

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

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Acronyms and abbreviations

CIFOR	Center for International Forestry Research
CSO	Civil society organization
CSR	Corporate social responsibility
CVPAF	Forest Management Plan Validation Committee (<i>Comité de Validation de Plan d'Aménagement Forestier</i>)
FMP	Forest management plan
LDF	Local development fund
NGO	Non-governmental organization
SG-EDD	General Secretariat for the Environment and Sustainable Development
WWF	World Wide Fund for Nature

Executive summary

Social clauses are an important aspect of forest management in the Democratic Republic of Congo (DRC). They were established by the 2002 Forestry Code as a social responsibility mechanism with the goal of making sure that logging companies contribute directly to the development of forest communities. This report presents the findings of monitoring work undertaken by the World Wide Fund for Nature in the DRC (WWF-DRC) and its partners, which looked at social clause agreements in the DRC between 2011 and 2020.

Social clauses were monitored in the five provinces of Équateur, Mai-Ndombe, Mongala, Tshopo and Tshuapa; the geographical footprint of which covers 24 forest concessions. These clauses determine the direction of socioeconomic development for 13 forestry companies, 380 villages and 87 groups. Investments made, following implementation of these social clauses, have theoretically impacted around 1,700,728 people in total.

The findings, after monitoring the 24 concessions, show that while approximately USD 20,322,367 should have been invested in local and Indigenous communities, the actual amount invested was USD 7,810,037; which is just 38% of the original estimate. Approximately 74% (USD 4 million) of this investment was made in the education sector, followed by 20% in health infrastructure, 4% in road infrastructure and 1% in village water supply. Cumulatively across the whole monitoring period (2011-2020), an estimated 36,466 students were direct beneficiaries of education sector investments. Over this same period, a total of 127 schools, 85 health centres, 27 administrative buildings, 11 water points and 436 kilometres of roads were built using these social clause budgets. At the same time, approximately 2,293 people benefited from transport facilities built by concession holders following social clause agreements. Various equipment was also provided, as well as support for income-generating activities, but this is difficult to quantify in monetary terms.

The social clause system has its origins in (oral or, more rarely, written) agreements that forestry companies in the Congo Basin made with local communities living in the vicinity of the areas where they formerly had operating licences or permits. This system existed long before forestry laws – adopted after the 1992 Rio Summit – institutionalized the practice, inspired by the idea of financing local development through exploiting natural resources. The approach involves promoting social forestry within the broader concept of sustainable management; specifically, using financial contributions from forest concession holders to implement an adopted forest management plan.

The model adopted by the DRC differs from that of Cameroon (which is based on an area fee), and is closer to that of Gabon (Nguimbi et al. 2010). In this case, the operator identifies and determines the commercially exploitable volumes of diverse tree species. Once the list is completed, the operator divides the tree species into classes (Class 1, 2, etc., according to the commercial value of the species) and assigns a value in USD for each class (Annex 14 of Ministerial Decree No. 072 of 12 November 2018, gives a model agreement for the social clauses of forest concession contract specifications, establishing a breakdown of tree species by class). For example, the cubic metre value of Class 1 species like Wenge (*Millettia laurentii*) and Afrormosia (*Pericopsis elata*) is set at USD 5; other species in the same category are valued at USD 4. Class 2 species are valued at USD 3; while Classes 3 and 4 species are valued at USD 2.

The amount set aside each year to finance projects of collective interest, usually in the fields of education, health and road maintenance, corresponds to the total amount of these levies, per cubic metre of round wood. However, this total amount remains 'estimated' or 'expected' until actual operations are carried out and the operator can determine the true number of cubic metres of round wood. Only then are the funds 'mobilized' and therefore available so social projects can be actioned.

The financing of infrastructure is arranged 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. Prior to the start of logging operations, the amount of expected contributions is jointly validated by the local communities and the companies, according to the production objectives of the latter. This means that implementation of the social clauses can take place only when the forest concession has effectively entered its production phase.

1 Introduction

Legal reforms initiated in Congo Basin countries in the mid-1990s have gradually rebalanced – at least theoretically – the economic, environmental and social aspects of forest management. This social aspect has taken the form of specific fiscal arrangements aiming to mainstream communities' aspirations for better living conditions (Bigombe Logo 2008). In practical terms, the goal has been for governments to increase forestry companies' contribution to local development. It was with this in mind that area fees, earmarked partially for governments and partially for communities living near logging sites, were first initiated in Cameroon in 1994. These area fees had mixed results. The system was later replicated in other Congo Basin countries; sometimes using different methods, but always with the same objective (Cerutti et al., 2010). In principle, this fee payment – a substantial portion of which is intended to carry out social projects – can be considered to be concession holders' contribution to local development (ATIBT 2005).

Observation of local development mechanisms that work through forest tax redistribution schemes has shown that these can become major sources of revenue for decentralized local governments in forest areas, as long as suitable conditions for good governance exist (Cerutti et al. 2010). At the same time, local communities directly linked to those local governments have not really seen their living conditions improved in any substantial way. As such, complimenting legal mechanisms that contribute towards local development, ways in which concession holders can contribute directly towards implementing community services have also been formalized. This approach already existed before the adoption of more recent forestry laws, in the form of promises or contracts between operators and local communities. (Cerutti et al. 2014). These social clause specifications, known in French as *cahier de charges*, set out companies' socioeconomic obligations.

The DRC adopted this trend of formalizing logging companies' contribution to local development by including the concept of social clauses in its 2002 Forestry Code. The concession holders' contribution to local community development draws its legal basis from the provisions of Article 89(c) of this same code. The article stipulates that the social clause specifications of the logging concession contract should contain a specific clause on the “construction of socioeconomic infrastructure to benefit local communities”.

The Forestry Code lists the types of infrastructure concerned in detail; including “the construction and improvement of roads; repairing and equipping hospital and school facilities; and transport facilities for people and goods”. Because the first generation of social clauses (2011–2015) ran into challenges when it came to the eligibility of certain projects, a ministerial decree issued in 2018 further clarified the content of socioeconomic investments, broadening their scope to include income-generating activities (Tsanga et al. 2017). This decree also set out the type of projects excluded from social clauses, for example projects with political, corporate or individual benefit. A legal framework for social clauses was given in Ministerial Decree No. 023 of 7 June 2010, including a model agreement for the social clause specifications of the forest concession contract. This initial legal framework was reinforced by the new ministerial decree in 2018.

Social clauses are an important aspect of socioeconomic development for local communities and, more generally, for making sustainable development a reality. Implementation of these standard-setting developments started a few years late, due to the slow pace at which the Forestry Code was applied. The social clause specifications got off to a slow start, resulting in a loss of potential income for the local communities. It is against this backdrop that the World Wide Fund for Nature (WWF) became involved, supporting the independent monitoring of social clauses.

