



REPORT

Independent monitoring of the social agreements in Democratic Republic of Congo (2011-2015)

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Abbreviations and acronyms

| | |
|---------|---|
| ACIBO | <i>Autorisation de Coupe Industrielle de Bois</i> / industrial logging permit |
| CCF | <i>Contrat de Concession Forestière</i> / forest concession contract |
| CCS | <i>Cahier des Clauses Sociales</i> / Social agreements |
| CIFOR | Centre for International Forestry Research |
| CLG | <i>Comité Local de Gestion</i> / local management committee |
| CLS | <i>Comité Local de Suivi</i> / local monitoring committee |
| CNCEIB | <i>Coalition Nationale contre l'Exploitation Illégale du Bois</i> / national coalition against illegal logging |
| FDL | <i>Fonds de Développement Local</i> / local development fund |
| FLEGT | Forest Law Enforcement Governance and Trade |
| GA | <i>Garantie d'Approvisionnement</i> / supply guarantees |
| HCVF | High Conservation Value Forests |
| LI | Letter of Intent |
| MECNT | <i>Ministère de l'Environnement, Conservation de la Nature et Tourisme</i> (Ministry of environment, nature conservation and tourism) |
| Norad | Norwegian Agency for Development Cooperation |
| PA | <i>Plan d'Aménagement</i> / Forest Management Plan |
| PCPCB | <i>Programme de contrôle de la production et de la commercialisation des bois</i> / Timber production control and marketing programme |
| PG | <i>Plan de Gestion</i> / Forest development plan |
| PNEFEB | <i>Programme National Environnement Forêt et Biodiversité</i> / National Program for Environment, Forest, Water, and Biodiversity |
| REPALEF | <i>Réseau des Populations Autochtones et Locales pour la gestion durable des Ecosystèmes Forestiers</i> / Network of Indigenous and Local Peoples for Forest Ecosystem Sustainable Management |
| VPA | Voluntary Partnership Agreement |
| WWF | World Wildlife Fund |

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Since the information in this report has been obtained from an encapsulated version of field data collected by a large number of collaborators with the assistance of the local communities and the indigenous people, it does not necessarily reflect the opinions of WWF, CIFOR or their financial partners. WWF, CIFOR and Norad, thus, cannot be held responsible for the data, analyses or opinions.

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Foreword

Although considerable efforts have been made to develop effective legal and political frameworks for forest management in the Democratic Republic of Congo, the situation on the ground has made it very difficult to apply the forestry regulations. This has an overall effect on the exploitation of forest resources, both in the situation of the industrial concessions and under artisanal logging permits. The difficulties in applying the forestry law reflect, on the one hand, the fragility of the State monopoly in overseeing forest management and, on the other, the need for concerted action in forestry management surveillance that can motivate the civil society, the technical partners and the private sector to work with the State. Uncommissioned forest monitoring by the Congolese civil society these last few years, thus, is part of the dynamics of forest law consolidation and improved implementation.

By focusing on the social obligations to local and indigenous communities that the logging companies are legally bound to respect, this report looks closely at an often ignored but major principle of forest governance in Central Africa: the principle of sharing the benefits of the forestry operations among all

parties concerned, especially the most fragile ones, the forest communities. This has become an integral part of legal practice in Central Africa. On the other hand, forestry control services still treat this component of forestry management as a marginal or even an unimportant issue.

The monitoring of social agreements shows their potential as a tool to enhance development within the forestry sector if this is done properly. Similarly, the assistance provided to the communities in negotiating social provisions with the forestry companies, and in building up the capacity of the local organisations to keep track of development projects as they are being deployed points to – although this is hardly necessary anymore, – the vital role of the national and international civil society in carrying out the social aspects of forest management.

Bruno Perodeau
WWF Conservation Director

Executive summary

The improvement of forest governance in Democratic Republic of Congo is a constant challenge to the public sector, the funding agencies and the civil society organisations. The 2002 Forest Code and the subsequent implementing legislation underpin a system of forest management based on management principles for industrial concessions, participant inclusiveness, and equitable distribution of profits generated by forestry operations. The basic challenge for the national legal instruments and the country's commitment in negotiating a Voluntary Partnership Agreement with the European Union is to improve forest governance by fighting illegal extraction of forest resources. Forest management reforms have been applied these last few years subsequent to the end-2014 completion of the logging titles conversion into forest concession contracts (CCF) and enactment of regulations regarding community forests.

Independent forest monitoring by Congolese civil society organisations with the support of WWF and Norad is evidence that the efforts made by Congolese authorities and non-state actors for the last fifteen years are gradually being assimilated by the formal forest sector even though current actions are not enough to end illegal logging nationwide. This report summarises the findings of the independent forest monitoring missions carried out between 2011 and 2015 in DRC. Following the conversion process, 57 logging concessions were granted and 23 monitored while 85 agreements were signed with local communities.

The uncommissioned independent forest monitoring missions highlighted the following points:

- In the 23 forest concessions operating between 2011 and 2015, the forest operators tried to meet their legal obligations to implement the social agreements. WWF's actions have contributed to obtaining signatures for 39 social agreements out of a

total of 85 agreements for all the converted DRC logging titles. The monitoring mission reported the construction of 27 schools, 7 healthcare centres, and 14 administrative premises, and the repair of several kilometres of road. At the national level, since 2010, 85 agreements on the social agreements should generate funding for socio-economic infrastructural projects to the tune of 13.6 million US dollars for the area around 60 forest concessions.

- Capacity building: The project offered training on the development of revenue-generating activities to some 38,000 people from the forest communities.
- The 23 forest concessions monitored by the project allocated 5.6 million dollars to social development though the social agreement, however only 2 million dollars was actually disbursed, in other words, less than half of what was budgeted in the agreements between the concession holders and the local communities. The significant difference between the forecast budget and the revenue received of course curtailed the implementation of the social agreements.
- Logging and social agreements in the rural areas provide an opportunity to position local development in a dynamic that ideally should be driven by the State and made to last. In situations that make it difficult to implement the public policies, infrastructure built by private enterprises can be viewed as a transfer of responsibility from the public sector to the private sector. The construction of the infrastructure may require certain skills and expertise that the concession holders lack, which may prevent the infrastructure from being built and as fast it could be.
- Despite the capacity building provided to local management and monitoring committees, these remain fragile institutions that are not always able to carry out their socio-economic

infrastructure monitoring and supervisory missions. The active participation of the local authorities in these mechanisms and their more effective support for the local and indigenous peoples could create community dynamism that might ensure the permanency of the present level of social achievement.

