interpretation by individual forestry officials, and the fact that the transparency requirements of large-scale concessions are not applied to smaller permits means their allocation can go unnoticed for a long time. Even when lists of titles are published, they are generally out-of-date, partial or incomplete, and give few details on the precise location of the concession. Shadow permits can thus be allocated behind closed doors, with minimum checks or conditionality. The whole process is vulnerable to abuse.

In Ghana, for example, Salvage Permits are based on one article of the Timber Resources Management Regulations of 1998.⁶⁸ There are no requirements regarding the size, duration, renewability, or allocation procedure. Ghana's constitution requires parliamentary ratification of all grants of natural resource rights, and the Timber Resources Management Regulations say that timber rights can only be allocated by auction involving pre-qualified bidders. According to Forest Watch Ghana, Salvage Permits contravene both these laws, although the Ministry of Lands and Natural Resources argues that the Regulations can be interpreted as a delegation by the parliament to the FC of the power to grant of timber rights.⁶⁹

Salvage Permits are mentioned in Ghana's VPA. However, because their allocation does not follow due process, the FC has not included any of the 430 permits issued between 2009 and 2013 in a list of 'valid titles' recently published.⁷⁰ In addition, the secret

nature of their allocation renders Salvage Permits in violation of the VPA's transparency requirements and undermines the reforms stipulated in Ghana's 1994 Forest and Wildlife Policy, which introduced competitive bidding.⁷¹ The FC and Ministry of Lands and Natural Resources have not so far been able to provide any explanation for the surge of administratively-allocated Salvage Permits.

In the DRC, the regulation on logging operations does detail the conditions for allocation of Artisanal Logging Permits but says they should only be granted in community forests, which cannot be created until the community forestry decree is passed.⁷² The regulation also states that Artisanal Logging Permits should be granted by the provincial governor, to Congolese nationals registered as artisanal loggers, up to a maximum of two permits per person per year. Global Witness has documented violation of all this, including a number of instances of the Environment Minister allocating several permits a year to the same foreign company, which then logs timber on an industrial scale, beyond the area and volume prescribed by law.⁷³

In Liberia, PUPs are the only logging title for which no regulations have been developed. Unlike other permits, there is no parliamentary oversight, no limit on the number or size of permits, and no specified duration. Reports by NGOs and the Land Commission of Liberia have shown that land deeds underpinning PUPs are often either suspicious or irregular. In one instance, a land deed dated 1924 was signed by a Liberian president who did not take office until 1930.⁷⁴ In numerous others, permits have been granted for land areas larger than the underlying deed.⁷⁵

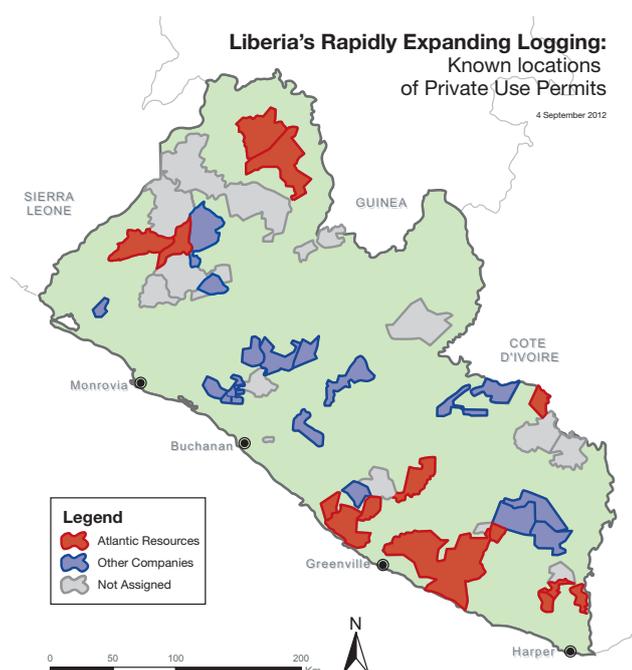


Most of DRC's Artisanal Logging Permits fell into the hands of industrial loggers, many from China



Local residents are amongst the most vulnerable to the damage done by large scale logging operations

A report by the Special Independent Investigative Body (SIIB) on PUPs, set up by the President in August 2012, found that “of the fifty-nine land deeds reviewed, fifty-seven are not eligible for the PUP license because the deeds presented evidence of collective ownership and therefore must operate under the requirements of the Community Rights Law”.⁷⁶ The SIIB report also found that documentation was not reviewed properly and field data was falsified or missing.⁷⁷ In addition, Global Witness found that consultations with communities prior to them handing over their collectively-owned forest were rushed and cursory.⁷⁸ In its damning collusion, the SIIB report states that the FDA “purposefully granted PUPs in violation of the existing legal framework and failed to develop standards for the process”.⁷⁹



Cameroon has made efforts to regulate its small titles, however even the Minister of Forests has acknowledged that a number of flaws remain in the allocation process, including the absence of a guarantee that the development project for which the permit was granted in the first place will actually be carried out.⁸⁰ The management of the allocation process by MINFOF is characterised by inconsistency and a lack of clarity (see Box 1), leading to small titles being systematically renewed over the years.⁸¹

Cameroon’s Observateur Indépendant has suggested that the Ministry tends to allocate small titles as compensation for logging operations that did not take place, or as a way of maintaining public roads, neither of which are adequate justifications.⁸²

The rise of shadow permits is a perfect example of how natural resource wealth can be captured by and for the benefit of an elite concerned with maintaining its privileged position and extending its patronage. The forest authorities directly responsible for permit allocation are enmeshed in a wider political economy, whereby timber rights are distributed through corrupt and abusive practices for the benefit of the few, at the expense of the many.

