



2019 Annual Report

Independent monitoring of social clauses in the Democratic Republic of Congo

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Report

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Photo by Ollivier Girard/CIFOR

On the Congo River SOFORMA wood Industry in between Lukolela and Kinshasa, Democratic Republic of Congo

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Abbreviations and acronyms

CIFOR	Center for International Forestry Research
CSO	Civil society organization
DP	Development Plans
DRC	Democratic Republic of Congo
GDP	Gross Domestic Product
IFM	Independent forest monitoring
LDF	Local development fund
MP	Management Plan
NGO	Non-governmental organization
NTFP	Non-timber forest product
WWF	World Wildlife Fund for Nature

Executive summary

This analysis has been undertaken as part of independent forest monitoring in the Democratic Republic of Congo, with a particular focus on the social clauses agreed to under forest concession holders' Development Plans. The analysis forms part of work being carried out with the World Wildlife Fund for Nature (WWF) to provide assistance to Congolese civil society in implementing the 2002 Forest Code.

The Democratic Republic of Congo has been officially committed to independent forest monitoring (IFM) since 2010. This form of forest observation, called mandated independent (forest) monitoring (MIM) has been requested by technical and funding partners, and seeks to address illegal logging operations. Alongside this government initiative, civil society has developed a complementary independent monitoring approach. Together with official IFM, civil society monitors the regularity of forestry operations, with particular emphasis on respect for their social requirements. Through the social clauses mechanism, civil society verifies implementation of the social clauses agreed to as part of forest concession holders' Development Plans. The social clauses mechanism was instituted in the 2002 Forest Code, and has been implemented since 2010. Despite numerous social clause agreements being signed by concession holders and local and indigenous communities between 2010 and 2019, a lack of systematic monitoring has made it impossible to evaluate their quality or their impact on the living conditions of local people, as well as the quality of monitoring by civil society. The purpose of independent forestry monitoring, conducted as part of this

analysis, is to document the implementation of social clauses in 19 forest concessions during the 2017-2018 logging period. Actions that affect: (i) socio-economic infrastructure, (ii) governance of local institutions, and (iii) the exercise of traditional rights, were documented. This study looks at activities designed to respond to the following three issues:

- (i) To what extent do social clauses improve the living conditions of local and neighboring communities?
- (ii) How effective are the institutions that ensure the participation of resident populations in managing revenue from logging operations?
- (iii) To what extent does progress in developing forest management affect the exercise of traditional rights?

Results show that, on the one hand, civil society has developed its capacity over time – but still needs regular support so that its achievements do not fade with time – and on the other, that application of the social clauses has had tangible effects on local and indigenous communities. The monitoring exercise has revealed that:

- Several national civil society organizations (CSOs) received training prior to implementation of the social clauses monitoring process. However, the capacity of these CSOs still requires substantial improvement, especially in terms of their ability to collect and analyze data.
- Monitoring results show that close to USD 1.9 million was invested in the socio-economic sector in 2017-2018. Several villages benefited from construction of infrastructure

- like schools, hospitals, water supply lines and road repairs, and other provisions (such as transportation of people and goods, medicine for healthcare centers). Altogether, official population data for zones with social clauses show that close to 390,000 people (including 12,000 students) benefit from infrastructure built under the implementation of these clauses. Likewise, almost 837 (permanent and temporary) jobs were created by the forest companies visited.
- Implementation rates for projects undertaken as part of the social clauses of Development Plans are still far below forecasts; just 20% of healthcare centers, 25% of water supply lines, 8% of road projects and 38% of schools were actually implemented in reality (to the tune of USD 1.9 billion). The difference between forecasts and reality is largely due to financial limitations, including delays in the release of funds from forestry companies (57%), non-payment of funds by concession holders (14%) and inaccurate costing by the suppliers hired by local management committees (19%).
 - On the other hand, the actual execution rates of the projects are more satisfactory. Of the 56 infrastructure projects identified, an estimated 62% of school, 48% of health center and 100% of drinking water supply projects have been fully implemented.
 - Resident populations are central to the project selection process, according to 78% of the people interviewed by CSOs, who stressed that projects reflected the will of local and indigenous communities. Just 22% said that local management committees chose the projects to be funded without much community involvement.
 - Local institutions, such as management and monitoring committees, are functioning well, thanks to monitored parameters like regular executive staff turnover, the existence and implementation of official operating procedures, and quasi-systematic recourse to elections as a method for selecting decision-making bodies. Local management and monitoring committees satisfactorily represent the villages and their sociological differences, but participation of women and indigenous populations is weak as their presence is still marginal.
 - In practice, there are many difficulties connected to the exercise of customary rights, for instance, restrictions on village hunting practices and the gathering of non-timber forest products (NTFP). In practical terms, there is no real separation between subsistence hunting and illegal commercial hunting. Since these limitations rarely spark conflicts between concession holders and the local population, we see these restrictions as a formality.
 - On the whole, the extent to which social clauses have been implemented is largely time-dependent. Results show that social clauses that have been signed a long time ago, are most likely to have been implemented now. The explanation for this lies in a systematic time lag between the signing of a social clauses agreement, the beginning of concession operations, the concession holder paying related taxes, and the transfer of these funds to local communities. Implementation of planned social clause activity is, therefore, dependent on a concession holder's logging operations being active.

1 Introduction

Respect for social obligations in forest concessions, long seen as a forgotten cousin, has been better considered over the last few years, largely thanks to the actions of civil society (Coffey and Palladium 2016). More extensive monitoring of social obligations should eventually extend to the entire forest sector, with the announced end of the process of conversion of former logging titles and the new systematization of the forest management plan as a tool for forest management.

Since social clauses can generate substantial financial revenue, up to USD 13 million per year, independent forest monitoring has major potential to improve the living conditions of local and indigenous communities and to guarantee the socio-economic rights of these peoples, who are among the most vulnerable in the timber value chain (Tsanga et al. 2017).

