

Monitoring of social clauses in the Democratic Republic of Congo 2011-2020

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School infrastructure developed as part of a social clause in the Democratic Republic of Congo © WWF

Key messages

- The bulk of financial resources devoted to social clause infrastructure projects is allocated to those in the education sector, accounting for about USD 4 million (74%); this is followed by 20% allocated for healthcare infrastructure, 4% for road infrastructure and 1% for water supply infrastructure. Cumulatively across the whole monitoring period (2011-2020), an estimated 36,466 students were direct beneficiaries of the education sector. A total of 127 schools, 85 health centres, 27 administrative buildings, 11 water points and 436 kilometres of road were built within the framework of social clauses.
- Effective mobilization of financial resources is the main challenge for achieving an efficient social clause system. There is a significant gap between the amount of financing 'estimated' and decided upon by mutual agreement between local communities and concession holders (USD 20,322,367), and the final amounts actually provided (USD 7,810,037). Overall, just a third (38%) of the amount expected was then actually given to local development funds (LDFs).
- For community projects to be effective and efficient, substantial improvements are required. At present, few infrastructure projects have been fully completed. Efficient use of available resources will mean selecting a minimum number of projects – or at least those considered essential for the community – and devoting the available resources to them.
- Social clauses have the potential to be a powerful tool for the socioeconomic development of local populations in the Democratic Republic of Congo. And while there is room for improvement in terms mobilizing the resources required, there is no doubt that current outcomes do help improve the daily lives of communities in the areas of health and education.
- The support given to civil society in the monitoring of social clauses should be continued. However, it would be useful to have a stable pool of non-governmental organizations (NGOs) and investigators specifically dedicated to monitoring, so that the capacities already acquired by these stakeholders can be strengthened, and the quality of collected data can be improved.