Box 1: Inconsistencies in the management of small titles by the former Minister Ngolle Ngolle

Cameroon’s allocation process for small titles is characterised by inconsistency at the highest levels.

In March 2011, following a report by the Observateur Indépendant, the then Minister of Forests, Elvis Ngolle Ngolle, cancelled 61 small titles,⁸³ including 56 of the 60 listed in the report, and listed 9 valid titles.⁸⁴ In August 2011, Ngolle Ngolle wrote to the Prime Minister to announce his intention to further regulate a category marred by illegality, cancelling 15 more titles, including seven of the nine declared valid earlier in the year.⁸⁵

However, within a few months, in spite of having declared, “these titles cannot be renewed or extended under any pretext”,⁸⁶ the same Minister granted an exceptional extension to 34 titles, including 14 of the ones he had cancelled earlier.⁸⁷

In Cameroon, for example, small titles are widely known as 'political titles', and are distributed by a variety of political elites. The concluding report by Cameroon's Observateur Indépendant, states, "*Small titles are one of the strong connections of the forest sector to the political sphere, with several members of the National Assembly owning some or requesting them under the motive to implement development projects in their constituencies*".⁸⁸ Reports from local civil society also provide anecdotal evidence of this,⁸⁹ while people interviewed by Global Witness confirmed that forestry officials were under huge pressure from politicians to grant titles to members of their networks. Several officials told Global Witness: "*We tried to control them but then we started getting phone calls*".

Research in Ghana suggests Salvage Permits are also politically motivated. As a 2012 study by the University of Copenhagen explained: "*timber rights are allocated in exchange for payments and / or political support [...] The large number of short-term timber rights allocated to firms with no track record in the forestry sector may be explained as rewards, possibly for political support*".⁹⁰ A number of interviews carried out by Global Witness also suggested political involvement in the granting of Salvage Permits on a large scale.

Of further note is the fact that the surge of shadow permits in all four countries happened around an electoral period. This is particularly apparent in Cameroon, where the reallocation of cancelled and expired titles happened in the few months surrounding the elections of October 2011. This reinforces the impression that shadow permits are perceived as political 'gifts', to be granted either in exchange for election support, or by political appointees keen to maximise the benefits they can extract from their positions.

Who gets the permits? Shadow permits & industrial logging companies

Shadow permits are not only easier to obtain than larger-scale permits, but are also subject to fewer conditions, and lower taxes. This allows timber accessed via shadow permits to undercut timber from more legitimate sources, which in turn suppresses world prices, disguising the environmental and social costs associated with logging.

- For an Artisanal Logging Permit in the DRC, companies typically pay US\$2,500 upfront followed by a variety of export-related taxes. Unlike traditional concession holders, they are not subject to an area tax.⁹¹ This can represent a significant saving, given that Artisanal Logging Permits are usually granted for a small area but end up leading to logging of much larger ones.
- In Liberia, Private Use Permits – unlike large-scale Forest Management Contracts – are not competitively auctioned, nor subject to land rental taxes.⁹²
- In Ghana, the government does not collect timber rights fees on Salvage Permits. Forest Watch Ghana estimates that this caused losses to the state of US\$10 million in 2010 alone, when 120 permits were allocated. Considering that over 400 permits have now been allocated, the loss is likely to be four times that amount.
- In Cameroon, small titles are not subject to area tax, unlike traditional concessions. Furthermore, the Observateur Indépendant calculates that 80% of small titles holders did not pay for their access rights to timber in 2009.⁹³



Foreign industrial companies use the DRC's Artisanal Logging Permits to bypass the country's moratorium on new forest concessions

Box 2: Industrial loggers and Liberia's Private Use Permits

The most egregious case of abuse of shadow permits for industrial logging has occurred in Liberia, where many Private Use Permits were granted on land previously earmarked for future concessions.⁹⁴ Atlantic Resources Ltd and Alpha Logging & Processing Inc. – companies linked to Malaysian giant Samling Global Ltd – obtained logging rights over 10% of Liberia's territory via shadow permits, despite Samling's dubious global reputation.⁹⁵

The Samling case came to light via Global Witness investigations. Little information is known about other companies that hold Private Use Permits because they are not required to go through the same checks as companies receiving other types of logging licence. However, Liberia's Land Commission has identified Private Use Permits as *"an easy alternative and bypass to much better regulated forest concessions"* and an increasingly popular route for companies seeking to carry out *"commercial forest logging"*.⁹⁶

The Liberian Timber Association emerged as the corporate public face of Private Use Permits when it submitted complaints in August 2012 to both the Liberian Senate and Supreme Court claiming that the President's moratorium on Private Use Permit operations was illegal.⁹⁷ Global Witness has shown how holders of such permits exported their timber to Europe, the Middle Eastern and Asia in spite of the moratorium.⁹⁸

The deliberate use of shadow permits to facilitate industrial scale logging is most firmly established in Liberia (see Box 2). However, Global Witness has also exposed the way in which Artisanal Logging Permits in the DRC are granted primarily to industrial logging companies, who then export the timber, particularly to China.⁹⁹ Greenpeace has likewise shown how timber from artisanal permits in the DRC is awaiting export, despite having been confiscated.¹⁰⁰ And Congolese civil society organisations have provided anecdotal evidence that some industrial companies holding large scale concessions, frustrated with the requirements they have to satisfy, are now turning to artisanal logging as a cheaper way to access timber. Greenpeace confirmed that some concession holders are sub-contracting logging in part of their concessions to artisanal permit holders when they are unable to conclude social agreements with communities.¹⁰¹