Sustainable forest management in the DRC comes as a result of a lengthy process of regular improvements in forestry practices, with sanctions and incentives throughout (WWF 2012). The social aspect of forest governance in the DRC has been improving for close to 20 years. Forest law is now specific on the practicalities when it comes to social measures, with sections requiring concession holders to provide socio-economic infrastructure for local and indigenous communities. These obligations were officially stipulated as ‘social clauses’, agreements appended to the Development Plans that define the framework for future collaboration between concession holders and local and indigenous communities

residing near forest operation sites. Terms and conditions for implementing these social clauses were outlined in 2010, triggering the start-up phase of these agreements. The five-year period of 2011-2015 was a trial run of these social clauses, called ‘first generation’ clauses. They were independently monitored by civil society and led to the publication of an earlier report.

This report, with financial support from the Norwegian Development Agency (NORAD) working via the World Wildlife Fund for Nature (WWF), focuses on the monitoring of social clause implementation during 2018 and 2019 in the Democratic Republic of the Congo. It also presents an assessment of such implementation during 2017 and 2018, which was selected as the reference period for social clause monitoring.

Activities carried out as part of this study seek to answer several questions, in particular:

- (i) To what extent do the social clauses improve the living conditions of local and neighboring communities?
- (ii) How effective are the institutions that promote local people’s participation in managing profits from forestry operations?
- (iii) To what extent does progress in forestry management impact the exercise of traditional rights?

After a short overview of the DRC forestry sector, the methodology for data collection and analysis used in this report will be discussed. The main results will then be presented and discussed, followed by a conclusion.

2 The forestry sector in the Democratic Republic of Congo

Forests in the Democratic Republic of Congo are managed according to provisions set out in the 2002 Forest Code, which establishes forest development and inventory as pillars of a sustainable natural resources development policy. The forestry sector is estimated to account for almost 1% of the national GDP (Atyi and Bayol 2009) and generates in the region of 15,000 jobs in industrial forestry and 25,000 jobs in artisanal forestry (Lescuyer et al. 2014). The number of jobs in industrial forestry, however, seems to be decreasing due to a reduced number of logging operations.

In 2014, the conversion of earlier forest deeds led to the conclusion of 57 forest concession contracts. This number increased to 63 in 2016. The advent of forest concession imposes the use of a Forest Management Plan as the main tool in sustainable forest management. Although a Management Plan is required before any logging takes place, legal mechanisms authorize those in the industrial forestry sector to run their concessions on the basis of a Development Plan approved by the forestry administration; this is taken to be a provisional Management Plan¹. The concession holder, under the supervision of the forest administration, is responsible for preparing this Management Plan. The plan must spell out the concession holder's silvicultural, social and economic activities and must be approved by the provincial authorities before being implemented. It can be evaluated and then revised every

five years. On 31 March 2019, 32 forest management plans were filed with the national forestry authorities, of which 23 were validated, covering a land area of 6.5 million hectares, approximately 60% of the total 11 million hectares allocated to industrial operators.

Traditional rights of local and indigenous communities are guaranteed by the local law covered by the MP. Allocating concessionary rights to a forest area does not alter the traditional rights of local people, who keep their right to exercise their traditional activities – fishing, hunting and gathering non-wood forest products (NWFP) – but who must respect restrictions related to agricultural and commercial practices. Removing wood for the construction of homes is also authorized.

From the social angle, 'area fees' and practical requirements provide two complementary approaches that have been introduced to ensure the redistribution of profits from logging to rural communities. The 'area fee' is a mechanism for charging USD 0.50 per hectare of land under operation (officially determined by the concessionaire and the forest administration); it does not apply to the whole land area in the concession. The money from this area fee is divided between central government (60%), provincial administration (25%) and the territory where wood has been harvested (15%). The amount of area fee that is distributed annually to these recipients varied between USD 3.5 million (2009) and USD 1.9 million (2016) (Bertaux 2017).

¹ See Art. 2 of Order no. 050 of 25 September 2015 on timber production

Besides the area fee, the law appends practical requirements to the forest concession contract, as an additional tool for local development. This practical requirement is a prerequisite to MP validation, and is set out in a social clause agreement, showing the type of community projects to be carried out or restored, and the related funding conditions. The first 'social clauses' were established in 2011, and 85 of these first-generation clauses involving local communities and concessionaires were signed. These social clauses were funded through local development funds (LDF) using forestry companies' contributions. These LDF contributions are based on the volume of timber declared every quarter by the forest managers (between USD 2-5 per cubic meter, depending on the species) while potential contributions are based on the logging authorization. Since authorizations often cover more than the volumes removed, there are major differences between forecast and real contributions. During 2011-2015, funds forecasted to feed local development funds were estimated at USD 5.6 million, however in reality just USD 2 million was made available to local communities through 23 agreements with forest concessions carrying out logging operations over that period. A look at these first-generation social clauses highlights a significant gap between financial forecasts and reality. Hence the implementation rate for social clauses is marginal, if we compare it to the forecasts jointly established by concessionaires and local communities. The gap between forecasts and reality can be explained by the fact that financial forecasts are based on the hypothesis that the volumes of industrial

logging authorized are very similar to the annual volumes actually cut and declared by concession holders to the forestry administration. This is not often the case, as in general the concession holder makes an inventory of all commercial species during operations inventory, but not all trees are felled, because of market demand or malformations, for instance. Likewise, some concessions remain inactive for multiple reasons, some even for years. In the sample analyzed in this document, for instance, an average of two years transpired between the date of signature of the social clauses agreement and forest operations actually beginning. In other words, if there are no activities and no officially harvested and declared volumes, there is no funding for the LDF, nor field operations.

Consequently, the correlation between approval and implementation of the forest management plan, and implementation of planned social clause activities, is still theoretical. In reality, differences between the amounts forecasted and paid means this tool is not yet able to reach its full potential and allow local and indigenous communities to develop and participate in the management of forest resources. Actual logging, and the reporting of results to the state, triggers implementation of the social clauses, through resources generated. These first-generation social clauses produced weak results, considering the socio-economic expectations. The low level of resource mobilization, resulting from concession holders' inactivity and, in certain cases, under-harvesting of the volumes authorized, has set the pace of this episode of forest management (Tsanga et al. 2017).

3 Methodology

3.1 Collection techniques and tools

The purpose of social clause monitoring is to assess the extent of implementation and the level of socio-economic impact on the well-being of neighboring local and indigenous communities. With this in mind, 19 forest concessions, active at the time of the monitoring mission, were selected for analysis. These selected concessions were located in the DRC's five main, extensively forested regions used for logging.