- The development of industrial forest concessions is a very slowly evolving process. The forest administration has only approved 8 Forest Management Plans although the 57 titles that were converted into Forest Concession Contracts (CCF) all had four-year Forest Development Plans. The CCF holders had the legal obligation to prepare the development plans within this four-year period, but this deadline is well past for most of the forest concessions.

- Various illegal types of artisanal logging in the converted forest concessions are worrisome; this is even more so in the concession areas that were not considered qualified for conversion¹. Furthermore, there is a growing tendency for what is called “semi-industrial”² logging that is against the forestry regulations³.

1 *Rapport de suivi forestier. La longue marche vers une gestion responsable des forêts en RDC* (Forest monitoring report. The long march to responsible management of forest in DRC). WWF, 2012.

2 Ibid.

3 Since this type of logging requires a logging permit, professional accreditation and equipment that, in principle, is reserved for industrial operations. It violates regulations that require small-scale production units to use crosscut saws and chainsaws as their basic equipment.

1 Introduction

For the last 15 years, the Democratic Republic of Congo has been striving to improve the governance of its forestry sector through a process it started in 2002 by drafting a new forest code aimed to improve the sector's economic performance without impinging on the requirements of social and environmental sustainability. Changes in the forest law and the subsequent regulations mainly involve the introduction of industrial forest concessions, the principle of sustainable forest management, an inclusive approach to forestland management, and equitable redistribution of the benefits derived from logging operations to all parties involved. Two complementary levers were used to implement the reform: i) in 2002, a moratorium on the allocation of new logging titles, and ii) in 2005, the conversion of previously valid titles (supply guarantees and letters of intent) into forest concession contracts (CCF).

The social aspects of the forest management for production forests became less important when social agreements were appended to the CCF, since these agreements amounted to agreements between the local communities and the concession holders on the realization of socio-economic infrastructure. The goal of the social agreements is to improve the well-being of the local and indigenous populations through the introduction of a logging-fed funding system for local development.

Efforts by the Congolese public authorities to modernise the legal framework have not produced decisive results. More than a decade after the logging titles conversion process was launched, only a small number of concessions actually have valid Forest Management Plans. And illegal logging is still a problem that parties interested in forestry sector management are trying to solve; NGOs, for instance, have made decisive contributions to the forestry sector reforms. World Wildlife Foundation (WWF) with the financial assistance of Norwegian Agency for Development Cooperation (Norad) has used different types of technical support and advocacy to make the legal framework operational.

This involvement in forest governance produced the following results: a contribution to the production of the enabling texts and their distribution to the

civil society, the local and indigenous communities, and the forest administration and companies; more contact between the many parties involved through the creation of civil society platforms, in particular REPALEF (Network of indigenous and local peoples for forest ecosystem sustainable management) and CNCEIB (National coalition against illegal felling), and smoother relations between the concession holders and the local communities in signing and monitoring the social agreements.

The forest monitoring system is part of the second generation of initiatives designed to control the implementation of the legal and institutional framework. The purpose of forest monitoring is to ensure that logging companies fulfil their pledge to create social and economic infrastructure for the local and indigenous communities. The action of the civil society is part of a sub-regional movement that recognises and legitimates the importance of the role of the environmental civil society in overseeing the logging activities.⁴ From the legal angle, forest monitoring is mainly based on Article 24 of the 2002 Forest Code that expands responsibility for forest management and surveillance to include NGOs. This provision is further expanded by the provisions of Order 102 of 16 June 2009 on the rules and formalities of forest controls, which oblige the national and international organisations working in the forest sector to denounce illegal activities. The Congolese civil society with the assistance of WWF has been monitoring the concession holders' respect for their social obligations in a national situation marked by an overabundance of norms that aim to regulate loggers' working methods, difficult implementation conditions, and the resumption of discussions on a potential Voluntary Partnership Agreement between the Democratic Republic of Congo and the European Union.

This report summarises five years of experiments with uncommissioned independent monitoring and espouses the spirit of the documents published by WWF in 2012 and 2013 on forest monitoring in DRC.

4 Article 27 of the Subregional Agreement on Forest Control in Central Africa.

1.1 Objectives

Uncommissioned independent monitoring by local NGOs was started in 2011 to verify concession holders' compliance with legal and regulatory requirements; special emphasis was placed on the social agreements written into the *cahier des charges*. The *cahier des charges* refers to the appendix to the forest concession contract, which indicates the socio-economic infrastructure agreed between the local communities and the concessionaire. The purpose of monitoring the logging companies in the sample was to:

- Collect, analyse and disseminate information on the implementation of the forest regulations in general and more specifically on the social agreements in the *cahier des charges*;
- Keep track of the impact of the logging companies' social actions on the living conditions of the recipient populations;
- Motivate and encourage logging companies to respect their social commitments;
- Document and disseminate information on illegal logging operations;
- Convince the government to take the necessary steps to put an end to illegal logging in the forest concessions and the surrounding areas;
- Contribute to the think-tank on improving forest governance in DRC.

1.2 Methodology and data analysis

This report is based mainly on data collected by the civil society and transmitted to CIFOR by WWF. To obtain a holistic view of the process, CIFOR had to start its work with a ten-day mission to DRC to understand the context surrounding the uncommissioned independent forest monitoring that took place during the last five years. Many persons connected directly and indirectly with forest management were interviewed during the mission in an effort to understand their perception of the monitoring method, how inclusive it was, and its long-term viability. The interviews were held in Kinshasa and in the Tshopo province with visits to some of the social accomplishments.

Uncommissioned independent forest monitoring of logging operations required several sequences preceded by training for CSO representatives in the techniques of independent observation. Altogether 21 civil society organisations were selected to participate because of their sound experience in the

social aspects of logging and their interventions in locations included in the independent monitoring project. Throughout the monitoring period, there were 72 missions on monitoring and support for negotiations of social agreements throughout the 27 territories.

Table 1. Contacts

| Contacts | Number | Location |
|-----------------------------|--------|---------------------|
| Private sector | 8 | Kinshasa, Kisangani |
| Provincial authorities | 1 | Kisangani |
| NGOs | 10 | Kinshasa, Kisangani |
| Local Management Committees | 4 | Kisangani |
| Total | 23 | |

Source: CIFOR

To plan the monitoring activities, a large sample of logging titles was taken into account, whether or not the titles could be converted⁵ into forest concession contracts (CCF) by the project launch date (Table 2). Parameters such as site accessibility and concession holder's agreement to collaborate were factored into the selection of forest concessions to be monitored. With regard to the monitoring of social agreements *per se*, activities involved 35 social agreements that were representative of the 23 active forest concessions in DRC between 2011 and 2015.