In Cameroon, the Observateur Indépendant noted in 2008 that almost all the timber from small title areas was being exported,¹⁰² while government and NGO representatives interviewed by Global Witness in 2012 all agreed that small titles are typically obtained by people with the right political connections but limited or no logging capacity, who then outsource them to large companies that export the timber (see Box 3). Evidence supporting the same conclusion has also been detailed in a report by Friends of the Earth¹⁰³ and in monitoring reports by the local NGO, the Centre for Environment and Development (CED).¹⁰⁴

In Ghana, Salvage Permits for large numbers of trees have been granted to big companies holding other titles, suggesting they were likely to at least mix their sources to fulfil export market specifications, if not actually log on an industrial-scale.



Atlantic Resources Ltd has shipped millions of dollars worth of illegal timber from Liberia in breach of the President's order to halt PUP timber exports



Industrial loggers regularly use heavy machinery when operating under Artisanal Logging Permits, in breach of laws which state that only long saw or chainsaws can be used

Box 3: Industrial loggers keep a tight grip on their small titles: The CANABOIS case

In a case demonstrating the importance of small titles to large companies, a Lebanese-Cameroonian company, CANABOIS, tried to sue the Minister of Forests for cancelling a permit first granted in November 2008.¹⁰⁵ The title was initially related to an agricultural project but was then reframed as compensation for the maintenance of public roads, one of the categories of small titles described as ‘unjustifiable’ by the Observateur Indépendant in 2010.¹⁰⁶

In its legal appeal CANABOIS claimed that losing a single small title would bankrupt the company and cause it to fire its 600 employees. This suggests there is nothing ‘small’ about the title it had been granted.

It is striking how rapidly shadow permits have proliferated over recent years while efforts to develop community forestry have stalled almost everywhere. The DRC Government has still not signed a long-awaited community forestry decree; Cameroon’s community forest initiatives remain hampered by opaque, complex, legalistic and expensive administrative processes; Liberia’s Community Rights Law has been more-or-less ignored;¹⁰⁷ and Ghana has no community forestry legal framework whatsoever. Meanwhile, political elites, forestry officials and logging companies are colluding to maintain easy access to timber, at the expense of the state, the environment, and communities.

The consequences of shadow permits

The evolution of shadow permits as an alternative way for companies to access large swathes of forest for commercial logging operations is a serious problem with tangible negative consequences that must be addressed.

Loss of state control over forest resources

Once allocated, shadow permits can open the door to large-scale, intensive and exceptionally profitable logging operations due to the absence of effective oversight by the authorities. Governments and other relevant authorities have repeatedly failed to stop the abuse of shadow permits, in some cases deliberately, in others as a result of accidental oversight, incompetence or lack of capacity.

In Cameroon the Observateurs Indépendants and civil society have exposed the complicity of local administrators in the abuse of small titles. In 2011, the then Minister of Forests acknowledged, “the non-payment of taxes and the laundering of illegally logged timber” as problems associated with small titles.¹⁰⁸

Similarly, in Liberia, a government moratorium on Private Use Permits proved ineffectual, while in the DRC, the state appears incapable of monitoring or controlling illegal forest operations, in part due to a lack of capacity, transport and equipment among forest officials.¹⁰⁹ The result in most cases is that logging via shadow permits is much more extensive and destructive to forests than the terms of the licences themselves might suggest.



Large scale PUP contracts are the first step in the complete destruction of the forest

Deforestation, environmental devastation, and rare species

This absence of effective control over shadow permit operations allows loggers to operate with scant regard for the environment. Environmental impact assessments are rarely, if ever, carried out and the tendency to use the same permit in multiple locations exacerbates the potential for environmental damage.

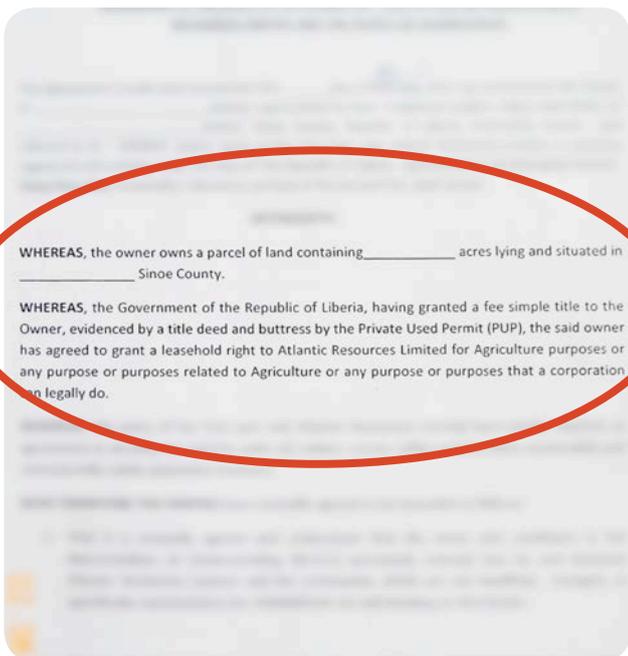
The consequences in Liberia have been particularly shocking, where 40% of the country's forests have been allocated via Private Use Permits, and where many of the agreements seen by Global Witness confirm that the objective is to convert the land for non-forest use after logging.¹¹⁰

In the DRC, much of the logging facilitated by Artisanal Logging Permits has focused on accessing wenge, a species listed as endangered on the International Union for the Conservation of Nature Red List. A majority of the permits seen by Global Witness bore the confusing double denomination of artisanal permits and special permits to cut wenge.¹¹¹

For both Ghana and Cameroon, the development project justifying the shadow permits should mean that the logging operations occur on relatively small but easily mapped areas. Yet the indeterminate permit area and excessive use leads to large-scale clear-fell and conversion.