There are several steps in social clause monitoring. The first step is to define the themes and variables to monitor as part of this study. These themes and variables were defined and validated together with civil society organizations and the private sector (Table 1) through ad-hoc work sessions. In the second step, the goal was to select experts on social clause monitoring and build up capacity to use a real-time

data collection tool (KoBoCollect). This tool is easy to use on a cell phone or tablet and does not require regular internet connection, which is often unavailable in rural areas. Training sessions for civil society organizations were held before information was collected in the provinces. The third step in information collection was composed of two phases, one in December 2018 and the other in March 2019 because general elections altered the original calendar. Data were collected by 17 civil society organizations that had previously supported local people in negotiating social clauses. Before the fieldwork, meetings were held with concession managers so as to inform them of the goals and compile information on the implementation of the social clauses from the concession holder's perspective. With this in mind, individual interviews and group sessions were held in the villages. Regarding infrastructure, data was collected from members of

Table 1. Themes and variables

Themes	Living conditions in local and indigenous communities	Participation of local and indigenous people in the management of local affairs	Traditional use rights to forest resources	Local employment
Variables	<ul style="list-style-type: none"> • Availability and quality of health services • Availability and quality of school infrastructure • Availability and quality of water supply lines • Easy access to transportation of goods and people • Road infrastructure management 	<ul style="list-style-type: none"> • Local institutions and governance • Existence of public consultation mechanisms and their effectiveness • Formal procedures for solving conflicts between local and indigenous communities and concession holders 	<ul style="list-style-type: none"> • Satisfaction with the exercise of traditional hunting and fishing rights • Satisfaction with the gathering of non-timber forest products • Satisfaction with the protection of important cultural sites 	<ul style="list-style-type: none"> • Number of jobs • Existence and effectiveness of a preferential policy for local and indigenous people

Table 2. Characteristics of the monitored concessions

Provinces	Logging companies	Social clauses	Concessions	Approved MP	Local institutions
Equateur	2	4	4	3	8
Mai-Ndombe	3	5	5	5	10
Mongala	1	2	2	2	4
Tshopo	4	6	6	6	12
Tshuapa	1	2	2	2	4
Total	11	19	19	18	38

local management committees on the existence and functioning of infrastructure, including their geolocations, before this was ascertained through visits to these structures.

During this phase, civil society organizations visited the 19 forest concessions, spread across the 8 territories (Bafwasende, Basoko, Befale, Ingende, Lisala, Lukolela, Oshwé and Ubundu) and 5 provinces targeted by the WWF forest governance project.

3.2 Limitations of the study

This report has two main limitations. The first is that the involved civil society organizations do not yet have the technical and analytical capacity required to develop a strong connection between the required information needs and the final data collection results. This weakness is part of the process currently in place to provide support to CSOs and is well known to WWF personnel in charge of the project. However, it means that not all possible analyses were able to be performed, due to the quality of some of the data received.

The second limitation is related to the method of concession monitoring. For financial, logistical and security reasons, available data are collected in the vicinity of concessions active at the time of the monitoring mission. This approach remains rather random; it does not allow concessions to be chosen on the basis of specific analytical characteristics. In future, it would be preferable to be able to select at least two groups of concession holders - ones with management plans (MP) and ones without, in an attempt to understand whether the presence or absence of an MP makes a significant difference in terms of implementation of the social clauses.

That said, these constraints do not lessen the value of this analysis, carried out from the very beginning of the process of social clause implementation and monitoring. Clear trends are highlighted, which may well be used as a baseline for future analyzes, that can simultaneously analyze any improvements (or lack of) in CSOs in terms of their role as independent observers, and also any progression (or lack of) in the quantitative implementation of social clauses in the DRC.

4 Results

4.1 Living conditions in rural communities

In institutional terms, the redistribution of profits from logging operations requires special managerial services to handle the companies' payments for social clauses. In material terms, special infrastructure has to be built to meet the basic needs of resident populations. The effectiveness of the socio-economic development stemming from social clauses is analyzed using both individual meetings with the relevant people and village-level focus groups. Although there was very little time for data collection and managerial bodies represent between 2 and 15 villages on average, discussions with the members of these bodies, theoretically, made it possible to understand the situation prevailing in 318 villages located around 19 forest concession areas.

Experience with the first-generation social clauses (2011-2015) showed a significant time lag from when forest companies signed the social clauses and when they actually transferred the related funds. As a year, 2017 may not reveal the full potential of the social clauses, as these clauses are too recent. But an analysis of this sort at this stage can also be used as a starting point for analyzing future developments. This is the approach we are using. The implementation of the social clauses will be analyzed from the viewpoint of (i) governance of the institutions responsible for local development, (ii) infrastructure that supports development activities, and (iii) protection of the resulting rights

4.1.1 Socio-economic investments

The law specifically defines the framework for the infrastructure that is authorized under social clauses. Community projects must be limited to road construction and management, reconstruction work, equipment for hospitals and schools, and facilities for the transportation of goods and people. The 19 social clauses that were monitored are strictly within this legal framework. According to 78% of the people we met, the resident population is very instrumental in project selection and projects reflect the will of local and indigenous communities, while 22% believe that the decision on which projects are financed is taken by the local management committee. Two aspects of the socio-economic investments were analyzed (see Figures 1 and 2). The first component (Figure 1) compares the program's investments with their level of disbursement. In other words, this component answers the question of how projects are defined, and how many have actually gotten off the ground. The second component, which hinges on the first, examines the project in detail. The purpose is to analyze the level of implementation (complete or part) of the projects that were conducted.

On the whole, there is a major difference between the work planned and the work completed (Figure 1). With an average of 38% of planned work being implemented in reality, school reconstruction or construction projects rank among the most satisfactory infrastructure projects.