After the selection was made, direct contacts were established with the concession holders, the local public authorities, the traditional authorities, and heads of entities responsible for managing local-level logging revenue for the local communities and the indigenous. Meetings with the various categories of stakeholders focused, *inter alia*, on management of funds fed by forest enterprises, realisation of socio-economic infrastructure, transport facilities, and conflicts among stakeholders on sharing profits from logging.

In theory, monitored concessions were to receive one mission visit a year, but mainly for financial

⁵ According to Decree 05/116 of 24 October 2005, the convertibility of old titles depended on (i) the legal validity of agreements underpinning the request for conversion, (ii) how well these agreements comply with the legal, environmental, social and fiscal obligations, (iii) existence and continued functioning of the processing unit in compliance with the terms of the title's supply guarantee and/or the letter of intent, and (iv) analysis of the development plan proposed by the title-holder.

Table 2. Distribution of title areas visited

| No. | Province ^a | Convertible titles | | Non-convertible titles | | Total number of titles visited/ total number in existence | |
|-------------------------------|-----------------------|--------------------|--------------|------------------------|--------------|---|--------------|
| | | Visited | In existence | Visited | In existence | Visited | In existence |
| 1 | Bas-Congo | 4 | 4 | 11 | 12 | 15 | 16 |
| 2 | Bandundu | 5 | 18 | 13 | 17 | 18 | 33 |
| 3 | Equateur | 18 | 33 | 13 | 38 | 33 | 71 |
| 4 | P. Orientale | 13 | 23 | 6 | 6 | 19 | 29 |
| 5 | Kasaï Oriental | 0 | 2 | 0 | 5 | 0 | 7 |
| Total number of titles in DRC | | 40 | 80 | 43 | 78 | 85 | 156 |

Source: WWF

Note:

^a The report does not make allowances for the new administrative zoning in DRC: previously 10 provinces, now 26 provinces.

and logistical reasons it was not possible to abide completely by this schedule. During the missions, data were collected based on monitoring records that included an update on the social agreements, the labourers' working conditions in the site facilities, the certification process, the situation of the indigenous peoples, and progress in forest management and planning.

The records were taken to the WWF head office in Kinshasa and the data were entered into a MS

Excel© database created especially for monitoring change in the implementation of the social agreements and other parameters. The analysed data was supposed to be used in the preparation of annual progress reports. This series of operations, however, has not always been carried out regularly or optimally. Hence, the analyses below are based exclusively on data from NGO reports in December 2015.

2 Overview of forest management

2.1 Situation of industrial concessions

The conversion of titles into forest concession contracts (CCF) that was started in 2005 was finally completed in 2014⁶ with 81 titles deemed convertible, 57 titles actually converted into forest concession contracts (CCF) and 5 logging titles cancelled and converted into conservation concessions. Another 15 titles were requalified as private domain of the State, 1 title was cancelled on the grounds that no Forest Development Plan or social agreement had been submitted, and 3 titles were suspended for reasons of *force majeure*. The absence of an official attributor exposes titles that are cancelled or transferred to the private domain of the State to a serious risk of illegal logging.⁷

According to Article 19 of Decree 05/116 of 24 October 2005 setting out the terms and conditions for converting old logging titles into forest concession contracts (CCF) and prolonging the moratorium on the allocation of logging titles, the concession holders have a four-year transition period to prepare a management plan for their concessions and receive approval from the forest administration. The Forest management plan is a technical document describing

and planning the long-term management of the forest concession. Forest Management Plans for production forests have not progressed significantly over the last five years, as shown in Figure 1. At present, only 8 forest management plans (covering an area of 1.7 million ha) have been approved.



Photos: Raphael Tsanga/CIFOR

The relatively small number of approved Forest Management Plans should not overshadow the achievements of these last few years, with the validation of the Forest Development Plans for close to 10.7 million hectares. The forest development plan is a 4-year planning document, during which the concessionaire is required to develop a forest

Table 3. Forest concessions with approved forest management plans

| | Name | CCF NO. | Land area (ha) | Territory |
|--------------|----------|---------|------------------|------------|
| 1 | CFT | 046/11 | 146,551 | Ubundu |
| 2 | CFT | 047/11 | 257,219 | Ubundu |
| 3 | COTREFOR | 018/11 | 219,722 | Bafwasende |
| 4 | COTREFOR | 009/11 | 275,064 | Befale |
| 5 | MOTEMA | 025/11 | 210,247 | Ingende |
| 6 | MOTEMA | 024/11 | 179,473 | Ingende |
| 7 | SODEFOR | 039/11 | 238,896 | Oshwe |
| 8 | SODEFOR | 035/11 | 200,144 | Kutu |
| Total | | | 1,727,316 | |

Source: MECNDD

⁶ Technical note of 26 August 2014 on closing the procedure for converting old forest titles into forest concession contracts, MECNT 2014.

⁷ *Rapport de suivi forestier* (Forest monitoring report), WWF 2013.

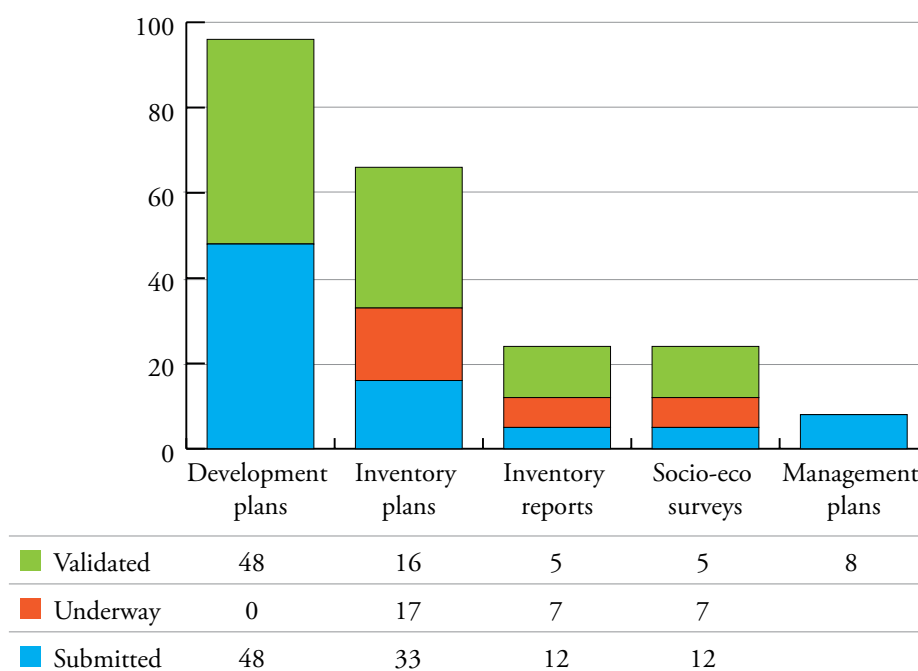


Figure 1. Information on forest management for 2016

management plan. In their monitoring reports, the civil society representatives indicated that all of the 57 titles converted into forest concession contracts had forest development plans validated by the forest administration. These plans, temporarily at least, are used to organise the logging operations.