In Ghana, there is evidence that Salvage Permits have become a way to access rosewood. Rosewood can only be found outside forest reserves and Salvage Permits are currently the only way to obtain a logging permit 'off reserve'. Among the list of permits obtained by Global Witness, 57 included rosewood, and exports of Ghanaian rosewood to China increased dramatically from mid-2011 onwards.¹¹² The Minister of Land and Natural Resources put a temporary ban on rosewood exports in September 2012.¹¹³

In Cameroon, iroko is regularly overharvested through small titles.

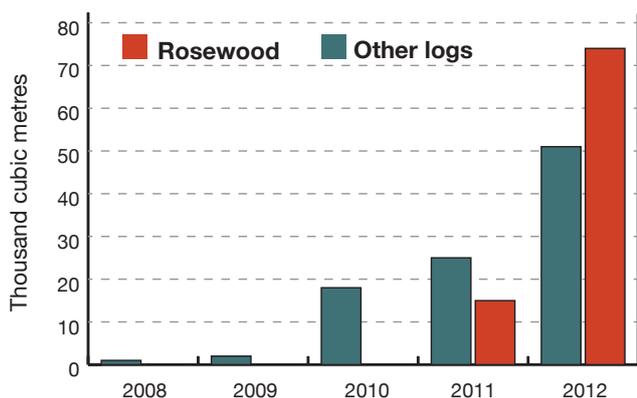


Extract of an addendum to a PUP contract of Atlantic Resources Ltd showing how they plan to convert the land into a plantation



An Artisanal Logging Permit, which also bears the words 'Special Permit to cut wenge'

Exports of rosewood and other logs from Ghana to China



China's imports from Ghana of "rosewood" and other logs¹¹⁴

Atebubu	103	Felled	Krayie, Papao, Senya	Council
Donkorkrom	53	Felled	Onyina, Kyenkyen	Ankobe
Atebubu	188	Standing	Papao, Senya, Ceiba, Kyenkyen, Mahogany, Kubre	Wiase T Council
Offinso	403	Standing/Felled	Onyina, Wawa, Bombax, Akyee, Cedrella, Esa, etc.	Mere Pl
Sunyani	1405	Lying	Rosewood	Bui Dam
Sunyani	742	Lying	Rosewood	Bui Dam
Sunyani	1213	Lying	Rosewood	Bui Dam
Sunyani	1405	Lying	Rosewood	Bui Dam

Extract of Ghana Salvage Permit lists, showing large quantities of rosewood trees granted¹¹⁵

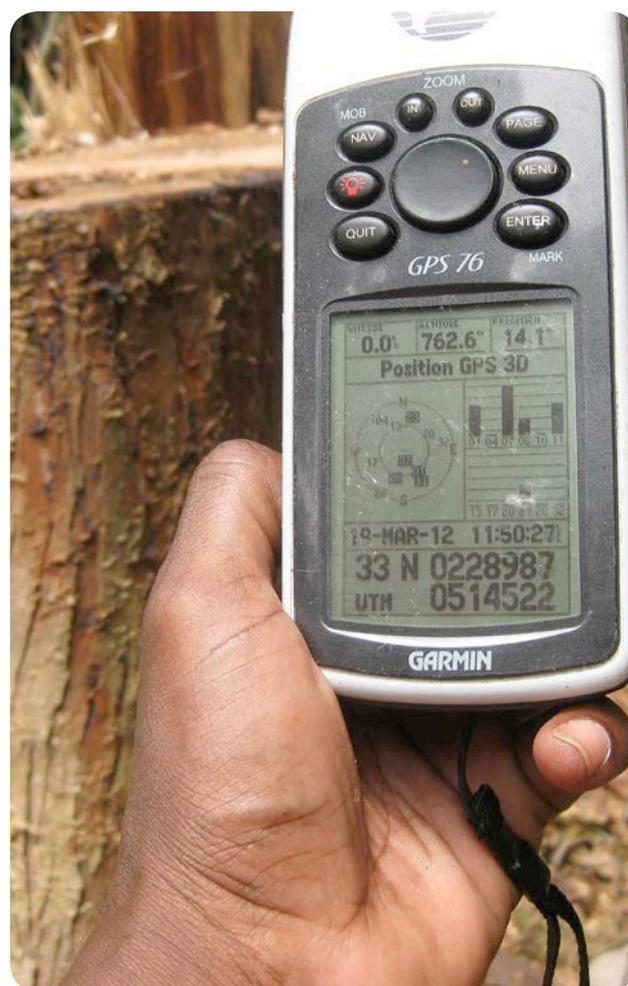
Consequences for communities: little consultation, few benefits, plenty of abuses

Communities are the most long-term victims of shadow permits. Their rights are undermined by the abuse of schemes initially designed to benefit them and they rarely receive adequate compensation, either in the form of a share of revenue or in lieu of damages. Ultimately they suffer irreparably from the disappearance of the forest.