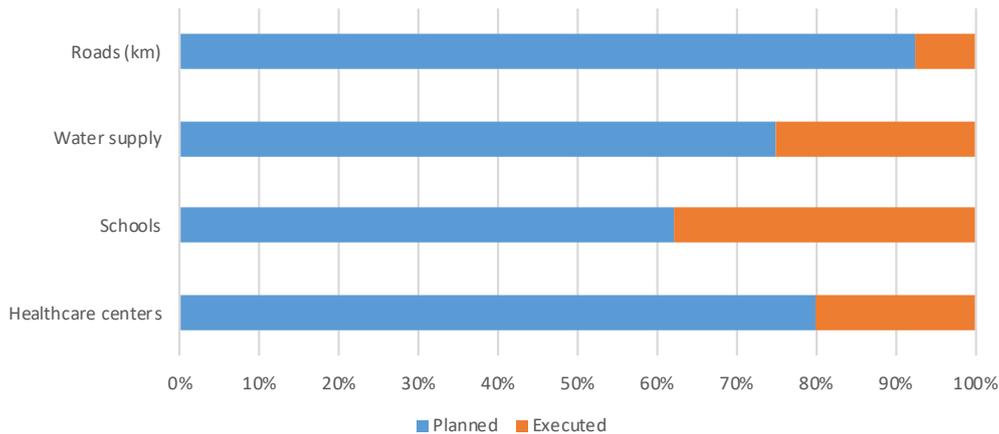


Figure 1. Number of infrastructure projects planned and executed

Educational facilities are among the top requests from the local and indigenous communities. Likewise, this type of infrastructure is desirable because their operating costs are lower compared, for instance, to healthcare facilities.

On the other hand, rural road renovation is the segment where the gap between forecasts and reality is at its greatest (8% implementation). This is a rather costly segment, where concession holders have to use large worksite machinery for actions that ultimately have a social purpose, but could also slow down their target-driven production. For many operators, competition for the use of worksite machinery also made it more

difficult to keep promises in terms of road construction.

The low rate of commitment fulfilment by concession holders is offset by the actual implementation of the projects (Figure 2). With regard to the projects undertaken, despite there being few of them, an estimated 62% of school projects, about 48% of healthcare center projects and 100% of water supply lines projects have now been completed. Community projects in social clauses that were signed long ago have the highest implementation rate. With the exception of roads, we observed that the highest project implementation rate (63%) concerned clauses signed between 2011 and 2016, compared to 15% for the clauses signed in 2017-2018.

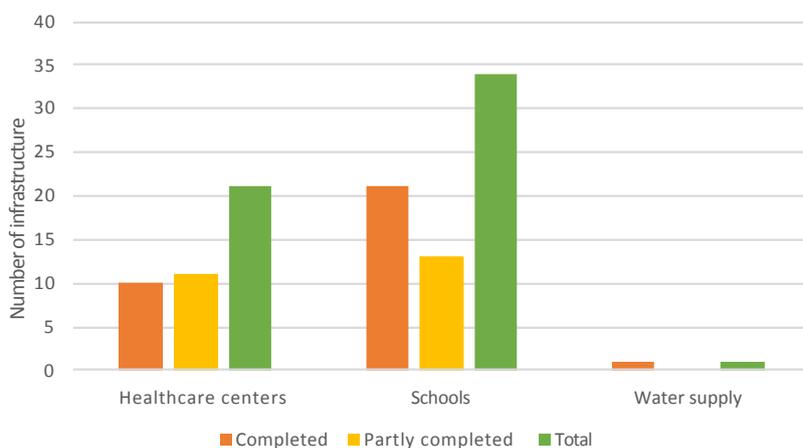


Figure 2. Completion rates for initiated projects

Tableau 3. Challenges encountered in the projects (N=56)

Disparities in programming	%
Late release of funds	59
Funds not paid by concession holders	11
Poor cost evaluation	15
Delays in implementation	4
Suspension of operations	11
Total	100

The community projects are predicated on payments made by the forestry concessions, but these concessions can only pay if their logging operations have started and the related taxes have been paid. There is actually a significant time delay between the signing of the social clause and its implementation. This time lag in starting activities is the first impediment to implementation of the community projects. Then there is local communities' lack of expertise, which often results in an under-estimation of project costs, with the inevitable consequence being delays in construction work in the best of cases, or even obligation to abandon the uncompleted worksite.

The problems mentioned above are mainly caused by management funding problems.

There is always a difference between theoretical production predictions, quarterly production reports and the sums actually paid to local communities. Figure 3 illustrates revenue projections for the 13 social clauses in 2016 and the 17 social clauses in 2017.

Generating funding for the LDF is an exercise fraught with problems. The three main challenges are (i) a delayed start to logging (45%), (ii) production levels lower than predicted (36%), and (iii) suspension of activities to a certain extent (9%). These challenges are connected to logging activities as well as to the constraints that forestry enterprises encounter. Difficulties can be due to: internal problems within the enterprises; administrative issues, due to late applications for logging permits or late payment of taxes, particularly the forest fee; or insufficient logistical resources (e.g. skidders, logging trucks). If the forest concession is not yet in operation, there is no production and therefore no financial resources to be made available to the LDF. Another problem is that of actually securing the funds, as there are not quarterly production statements. Because of difficulties obtaining the legally required quarterly production reports, LDF managers have an unclear picture of the amount of funding they will receive, which

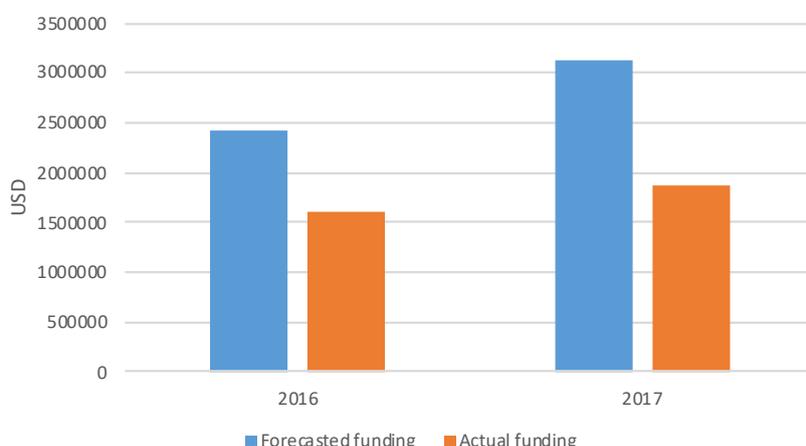


Figure 3. Funding for LDFs in 2016-2017

also reflects a certain lack of transparency in the fund allocation process.