Some companies are trying to develop private certification processes. Apparently six logging companies have consulted audit firms about the wood controlling process and the verification of the legal origin of wood. These processes are currently underway although there is not enough information in the database on variables, such as the existence of a pre-audit or an initial audit, to accurately assess the level of progress.

2.2 Artisanal logging

Illegal artisanal logging is a fact of life mentioned in various ways in the monitoring mission reports and in observations made during the CIFOR mission. This tendency was confirmed by the PCPCB (timber production and marketing control programme) where 97% of the logs from small-scale logging checked in 2013 were deemed illegal.⁸



Photo: Guillaume Lescuyer/CIFOR

Alongside the question of artisanal logging without a logging permit or accreditation, there are three main issues: Firstly, regulations are disregarded both within the active convertible concessions and in the surrounding areas, which shows that the introduction of industrial logging only partly protects the logging titles against illegal practices. Furthermore, some of the titles that were declared ineligible for conversion are still being used in small-scale logging.

Secondly, the rules governing the allocation of artisanal logging permits (ALP) tend to be misappropriated. In Article 8 of Ministerial Order 35 of 5 October 2006 on logging operations revoked in 2015, the small-scale or artisanal logging permit

⁸ Ministry of environment, nature conservation and tourism. *Programme de contrôle de la production et de la commercialisation des bois* (PCPCB). 2013. PCPCB report, May to September 2013.

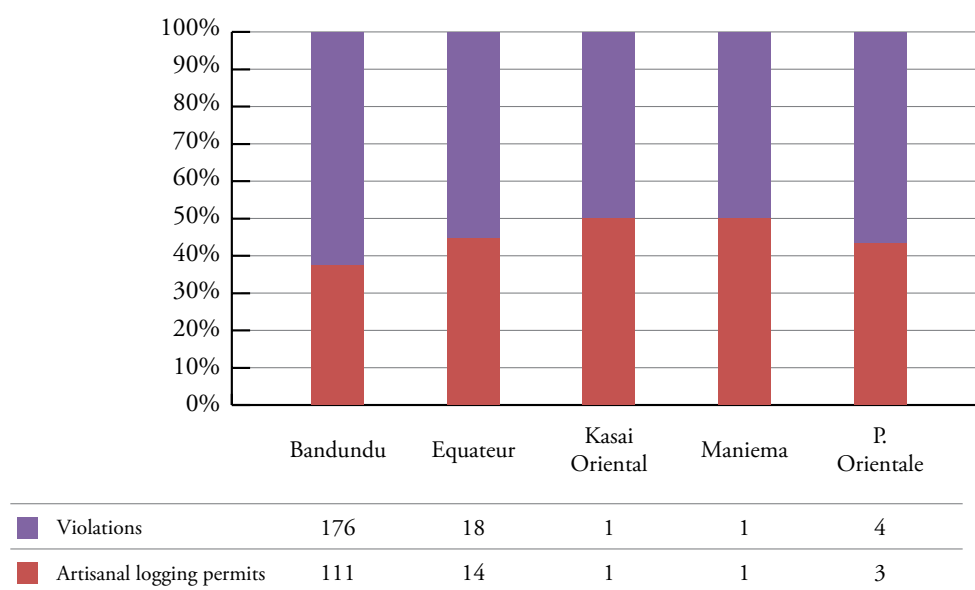


Figure 2. Number of logging permits issued per province, and number of violations (2012-2013)

authorises an individual person to remove timber from a local community forest or from a forest concession that is part of a protected forest estate but has been allocated to local communities (Art. 22 of the Forest Code). These two provisions impose restrictions on the beneficiaries, and the land area; it is illegal to use the logging permit outside of specifically designated areas. Actually legal entities/companies obtained titles that the law had reserved exclusively for private individuals. Note that the regulations on small-scale logging have changed significantly over the last few years as concerns the definition of beneficiaries. In 2016, Article 5 of Ministerial Order 084 on the rules and conditions of timber production established a second category

of artisanal logging which, under Congolese law, is available to companies, and private individuals of Congolese nationality. In a way, this change in the regulations gives formal status retroactively to previously illegal logging practices characterised as “semi-industrial logging”.

This situation is tantamount to fraudulent use of small-scale or artisanal logging permits for industrial logging. Artisanal logging permit and specific accreditation are required for small-scale logging that, according to the regulations, must use crosscut saws and chainsaws as the basic equipment, while in this situation equipment is used that, in principle, is reserved for industrial logging.

3 Social aspects of forest management

3.1 Funding social agreements

The development of social agreements is part of the introduction of community or 'social forestry' in DRC. The 2002 Forest Code states that the forest sector must contribute to improving the well-being of the local and indigenous populations. To fulfil this commitment the State transferred responsibility from the public authorities to the forest operators to whom the forest concession contracts (CCF) had recently been awarded. Along the same lines, the agreement between the local communities and the concession holders are an integral part of the agreements of the forest concession contract.⁹ The first social agreements were signed in 2011 during the final stage of the conversion of certain titles into forest concession contracts (CCF). In 2014 this led to the signing of 85 social agreements by owners of 57 titles that were converted into CCFs through a procedure that recognised the right of a forest company to sign a certain number of social agreements, depending on the number of local communities in the concession.

Funding is obtained through local development funds (FDL) fed by the logging companies. Up to now, the NGOs and the forest administration responsible for implementing Order 023 have worked together to establish these funds. The contribution of the concession holders to the FDL is based on the quarterly wood volume declaration. The rate is 2 to 5 dollars per cubic meter, depending on the wood species. As soon as the social agreements have been signed, the system also provides for the payment of the equivalent of 10% of the total amount to the local communities. Funds are provided based on the area which is covered by the local and indigenous community within or next to the forest concession.

⁹ See Order 023 of 7 June 2010 setting out the correct model for an agreement that contains the specific social clause required in the CCF.