With financial support from the Norwegian Agency for Development Cooperation (NORAD), a programme of advocacy and multifaceted technical support was carried out to make the new legal framework operational. This programme facilitated the negotiation of several agreements and the organization of five provincial advisory councils and supported the drawing up of local sustainable development plans¹. WWF also helped to set up a system to monitor the implementation

of social clauses. This system has relied on civil society organizations (CSOs) that work in the non-mandated monitoring of logging.

This report presents the findings of monitoring carried out on the social clauses between 2011 and 2020. The next section describes the methodology used; this is followed by the findings and then some concluding remarks.

1 <https://pgfrdc.org/en/nouvelles/>

2 Methodology



2.1 Collection techniques and tools

The goal of social clause monitoring was to assess 1) their level of implementation, looking at financial resources and expected results; and 2) their impact on the well-being of local and Indigenous communities living in the vicinity of concessions. For this purpose, 24 logging concessions active at the time of monitoring (between 2011 and 2020) were selected for analysis. These concessions, targeted by the WWF forest governance project, are spread across the five major forest areas in the DRC where logging operations take place (Équateur, Mai-Ndombe, Mongala, Tshopo and Tshuapa).

The monitoring of social clauses took place over several stages. The first stage consisted of determining the themes and variables to be monitored in the study. These themes and variables were determined and validated in consultation with CSOs and the private sector (Table 1), through ad hoc working sessions held in Kinshasa in 2016 and 2018.

The second stage involved selecting experts from Congolese civil society. The selected stakeholders underwent capacity building in the use of a real-time data-collection tool (the KoBoCollect app), which is easy to use on mobile phones and tablets and does not require a regular internet connection,

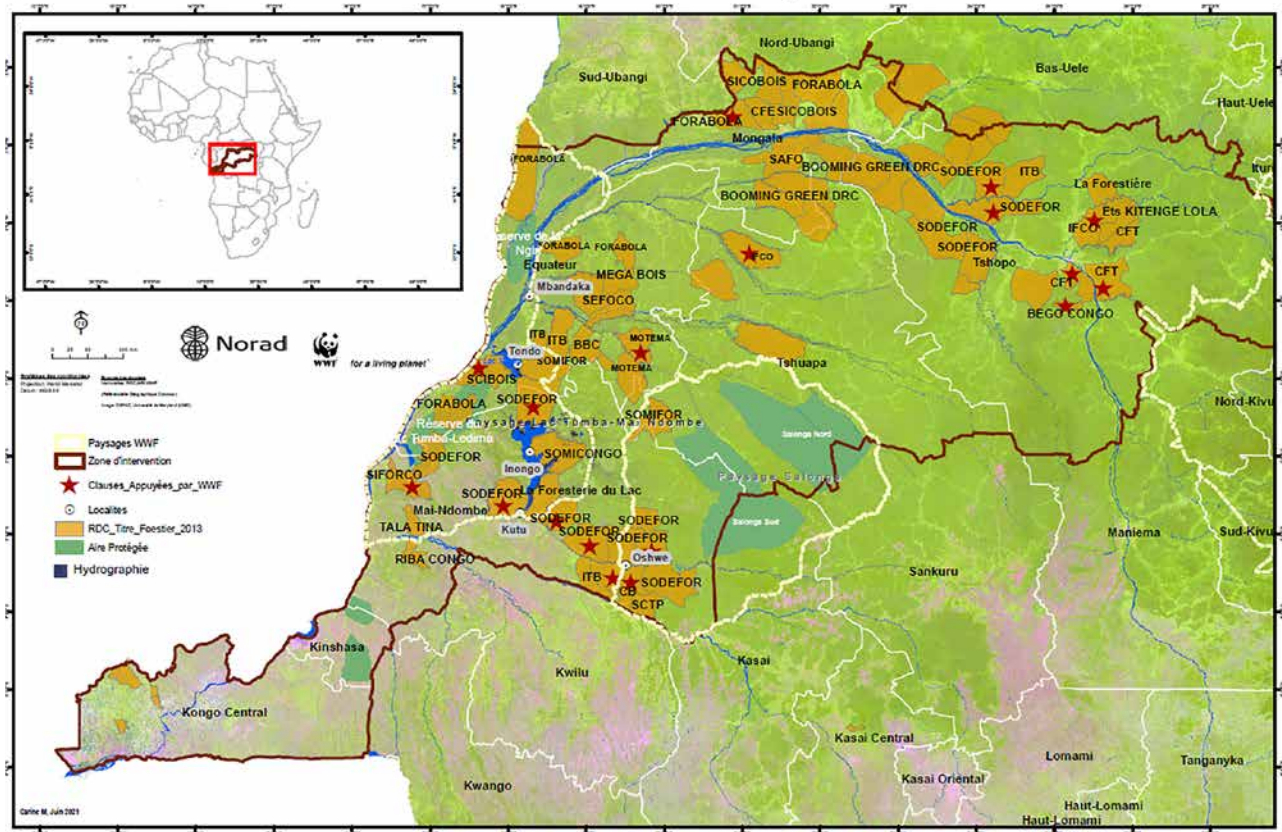


Figure 1. Locations where social clause monitoring was undertaken by WWF (2011–2020)

which is often lacking in rural areas. These CSO training sessions took place before data was collected in the various provinces.

The third stage was that of data collection. This last phase was disrupted on a number of occasions, challenged first by the presidential elections and, later, by the arrival of the coronavirus (Covid-19) pandemic. Data collection was carried out by 18 CSOs previously involved in guiding local communities in negotiations around social clauses. Prior to field visits, meetings were held with the management teams of targeted concessions so they understood the monitoring mission and its objectives, and so information could be gathered on social clause implementation from the perspective of the concession holders. Information on existing infrastructure or facilities and their level of functionality (whether active, built, etc.) was collected from members of the local management committees and supplemented by visits to those infrastructure or facilities. Information on their geolocations was also gathered.

2.2 Limitations of the study

Due to financial, logistical and security constraints, data were collected around concessions active at the time of monitoring. This rather random approach limits the possibility of selecting concessions based on certain analytical features. For example, in the future, it would be preferable to choose at least two major groups of concessions, those with a development plan and those without; to try to understand whether there are significant differences in the implementation of social clauses depending on, for example, the presence or absence of a development plan, the provinces concerned, or the origin of the concession holder's capital, etc.