Despite these technical and financial challenges, 78% of respondents were satisfied with the implemented projects. The communities paid particularly special attention to the materials used when it came to the schools and healthcare facilities (Figure 4). The situation is less clear concerning the materials used in constructing the water supply lines, as water is generally considered to be non-potable, whether from man-powered pumps or natural sources.

Various facilities, installed by concession holders for the purpose of improving the daily lives of local communities, were identified. According to interviews, the majority of the concession holders (94%) provided transportation facilities for people and goods. These facilities allowed about 795 people a year to travel by sea or road. This number is probably much higher, firstly because the interviewers did not always have access to the transport manifests, secondly because an apparently considerable number of individuals were not listed on the manifests, and lastly the decentralized government offices, local management committees and concession holders did not always keep records of the people who benefited.

Responsibility for the construction or restoration of the socio-economic infrastructure varies, depending on the type of infrastructure in question. For instance, construction of healthcare facilities and water supply lines is generally handled by concession holders, while construction of schools is generally taken on by the LDF (Figure 5). This is contradictory, if we consider that the infrastructures are supposed to be financed by the local development fund on the basis of the contributions paid by the concessionaires, but in reality, this works as a system of pre-financing whereby funds advanced can be deducted from the total amount paid to local community. Through discussions, we discovered that in several cases, concession holders contributed to local development over and above the payments due in application of the social clause agreement. For local actors, the dividing line is not always clear between what comes from LDF and what comes from concession holder donations. The confusion, which appears to be a form of substitution of the LDF by the concessionaire, is accentuated by the fact that it is the concessionaire who actually manages the LDF.

There are no surprises when it comes to the question of who pays for infrastructure operating costs; the biggest funder is the state (57%), followed by the LDFs (17%),

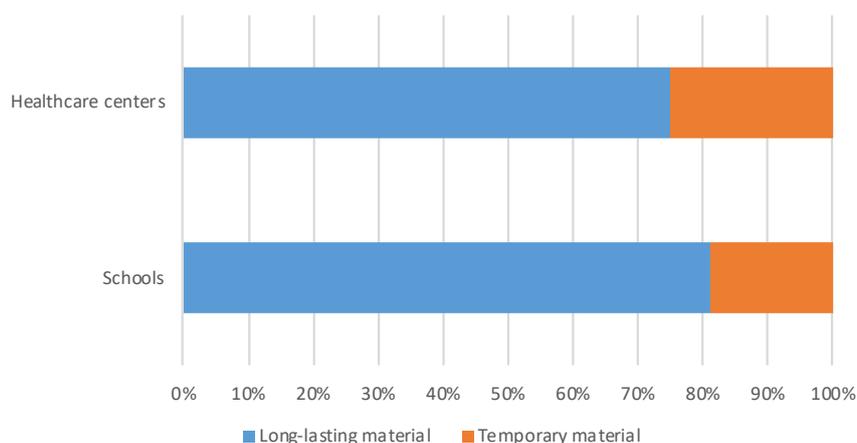


Figure 4. Infrastructure quality

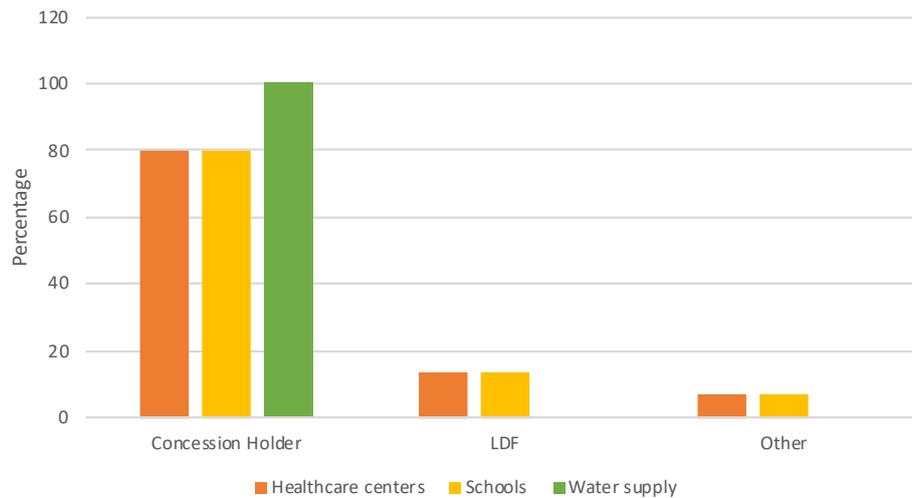


Figure 5. Instigator of infrastructure construction/restoration project

the concession holders (13%) and schools’ parent associations (13%). It is, of course, incumbent on the state to provide schools and hospitals with the equipment and personnel that they need. However, these pledges are not always upheld, which explains the temporary replacement of the state by the LDFs, the concession holders and sometimes the schools’ parent

committees. This can include anything from covering the costs of nursing and teaching staff, to providing healthcare centers with medicines and teaching material for schools.

Replacing state authorities with local actors, be they concession holders or local communities, illustrates the difficulties in keeping the socio-economic infrastructure operational (Tables 4 and 5). When the question of ‘functioning’ came up, it was often said that after the healthcare facility or school had been constructed, the state failed to assign state-paid personnel or provide the necessary equipment.

Table 4. Challenges encountered by healthcare facilities

Type of challenge	%
Shortage of nursing staff	30
Lack/shortage of drugs	40
Non-functional centers	5
Shortage of equipment	10
No challenges	5
Other	10

4.1.2 Local employment

Local employment, particularly that in the forestry sector, is addressed under the social clause regulations. The intention was to ensure that nearby local and indigenous communities, if they had the proper skills, had priority access to jobs generated by forestry companies. In most cases, forestry companies are located far from urban centers and provide the main source of employment in the area. In total, eight forestry companies declared that they employed approximately 837 people, mainly on a temporary basis (Figure 6).