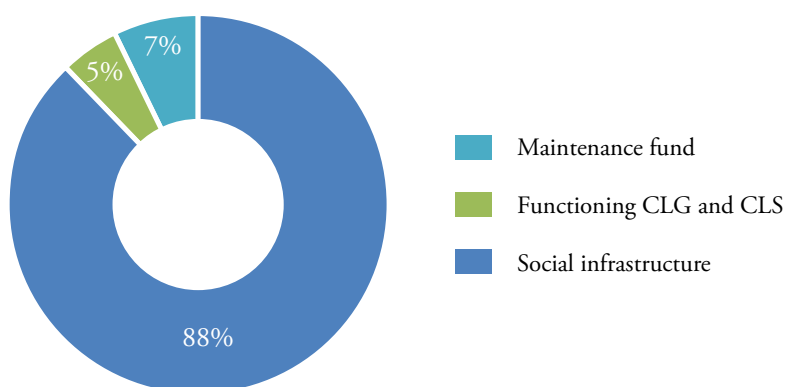


Figure 3. Breakdown of the FDLs expenditures (2011-2015)

The local development funds for the 23 titles being monitored are expected to receive approximately 5.6 million dollars. The breakdown of expenditure among the main budgetary items shows a clear tendency to construct social infrastructure.

For the period in question, the funds made available to the local and indigenous community were less than expected. Only about one-third of the financial resources in the FDL plan were actually received.

The discrepancy between the forecasts and the revenue can be explained essentially through the following two reasons: firstly, financial forecasts are based on the hypothesis that the volumes covered by the industrial logging permits for each of the titles and for each year are very close to the annual volumes actually cut and declared by the concession holders to the forest administration. Often this is not the case since the concession holder starts by making an inventory of all the commercial species during the inventory of the area but ultimately does not cut all the available timber, for reasons such as market demand or defective wood.

Secondly, for several reasons some forest concessions remain inactive, sometimes even for several years. In the forest concessions monitored, there was a gap of at least two years between the signing of the social agreements and the actual logging activities. No

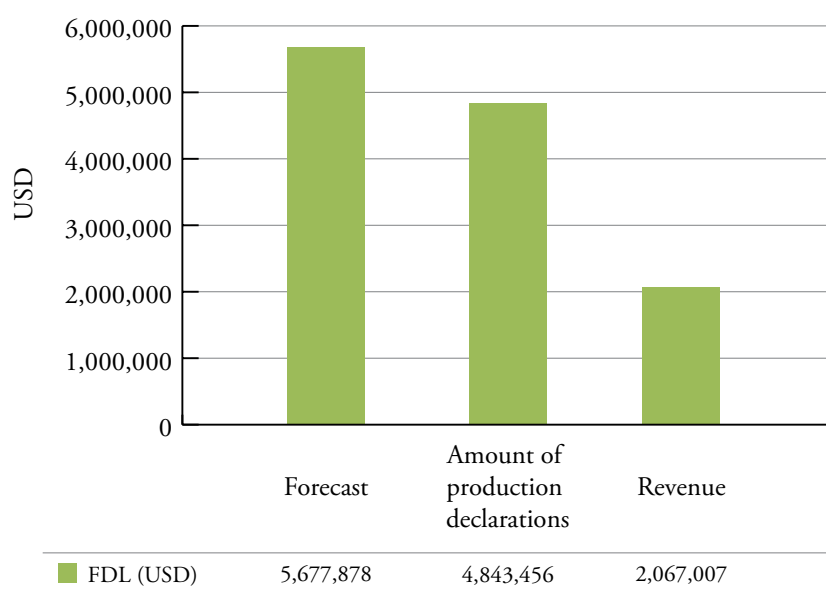


Figure 4. True financial situation of the FDLs (2011-2015)

activity means no officially cut and declared volumes, and no funds for the FDL.

3.2 Monitoring social agreements

3.2.1 Implementation of socio-economic infrastructure

Article 89 of the Forest Code lists the socio-economic infrastructure that the concession holders must provide to the village communities. Special mention is made of the construction and development of roads, repair work, equipment for hospitals and schools, and transportation facilities for people and goods. The formalisation of these social agreements is a mark of major progress since it allows, on the one hand, the private sector to promote local development and, on the other, priority to be given to community infrastructure, which means a

greater number of potential beneficiaries. Another advantage of the social agreements is that they reflect the expressed needs of the communities. This approach is quite different from earlier approaches wherein the business enterprises negotiated mainly with the territorial authorities in order to adopt a more inclusive process involving the concession holders, the village communities, the decentralised government services, and the civil society organisations. Furthermore, WWF's actions have contributed to obtaining signatures for 39 social agreements out of a total of 85 agreements for all the converted DRC logging titles.

The monitoring missions have shown that the enterprises in the forest sector are gradually investing in socio-economic infrastructure. Most of their investments cover the provision of vital services to the satisfaction of the basic needs of the local communities and indigenous people, who give



Photos: Raphael Tsanga/CIFOR

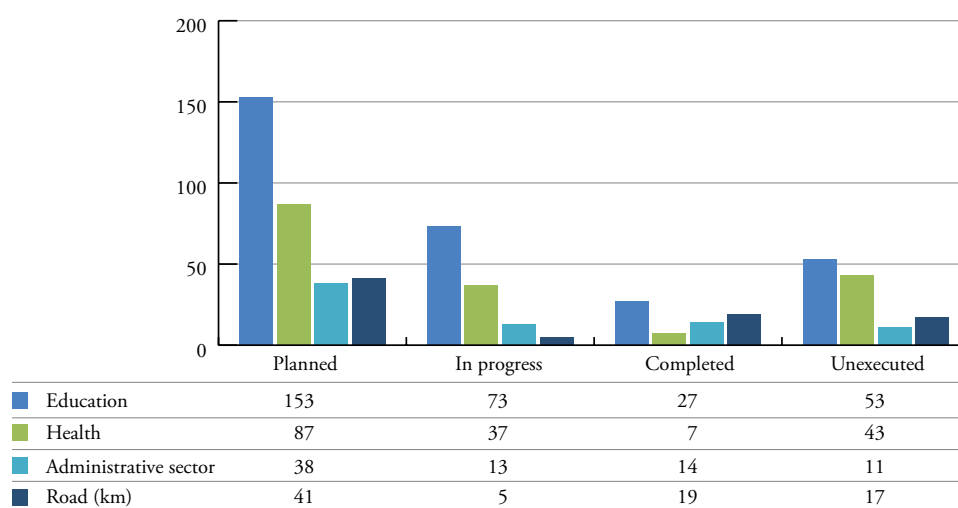


Figure 5. Recap of number of social realizations per sector (2011-2015)

priority to the healthcare and the education sectors. Regarding education *per se*, efforts are made to improve the quality of school infrastructure as illustrated below.