It is also important to note that the CSOs do not yet have the technical and analytical capacities for a strong link to be established between information needs and the final results, in terms of data collected. This lack of capacity is well known to WWF and is part of the CSO support process. It is a weakness that, due to quality issues with

Table 1. Criteria used for monitoring social clauses

Themes	Concessions	Living conditions in local and Indigenous communities	Participation by local and Indigenous People in the management of local affairs	Customary rights to use of forest resources	Local employment
Variables	<ul style="list-style-type: none"> • Status (active/inactive) • Existence of social clauses • Existence of a development plan 	<ul style="list-style-type: none"> • Availability and quality of health services • Availability and quality of school facilities • Availability and quality of water supplies • Facilities to transport goods and people • Road infrastructure development 	<ul style="list-style-type: none"> • Local institutions and governance • Existence and effectiveness of public consultation mechanisms • Formal conflict-resolution procedure between local/Indigenous communities and concession holders 	<ul style="list-style-type: none"> • Satisfaction regarding customary hunting and fishing • Satisfaction regarding the gathering of non-timber forest products (NTFPs) • Satisfaction regarding protection of culturally important sites 	<ul style="list-style-type: none"> • Number of jobs • Existence and effectiveness of a preferential policy for local and Indigenous populations

some of the data sent, still limits the possibilities for carrying out all potential analyses. That said, these limitations do not detract from the value of this analysis, conducted at the very start of social clauses being implemented and monitored. Clear trends have been identified, which could

be used as a baseline for future analyses. These could also facilitate analysis of whether or not CSOs have improved, both in terms of their role as independent observers, and in terms of the progress made in the quantitative implementation of social clauses in the DRC.

3 Findings



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3.1 Living conditions of rural communities

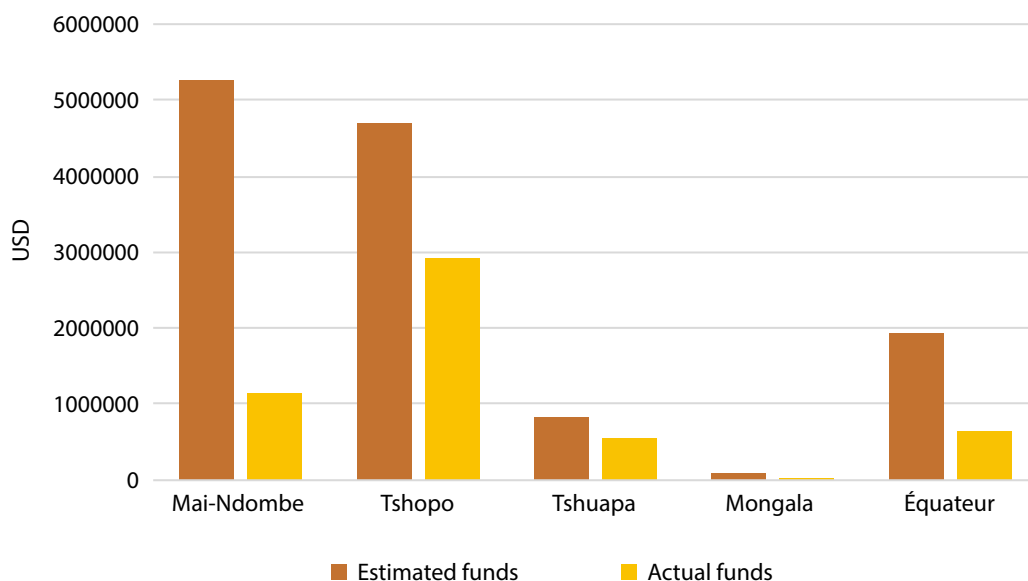
The monitored social clauses establish the direction of socioeconomic development for 13 forestry companies, 380 villages and 87 groups. A total of around 1,700,728 people were impacted by the investments made under these social clauses.

3.1.1 Financing arrangements for social clauses

Table 2 shows the amount of funding 'estimated' and jointly agreed upon between local communities and concession holders between 2011 and 2020, and the amounts actually 'mobilized' after operations. Comparing between provinces, Mai-Ndombe and Tshopo account for most of the funding, followed by Équateur (Figure 2).

Table 2. Estimated and mobilized funding for social clauses (across 24 concessions)

Year	Amount estimated	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
Overall total	20,322,367	7,810,037	38	12,512,330

**Figure 2. Funding for social clauses across the five provinces**

The table and figure above show that, in practice, the amount of funding estimated by logging companies is rarely mobilized. Across the 2011–2020 monitoring period, we see that, on average, just 38% of the amounts estimated were made available to fund the development projects.

There are several explanations for this gap between estimates and actual revenue. The main reason has to do with the reality of logging operations in the Congo Basin, where operation estimates rarely match actual logging operations. 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, like international tropical timber market conditions

and 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, etc.).

Other reasons include the suspension of logging activities, and the concession holder prefinancing certain projects; when the amounts advanced are deducted from the overall amount mobilized and allocated to the development funds. A further reason is that of logging concession inactivity, which was the case for 32% of the 24 concessions monitored (concessions for which social clause agreements were negotiated during the monitoring period). If there are no logging operations, logically there is no production, and thus no funding for the development fund.

One final reason mentioned by interviewed stakeholders is insufficient knowledge around the actual timber production of concession holders. This may be much more important than it first seems. According to Annex 16 of the Ministerial Decree on social clauses, “calculation of the payment of contributions is made based on the quarterly timber-cutting declaration, which must be sent by the concession holder to the chair of the local management committee and the chair of the local monitoring committee at the same time as it is submitted to the forestry administration. The volume of each species harvested is multiplied by the unit amount of the contribution per m³ according to the class of the species, in order to establish the amount of the LDF for the cutting declaration concerned”.

As the name implies, the production upon which contributions are based is reported quarterly by the concession holder. Because of its declarative nature and in the absence of regular monitoring and verification, local community members and local and national governments have little or no way of objectively checking the authenticity of the declarations made by concession holders. In other words, the financing of the LDF is largely based on concessionaires’ good faith at the time of the quarterly cutting declaration. This aspect is therefore problematic and potentially conflict-producing, due to the discrepancies it can lead to in terms of assessing actual production.

3.1.2 Effectiveness of collective interest projects

Over the last 10 years, social clauses across the 24 monitored concessions planned a total of 385 projects in the priority sectors of water, health care, education and administrative building construction. Analysis shows that, on average, 59% of the number of infrastructure projects planned were actually completed (Table 3). Road infrastructure saw the lowest implementation rate (43%). The development and construction of roads require 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. Another practical reason has

Table 3. 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%

to do with the sourcing of construction equipment; in some cases this can create competition between concession holders’ contractual social obligations, and their need to exploit forest resources.

As well as infrastructure projects, we have the transportation of people and goods, and the financing of income-generating activities. Transportation is an essential service for local communities. Concession holders often operate in very remote areas where the main mode of transport is the barges used to transport logs; these are then also used by local people. With income-generating activities, funds are used to buy equipment like huskers, mills and outboard motors for the processing, transporting and marketing of foodstuffs not consumed by local populations.

Some other indirect benefits not included in social clause agreements were mentioned by interviewees: electricity provision (e.g., connecting the community to the power-generating system of the first-stage processing plant); the payment of school fees (by which particularly benefitted female employees); and the transportation of building materials.

Analysis of where funds went shows funding was primarily directed towards the education sector to construct, upgrade or equip classrooms (Figure 3). Approximately USD 4.1 million was invested in this area, benefiting some 36,446 students over the monitoring period. This was followed by health infrastructure, roads, and finally, investments into water supply. Overall, the monitored social clause funding enabled the building of 127 schools, 85 health centres, 27 administrative buildings, 11 water points and 436 km of roads.