Table 5. Challenges encountered by schools

Type of challenge	%
Lack of educational material	60
Shortage of teachers	20
Inability to pay teachers	5
Insufficient teaching materials	5
Lack of state support	10

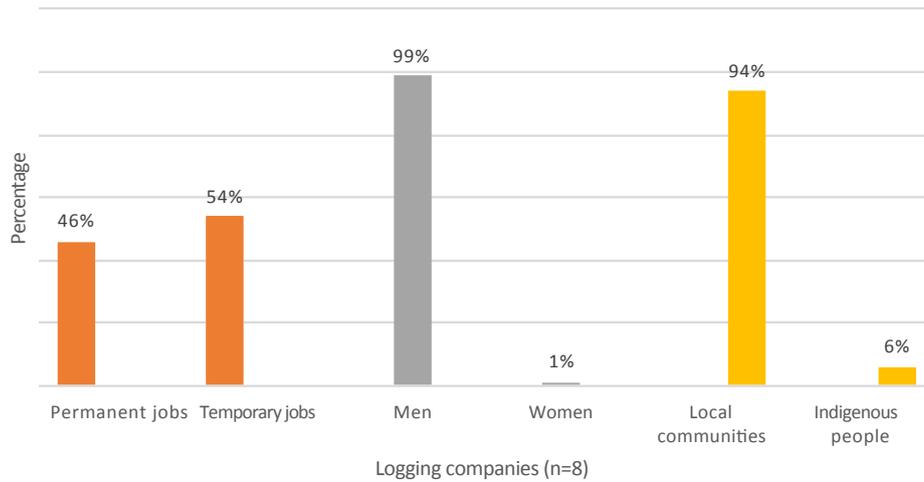


Figure 6. Local employment

As some companies did not report their figures, these estimates are low. When questioned about the existence of formal policies encouraging companies to prioritize the recruitment of local labor, 53% of respondents stressed that there was no such policy, while 47% said that initiatives of this type did exist. In reality, there are social clause regulations on this very issue.

4.2 Institutions and governance

4.2.1 Characteristics of the local management and monitoring bodies

Legal terms and conditions for the application of social clauses also identify bodies responsible for managing the resources generated by logging operations. These bodies serve as the interface between local communities and the concession holders, and cannot be separated from the social clause activities. Two bodies are involved in managing resources generated: the local management committee in charge of administering the LDF, program planning and the implementation of community projects; and the local monitoring committee which is more focused on project monitoring and control. This section presents the functioning,

representation and accountability of these two bodies.

In the Management Plan, these bodies are introduced as independent entities. The starting date for the forestry company's operations, based on the development plan, triggers the services of these local bodies. As such, many of these local bodies have been constituted well before concession holders had a Management Plan validated and approved by the various authorities.

The local management committee and the local monitoring committee are public bodies, which explains the important role of the local public authorities in setting them up (Figure 7). State control over the establishment of these structures is equivalent to that of the concession holder; the two together hold the political and the financial power. Thus, in about 30% of cases, either the state or the concession holder facilitated and supported establishment of the local bodies.

Civil society organizations, despite being very influential during the social clause negotiation phase, providing technical support to the local and indigenous communities, play a far lesser role in the establishment of the local management and monitoring bodies.

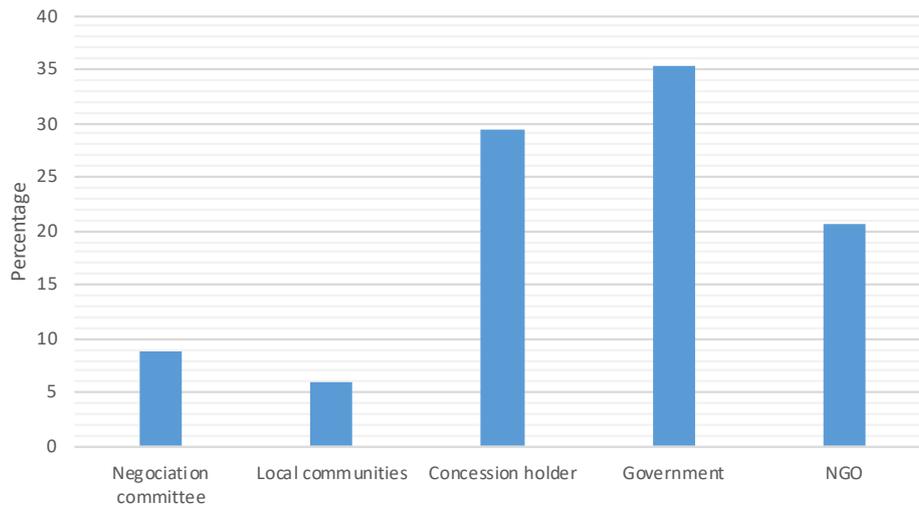


Figure 7. Facilitation around the establishment of local management and monitoring bodies

The question of inclusiveness was brought up during the research, to assess the capacity of these management and monitoring bodies to guarantee the participation of those located in the zone being covered, both the villages and the various communities (Figure 8). A local management committee is composed of 10 villages on average (between 1 and 29) while a monitoring committee represents an average of 11 villages (between 2 and 20). Discussions with interviewees indicated that the local bodies generally try to

reflect, in so far as is possible, the ethnic composition of the territory they cover.

A balanced representation, when it comes to gender within the institutions, is more problematic (Figure 9). There are very few women in the management bodies. It is also not surprising that the participation of indigenous communities is marginal. It is noteworthy that the participation of indigenous communities was only reported in 4 of the 19 forest concessions.