- In Liberia, most Private Use Permits were granted on collectively-owned land which should have been managed in accordance with the Community Rights Law. Global Witness and others have shown that only the minimum level of consultations were held and the FDA pushed communities to enter into an "exploitative agreement".¹¹⁶ Community members typically agreed to receive between US\$1.50 and US\$3.00 per cubic metre, instead of negotiating much wider social agreements that would have applied to formal concessions.¹¹⁷
- The same can be seen in the DRC, where Artisanal Logging Permits are supposed to be granted only in community forests. Global Witness has shown

that companies using such permits tend to deal only with local chiefs and traditional authorities, whereas official concession holders are obliged to go through complex benefit sharing negotiations with the broader community to obtain a logging contract.¹¹⁸

- In Cameroon, small title holders are supposed to conclude social agreements with affected communities, but in 2010 the Observateur Indépendant warned that this condition was never respected and that the lack of consultation of communities was one of the main weaknesses of the existing legal framework.¹¹⁹
- In Ghana, the lists of Salvage Permits provided at various times by the FC indicate that the authorisation of a traditional authority is required for each but there is no evidence that this happens as it should, either when the permit is first granted or in subsequent contract extensions. As such agreements are not made public, there is no way of knowing who, if anyone, has signed in the name of the community or what benefit sharing arrangements are in place.



Small titles have led to an over-harvesting of Iroko in Cameroon. Photo: © CED

Lessons learnt in the fight against shadow permits

Shadow permits in their various guises all undermine governance reforms, entrench powerful vested interests, and have dire consequences for the forests and the people that live in them. Each of the four countries studied offers lessons on why and how to eliminate shadow permits.

Civil society & transparency versus shadow permits

Over the last year, under pressure from civil society, governments have taken some steps towards addressing the damage and lack of control associated with the proliferation of shadow permits. The extent to which this has been successful greatly varies from country to country. In each case, increased transparency and civil society-led independent monitoring stand out as prerequisites for the effective elimination of poorly designed and poorly regulated permit systems.

Transparency – bringing permits out of the shadows

In order to expose and end the exploitation of shadow permits, people – from local communities to foreign importers – must be able to access relevant information. Obliging governments to be more transparent about forests and the trade in timber is critical to successfully eliminating illegitimate permit systems and preventing the emergence of new ones.

Inevitably, given the elite capture of the regulatory system, all four countries featured in this report showed very poor respect for shadow permits transparency standards. VPAs typically go beyond generic transparency commitments by including an annex listing specific forest-related information to be made available. The sovereign nature of the VPAs gives legal backing to these obligations, and in 2012 Global Witness and others made an initial assessment of compliance with these obligations in Cameroon, Ghana and Liberia.¹²¹ While some information is available for more mainstream logging operations (see Table 2), the conclusion was that governments are largely failing to meet their own transparency commitments when it comes to shadow permits.

In Cameroon, only one outdated list containing small titles is available on the Ministry's website, but is widely believed to be incomplete and lacks comprehensive data regarding location and production. The ministerial decisions to annul some permits are publicly available, and provide at least a sufficient basis to demonstrate poor management of small titles. Reports by the Observateur Indépendant highlight the persistence of problems relating to small titles and are a useful source of analysis, but their publications are frequently delayed by the Ministry. For example, an investigation conducted in late 2011 and early 2012, which led the new Minister to decide not to allocate any new permits, has not yet been officially published.

Table 2: *Making the Forest Sector Transparent 2012* assessment of the availability of documents of commercial logging operations¹²⁰

Country	Degree of transparency regarding commercial logging operations (the yellow traffic light means that the information is only partially available)	
 Cameroon		Some legal documents on commercial forest operations are made available to the public. Nevertheless, other key documents such as five-year plans and annual operating plans, terms of social agreements, and environmental impact studies are not published on a regular basis.
 DRC		A list of forest concession contracts that have been converted and signed was made available on the Ministry of Environment website, but it remains incomplete. Details of Artisanal Logging Permits were also published in 2011, but they did not reflect the real situation in terms of permits granted by different authorities.
 Ghana		The legal documents for Timber Utilisation Contracts and permits can be obtained on request from Forest Services Division offices, but they are not published online and it is difficult to gather comprehensive data on existing timber rights.
 Liberia		The forestry law and regulations and the Public Procurement and Concession Act require transparent processes for allocating forest use permits, including publication of the final contract. Documents for most concessions are publicly available, but documents for only a subset of PUPs were released in 2012 and information about these permits has been grossly inadequate.

The DRC publishes a list of some Artisanal Logging Permits on the Environment Ministry's website, including several cases whereby companies rather than individuals obtained several permits a year, in violation of the regulations.¹²² The Observateur Indépendant has also sought to monitor artisanal permits. However, it took an in-depth field investigation by Global Witness and local NGOs to show that many more permits existed than had previously been thought, and to demonstrate that available lists gave an incomplete picture.

In Liberia, the extent of PUPs might not have been uncovered had not the Liberian NGO SDI requested copies of 25 contracts from the FDA. The revelation of the contracts' existence led to the initial moratorium by the FDA Board of Directors.

This contrasts with Ghana, where the FC has never released copies of logging contracts, and only provided lists of permit holders very recently, following persistent requests by NGOs. Forest Watch Ghana became aware that permits were granted in late 2010 thanks to a leaked document. The lack of effective transparency obligations then allowed the FC to give only verbal commitments that such practices were indeed abusive and had stopped,¹²³ while actually continuing to issue over a hundred permits a year.