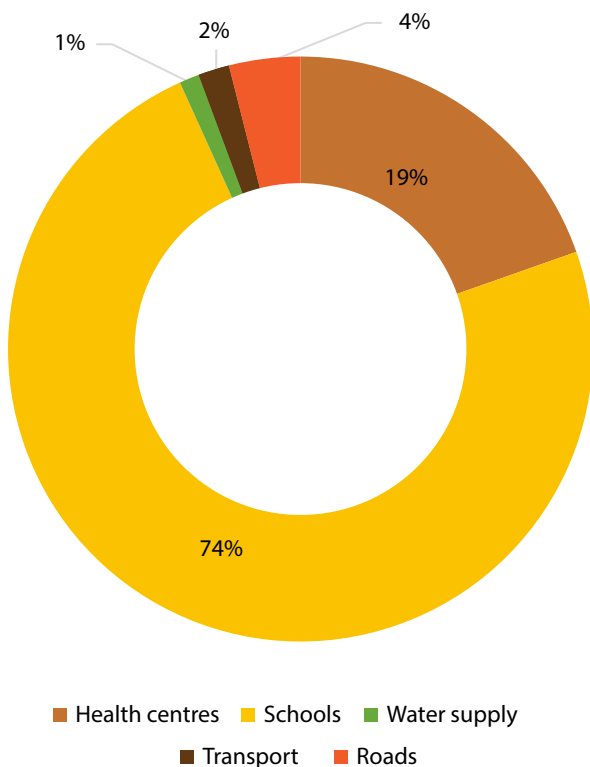


Figure 3. Priority areas for investment

At the same time, around 2,293 people benefited from the transport facilities offered by concession holders under the social clause agreements. This figure is likely underestimated, as barge passenger logs do not always count every individual boarding at each port; several passengers are also picked up along the way, and these are also not listed in official documentation.

The monitoring findings indicate that the social clauses have spring boarded a change process in the quality of infrastructures, with a shift from more traditional materials like wood and earth, to more durable materials like clay bricks and concrete (Figure 4).

When it came to village water supplies, water quality was felt to be satisfactory by 60% of respondents, while 78% of water infrastructure was declared to be functional.

Unexpectedly, interviewees mentioned several actions that contradict the eligibility criteria for LDF-funded projects. Support for individual income-generating activities and funeral expenses were mentioned, despite the funding of these

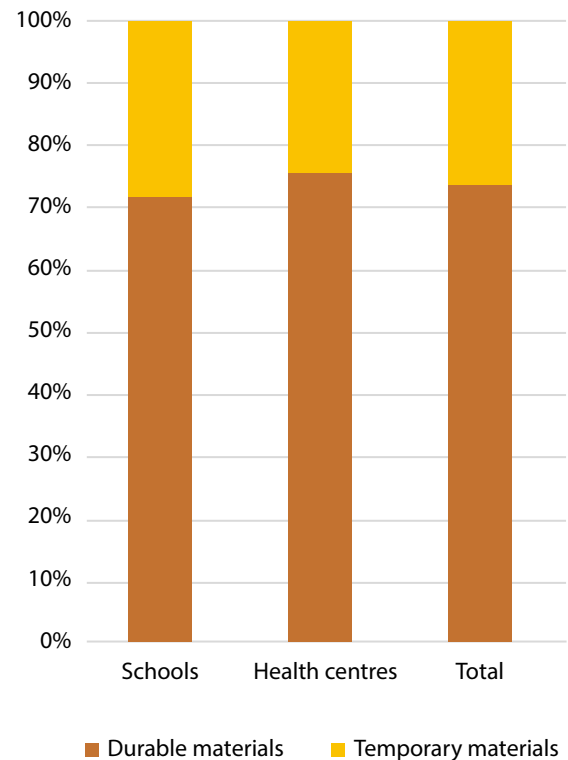


Figure 4. Infrastructure quality

items contradicting the 2018 ministerial decree requirement that LDF-funded projects be of a collective nature. Although funding of this type of project or action should be considered from the perspective that, in most cases, it is the communities themselves that decide which projects to fund, this finding highlights the issue that actions taken by fund management committees are monitored by entities outside the beneficiary communities.

As administrators of the development funds, the construction or upgrading of infrastructure is the responsibility of the local management committees (Figure 5); yet interviews showed that it is usually the concession holders who perform this duty in practice.

This result mirrors experiences in other Congo Basin countries, and reflects the persistent relationship of dependence on the concession holder, given that social clauses are also intended to make local communities responsible for the management of financial resources made available to them. There are two reasons behind responsibility being given to the concession

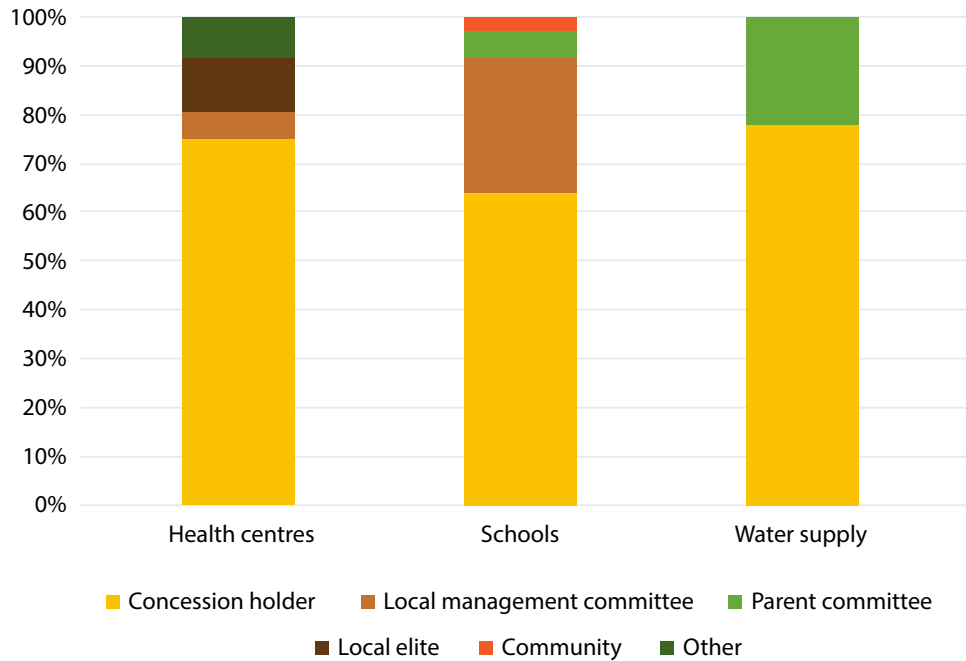


Figure 5. Instigators of infrastructure construction/upgrade projects

holders when it comes to community project implementation. The first is that it is concession holders that finance the LDFs, and because local management capacity is often weak, concession holders often resort to ‘in situ management’, as it is they who will be held accountable for the projects implemented (or for their failure). The second reason has to do with a sort of confusion of roles between the concession holders and the LDF management committees. Under the provisions governing LDFs, these funds may be deposited with the concession holders, or with a third party designated by mutual agreement between the concession holder and the social clause management committee. In practice, the first option is the most common, which tends to make the concession holder, instead of the legitimate management body, the de facto LDF manager.