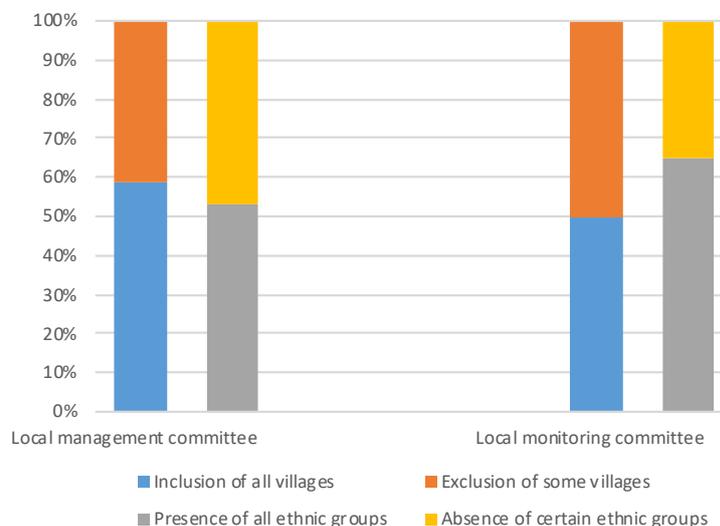


Figure 8. Inclusiveness within local management and monitoring bodies

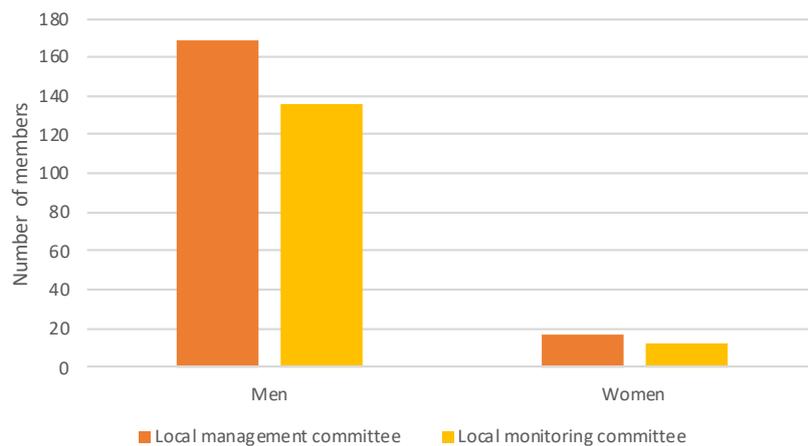


Figure 9. Gender representation within local management and monitoring bodies

Altogether, the local bodies around concessions that reported the presence of indigenous communities, said that about 7% of their representatives came from such communities.

4.2.2 Governance of the local management and monitoring bodies

The functioning of the local management and monitoring bodies is closely connected to the forestry activities themselves. Regulations state that members of these local bodies should receive financial compensation for their activities. The operating budget for these bodies is drawn from the LDF and cannot exceed 10% of the available financial resources. These bodies begin their services after the concession holder has made a 10% payment as an advance on the first logging operations. As such, there is a strong correlation between the activities of these institutions and the companies' activities; this can create problems of sustainability. In reality, 82% of the respondents stressed that the local bodies, being born of the social clauses, could not outlive the logging companies.

Institutional governance of the bodies is built upon several variables, connected to: elections at given dates; the method for selecting community representatives;

the presence of people from outside the community; and the formalization of operating procedures (Figure 10). At the operational level, it was established that most of the local institutions have formal procedures clarifying the mission and activities of the governing bodies. Decisions are taken on a collegial basis, after consultation with members. Election is generally the preferred method of selection, except in a few cases, when appointments are made by community consensus, or by the village chief, who has the authority to appoint the representatives. This approach is mainly used by the local management committee, which is the body offering the most formal guarantees about the legitimacy of the representatives, unlike the local monitoring committee, which leaves certain leadership functions to the village chief, local and provincial authorities. Most of the management and monitoring bodies' members are connected through their clans (60%) and to a certain extent through family ties (17%). On the whole, the institutions allow members from outside the community, including NGOs, elites and concession holder representatives, to attend their decision-making sessions. The statutes require the participation of the concession holder in the various committees, while that of NGOs is optional.

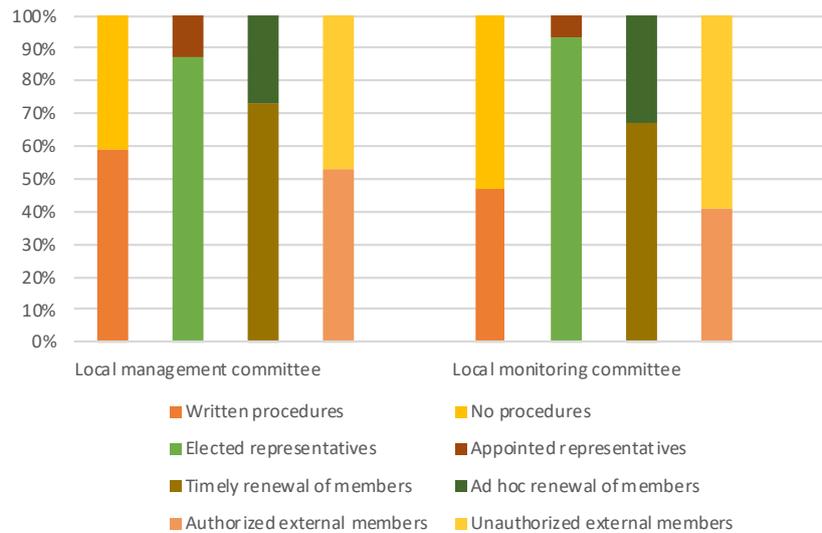


Figure 10. Governance of local management and monitoring bodies

The local management and monitoring committees hold an average of four meetings a year each, but 43% of respondents said that minutes were not always taken. Depending on funding availability and the number of projects being carried out, these committees may hold up to 12 meetings a year, as was the case for two institutions, but this is exceptional. According to the law, local management and monitoring bodies take office and hold their meetings as soon as the concessionaire begins to pay money into the LDF and in particular the start-up advance (10%). However, sessions can also be held in the absence of any payment. This scenario, provided for in the regulations, is only possible when the institutions have to meet to resolve any queries highlighted by the public authorities on the content of a social clause. In this case, the two committees meet for an extraordinary session.

Looking into accountability, one question asked was whether the local institutions held information meetings for local and indigenous communities; to which 62% of respondents answered affirmatively. As regards the frequency of such meetings, the average for all the institutions combined was fewer than once a year,

during 2017. Similarly, the communities had very little access to information on the local monitoring and management bodies' financial management. Overall perception was negative for this parameter; 67% of respondents stated that they had no opportunity to participate in a public review of the budget, let alone judge its contents (87%).

4.3 Customary rights to forest resources

In terms of monitoring the exercise of traditional rights, this focused on guarantees that the local communities would have access to the resource areas in question, especially areas for hunting, fishing and the gathering of non-timber forest products. The purpose of interviews was to check whether concession holders imposed restrictions on traditional activities, and to what extent local and indigenous people perceived such restrictions as obstacles.

