Summary report of the observation mission on allegations of illegal logging

Rapport de synthèse mission d'observation d'allégations D'illégalités forestières

1 Mission No. 001 from January 17 to 23, 2019 Location..... : Remboue (Estuaire province) Title visited .. : CFAD HUA JIA Mission report on allegations of forest illegalities Summary report MISSION TEAM Olivier MEYE OBIANG, Lawyer/Expert OI Elodie Grace NTSAME OLLOMO, Lawyer

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Following a report by a community observer of illegal logging in the CFAD Hua Jia in Remboué, specifically in the villages of Roungoula, Bangando, and Padouk, an independent external observation mission was dispatched by the NGO Brainforest from January 17 to 23, 2019, with the overall objective of verifying the compliance of said activities with the current legislation. The actions carried out during this mission, including documentary analyses and site visits, revealed issues related to the allocation procedure for wood recovery in agricultural plots, the traceability of wood harvested in these areas designated for agriculture, and contracts between agricultural operators and logging operators. 1. Issues with the allocation procedure for recoveries: Granting of wood from food crop plantations in violation of procedures; Arbitrary assessment of the price of abandoned wood and sale to ineligible third parties by the forestry administration. 2. Traceability issues: Unmarked wood (stumps and logs), poorly marked at logging sites, non-compliance with marking instructions in areas designated for agriculture by ANF; Logging without corresponding authorization of abandoned wood. 3. Contract issues between involved operators: Unauthorized use of the business name of the contractual partner; Substantial irregularities in the contract between COOFEROU and ANF. A. Observations on the logging site. Observation No. 1: Non-compliant wood marking. The company ANF, claiming to carry out the valorization of wood from agricultural plots of COOFEROU supported by the GRAINE program, itself marks the wood. Thus, three types of marking were identified during field visits by the team. Indeed, the team observed logs bearing the initials: ANF, CFR, COF, designating respectively ANF, for the company AMVENE NKOU-LU and Sons; and CFR and COF, for COOFEROU. The letters PA and CA, associated with the letters CFR and COF, designate Agricultural Plots and Agricultural Conventions. 2 Mission report on allegations of forest illegalities.

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According to Article 2 of the Convention on the exploitation and valorization of wood from cooperative food crop plantations of the GRAINE program, "SOTRADER and its cooperatives are responsible for: - Identifying and marking commercially valuable trees that must be felled and recorded by agents of the provincial services in charge of Water and Forests; - Keeping the felled logs on the plot until purchase, marking their surfaces with indications of the plot (and the legal number of the cooperative)." The marks do not correspond to the indications of the convention, as the operator marked the wood instead of SOTRADER without authorization, and no indication of the cooperative number is visible. Furthermore, the plot numbers are random and do not correspond to any agricultural plot on site. This is an indication of wood laundering, as poor marking and fraudulent marking pave the way for wood laundering. Recommendation: The CKK must carry out a traceability control operation for wood coming from the indicated areas. Observation No. 2: Unmarked stumps, logs, and butts During the field visit, the OI noted eight (8) unmarked stumps, one (1) log, and three (3) unmarked butts on the periphery and beyond the plantations in the villages of Roungoula and Padouk located in the CFAD Hua Jia. After the felling of a tree, the logging operator is required to mark the stump and the butt with the

imprint of their logging hammer and an identification number. On the logs from the felled tree, in addition to the hammer imprint, a number is indicated in the form of a fraction where the numerator is the tree number and the denominator is a digit indicating the order of the log from the butt. Such is the spirit of Article 128 of the forestry code. However, the logs, stumps, and butts observed by the mission bore no marks. 3 Mission report on allegations of forest illegalities.

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This indicates that, since the CFAD Hua Jia is not currently being logged and no valid title exists in these villages, the observed stumps, logs, and butts result from illegal logging. Recommendation: The CKK must organize a control mission and pursue offenders if necessary! These facts constitute offenses of logging without title and non-marking of felled trees, in violation of the provisions of Articles 14 and 128, exposing the perpetrator to the sanctions provided for in Articles 274 and 276 of the Forestry Code. Observation No. 3: Presence of wood bearing the CFR mark outside recovery zones During visits beyond the villages of Roungoula and Bangando, the team noted the presence of a Tali log marked CFR 00255-1 CA in the village of Padouk (S 00.29143°/E 010.22272°), the CFR mark designating COOFEROU. The partnership agreement between ANF and COOFEROU specifically designates the villages of Bangando and Roungoula as zones for the valorization of wood abandoned by the company ANF. Similarly, according to the mission report on the potential timber on the site of the women's cooperative of Roungoula (COOFEROU), the wood, totaling 7,509 logs, subject to appropriation by the company ANF, was identified only in the villages of Roungoula and Bangando. It therefore seems that the company ANF has exceeded the limits of its activity zones and could consequently exceed the quotas identified by the CKK. Recommendation: The CKK must stop ANF's activities. 4 Mission report on allegations of forest illegalities.