Civil society monitoring

Monitoring and surveillance by civil society has been key to exposing the degree of abuse by companies and government officials of the shadow permit system. In Liberia, for example, SDI exposed the dramatic consequences of PUPs, and Global Witness, SAMFU and SDI revealed that the moratorium on PUPs

operations was not being respected. However, this took over a year, during which PUPs became the primary means of accessing and exporting Liberian timber.

In the DRC, members of the NGO network Réseau Ressources Naturelles published evidence of the subversion of artisanal permits and went on to collaborate with international NGOs on further investigations.¹²⁴ The official Observateur Indépendant also obtained information, and sought to publish it, but was constrained by the government.

In Cameroon, field monitoring by CED and other local NGOs helped trigger action by the Observateur Indépendant and the authorities, but the observateurs have found it difficult to conduct fieldwork without prior approval from the Ministry of Forests and Wildlife. Pressure from civil society has enabled the Observateur Indépendant to take forwards a proper regulatory framework for small titles.¹²⁵

In all the cases above, an adequately-resourced, unimpeded, independent civil society monitor could have investigated the shadow permits much earlier, highlighted the dangers and potentially exerted enough pressure to stop the abuse.

VPA all acknowledge civil society's key role in maintaining the credibility of systems designed to ensure legal timber. And yet, as the prevalence of shadow permit abuse shows, government institutions can pay lip-service to civil society and the EU while simultaneously bending to the pressure from timber barons to seek ways around restrictions and evade scrutiny.

Support to a strong civil society must therefore be reaffirmed and put at the centre of VPA preparation



Investigations by the Centre for Environment and Development have been key to exposing abuse of Cameroon's small titles.
Photo: © CED



PUP timber ready to be exported in a Liberia port. These logs are now in India.

and implementation to ensure effective monitoring and accountability. Beyond this, efforts must be taken by all involved to return shadow permits to their original purpose, and ensure forest governance reforms are not undermined by the ‘black-market’ in logging licences.

VPAs: reforms but not far enough

The governments of Cameroon, Liberia, and the DRC have all taken steps to tackle their respective shadow permit problems. In Cameroon, sources told Global Witness that the new Minister resisted pressure to grant more small titles by arguing that the VPA with Europe prevented him from doing so. The Prime Minister backed him, confirming the need to respect the VPA.¹²⁶

In the DRC and Liberia, new executive orders have been introduced to crack down on the abuse of Artisanal Logging Permits and PUPs respectively. In Ghana, the government appears to have excluded timber exports from Salvage Permits as non-compliant with the VPA.

While not yet achieving their ultimate aim of eliminating illegal timber, VPAs have also encouraged greater openness and transparency and provided civil society with legitimate grounds for enquiry. In Ghana, for example, letters from a local NGO had received little attention until the VPA was signed, and the FC recently justified its publication of a list of ‘valid permits’ by the entry into force of the EUTR.¹²⁷

Curb your enthusiasm

However, recent efforts in all four countries fall far short of stopping shadow permit abuse altogether, and the positive progress that has been made should not lead to a decrease in vigilance from national or international observers. In the DRC for example, very few permits have actually been cancelled and logging and exports are continuing. In Cameroon, small titles are effectively suspended but a new draft regulation is still pending adoption, over two years after being initially drafted. Ghana has done the least. There, complaints by civil society and European VPA partners have had no effect on the FC’s allocation of timber rights on a discretionary basis. Instead, the FC continues to create several ways of administratively and secretly allocating timber rights. A recent illustration is the fact that both the lists provided to Global Witness and those published by the FC disclose a number of permit types that were previously unheard of.

At the same time, forest authorities are very keen to preserve the ability to hand out logging rights for development projects. In his assessment of the small titles issue, the Cameroonian Minister of Forests stated baldly: *“It will not be possible, in the short and medium term, to make small titles disappear. Cameroon has the ambition to be an emerging country by 2035. This supposes the realisation of big development projects. In certain cases, this will mean cutting and recuperating wood from the projects’ areas. [...] As in the past, the Ministry of Forest and Wildlife*

will be solicited to grant small titles".¹²⁸ The forest authority in Ghana is similarly robust in its defence of Salvage Permits.

There is evidence that VPAs have also had unintended consequences. In Cameroon, one official told Global Witness that the regulatory pressure created by the VPA led to a rush to access as much timber as possible, and provoked a surge of small titles. Meanwhile, in Ghana, the rise in the number of Salvage Permits coincides with preparations for VPA implementation.

A new cycle of shadow permits?

The main reason for caution is the fact that in each country the underlying conditions that enabled the misuse of shadow permits still exist, meaning the same issue could resurface in a different form. Indeed there are indications that vested interests have already adapted to the recent efforts to regulate shadow permits and are exploiting other loopholes. For example, major steps were thought to have been taken in Liberia to put a stop to logging under PUPs, but Global Witness understands that subsequently significant numbers of Community Forestry Management Agreements have been developed. Like PUPs before them, these agreements appear to have become a vehicle for companies to log Liberia's forests rather than a mechanism for communities to control their resources.

In Cameroon, meanwhile, a 2012 report by the Observateur Indépendant notes: *"the cancellation of authorisation of timber recovery leads to more wood removal permits through public auctions"*,¹²⁹ and therefore that AEBs, one of the two permit types constituting small titles, continue being granted.