The majority of respondents said that officially, traditional practices were authorized throughout the forest concession areas we visited, but in practice their implementation is very

problematic. When it came to hunting, 71% of interviewees said that this activity was subject to restrictions. An equally large percentage (72%) said that there were similar restrictions on the harvesting of non-timber forest products. Access restrictions to the concession area relate to road use by the communities for the purpose of illegal forest exploitation. In practical terms, there is no real distinction between subsistence hunting and hunting viewed by the concession holder as illegal.

Paradoxically, these restrictions seldom give rise to conflict. 88% of respondents

felt that there was no conflict between resident populations and concession holders concerning traditional hunting and fishing. The absence of conflict is an indication of the purely formal nature of these restrictions. Concession holders want to respect the law by giving local and indigenous communities information and raising awareness around which hunting, fishing and gathering practices are authorized by law and which are forbidden. However, compliance with these legal requirements, including verification and control, remains the responsibility of public authorities.

5 Conclusion

This report presents an analysis of the social clauses set out in the forest regulations of the Democratic Republic of Congo. Monitoring results for 2017 indicate that almost USD 19 million was invested in approximately 318 villages and communities adjacent to forestry operations. Several villages benefited from socio-economic infrastructure (schools, hospitals, water supply lines and roads) as well as other facilities, such as transportation for people and goods. The involved forestry companies created around 837 (permanent and temporary) jobs and around 390,000 people, including 12,000 students, benefited from infrastructure built as a result of these social clauses being implemented.

Results show that the monitoring and analysis capacities of the involved CSOs need considerable improvement. This is not unusual, since non-mandated independent observation is a rather new mechanism in the Congo Basin, and especially in DRC. National and international organizations need to plan and maintain strong, consistent efforts and include support for CSOs in their missions. In the long run, social clause impact can only be thoroughly monitored if local CSOs are efficient in their data collection and analysis.

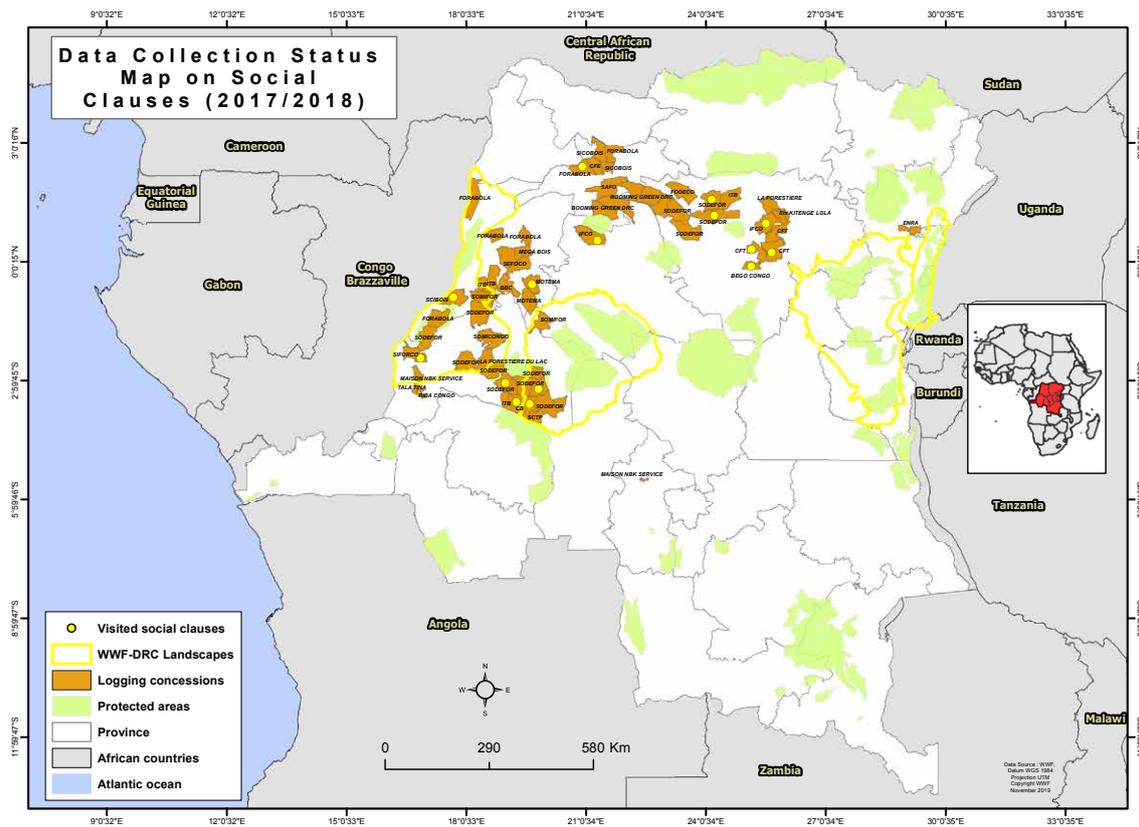
In terms of participation, the results show that the local management and monitoring institutions do ensure the participation of the majority of villages concerned with logging operations; they also use democratic procedures for selecting representatives. However, the effectiveness of these institutions should be viewed in terms of their functional dependence on the concession holders. At present, the local management and monitoring bodies are very active and enthusiastic. In the longer term, the committees created by law to administer the profits from logging will be cyclical in nature, as they are connected to the logging operations of specific concession holders.

The social clauses would probably have a more significant effect on local people's quality of life if it were possible to overcome obstacles relating to local management and monitoring bodies' funding and governance. Difficulties experienced by LDFs, such as securing funding for infrastructure, are indeed a major constraint. Uncertainties like delays in starting logging operations, the suspension of logging operations, or late and irregular payments of sums due by concession holders, can substantially curtail LDFs capacity to play their role.

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Annexes





RESEARCH
PROGRAM ON
Forests, Trees and
Agroforestry

This research was carried out by CIFOR as part of the CGIAR Research Program on Forests, Trees and Agroforestry (FTA). FTA is the world's largest research for development program to enhance the role of forests, trees and agroforestry in sustainable development and food security and to address climate change. CIFOR leads FTA in partnership with Bioversity International, CATIE, CIRAD, INBAR, ICRAF and TBI.

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