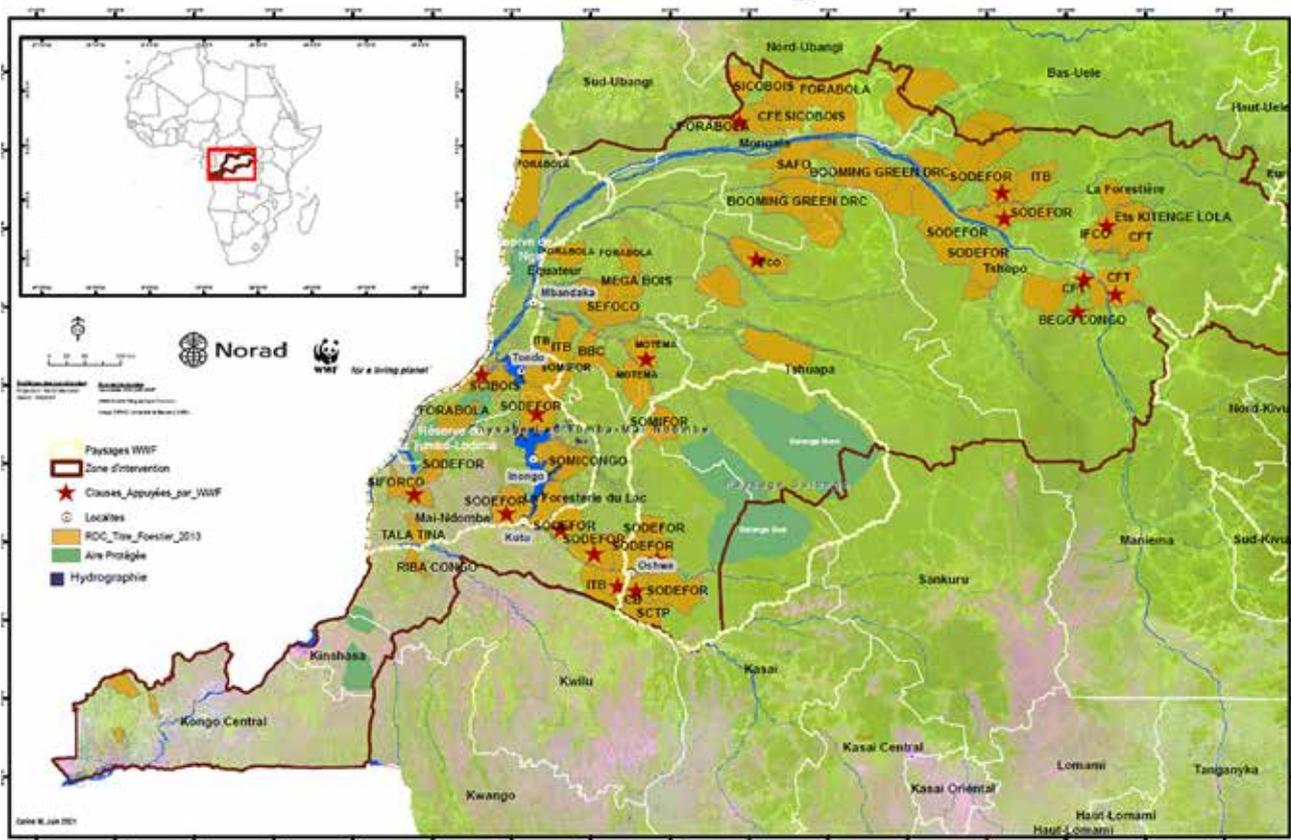


Figure 1. Locations where social clause monitoring was undertaken by WWF (2011–2020)

Background

Legal reforms initiated in Congo Basin countries in the mid-1990s have gradually rebalanced – at least in theory – the economic, environmental and social aspects of forest management. In particular, concern around the social aspect of forest management has evolved into specific fiscal arrangements with the aim of better considering communities' aspirations for improved living conditions. In practical terms, governments have sought to increase logging companies' contribution to local development. An early example of this was 'area fees', a portion of which went to the government with the remainder going to communities living near logging sites. This system was first initiated with mixed results in Cameroon in 1994, before later being replicated in other Congo Basin countries; sometimes using different methods, but always with the same objective.

As well as tax mechanisms contributing to local development, approaches seeking to have concession holders directly contribute to social project implementation already existed before more recent forestry laws were adopted, in the form of promises or contracts between operators and local populations.

These requirements, known as *cahiers de charges*, or 'specifications', set companies' socioeconomic obligations and have been maintained and formalized. The Democratic Republic of Congo (DRC) has adopted the trend of formalizing logging companies' contribution to local development by including the concept of social clauses in its 2002 Forestry Code.

This policy brief presents the findings of the monitoring of social clauses in the DRC between 2011 and 2020. It discusses how the social performance of this mechanism can be improved, whereby logging companies can play an important role in improving the living conditions of Indigenous Peoples and local communities.

The findings presented here are the result of data collection carried out by the World Wide Fund for Nature in the DRC (WWF-DRC) and 18 civil society organizations (CSOs) which have previously been involved in providing support to Indigenous and local populations in negotiating social clauses. Social clauses were monitored in five provinces (Équateur, Mai-Ndombe, Mongala, Tshopo, Tshuapa); their geographical footprint covers 24 forest concessions. These clauses set the guidelines for socioeconomic development between 13 forestry companies, 380 villages and 87 groups.

Main findings

Effectiveness of resource mobilization

Projects of collective interest are funded via a local development fund (LDF) made up of financial contributions from concession holders. The provisioning of the LDF is linked to the business activity of the logging concessions. Results show that there is a significant gap between the amounts of financing ‘estimated’ and decided by mutual agreement between the local communities and the concessionaires, and the amounts actually ‘mobilized’ following logging operations (Table 1). Overall, just a third (38%) of the amount expected was then actually given to the LDFs.

This gap between the estimates and revenues is mainly down to the realities of logging operations in the Congo Basin, where operation estimates rarely match actual logging activities. Prior to logging, concession holders carry out inventories that determine all the tree species that have commercial value. However, several factors can limit the logging of what is potentially available, such as international tropical timber market conditions, and various technical factors arising at the time of felling (e.g., anomalies among the species inventoried, incorrect commercial classification by the inventory team, or simply inventory errors).