Moreover, a Cameroon National Anti-Corruption Committee report showed that significant irregularities have been observed in the allocation of another small permit type, sales of standing timber, in 2011, stating that *"the interministerial commission [allocating the sales of standing timber] has committed numerous and grave irregularities in all its phases, from beginning to end, to the point of being qualified of a sophisticated artisanal and criminal organisation"*.¹³⁰

Finally, in November 2012, the new Minister of Forests in Cameroon granted an exceptional authorisation to cut and salvage 2,500ha of High Conservation Value forest in South West Region for the palm oil plantation Herakles Farm, seemingly outside of the normal framework.¹³¹ When Global Witness enquired about the legality of this logging allocation, the Minister answered that it was justified by article 73 of the forest law, the same article that underlies small titles. This case highlights the risk that companies will seek to locate future development projects inside forest areas as a means of accessing timber to offset start-up costs.

As the centrepiece of the EU's FLEGT action plan, VPAs were designed to encourage wide-reaching and effective forest governance reform in all four countries studied. Unfortunately, as this report shows, the rise of shadow permits has undermined VPAs and could threaten the whole FLEGT process, by mixing illegitimate timber into exports to the EU.

These examples show that there is still a long way to go to address effectively the problem of shadow permits. The individual schemes and examples currently operating – and described in detail above – must be controlled and eliminated, but the problem must also be addressed at a systemic level, so that new loopholes do not simply open up when current ones are closed.



PUP log with the property mark of Atlantic Resources Ltd, Liberia.

Conclusions & recommendations

Far from being isolated cases, the abuse of shadow permits is an established and growing trend. Weak spots in countries' legal frameworks are being exploited by unscrupulous individuals and companies determined to maintain their grip on the wealth generated by unregulated logging.

While VPAs had the laudable aim of driving major reform in the forestry sector, their neglect of the patronage networks underpinning forest mismanagement has encouraged the opportunistic exploitation of other permit types. Furthermore, the co-opting of shadow permit allocation by commercial loggers has undermined the promotion of proper, functioning community-based alternatives to large-scale logging that would sustain local economies.

The allocation process for shadow permits needs to be tightened up, both to ensure legal timber for export and for domestic use. This is a VPA requirement in all countries (except in the Central African Republic), so improved regulation of shadow permits will be key to achieving it, given that such permits were originally intended to facilitate small-scale, artisanal and community-based forest management.

Some reforms are underway in each of the countries studied, and these will be helped by the efforts of new ministers, and monitoring and advocacy by civil society. Technical measures introduced via trade deals and other instruments by Europe, the US, Australia and others will also help prevent timber of dubious legality from entering these markets.

However, only complete transparency in the allocation process of all permit-types will prevent vested interests from exploiting them for illegitimate purposes. Governments and their partners in forest reform need to go beyond a box-ticking approach and address the problem systematically.

Recommendations

To timber importers in the European Union and the United States

- Consider timber logged under any of the shadow permits covered by this report as high risk and potentially illegal.
- Exercise due diligence for timber logged under any permit. Do not assume timber is legal because it has a permit. Ascertain the precise location from which the timber originated as well as whether the allocation followed due process.

To international donors

- Support the establishment or continuation of independent monitoring initiatives in all four countries, and current or new civil society-led monitoring projects, including by providing adequate political backing so that they are effective in the face of vested interests.

To the EU FLEGT team

- Ensure that the key issues of (i) prevention of misappropriation of permits, and (ii) promotion of community-based alternatives to large-scale logging are included in FLEGT forest reforms.
- Ensure that compliance with VPA transparency requirements, particularly in relation to permit allocation, is a time-bound pre-requisite for any fully-functioning legality assurance system.
- Do not recognise legality assurance systems until all permit types are included.
- Ensure that all chain of custody systems use a web portal to make all information from the chain of custody system public – including all existing permits, their location, area, social agreements, contract documents, production, tax liability, and other payments or arrears.



Operations using Artisanal Logging Permits are concentrated along the DRC's rivers to facilitate transfer to Kinshasa, from where they are exported onto the global market

To Civil Society in all four countries

- Initiate professional and robust civil society-led monitoring programmes that enable early identification of any shadow permits operations.
- Pressure the authorities to expedite legal reforms that will control all types of permits and enable community-based forest management.
- Pressure VPA governance committees to take rapid and effective corrective actions whenever an abuse is reported.

To the Government of Cameroon

- The government should adopt the regulation as proposed by the Observateur Indépendant to regulate small titles, including its key provision to put the inter-ministerial commission of forest titles attribution in charge of the allocation of small titles.
- MINFOF and others should use this regulation as the valid legal framework for salvaging of trees from development projects.
- MINFOF should open registration of loggers at the local level to allow small-scale loggers to benefit from smaller permit types.
- MINFOF should improve the regularity of publication and accuracy of lists of small titles, including location details.
- MINFOF should make all contract documents, including social agreements and operational plans, available to affected communities and others.

To the Government of DRC

- The Environment Ministry should pursue initial efforts to regulate the artisanal sector, cancelling unlawfully allocated permits and seizing illegally-harvested timber.
- The Prime Minister should sign the long-awaited community forestry decree to end the current legal vacuum surrounding artisanal logging.
- Artisanal permits should only be allocated by provincial governors, who should maintain and publish a list of all approved artisanal loggers.
- The Environment Ministry should regularly publish an updated list of artisanal permits approved at the provincial level, including location details.
- Provincial authorities should make all artisanal permit documents, including operational plans, available to affected communities and others.

