

Evaluating the VPA process in the Republic of Congo

Views from civil society



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Contents

List of Acronyms	4
Summary	6
1. Introduction	7
2. Methodology	8
3. Progress Towards the VPA Governance Objectives	9
3.1. Accountability	9
3.2. Transparency	10
3.3. Coordination	11
3.4. Participation	12
3.5. Capacity	14
4. Progress on Civil Society's Governance Priorities	15
4.1. Legal reform	15
4.2. Social benefits and community rights	16
4.3. Monitoring	17
5. Recommendations	21
5.1. Future priorities for civil society	21
5.2. What should the EU and the Congolese government do?	21
6. Conclusion	22
7. References	23
8. Annexes	25
Annex 1. List of interviewees	25
Annex 2. List of forest governance related initiatives and commitments in Congo	26

List of Acronyms

ACRN	African Community Rights Network
AFD	Agence Française de Développement
AFR100	African Forest Landscape Restoration Initiative
APOI	African Palm Oil Initiative
BMU	Federal Ministry for the Environment, Germany
CACO REDD+	Cadre de Concertation des Organisations de la Société Civile Congolaise et des Populations Autochtones sur la REDD+
CAFI	Central African Forest Initiative
CAGDF	Cercle d'Appui à la Gestion Durable des Forêts
CAJAC	Le Centre d'Assistance Juridique et d'Action Citoyenne
CBFP	Congo Basin Forest Partnership
CDA	Community Development Area
CEFDHAC	Conference on Central African Moist Forest Ecosystems
CIDT	Centre for International Development and Training
CJJ	Comptoir Juridique Junior
CLVS	Computerised Legal Verification System
COMIFAC	Central African Forests Commission
CoNGOs	Collaboration d'Organisations Non Gouvernementales en faveur de moyens de subsistance
CoP	Conference of the Parties
CSO	Civil Society Organisation
CV4C	Citizens' Voice for Change
DfID	Department for International Development, UK
DG DEVCO	Directorate General Development Cooperation
EFI	European Forest Institute
EIA	Environmental Investigation Agency
EITI	Extractive Industries Transparency Initiative
EU	European Union
FGDH	Forum pour la Gouvernance et les Droits Humains
FLEGT	Forest Law Enforcement Governance and Trade
FPIC	Free Prior Informed Consent
FPP	Forest Peoples Programme
GDP	Gross Domestic Product
GEF	Global Environment Facility
IA	Independent Auditor
IFM	Independent Forest Monitor
IO	Civil society-led Independent Observer
INDC	Intended Nationally Determined Contributions
IP	Indigenous Peoples
IUCN	International Union for the Conservation of Nature

JIC	Joint Implementation Committee
JWG	Joint Working Group
LDF	Local Development Fund
LVS	Legal Verification System
MEF	Ministry of Forest Economy
NGO	Non-Governmental Organisation
NDCs	Nationally Determined Contributions
NIF	National Investment Framework
OCDH	Observatoire Congolais des Droits de l'Homme
ODDHC	Organisation pour le Développement et les Droits de l'Homme au Congo
PGDF	Plateforme pour la Gestion Durable des Forêts
PWYP	Publish What You Pay
REDD	Reducing Emissions from Deforestation and Forest Degradation
REM	Resource Extraction Monitoring
RENAPAC	Réseau National des Peuples Autochtones du Congo
RPDH	Rencontre pour la Paix et les Droits de l'Homme
SNOIE	Normalised System for External Independent Observations
TS	Technical Secretariat
UNEP	United National Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
VPA	Voluntary Partnership Agreements
WRI	World Resources Institute
WWF	World Wildlife Fund



Summary

The Voluntary Partnership Agreements (VPA) are a central pillar of the European Union (EU) Forest Law Enforcement Governance and Trade (FLEGT) Action Plan; they are trade deals between the EU and countries that export timber and timber products to the EU. A country that has a VPA and an operational licensing system can issue FLEGT licences for legally produced timber and timber products. The VPAs rightly assume that tackling illegal logging requires significant governance reforms in timber-producing countries, without which regulations will not be effective.

The Republic of the Congo (Congo) signed a VPA with the EU in 2010 which entered into force in 2013. By signing the agreement, the Congolese government committed to ensure that its entire timber industry meets the legality and traceability requirements of the Legality Assurance System (LAS).

This report, written ten years after the VPA was signed, evaluates the extent to which forest governance has improved in the Congo from civil society's point of view. It aims to identify civil society's priorities for future action while assessing Fern's added value in supporting Congolese civil society.

This evaluation concludes that forest governance has improved gradually in Congo. The VPA has been a model for multi-stakeholder governance. Thanks to the VPA, civil society organisations (CSOs) were recognised as a credible partner for the first time, playing a clear role in the process. A major achievement for CSOs was ensuring an inclusive forest legal reform process, leading to the drafting of legal provisions on community rights, and governance mechanisms. Substantial progress has also been made on increasing transparency in the forest sector, through implementation of the VPA transparency annex, the creation of the independent forest monitor, and the inclusion of timber in the reporting scope of the Extractive Industries Transparency Initiative (EITI). CSOs have also strengthened their overall capacity to influence and monitor a wider set of policies and regulations. They have helped to shed some light on benefit sharing mechanisms in the forest sector and pushed for the inclusion of community forestry in national legislation.