Road rehabilitation is also in the *cahier des charges*. The local villages have also expressed the need for non-recurrent investments such as sheet metal, transport facilities, water supply points, electric generators, the construction of housing for the village leaders and various equipment.

In the chart above, we see that the business enterprises ambitiously contribute to improving the well-being of the people living around the concession, especially through the number of projects scheduled to be implemented during the four years after the agreement is signed. The plan was to carry out a total of 453 projects in 23 forest concessions that were representative of 35 social agreements. The monitoring missions however indicate that the actual rate of project implementation is very low, e.g. only 11% of the projects in the education field were completed, 5% in the health sector, 22% in the administration sector and 29% in road infrastructure. Therefore, an average of only 38% of the projects planned for the 2011-2015 period were completely implemented or are in progress.

There are several reasons for the low level and the delays in socio-economic construction. The first reason is related to the abovementioned constraints to logging; there is always a significant difference between the authorised and the real logging levels. In DRC, like elsewhere in the Congo Basin, the volume of wood removed is very often less than planned.

Further, because of financial problems, the logging companies fell the trees intermittently or may remain inactive for the period between the CCF signing date and the beginning of the logging operations. Besides the financial problems, the companies may have other problems such as insufficient tin-house skills to carry out the social agreement. Because of low skill levels costs may be underestimated which in turn can lead to unsatisfactory realisation of the work dictated in the social agreements. In some cases, the local communities that are asked to select the persons or companies to carry out the infrastructural projects are too poorly equipped for the job. In other cases, work by the business enterprises is held back by operational problems, e.g. the assignment and funding of health and education staff, for instance, is the responsibility of the State, which does not always fulfil this obligation.

With regard to social agreements, since 2010 the implementation of the 85 agreements in DRC reaped direct benefits to the tune of 13.6 million US dollars of funding for socio-economic projects connected to 57 forest concessions. If well carried out, these projects could impact the living conditions of some 16 million people. In addition, WWF and its partners have been training people in close to 500 communities on the development of non-forest revenue-generating activities.

3.2.2 The functioning of local institutions: Local Management Committees (CLG) and Local Monitoring Committees (CLS)

The Local Management Committee (CLG) and the Local Monitoring Committee (CLS) represent the local and indigenous populations. The CLG

is in charge of managing the local development fund and the CLS is responsible for monitoring the implementation of the social agreements. Local NGOs supported the creation of the CLG and the CLS through training and capacity building for their members. Thanks to the support from the civil society, during the monitoring period 30 CLGs and 30 CLSs were set up and cover 75% of converted titles.

The monitoring missions have noted the difficulties that the CLGs and CLSs are having in carrying out their supervisory and monitoring duties. There are several factors holding them back: their financial independence depends heavily on funds provided from the FDL. This means that when logging activities stop or when the share of funding due to the communities is paid late, these committees almost stagnate. In some cases when these committees began their work, the members were not equipped to effectively manage the FDL, and the monitoring missions noted that there were mistakes in the financial management or that the statutory meetings were not held. In other words, the Local Management Committees were reproducing poor governance practices at the local level, e.g. misappropriation of funds, removal of materials, and overbilling.

3.2.3 Indigenous populations in search of visibility

The question of involving the indigenous populations in the sustainable forest management processes is a major concern, although some slight progress has been made in the companies' forest management practices. An inventory has been made of the indigenous populations around the 14 forest concessions in the sample, which is composed of 63 logging titles. For the 2011-2015 period, 3 logging companies out of the 26 that were granted logging permits had specific policies for indigenous peoples. But 'existence' is not the same as 'implementation'. The inclusion of the indigenous populations issue in the corporate strategies must be seen in terms of the submission and validation of the Forest Development Plan, which is the intermediary stage on the road to the Forest Management Plan. The path to sustainable management thus, is used, in a certain way, to draw more attention to the indigenous people, especially to securing their user rights.

In 2012, the indigenous people did not have representatives on the CLG or the CLS, although

they participated in the negotiations for the social agreements connected to 10 logging titles for the 14 concessions where their presence had been recorded. Considerable change occurred between 2013 and 2015 with the appointment of representatives of the indigenous populations to the CLGs and the CLSs of the 14 concessions.

Although the goal of including the indigenous people in the CLGs and the CLSs was achieved, these people played a relatively small role on the committees. In the decision-making bodies, their participation was weak and attending to their issues was problematic. When this category of the population, hypothetically, was involved in negotiating the social agreements or in the CLGs and the CLSs, its presence was essentially part of a strategy to legitimate actions and processes initiated and promoted by the dominant groups. What we see is a showcase strategy, window dressing rather than real participation.

3.3 Workers' living conditions

The monitoring missions suggested that the working conditions varied from one enterprise to the next. Some logging companies provide the workers with facilities to improve their lifestyles while others stick to the strict minimum. The data of 33 logging titles were analysed; 85% had a workers' camp that the mission judged as good, fair, or poor. Access to drinking water is limited on the whole, since only 24% of the title areas have drinking water supply lines for the workers. With regard to healthcare, 55% of the title areas have a healthcare centre and 93% have canteens.

More generally, the information in the 2012 and 2013 reports on the workers' living conditions does not appear clearly in the databases. The same holds true for the labour regulations, and how often staple products are delivered to the canteens. As concerns the quality of housing, the information collected should include the type of materials used and variables such as the standards set for workers' housing away from home. Without this information, we could objectively assess the discrepancy between the requirements and whether they are fully respected or not.

3.4 Conflicts

Disagreements mainly concern the boundaries to the forest concessions and involve two groups of people: the resident populations and the concession holders. Conflicts generally grow into confrontation between the two groups but can also generate tension within each of the groups. The subjects of the conflicts are, *inter alia*, non-respect for the boundaries of the concessions, confusion between titles and boundaries, and the intrusion of artisanal loggers in areas granted to industrial operators. The recurrence of conflict over boundaries between the local communities and the forest concession holders brings out the importance, even today, of the vertical logic in deciding on logging titles. The question of boundaries concerns the holders of the logging titles within a given group but also between different groups.

Within the communities, the challenge emanating from disputes over the concession boundaries must

be weighted against the changes in regulations on the establishment of community forestry. The prospects, in theory at least, of being availed of a forest that can generate substantial revenue contributes, to a certain extent, to exacerbating tension between the groups over the boundaries to each group's territory. There is also disagreement, albeit marginal, over non-respect for agreements and misinterpretation of forest regulations.