To the Government of Ghana

- The forest ministry and FC should stop issuing Salvage Permits or any other permits allocated administratively.
- The Commission on Human Rights and Administrative Justice, the official ombudsman, should investigate the surge of Salvage Permit allocation in the past three years, and consider legal action against the key perpetrators.
- The forest ministry should ensure that the transparency and competition requirements of the 1997 Timber Resource Management Act are applied to all forest titles.
- The forest ministry should develop a regulation to specify the conditions and procedure for the allocation of Salvage Permits.
- The FC should regularly publish lists of all permits, including location details. It should make all contract documents, including social agreements and operational plans, available to affected communities and others.

To the Government of Liberia

- The FDA should implement the Community Rights Law to end the current ambiguity around what a community forest is and how timber and other products and services can be obtained from it.
- In the wake of the PUPs scandal, the government needs to build capacity in communities to manage their forests and seek support from donors to do so.
- The FDA should cancel all current PUPs and adopt regulations specifying a size limit for PUPs, the type of land title they can be granted on, their duration, and their beneficiaries. This regulation should make clear that PUPs may not be granted for collectively-owned land.
- The Special Prosecution Team appointed in the wake of the scandal should swiftly prosecute individuals, companies and officials responsible for the PUP abuses.
- The FDA and the chain of custody operator should prevent any further export of PUP timber.
- The FDA should improve the regularity of publication and accuracy of lists of all permits, including location details. It should also make all contract documents, including social agreements and operational plans, available to affected communities and others.

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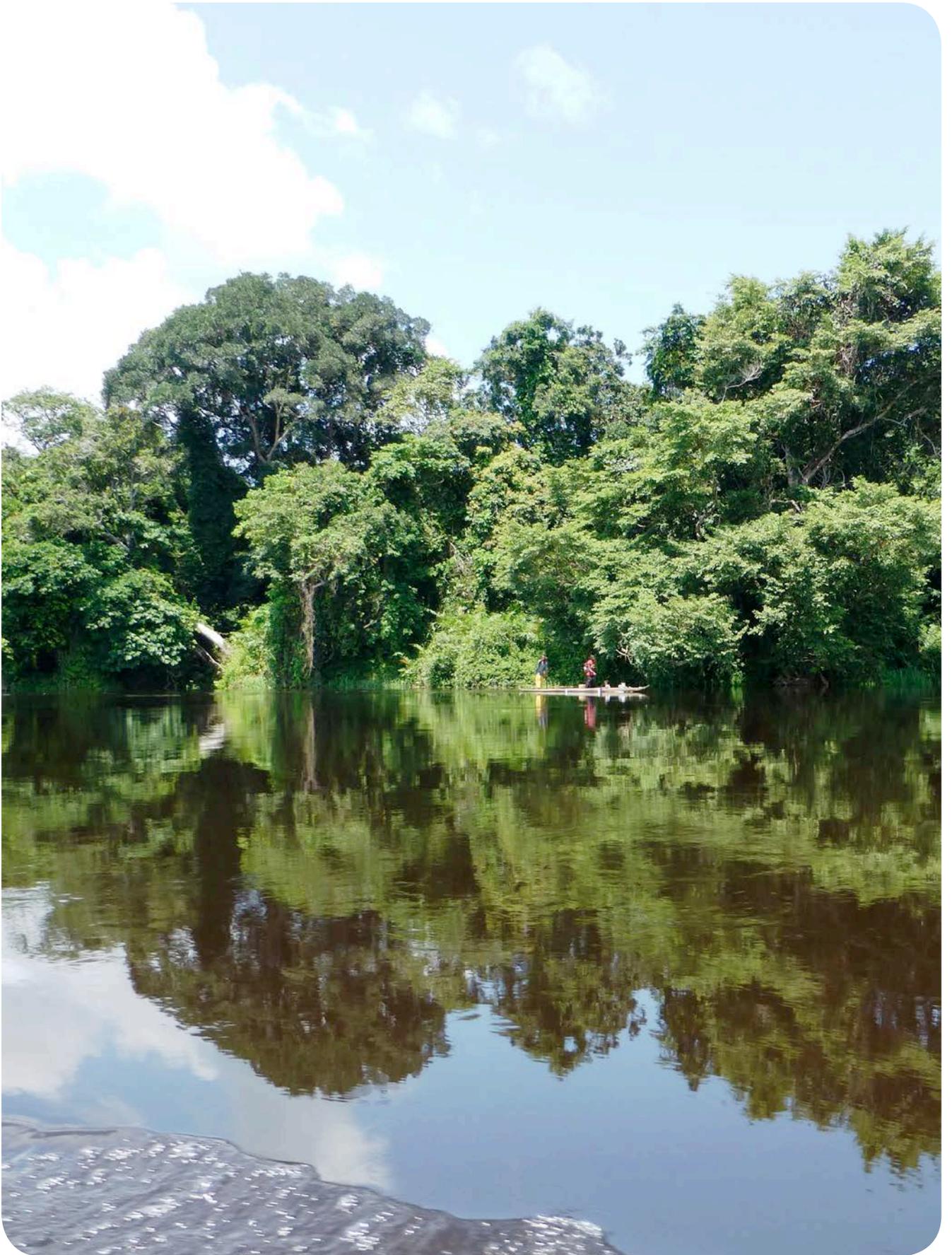
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The abuse of PUPs by industrial logging companies constituted the worst breakdown of rule of law in Liberia's forest sector since the timber-fuelled civil wars of the Charles Taylor era



Decades of weak laws and poor government have allowed logging companies to plunder the forests of the DRC, which contains the second largest area of tropical forest in the world. The 40 million Congolese who depend on the forest have seen very few of the supposed development benefits from these activities.



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