There are many challenges when it comes to planning, implementing and managing community projects. Planning involves negotiating and obtaining the broadest possible consensus on the type of infrastructure to be put in place. One of the challenges here is accurate estimation of project costs. Local communities and management bodies do not always have the skills needed to assess those costs, with repercussions in the implementation of individual projects. As for project

Table 4. Challenges faced in project implementation

Reasons for gaps between the planning and implementation of projects	%
Late start of operations	21%
Late release of funds	38%
Funds unavailable	10%
Service provider incompetence	4%
Poor cost assessment	22%
Suspension of operations	5%

implementation and management, LDF funding can be affected when a forest concession is inactive or when its operations are slow to start. In short, community projects cannot be implemented without LDFs being funded. For this reason, a late start to logging, late release of funds, and lack of fund availability are the main causes of gaps observed between the planning and the implementation of community projects (Table 4).

Another important aspect that explains many delays in community project implementation is the rough evaluation of implementation costs. In the initial phase of social clause implementation, cost estimates were carried out by communities

or appointed service providers. In many cases, these estimates proved to be unreliable, resulting in projects not being completed due to underestimated costs. The 2018 ministerial decree attempted to address this issue by establishing guidelines for the preparation of technical specifications for community projects involving the upgrading, purchase or construction of infrastructure. The decree proposes a framework for estimating the construction costs of buildings, and stipulates that the concession holder or a specialized company must draw up the estimate to calculate the cost of each community project. Whatever option is taken, communities still lack expertise when assessing the credibility of the proposed estimates; this is probably why this problem persists despite improvements being made in the new governance system for social clauses.

Part of the financing of community projects is guaranteed by the payment of an advance by the concession holder prior to logging operations beginning. This advance is equivalent to 10% of the funds expected from logging. For most (90%) of the stakeholders met with, this advance is always paid. However, 53% of the management committee members interviewed reported that, once the production was underway, quarterly payments (theoretically linked to the quarterly operating declarations) of the funds were not made by the concession holders within the required timeframe. The 10% advance was identified as the most effective source of funding. The start of project implementation still relies on this advance, but because of the uncertain nature of the funding, generated by production, many projects are then only partially implemented.

When it comes to the operation of schools and health centres, these facilities face a lack of medicines and a chronic absence of teaching materials (Tables 5 and 6).

Congolese law stipulates that it is the state's responsibility to provide the equipment as well as the teaching and care personnel needed for healthcare and school facilities to operate as expected. But consistent state deficiencies in this area often lead to huge unmet demands among local communities; which then have to be made up for by the LDFs, concession holders, local elites and parent committees.

Table 5. Challenges faced by healthcare facilities

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

Table 6. Challenges faced by schools

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

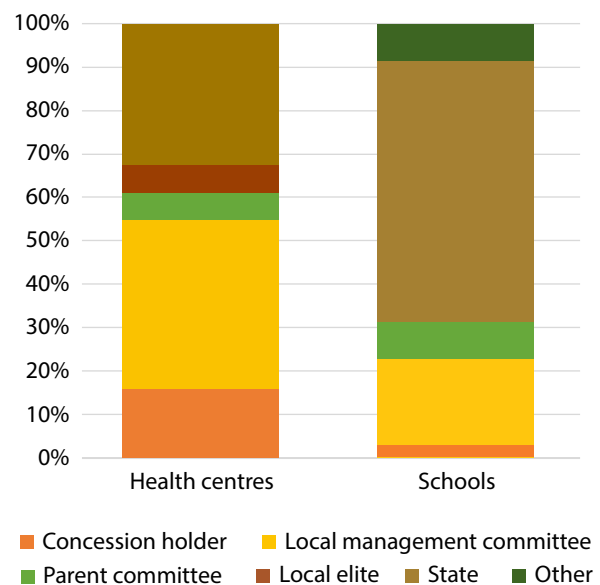


Figure 6. Entity in charge of operating the healthcare and educational facilities

This de facto substitution was made legal by Ministerial Decree No. 072 of 2018, which instituted the notion of “transitional costs” in order to pay for the operating needs of newly created facilities, until the state can take them over. That LDFs can cover such transitional costs is appropriate, given that personnel and equipment are only rarely made available when a project is completed.

3.2 Local employment

Local employment is one of the key aspects in implementing the social clauses. Most of the logging companies involved in this monitoring exercise are located in areas where they are the main providers of jobs. In Central Africa, local employment is usually a key conflict between concession holders and local communities, with the former arguing that local people lack skills and the latter that concession holders favour outside labour over local people. Article 19 of Ministerial Decree No. 072 of 12 November 2018, establishing a model agreement for logging concessions' social clause contract specifications, stipulates that: "Among qualified individuals, the logging concession holder undertakes to recruit its company's workforce from the local community and/or Indigenous People if they possess the suitable skills. This recruitment concerns only work for which the expertise exists within the community." Local employment issues were discussed with 16 concession holders, including the number of jobs, gender mainstreaming and the existence of specific policies regarding employment and Indigenous People.

Most (76%) of the 16 concession holders interviewed stated that they had a policy of giving priority to the local workforce. Unsurprisingly, the jobs created locally were mostly unskilled or low-skilled. However, existing capacities in the communities are taken into account when implementing this policy. Project design, for example, is therefore beyond the reach of the local population, as few locals have the level of skills required in that field. 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.

In reality, Indigenous Peoples remain the least represented in terms of the number of people employed by forestry sector companies. The same applies to women, who fill a relatively limited number of forestry sector jobs. From this point of view, the local employment pattern mirrors the overall situation in the Congo Basin; i.e., vulnerable groups are poorly represented within the labour force.

3.3 Governance of the local committees

Local and Indigenous communities are represented by two bodies; the local management committee and the local monitoring committee. These two committees act as an interface between the concession holders, other timber sector stakeholders, and the local communities. Specifically, the local management committee's purpose is to implement community projects decided upon by the communities, ensure financial management of the LDF, and report to the local communities and/or Indigenous populations on implementation progress. Meanwhile, the local monitoring committee is responsible for monitoring and evaluating the implementation of commitments made under social clause agreements, as well as ensuring that the management committee carries out activities as stipulated in the social clause agreements. The local management and monitoring committees were examined in terms of the representativeness, governance and accountability of their representatives.