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B. Observations arising from documentary analysis Observation No. 1: An unfounded recovery of wood due to the absence of rights of COOFEROU on the abandoned wood. In the contract binding COOFEROU to ANF, it is stated that "the company ANF is the business bearer and responsible in this project for the valorization of abandoned wood in these agricultural projects." Furthermore, the mission report on the evaluation of the potential timber on the site of the women's cooperative of ROUNGOULA (COOFEROU) in the grouping of Remboué 2, established by the Water and Forests Department of Komo Kango, notes that 7,509 logs (Ovengkol, Tali, Padouk, Ebiara, and Okoumé), totaling 22,527 m3, were "felled and put into logs during cleaning to accommodate future agricultural crops of the COOFEROU cooperative." From various interviews, it appears that the only agricultural project in the area is the GRAINE program led by SOTRADER. Indeed, the valorization of exploitable species with commercial value benefits only the partner cooperatives of SOTRADER in the GRAINE program. (art.4: Sale of wood and distribution of profits). However, SOTRADER notes in its letters addressed to the Departmental Service of Water and Forests of Komo Kango, dated October 30, 2018, and January 21, 2019, that it does not support any cooperative within the framework of its program. But, it supports more than 200 farmers, individually, in the development of their plantations. Therefore, COOFEROU is not a partner cooperative of the GRAINE program and cannot benefit from the sale of recovery wood in the same way as cooperatives working with SOTRADER. Consequently, it cannot engage in transactions regarding forest resources that do not belong to it. The company ANF has no valid recovery rights based on the valorization of abandoned wood within the framework of agricultural projects, due to the lack of rights of COOFEROU over said wood. Observation No. 2: An appropriation of abandoned wood without authorization from the Director General of Water and Forests The company ANF claims the following documents to justify the appropriation of abandoned wood: – A pre-judgment transaction act in the matter of Water and Forests stating a

fine of 7,059,000 FCFA, addressed to COOFEROU, for "non-compliance with the provisions of Articles 134 and 234 of Law 016/01 and sanctioned by Article 275 of the same law"; – A payment order of 4,000,000 FCFA for the sale of wood in favor of COOFEROU; Articles 7 and 8 - A1 of Decree No. 0273/PR/MEF of February 2, 2011, setting the status of abandoned wood, provide that at the end of a procedure for the appropriation of abandoned wood, either by auction or by private sale, the beneficiary must have an appropriation authorization issued by the Director General of Water and Forests. None of the documents presented by the company ANF corresponds to the appropriation authorization in favor of COOFEROU issued by the DGEF. Consequently, this allocation is not regular. Recommendation: The company ANF must obtain the required documents for the appropriation of abandoned wood. Observation No. 3: An ambiguous forestry dispute, on the margins of procedures to launder felled wood without authorization. After examining the documents brought to the attention of the team, it appears that: The pre-judgment transaction act in the matter of Water and Forests, dated December 11, 2018, stating a fine of 7,059,000 FCFA, addressed to COOFEROU, for "non-compliance with the provisions of Articles 134 and 234 of Law 016/01 and sanctioned by Article 275 of the same law," is signed by Ms. Jobet Ingrid, Director General of ANF, as the representative of the offending COOFEROU. Two payment deadlines are set: December 10, 2018, and February 10, 2019. The payment slip, dated December 11, 2018, related to a sale of wood to COOFEROU, indicates payment by Ms. JOBET of the first installment of the transaction, one day after the deadline set in the transaction act established on the same

December 11. The partnership contract between COOFEROU and ANF is signed on December 13, 2018, two days after the payment of the first installment. In law, any report of an offense or any document that serves as such must be 6 Mission report on allegations of forest illegalities.

communication to the accused and not to third parties, unless the third party is carrying a representation mandate. However, no authorized representative of COOFEROU has signed the transactional and payment documents related to the said litigation. The latter does not acknowledge being in litigation with the forestry administration, and no agreement with ANF justifying the payment of this first tranche on behalf of COOFEROU has been presented to the mission team. This situation suggests a lack of clarity surrounding this wood valuation aimed at granting resources to an operator who is not compliant: a framework set up for the laundering of wood. Recommendation: The inspection of the services of the Ministry of Forests and the Environment in charge of the Climate Plan must hear the protagonists of this case and note any procedural discrepancies if applicable. Observation No. 4: A payment order established by an unauthorized authority Upon analyzing the payment order for the sale of wood issued to COOFEROU, it appears that it was signed by the Director General of Forests. However, according to Volume 2 of the Procedures Manual of the services relating to the Procedures for issuing technical acts, the payment order for the sale by mutual agreement is signed by the DGICBVPF, while the payment order for the auction sale is signed by the DP. In all cases, the Director General does not intervene in such a procedure. Consequently, the payment order for the sale of wood issued to COOFEROU is tainted by irregularity and must therefore be called into question. Recommendation: Suspend the valorization activities by ANF, review the sale price assessment, and make a correction on the wood already recovered by ANF. Observation No. 5: The results of the evaluation of the potential contradict the estimates of SOTRADER The report of the mission evaluating the woody potential on the site of the cooperative of women from Roungoula states that there are 7,509 logs for a volume of 22,527 m3. The report does not specify who is the author of this cut but states that “the timber has been felled and placed in logs during the cleaning to accommodate the future agricultural crops of the COOFEROU cooperative.”