However, fundamental governance challenges persist, which are slowing down progress. Corruption is systemic and the mining, oil and agro-industrial sectors have a strong impact on forests. There is limited coordination between ministries, resulting in illegal conversion of timber and overlapping land uses. In order to build on gains from the VPA, and chart a positive course forward, civil society must be more effective and ramp up its engagement in the process. This means overcoming their internal differences, being more strategic by demanding effective law enforcement and strengthening their watchdog role through standardised independent observations. They should also work to ensure effective community representation, and engagement in the VPA process, and advocate for stronger community benefits through improved management of the local development fund (FDL) and community forestry.

Many interviewees agree that Fern's added value is to strengthen local civil society platforms' advocacy while building their capacity to have more impact. As an influential campaigning organisation active at the EU and international level, Fern is in a strong position to identify levers to improve governance in ongoing climate and land policy processes and to convey CSOs' priorities to EU decision makers.

1. Introduction

Natural forests cover 22.3 million hectares (66 per cent) of the total land area of the Republic of Congo. Of these, 3.6 million hectares (ha) are in protected areas, with the vast majority set aside for logging.¹ Congo has two principal forest zones, one in the south (around 4 million ha) and the main area in the north (around 16 million ha). After oil, timber is the second most important export product, corresponding to 5 per cent of Gross Domestic Product (GDP).² The forestry sector is the second largest employer after the government, and thus makes an important contribution to the national economy. Serious governance problems in the forest sector are reflected in the high levels of illegal logging in the country, which are estimated to be about 70 per cent of production.³ The Northern logging concessions – of which five concessions are certified⁴ – supply timber to the EU (around 20 per cent), while the Southern logging concessions, where illegalities are known to be worse, supply Asian markets (67 per cent). Congo has a relatively low historical deforestation rate, although this rate is increasing due to major drivers such as forest clearance for large-scale agriculture, illegal and unsustainable logging, and urban development.⁵

To address illegal logging, the EU launched the FLEGT Action Plan in 2003. Bilateral trade agreements between the EU and a timber exporting country are a central part of FLEGT. Known as Voluntary Partnership Agreements (VPAs) they require the country to verify that timber exports were harvested in conformity with national legislation.⁶ Congo entered VPA negotiations with the EU in June 2008; the VPA was signed in May 2010 and ratified in February 2013.⁷ The VPA promotes a multi-stakeholder participatory approach that fosters participation and debate on forest issues, between all relevant stakeholders - government, private sector and civil society. This was unprecedented in Congo. Civil society sees the VPA as a tool that uses trade as a leverage to craft just laws in an inclusive way, and to improve the way forests are owned and managed.⁸ During the negotiation phase, Congolese civil society organisations (CSOs) have influenced the outcome of the process and managed to broaden the agenda by including (forest) governance issues such as tenure and community rights, free prior informed consent (FPIC), social agreements and transparency.

This evaluation focuses on governance⁹ aspects included in the Congolese VPA, and the extent to which these have been implemented from a civil society point of view, almost 10 years after signature of the VPA. The Platform for Sustainable Forest Management (*la Plateforme pour la Gestion Durable des Forêts*), or PGDF, is the local platform representing civil society in the VPA process.

In order to assess any improvements in governance and the role of civil society, it is important to keep in mind that the Congolese context is characterised by limited democracy and a tight civic space. Congo was under a Marxist-Leninist regime for three decades and the Congolese people experienced several civil wars and conflicts. These events greatly impacted the social fabric of the country: civil society is concerned about maintaining peace and avoiding confrontation with public authorities. In 2016, the contested presidential election sparked further socio-political instability, aggravating the economic crisis resulting from the fall in oil prices (80 per cent of state revenues), and high national debts. In Congo, there is no strong local civic culture, which hampers effective advocacy from non-state actors. Local civil society also suffers from internal divisions and fragmentation which affects its capacity to play its role effectively.

¹ <http://www.timbertradeportal.com/countries/congo/>

² http://www.apvflegtcongo.com/images/pdf/rapport_conjoint_apvflegt_2017.pdf

³ https://www.illegal-logging.info/sites/files/chlogging/Lawson_Republic_of_Congo_PP_2014.pdf

⁴ http://www.apvflegtcongo.com/images/pdf/concessions_certifiees.pdf

⁵ <http://www.timbertradeportal.com/countries/congo/>, <https://bit.ly/2mhDyrr>

⁶ https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf

⁷ <http://www.euflegt.efi.int/republic-congo>

⁸ https://www.fern.org/fileadmin/uploads/fern/Documents/VPAs%20update%20FW2017_final.pdf

⁹ Governance as defined in the Fern publication 'Do FLEGT VPAs improve forest governance?' <https://www.fern.org/news-re-sources/do-flegt-vpas-improve-governance-393/>

2. Methodology

The methodology for the evaluation was based on : 1) A desk-based review of non-governmental (NGO) and local CSO publications, VPA related documents on the European Forest Institute (EFI) and national websites; and 2) 28 semi-structured interviews conducted either face-to-face with Brussels-based interviewees or by Skype and WhatsApp for other stakeholders, including representatives from Congolese CSOs, international NGOs, research institutes, donors and consultants. All interviewees have been directly involved in the VPA process through the local civil society platform. Fern provided an initial list of interviewees which was further completed as interviews progressed and other relevant names were suggested. See Annex 1 for the complete list.