Table 1. Estimated and mobilized funding for social clauses (24 concessions)

Year	Amount planned	Amount invested	%	Gap (in USD)
2011–2015	5,677,878	2,067,007	36	3,610,871
2016	2,902,490	1,616,219	56	1,286,271
2017	5,892,046	2,466,632	42	3,425,414
2018	325,552	217,782	67	107,770
2019	2,027,252	350,766	17	1,676,486
2020	3,497,149	1,091,631	31	2,405,518
Grand total	20,322,367	7,810,037	38	12,512,330

Effectiveness of collective interest projects

Social clauses monitored across the 24 selected concessions planned to implement 385 projects in the priority sectors of water, health care, education and the construction of administrative buildings. Analysis shows that, on average, 59% of these planned infrastructure projects were actually built and/or completed (Table 2). Road infrastructure saw

Table 2. Implementation rates of collective interest projects

Infrastructure	Planned	Implemented	Implementation rate
Education	197	127	64%
Health care	184	85	46%
Administrative sector	38	27	71%
Water supply	16	11	69%
Roads (km)	1,017	436	43%

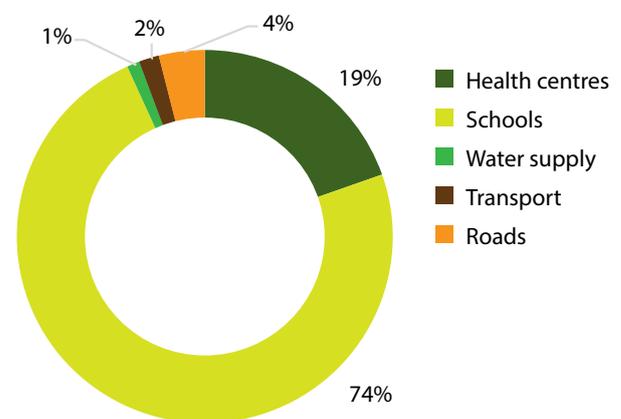


Figure 2. Priority areas for investment

the lowest implementation rate (43%). The development and construction of roads requires substantial financial investment. Given that operators lack foresight into long-term funding availability (i.e., over several operating seasons), they tend to prefer education or healthcare investments, as these are more easily linked to production and require funding amounts that can be mobilized over just one or two operating years.

Analysis of where funding went shows that funds are primarily directed towards the education sector, whether for building, upgrading or equipping classrooms (Figure 2). Approximately USD 4.1 million was invested in this area, benefiting some 36,446 students over the monitoring period. The education sector was followed by infrastructure in the sanitation, road and water-supply sectors. Thanks to the social clauses, 127 schools, 85 health centres, 27 administrative buildings, 11 water points and 436 km of road were built.

Challenges in implementing the social clauses

There are many challenges, when it comes to the planning, implementing and managing of community projects. Planning involves negotiating and obtaining the broadest possible consensus on the type of infrastructure to be put in place. One of the difficulties here is accurate estimation of project costs. Local populations and management bodies do not always have the skills needed to assess those costs, with repercussions on the implementation of various projects. As for project implementation and management, the creation of LDFs can be affected if a forest concession is inactive or its operations are slow to start. If an LDF is not created, community projects cannot be implemented. For this reason, delays in the commencement of logging, late release of funds, and lack of fund availability are the main causes of the gaps observed between the planning and implementation of community projects (Table 3).

Table 3. Challenges faced in project implementation

Causes of programming gaps	%
Delayed start in operations	21%
Late release of funds	38%
Funds not available	10%
Service provider incompetence	4%
Poor cost assessment	22%
Suspension of operations	5%

Table 4. Challenges faced by healthcare facilities

Difficulties impacting healthcare facilities	%
Lack of medicines and care personnel	77%
Non-functional centre	3%
Lack of medicines	13%
Lack of equipment	6%

Table 5. Challenges faced by schools

Difficulties impacting schools	%
No teaching materials	81%
No pay for teachers	5%
Lack of government support	5%
Other challenges	8%

Even after implementation, infrastructure can encounter various difficulties when it comes to functioning.

Congolese law stipulates that the state must provide equipment, as well as the teaching and care personnel, needed for healthcare and school facilities to operate normally. But regular state shortcomings in this area often lead to huge unmet demands among the local population. Their expectations then have to be made up for by the LDFs, concession holders, local elites and parent committees. This de facto substitution was legalized by Ministerial Order No. 072 of 12 November 2018, which formally established the notion of “transitional costs” so as to cover the operating costs of newly-created facilities until these costs are assumed by the state. That LDFs can cover such transitional costs is appropriate, given that personnel and equipment are rarely available at when a project is completed.