Consultation mechanisms for conflict resolution exist but do not function well, according to discussions with the local NGOs and the private sector. The responsibility is left with the local authorities, i.e. the territorial administrators who seem skittish about intervening. Conflict management strategies should, as much as possible, prevent the development of controversy using mechanisms that use remedial measures of course, but emphasise conflict prevention methods, the only way to sustainable conflict solution.

4 Discussion

4.1 The legitimacy of uncommissioned independent forest monitoring

Monitoring the implementation of the social agreements contained in the *cahier des charges* brings out the role of the environmental civil society in the forest governance improvement process in Democratic Republic of Congo. Other countries in the sub-region, such as Cameroon and the Republic of Congo have been experimenting with the independent commissioned observation system for several years. The results of commissioned observation together with verifications by civil society are undoubtedly instructive in terms of the numbers of violations recorded but do not seem very instrumental in overcoming impunity for violations, or reducing illegal logging or increasing compliance with laws and regulations. The action of the uncommissioned NGOs introduces another layer to the forest control strategy.

Uncommissioned monitoring has several advantages: firstly, – setting aside the problem of indigenous peoples' rights that has received sustained attention for more than a decade, – it focuses on social issues such as workers' rights, living conditions in logging areas, and the repercussions of the logging operations on the local populations. Experience in DRC, as in other countries in Central Africa, shows that forest controls orchestrated by the public administration pay little attention to the social aspects of sustainable forest management. Secondly, the fact that uncommissioned monitoring is devolved to one of 20 or so organisations working in the target zones allows for a broader coverage of the logging titles and, theoretically, greater efficiency. Thirdly, the approach meant to be inclusive through its interaction with the private sector, the local administrations and the traditional authorities may well contribute to enhancing the legitimacy of interventions by the organisations involved in monitoring the social agreements. When watching the monitoring of social agreements we noted some weaknesses in methodology, the sustainability of the monitoring work, and the role of monitoring in the broader, FLEGT-type dynamic.

4.2 Difficulties for forest concessions to implement social agreements

The concession holders find it difficult to keep their promises to the local and indigenous populations. Shortage of financial resources or prolonged inactivity may delay the implementation of social construction programmes. Alongside these technical and financial difficulties, the main obstacle is the capacity of forest sector operators to deliver social infrastructure. Discussions with the private sector indicate that the concession holders are not well enough equipped to carry out development operations. Responsibility for the social component of a sustainable management activity requires logistical means and the assignment of specially trained workers. Lack of training and, ergo, capacity, is a handicap, and therefore should be tackled, as an act of support for the concession holders.

The transfer of this regalian function from the public authorities to the private companies in the forest sector leads to the question of the latter's legitimacy and capacity to carry out such a mission. Basically, the transfer of responsibility brings up the question of a "State within the State"¹⁰ phenomenon, which has already been observed in several Congo Basin countries and involves the State's transfer of sovereign State powers to the private sector. The range of responsibilities devolving to the private sector through Order 023 of 7 June 2010 tends to institutionalise a system that has been tested by several forest companies in order to placate their relations with the local communities. There is some question of whether the private sector has the expertise required to handle complex managerial problems in situations where the State almost failed. Thought must be given to an intermediary scenario in which a specialised agency, for instance, would be responsible for delivering the socio-economic infrastructure under the combined supervision of representatives of the State, the private sector, and the local communities.

10 Cerutti, P.O., Lescuyer, G., Tacconi, L., Eba'a Atyi, R., Nasi, R., Tabi Ekebil, P.P. and Tsanga, R. 2016. Social impacts of the Forest Stewardship Council certification in the Congo Basin. *International Forestry Review* 18(S1): 1-14.

4.3 Sustainability of uncommissioned independent forest monitoring

The increased capacity of the civil society observers will be valuable for the next steps in the monitoring missions. On the other hand, there is some concern over the capacity of the civil society organisations to carry out their work without technical and financial support from WWF. There are no guarantees that these organisations have action plans and independent funding lines specifically earmarked for forest violations and social agreements.

Besides the financial issues, the sustainability of uncommissioned monitoring will depend on the programme's capacity to convince the public authorities to adopt the recommendations presented in the monitoring reports. The civil society action over the last five years has brought out the weaknesses in the forest administration's forest controls. After

identifying infractions to the rules, little was been done to punish the culprits. The logic of latent confrontation amongst civil society, public administration and forest concessions on these issues currently inhibits the potential effectiveness of the recommendations made at the end of the missions. One of the major challenges is to convert the relatively ambivalent perception that the public authorities and the private sector have of the role of uncommissioned monitoring into a strong source of proposals. With this in mind, the private sector should be a vital stakeholder and agree to play the transparency game by providing information on its activities. Possibilities for working together already exist, and the private sector seems favourable to the idea as long as the recommendations from the monitoring missions are handled using the inclusive approach and that the recommendations are based on reliable data.

5 Conclusion and recommendations

Uncommissioned monitoring of logging operations is an integral part of a series of measures that were introduced in an effort to prevent illegal logging and improve forest governance. These measures are meant to be complementary to those of the forest administration, the independent observers appointed by the public authorities, and the technical and financial partners. The action led by WWF-DRC and implemented by the national civil society is part of a sub-regional movement that DRC has no legitimate reason to leave. In the DRC context, the strength and credibility of monitoring data depend largely on the solidity of the approach, the credibility of the data, and the support of the public authorities and the private sector for the approach. The observation missions conducted between 2011 and 2015 showed that the implementation of the forest management plan, which is a pillar of sustainable forest management in the Congo Basin, is behind schedule in DRC because the titles conversion process took ten years (2005 to 2015). Out of the 57 converted titles, only 8 concessions now have Forest Management Plans that have been approved by the forest administration. To avoid out-time in the logging operations, the forest administration institutionalised the Forest development Plan and the signing of the social agreements as prerequisites to logging. Illegal logging is still a major concern because of the continued fraudulent use of artisanal logging permits for industrial purposes, and the intrusion of clandestine loggers in concessions, whether converted or not. As for the social agreements signed by the communities and the logging companies, the number has been climbing steadily since 2011. The construction of infrastructure for healthcare and education is evidence of the efforts made by the concession holders to live up to their promises to the local populations.