Findings show that establishment of local management and monitoring committees involves many stakeholders, of which the state, technical partners and concession holders are considered the most important (Figure 7). This stage-by-stage support helped communities in everything from negotiating social clauses to setting up representative bodies. WWF, for instance, provided technical and financial support to Congolese CSOs so that they could help guide local communities in negotiating social clauses.

It is rather paradoxical that stakeholders from outside the local and Indigenous communities play a predominant role in setting up local committees. Indeed, for supposedly representative

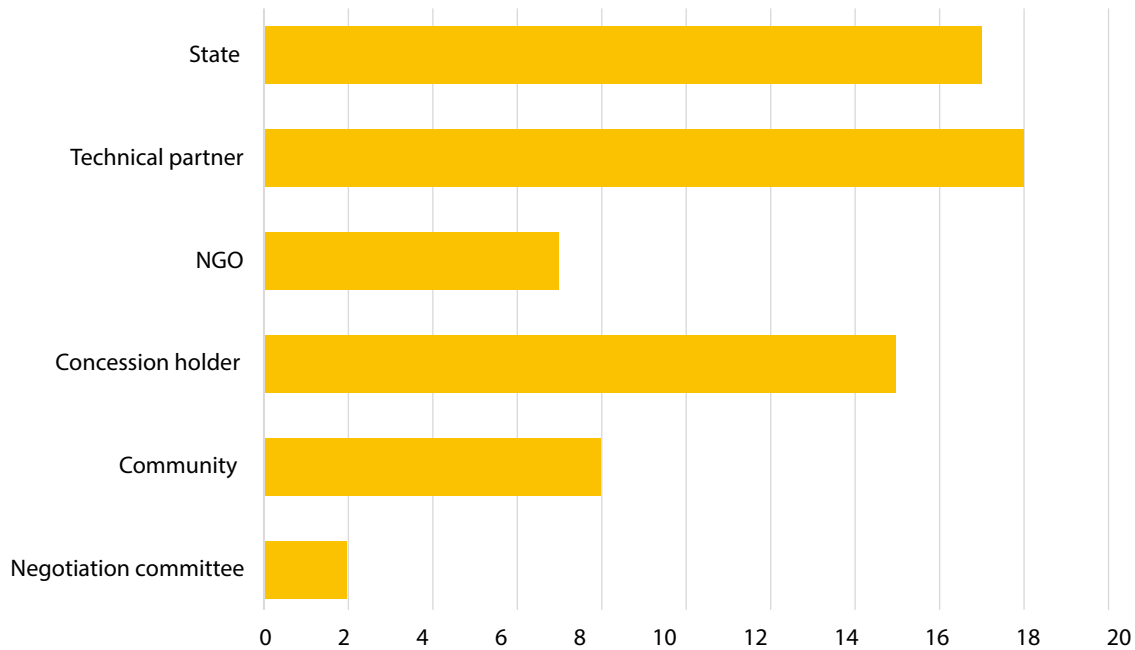


Figure 7. Entities facilitating the establishment of local management and monitoring committees

institutions, the local communities do not seem to have control over the entire process. The picture that emerges from the establishment of local committees is that of a process designed for the communities, without really taking their opinions into account. The limited involvement of NGOs seems equally paradoxical, especially considering that it is they which are statutorily mandated to guide the local communities in negotiating the social clauses. The predominant role of technical and financial partners and of concession holders can be explained by the fact that it is these stakeholders which have the financial resources allowing NGOs to provide technical support to communities and to finance social clauses.

The state meanwhile is the guarantor of local populations' interests, and it is in this capacity that it is heavily involved in setting up the local committees. Public stakeholder involvement takes the form of monitoring consistency across the entire social clause negotiation process, and it is in this way that the forestry administration is responsible for validating the process.

3.3.1 Representativeness

Analysis of local body representativeness was based on village community involvement and the degree to which local sociological aspects and vulnerable groups were taken into account. As for village representation, local management committees include representatives from between 2 and 29 villages, while the number of groups involved varies between 1 and 8. In 53% of local monitoring committees and 73% of local management committees, all local ethnic groups are represented; while in 57% of local monitoring committees and 80% of local management committees, all villages

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 those decision-making bodies. 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%.

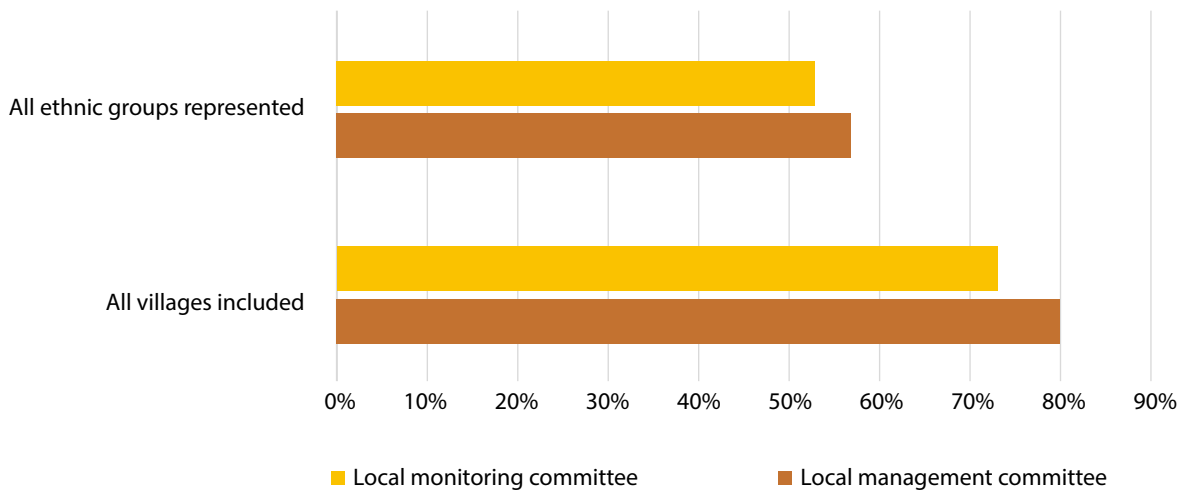


Figure 8. Representativeness in the local management and monitoring committees

Representativeness was assessed not only by inclusiveness, but also through the ability of local governance bodies to show accountability to the 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.

3.3.2 Effectiveness of the local management and monitoring committees

Local committee governance was also analysed in terms of their effectiveness, their democratic nature, their forms of decision making, and their sustainability. 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 bodies a form of functional autonomy, even if it is closely linked to the effectiveness of the logging operations. The budgets of these institutions 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 bodies. In addition to LDF funds, local authorities sometimes receive grants from NGOs.

Looking at how committee members are chosen, local management committees are largely chosen by elections (Figure 9). Members are elected for a

term of three to five years. There are other routes to becoming a member, including appointment by customary authorities, or co-opting, but these approaches are infrequent.