Local employment

Most (76%) of the 16 concession holders interviewed stated that they had a policy of prioritizing the use of local labour. Existing capacities in the communities are taken into account when implementing that policy, but, unsurprisingly, the jobs created locally are mostly unskilled or low-skilled. Project design, for example, requires high levels of skills largely unavailable among the local population and is thus entirely or partly beyond their reach. Across the 16 companies and 24 concessions involved in social clause monitoring, approximately 8,400 jobs have been created, 60% of which are permanent.

Indigenous populations were identified as being present in 22 of the 24 forest concessions included in the sample for monitoring social clauses. In these forest concessions, all managers claimed to apply specific measures to account for the particular situation of this population group. However, as related policies were not always available to observers, it is difficult to confirm their existence. Where provisions for Indigenous Peoples do exist, this is more of a practice than a policy.

Governance of local management and monitoring committees

The establishment of local management and monitoring committees involves many stakeholders, of which the state, technical partners and concession holders are considered the most important. Facilitation consists of supporting communities in the various stages, from negotiating social clauses to setting up representative bodies. It is in this context that WWF, for example, has provided technical and financial support to Congolese CSOs so they can support local communities in negotiating social clauses.

Representativeness

Analysis around the representativeness of local bodies looked at the involvement of village communities as well as the degree to which local sociological considerations and vulnerable groups were taken into account. As for representation in the village bodies, local management committees are made up of representatives from between 2 and 29 villages, while the number of groups involved is between 1 and 8. All local ethnic groups were found to be present in 53% of local monitoring committees and 73% of local management committees. Inclusion of all villages was found in 57% of local monitoring committees, and 80% of local management committees (Figure 3).

In addition to how well villages were represented in local management committees, observations were also made on the inclusion of women and Indigenous populations in decision making. At this level, men are still largely over-represented in the local committees, making up 85%, with women representing just 13%, and Indigenous Peoples remaining the least represented group at 2%.

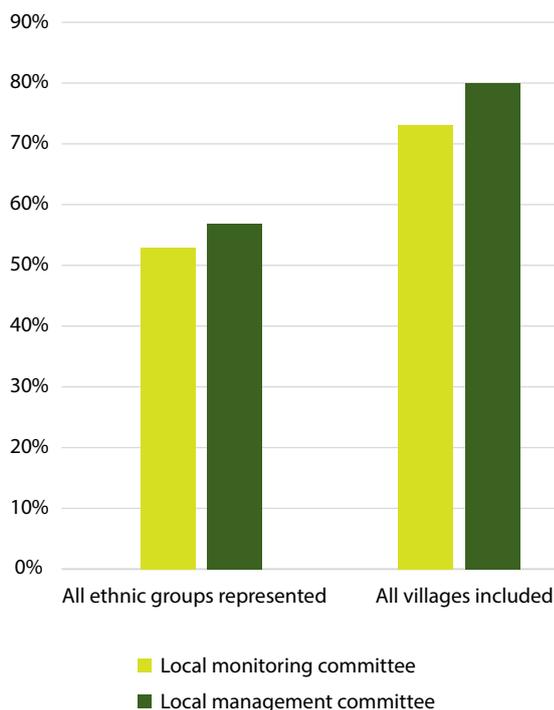


Figure 3. Representativeness in the local management and monitoring committees

Representativeness is assessed not only by inclusiveness, but also through the ability of local governance bodies to be accountable to communities. This accountability is one area of governance where improvements need to be made; 57% of respondents reported that information meetings for local people are either held irregularly, or not held at all.

Effectiveness of the local management and monitoring committees

In terms of effectiveness, the committees hold an average of four meetings per year and have formal operating procedures. They also have an operating budget of up to 5% of the total amount of funds mobilized from the LDF. This approach guarantees local committees a form of functional autonomy, even if this is closely linked to the effectiveness of logging operations. The budgets of these committees are not public, and the communities do not have the opportunity to comment on them when they are drawn up. This raises questions about the transparency of the choices made by these committees.