According to this report, the abandoned woods have been identified on the sites of COOFEROU located in the villages of Bangando and Roungoula, without specifying the area on which they were felled. These are villages where SOTRADER assists farmers in the development of agricultural plots. On the other hand, this company notes, in its letter dated January 21, 2019, addressed to the Head of the Departmental Service of Water and Forests of Komo-Kango (See annex) that: the area of the developed parts where the wood was identified does not exceed 75 ha (32.2 ha in Bangando and 41.1 ha in Roungoula); the said areas are essentially fallow land. The administration's evaluation is questionable because the calculation bases are not clarified in their report, particularly the agricultural areas traversed where the abandoned woods were located. Recommendation: Commission a counter-expertise of the evaluation of the potential of the area. Observation No. 6: The calculation basis for the sale price of wood to COOFEROU/ANF is arbitrary In the analysis of the payment order and the payment slip for the sale of wood submitted to the mission team, it appears that COOFEROU, through the general director of ANF, paid an amount of 4,000,000 FCFA to the CDC for the purchase of abandoned wood on its sites. Mr. AMVENE NKOULOU claims that the acquisition of the abandoned wood under the payment order presented was made on a basis of 1,000 FCFA per log for the 7,509 declared logs. The law states that the “final market value of abandoned wood depends on its state of deterioration.” In this sense, circular No. 844/MEF/SG/DGF/DEPRC/SRC of October 18, 2011 sets the price of abandoned wood by species and per cubic meter. By strictly applying the price grid of circular No.

844/MEF/SG/DGF/DEPRC/SRC on the potential as described in the evaluation report, we can estimate the market value of the said abandoned wood at 1,244,220,000 XAF, representing a loss of 1,240,220,000 for the State. Table 1: Estimation of the loss for the State Species Volume(m3) Price/m3 Total Ovengkol 6285 80,000.00 XAF 502,800,000.00 XAF Tali 1635 50,000.00 XAF 81,750,000.00 XAF Padouk 1194 100,000.00 XAF 119,400,000.00 XAF Ebiara 750 45,000.00 XAF 33,750,000.00 XAF Okoumé 12663 40,000.00 XAF 506,520,000.00 XAF Total 22527 1,244,220,000.00 XAF Sale amount 4,000,000.00 XAF Difference 1,240,220,000.00 XAF Recommendation: Reassess the price of all sold wood and send a correction note to the ANF/ COOFEROU company. Observation No. 7: A sale of abandoned wood to an offender (COOFEROU) The transaction act before judgment in matters of water and forests is brought against COOFEROU for an offense related to the non-observance of articles 134 and 234 of law 16/01 of December 31, 2001, reprimanded by article 275 of the same law, concerning abandoned wood on its site. However, the payment order for the sale of said wood indicates that it is a beneficiary. Volume 3 of the Procedures Manual of the services relating to control procedures specifies that the payment of a transactional fine does not entitle the recovery of seized products and objects. And Volume 2 of the procedures manual of the services, relating to the procedures for issuing technical acts, reiterates that in the context of the appropriation procedure for abandoned wood, any offender is not eligible for either the mutual sale procedure or the auction sale procedure. As COOFEROU is the main offender, it was therefore not eligible for the sale of abandoned wood on its plots. The forestry administration did not respect the procedure for appropriating abandoned wood. Recommendation: Cancel the act of sale of abandoned wood in favor of COOFEROU. Observation No. 8: A partnership exploitation contract tainted by irregularities Legally formed agreements hold the force of law for those who made them. This is the spirit of the provisions of articles 5 and 13 of the Gabonese civil code. However, certain conditions must be met for them to be validly formed. Upon analyzing the contract between ANF and COOFEROU, we note certain elements that could taint its validity. Indeed, it is stated that “the cooperative will be entitled to a small royalty...”, without the amount being determined. However, the quantities and species of wood to be valorized under this contract are known and recorded in the report of the woody potential evaluation mission conducted by CKK on the sites of COOFEROU. Likewise, no duration is fixed within the framework of this contract. It seems, however, essential to

determine a duration for the contract, considering the works that ANF has committed to carry out for the benefit of the village populations. The contract mentions a duration without specifying it: “The cooperative has the right not to allocate any area to another forestry operator during the duration of this contract, given the documents obtained and the expenses incurred by ANF.” Furthermore, this contract, drafted by ANF, does not provide any possibility of termination for the parties involved. Thus, if COOFEROU believes that ANF has not respected its commitments, it cannot terminate the contract. Moreover, this contract contains exclusivity clauses in favor of ANF. Recommendation: COOFEROU should seek the annulment of this protocol agreement. B.P: 23 749 Libreville, Gabon Ambowé, Camp DEGAULLE Tel: +241 01 73 08 86 E-mail: info@brainforest-gabon.org www.brainforest-gabon.org (c) Brainforest, January 2019