Local monitoring committees appear to use democratic election slightly less. In these committees, regulations provide for statutory members, whose presence on the management board is mandatory. In addition to community-appointed members, some positions are reserved for prominent local individuals; for example, the chair and vice-chair are positions reserved for the heads of sectors/chieftaincies and group leaders. A concession holder delegate and sometimes a civil society representative, are also members. In the case of the monitoring committees, just 7 of the required 11 members are thus democratically elected.

With regard to internal operations, members of the local monitoring and management committees interviewed stated that decisions are taken by consulting the members, and that most (70%) members attend meetings. However, very few members of the communities affected by the social clauses are invited to participate 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.

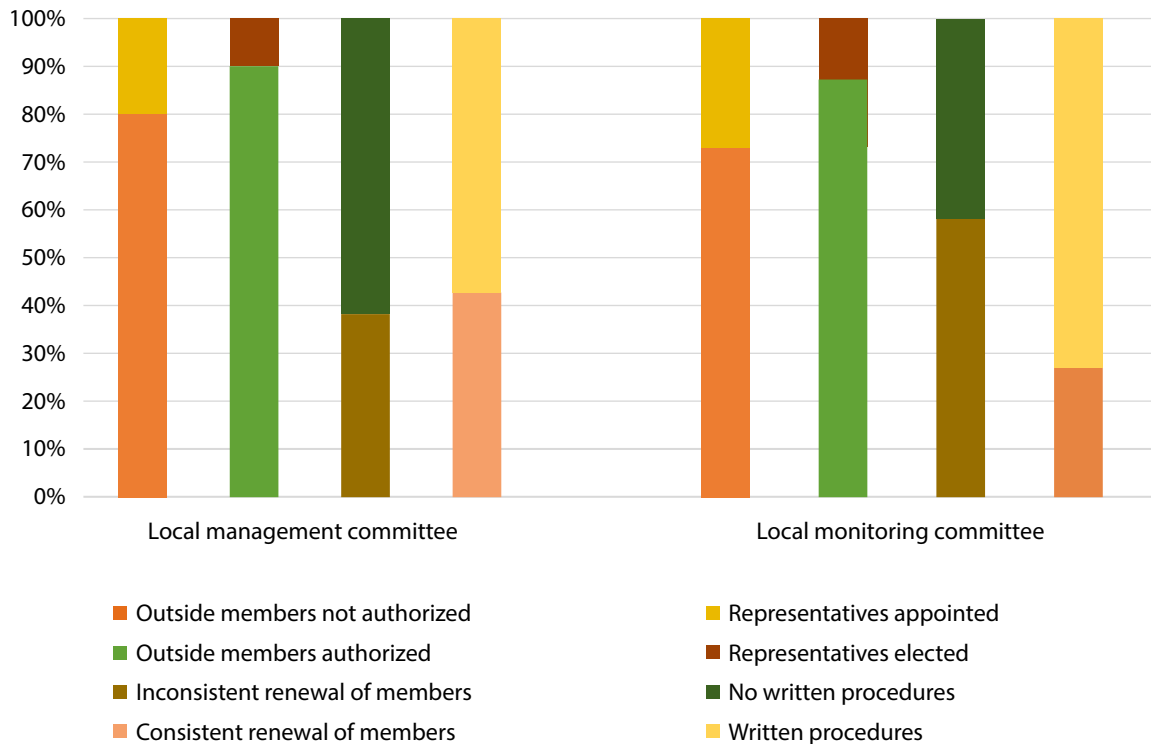


Figure 9. Governance of the local management and monitoring committees

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. This finding is surprising and contradicts previous empirical observations about local bodies in the Congo Basin; as such it needs to be confirmed by longer-term analyses.

The life expectancy of the committees is very often linked to the presence of a logging operator. That presence usually averages five years, corresponding to the operating life of a five-year development block. Many local committees do not survive the end of logging operations. The context for setting up management and monitoring committees in the DRC is very similar to that of other countries in the Congo Basin, as is their heavy dependence on subsidies generated by logging. It will therefore be interesting to follow the evolution of these committees in the future.

3.4 Customary use rights

Questions on customary use rights aimed to analyse the relationship between local and Indigenous Peoples and the concession holders. 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 10).

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). In the event that such conflicts occur, they are resolved through negotiation or compensation.

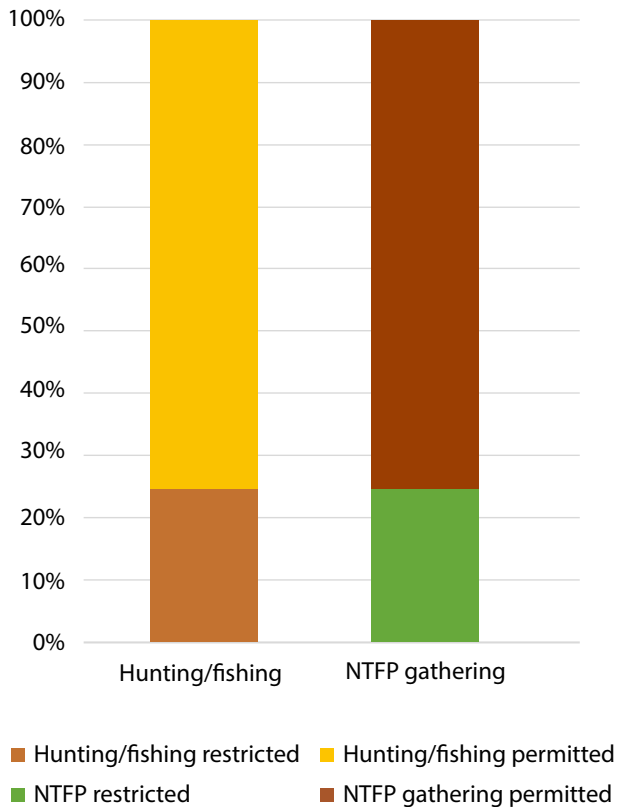


Figure 10. Exercise of customary rights

However, other forms of conflict exist. This is particularly the case when it comes to restrictions around access to the concessions. In accordance with the law, concession holders tend to limit the use of roads created for logging purposes. Communities are accused of using these roads for illegal purposes like poaching. Indeed, there is not always a clear dividing line between hunting for subsistence purposes, and hunting considered illegal by the concession holders.

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; however, as such checks are not yet comprehensive or effective in the DRC, law enforcement tends to be weak and does not significantly hinder the exercise of use rights.



4 Conclusions and recommendations



In the DRC, social clause agreements are seen by timber sector stakeholders as an approach likely to promote the sharing of logging operation profits with village communities, so revenue generated from the exploitation of forest resources is more equitably redistributed. Over the years, this system of revenue sharing has gained a form of social acceptability among local communities, as well as concession holders, government administration and civil society.