Despite the above mentioned progress, the implementation rate for the social agreements is marginal considering the plans adopted jointly by the concession holders and the local populations. This discrepancy makes sense, however, since forecasts seldom reflect reality, as was mentioned with regard to the studies on forestry operations in Cameroon. Having the indigenous populations participate in the management of all these spin-offs is still a

challenge for the NGOs doing the monitoring and for the administration that is expected to ensure the local actors' fair access to the benefits of the logging operations.

The development of the social agreements will depend on the commitment of the public authorities, together with the involvement of the national and international NGOs, the private sector, and the local and indigenous communities in consolidating the achievements made up to now as a result of uncommissioned independent monitoring. From that vantage point, the combined efforts of the various stakeholders should contribute to:

Consolidating achievements in implementing the social agreements. Logging operations and the realisation of social agreements in the rural areas provide an opportunity to draw local development into a dynamic that ideally should be shouldered by the State in order to ensure its durability. As a result, the principle of the social agreements should grow to develop a subtle balance between the legitimate aspirations of the local and indigenous populations to improve their living conditions and the economic sustainability of the forest enterprises.

Improving the ability of the members of the local management committees (CLG) and the local monitoring committees (CLS) to handle responsibilities that devolve to them. This will require more training on the management of associations and on financial resources.

Supporting the concession holders to build social infrastructure. Providing technical support to the private sector is just as critical as the financial aspects of the social agreements, since the management missions required by law are very complex. The Decentralised Territorial Entities (DTE), at this level, must play a role in supporting the logging companies and effectively monitoring the suppliers selected by the communities. The political evolution of the decentralisation process does not facilitate the task. At the same time, the State must have a central position to ensure the functioning of the schools and hospitals which require State support to be kept up and running.

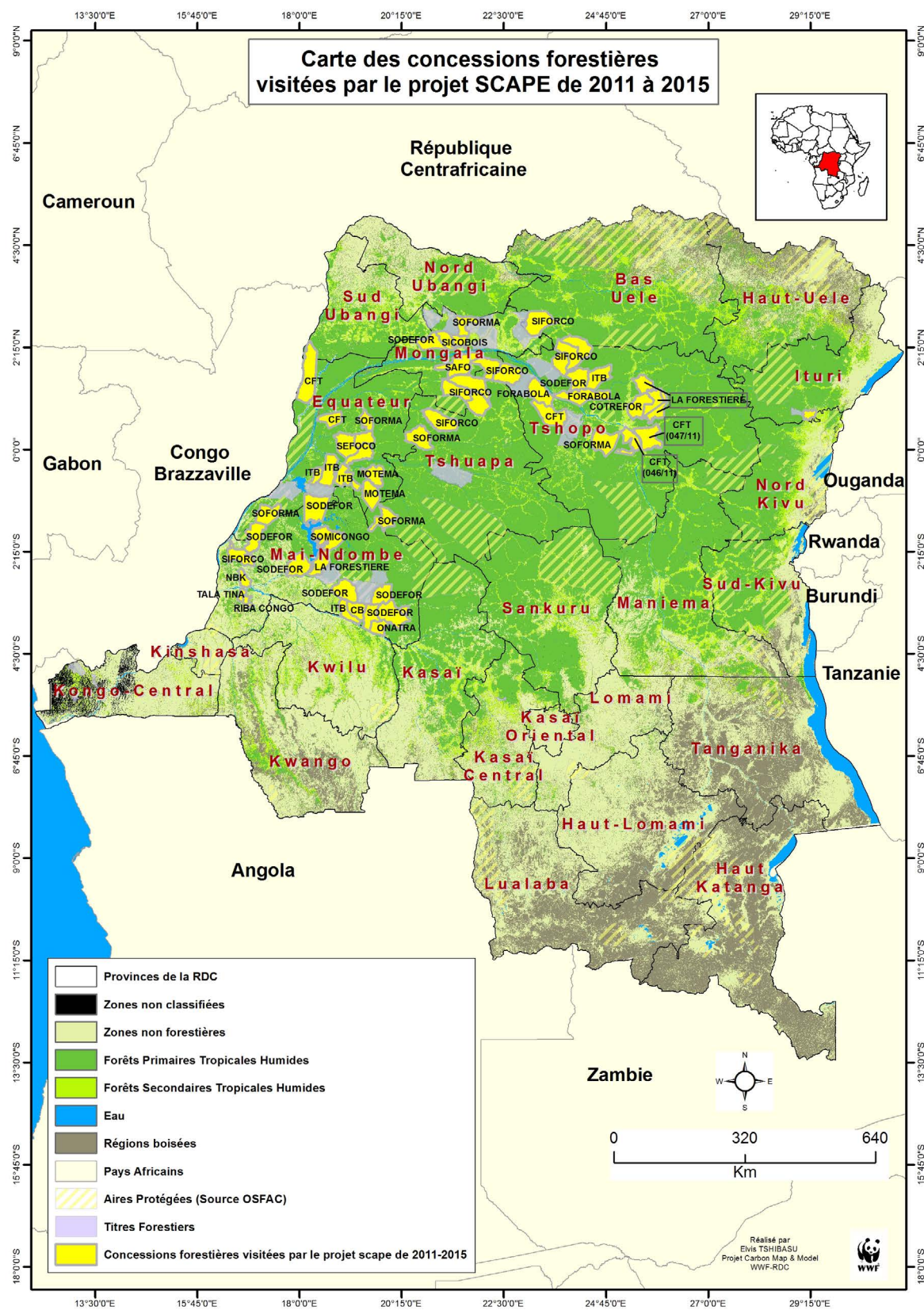
Instituting and consolidating uncommissioned independent forest monitoring as a citizen-based approach to supplement the forest administration's control missions that have been recognised and accepted by both the public authorities and the private sector. The private sector has participated in the first phase of the project. It would be wise to expand the pool of enterprises that are willing to cooperate with the monitoring exercise so as to develop a truly inclusive approach and put an end to industry's insufficient compliance with the regulations.

Consolidating and perpetuating the collaboration between the international and the national NGOs. Support structured as a balanced "scaffold" composed of an international NGO (WWF), national NGOs, local communities and representatives of the

indigenous peoples centred on the forest societies is still very fragile and is organised from a short-, at best a medium-term perspective. The main challenge, thus, is to strengthen this partnership in order to find the resources needed for community capacity building with special attention to the indigenous peoples.

Building up the credibility of uncommissioned forest monitoring. The effectiveness of the civil society's intervention will depend on its capacity to overcome certain weaknesses in the methodology that were identified during the first phase. Special attention must be given to data collection frequency, information on variables, collection techniques and, above all, data centralisation, registration and analyses.

Annex



Source : WWF



Norad



Center for International Forestry Research (CIFOR)

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