The method of appointing members is based on election (Figure 4). Members are elected for a term of three to five years.

With regard to internal functioning, interviewed members of local monitoring and management committees stated that decisions are taken by consulting members, and that the majority of members (70%) attend meetings. However, very few members of communities affected by social clauses are invited to take part in meetings. Local and Indigenous community members interviewed said they were satisfied with the quality of the work carried out by local management committees; however, their opinion was more mixed on local monitoring committees, which they believed were not sufficiently fulfilling their role of monitoring investments.

Interviewees were asked whether local monitoring and management committees functioned as well where logging was active, as where logging had either ceased or not yet started. Just 30% of respondents replied negatively, implying that local committees are resilient and continue to function even in the absence of LDF funding. While this outcome needs to be confirmed by longer term analysis, it is surprising, and contradicts previous empirical observations about local bodies in the Congo Basin.

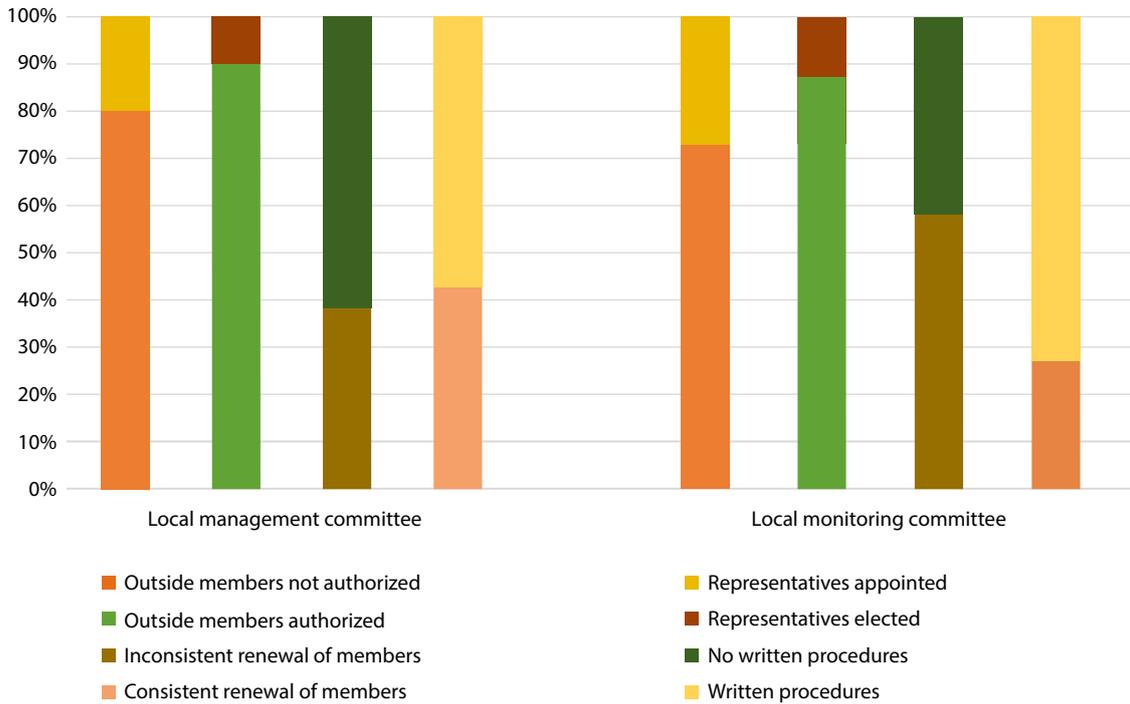


Figure 4. Governance of local management and monitoring committees

Customary use rights

Here, observations focused on whether there were any restrictions on use rights enshrined in regulations, whether there were any potential conflicts, and what mechanisms exist to manage these conflicts. The results show that concession holders do not impose significant restrictions on local populations when it comes to exercising their rights (Figure 5).

Legally, hunting is strictly regulated in the DRC. As part of their forest management, concession holders are required to uphold the law within areas allocated to them. Local community members did not report any major conflicts with concession holders. About 82% of respondents stated that there were no conflicts with concession holders, when it came to hunting or the gathering of non-timber forest products (NTFPs).