The social clause mechanism has a threefold advantage. The first is that it supports the implementation of corporate social responsibility (CSR). CSR is understood here as the company fulfilling its legal obligations while developing a fair relationship with stakeholders and investing locally in economic, social and environmental aspects (European Commission 2001). In this case it is an institutionalized form of CSR, as CSR is by nature a voluntary mechanism for companies. As a CSR mechanism, the findings suggest that social clauses

act to some extent as a platform for discussions and negotiation among all stakeholders. From this perspective, they help smooth out social relations among stakeholders with sometimes conflicting interests.

The second advantage of the social clause mechanism is that it helps to mitigate top-down approaches to development. In this case, various stakeholders agree on the type of community projects that the beneficiaries need, depending on the financial resources available.

The third advantage of this mechanism relates to its effect on local development. Our hypothesis is that if the social clauses were to be implemented optimally, they would have a very significant effect on improving the living conditions of local and Indigenous populations. Their potential effect is visible in some cases, but still limited by challenges in implementing the social clause agreements and in their monitoring by civil society.

Recommendations

The monitoring of social clause implementation has revealed some shortcomings. The first concerns the ability of concession holders to fulfil their financial obligations to local communities. Sometimes, the concession holders cannot fulfil their contractual obligations because of internal financial difficulties. These difficulties can lead to periods of inactivity of varying length, resulting in a delay in the payment of funds to communities. In practice, it is very difficult to overcome such situations. On the other hand, adjustments can be made, both in the method of estimating logging operation revenue and in the choice of social and community projects.

The current approach of financial forecasting, 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.

Another related issue is the transparency and authenticity of concession holders' production declarations. Under the current system, local management committees are informed of production from the quarterly declarations made by the concession holders. As they are currently designed, the committees 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. Another option would be to broaden the

mandate of the local monitoring committees to include this, in order to avoid a multiplication of committees.

The second aspect related to LDF funding arrangements is the streamlining of community project choices. 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.

A final point concerns the monitoring of social clauses by civil society. 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. In this respect, monitoring could have a highly positive effect on CSO capacity.

To conclude, the social clauses have the potential to act as a powerful tool in the socioeconomic development of local communities in the DRC. And while there is room for improvement in terms of the level of funding required, the current outcomes do help improve the daily lives of communities in the fields of health and education.

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Annex

Status of submission, analysis and validation of forest management plans as of 5 January 2021

No.	COMPANY	LOGGING CONCESSION CONTRACT (CCF) NO.	SUBMISSION DATE	CURRENT STATUS	COMMENTS	DATE OF LETTER
1	BBC	004/11	18/05/2017 16/05/2018 (2 nd version)	Validated by the CVPAF ²	Pending the Provincial Governor's decree	Notified on 13/07/2019 + Certificate of Compliance with FMP
2	BEGO CONGO	022/11	26/07/2017 08/05/2018 (2 nd version)	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 13/07/2019 + Certificate of Compliance with FMP
3	SCIBOIS	020/11	16/06/2017	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 13/07/2019 + Certificate of Compliance with FMP
4	CFT	005/18	30/10/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 04/09/2019 + Certificate of Compliance with FMP
5	CFT	046/11 and 047/1	20/07/2015	Validated by the CVPAF	None	Notified on 09/08/2016 + Certificate of Compliance with FMP + decree signed by the Provincial Governor
6	IFCO COTREFOR	09/11	19/04/2013	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 09/02/2016 + Certificate of Compliance with FMP
7	IFCO COTREFOR	018/11	18/11/2014	Validated by the CVPAF	None	Notified on 09/02/2016 + Certificate of Compliance with FMP + decree signed by the Provincial Governor
8	FOLAC	048/12	04/10/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 13/07/2019 + Certificate of Compliance with FMP
9	FORABOLA	015/11	10/01/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 04/09/2019 + Certificate of Compliance with FMP
10	FORABOLA	036/11	23/02/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 04/09/2019 + Certificate of Compliance with FMP
11	FORABOLA	043/11	20/12/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 19/06/2020 + Certificate of Compliance + Provincial Governor decree

2 Forest Management Plan Validation Committee.

No.	COMPANY	LOGGING CONCESSION CONTRACT (CCF) NO.	SUBMISSION DATE	CURRENT STATUS	COMMENTS	DATE OF LETTER
12	FORABOLA	057/14	23/12/2019	Validated by the CVPAF	Pending notification and Certificate of Compliance signed by the SG-EDD ³	
13	FORABOLA	058/14	27/09/2019	Validated by the CVPAF	Pending notification and Certificate of Compliance signed by the SG-EDD	
14	FORABOLA	060/14	03/07/2019	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 19/06/2020 + Certificate of Compliance
15	KITENGE LOLA	015/18	10/09/2020	Validated by the CVPAF	Pending notification and Certificate of Compliance signed by the SG-EDD	
16	MOTEMA	024/11 and 025/11	11/09/2015	Validated by the CVPAF	None	Notified on 09/08/2016 + Certificate of Compliance with FMP + decree signed by the Provincial Governor
17	(Booming Green) SIFORCO	052b/14, 053/14 and 054/14, 026/11 and 027/11	20/12/2019	Validated by the CVPAF	Pending notification and Certificate of Compliance signed by the SG-EDD	
18	SCTP (Ex-ONATRA)	055/14	29/10/2020	Not validated	Under analysis: the company must submit the notices and minutes on land allocation.	
19	SODEFOR	034/11	20/03/2015	Validated by the CVPAF	None	Notified on 06/03/2017 + Certificate of Compliance with FMP + decree signed by the Provincial Governor
20	SODEFOR	035/11	29/12/2015	Validated by the CVPAF	None	Notified on 17/11/2016 + Certificate of Compliance with FMP + decree signed by the Provincial Governor
21	SODEFOR	037/11	23/07/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 04/09/2019 + Certificate of Compliance with FMP

³ General Secretariat for the Environment and Sustainable Development.

No.	COMPANY	LOGGING CONCESSION CONTRACT (CCF) NO.	SUBMISSION DATE	CURRENT STATUS	COMMENTS	DATE OF LETTER
22	SODEFOR	039/11	26/04/2013	Validated by the CVPAF	None	Notified on 09/02/2016 + Certificate of Compliance with FMP + decree by the Provincial signed Governor
23	SODEFOR	038/11 062/11 063/11	18/06/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 13/07/2019 + Certificate of Compliance with FMP
24	SODEFOR	042/11	14/11/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 04/09/2019 + Certificate of Compliance with FMP
25	SODEFOR	045/11	27/09/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 19/06/2020 + Certificate of Compliance
26	SODEFOR	059/14	07/12/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 19/06/2020 + Certificate of Compliance
27	SODEFOR	061/41	17/04/2019	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 19/06/2020 + Certificate of Compliance
28	SODEFOR	064/14	21/11/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 04/09/2019 + Certificate of Compliance with FMP
29	SODEFOR	065/14	27/11/2018	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 19/06/2020 + Certificate of Compliance
30	SIFORCO	040/11	06/11/2016	Validated by the CVPAF	Pending the Provincial Governor's decree	Notified on 23/04/2018 + Certificate of Compliance



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