The low level of conflict between local populations and concession holders is probably due to the limited progress of forest management in the DRC and the weakness of forest monitoring. Although use rights are permitted by law, the implementation of forest management has the effect of limiting their scope, particularly when exercising these rights could undermine management requirements. In theory, concessions under management tend to apply the law strictly, especially if they are subject to regular and effective checks by the forest administration.

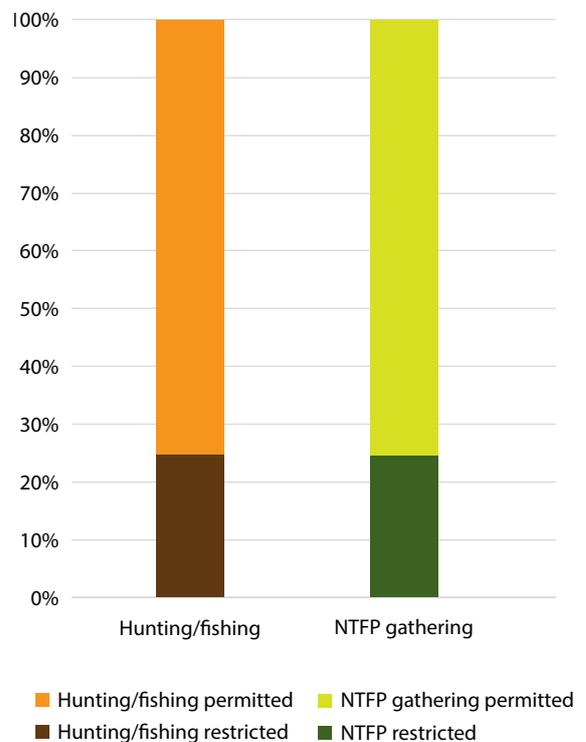


Figure 5. Exercise of customary rights

Recommendations

Social clause agreements in the DRC are seen by timber industry stakeholders as an approach likely to promote the sharing of logging operation profits with village communities, with the goal of achieving more equitable redistribution of revenue from the exploitation of forest resources. Over the years, this system of sharing revenue from logging operations has gained a form of social acceptability among the local communities themselves, as well as among the concession holders, the administration and civil society. That said, the mechanism has some shortcomings, which could be improved upon. To increase its effectiveness, the following changes are recommended:

- Change the way in which the development funds are established. The current approach of financial forecasting, which is based on an inventory of available resources, is unsuitable. Monitoring revealed that, on average, less than half of the funding expected (38%) was actually secured. A more realistic approach would be to calculate the amounts expected from the LDFs – or at least plan the infrastructure to be built – based on the amounts actually mobilized in previous periods (e.g., an average over the previous three years of operation). It would then be possible to moderate or reduce the sometimes-huge gap between what is planned today, and what is actually produced and paid out under the social clauses.
- Strengthen the transparency and authenticity of production declarations. As they are currently designed, the bodies have no real power to check whether such production declarations are true; neither do regulations outline any rules on the cross-checking of these declarations. NGOs need to provide greater support to local communities on this point in particular. On a practical level, a system for verifying production volumes, involving concession holders, the forest administration, civil society and local populations, should be set up for this purpose.
- Streamline the choice of community projects. It was found that communities tended to include all their concerns in healthcare, education and access to water in the social clauses. As well as these main sectors, the funding of income-generating activities could be added. For available resources to be used efficiently, only a minimum number of projects – or at least projects considered essential for the community – must be selected and the available resources be devoted to them. At present, few infrastructure projects are fully carried out. Therefore, priority should be given to completing any existing infrastructures, or to selecting a few projects whose cost estimates mean their completion is a guarantee.

- Continue the support given to civil society in terms of monitoring social clauses. These organizations have received substantial technical and financial support to carry out their field missions. In particular, their capacities have been strengthened on new data collection tools and on regulations relating to social clauses. Staff changes over the monitoring period have limited the development of a strong pool of interviewers. This gap may, to some extent, impact upon the quality of certain information collected in the field. For future monitoring, it would be useful to have a stable pool of NGOs and interviewers specifically dedicated to monitoring. The continuation of monitoring activities should help to consolidate the capacities already acquired by civil society actors.

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