This evaluation focuses on civil society's point of view regarding progress made on the five key pillars of forest governance,¹⁰ and priority issues that civil society would like the VPA to help tackle¹¹. It also provides an assessment of civil society's role and performance in VPA implementation. The interviews discussed progress in improving forest governance, civil society's performance, and Fern's expertise and added value. The report provides information on progress and includes views from interviewees. It ends with recommendations on the way forward for civil society.

¹⁰ Accountability, transparency, coordination, participation and capacity.

¹¹ The initial aim was to also get feedback on gender implications and the different experiences of men and women. Unfortunately, there was very little information in the reports analysed or from interviewees and gender could not be included as a stand-alone issue.



3. Progress Towards the VPA Governance Objectives

3.1. Accountability

In Congo, government accountability remains weak. A recent report¹² from the Environmental Investigative Agency (EIA) shows how forest crimes fuelled by high-level corruption are systematic and tightly linked to the inner working of industrial logging in Congo. Important revenues from the forest sector have reportedly been lost due to corruption.¹³ The protection of property rights is undermined by corruption, state interference, inefficient bureaucracy and an inefficient judicial system.¹⁴ Anti-corruption legislation exists in Congo, and includes potentially serious penalties, however impunity is widespread.

In this context, setting up a traceability system for legal timber is arduous, and hindered by poor infrastructure and limited human resources. Despite these difficulties, and after years of work, the Congolese authorities deployed the computerised legality assurance system (CLVS)¹⁵ in August 2019, housed in the Finance Ministry's data centre. The CLVS, once fully operational, will allow the export of legal timber to the EU and enable closer monitoring of forest revenues. Many consider this an important step forward for the VPA. However, several people indicated that challenges remain in relation to legality. In addition, the forest code reform process must be finalised, and the implementing decrees for the law to become fully effective must be completed and adopted.

CSOs have long called for greater accountability and zero impunity in the forest sector¹⁶ and they are hopeful that the VPA process will bring greater accountability. Several control mechanisms are in place in Congo, and channels for reporting illegalities exist. An independent forest monitor (IFM) was created in 2007, and in 2015, an independent auditor (IA) was appointed. More recently, civil society-led independent observations (IO) have picked up. This has resulted in increased public information on infractions that is harder to ignore. Some IO reports have triggered action on illegal permits, conversion is being gradually addressed and there has been a decrease in company infractions over the years. While there are some positive examples of follow up actions, a more systematic and continuous effort from the forest administration is needed to tackle impunity in the sector.

A formal VPA complaint mechanism exists and is expected to function once the CLVS is fully operational and FLEGT licenses are delivered. An interesting CSO initiative is the Legal Assistance and Citizen Action Centre,¹⁷ a citizen's mechanism in the context of the Reduced Emissions for Deforestation and Degradation (REDD+) process that receives complaints from local communities, provides legal assistance and mediates between communities and companies or central and local government.

¹² <https://eia-global.org/reports/20190325-toxic-trade>

¹³ https://www.illegal-logging.info/sites/files/chlogging/Lawson_Republic_of_Congo_PP_2014.pdf

¹⁴ <https://www.ganintegrity.com/portal/country-profiles/republic-of-the-congo/>

¹⁵ Called *Système informatisé de la Vérification de la Légalité (SIVL) du bois* in french, <http://www.adiac-congo.com/content/trafic-du-bois-le-systeme-informatise-de-verification-de-la-legalite-enfin-effectif-104233>, <https://www.finances.gouv.cg/en/artic-cles/computer-timber-legality-and-traceability-verification-system-sivl>

¹⁶ <https://www.fern.org/fileadmin/uploads/fern/Documents/VPA-Update-December-2018.pdf>

¹⁷ Centre d'Assistance Juridique et d'Action Citoyenne – CAJAC <http://www.rpdh-cg.org/terme/cajac>

3.2. Transparency

During VPA negotiations, civil society were the first to emphasise the weakness of the traceability system and demand greater transparency. This resulted in the Congolese VPA including a legally binding transparency annex¹⁸ listing the type of information that should be made public including dissemination channels, a web-based mechanism and a communication strategy. Today, documents related to VPA implementation are currently available on a dedicated Congolese VPA website,¹⁹ the Ministry of Forestry Economy website,²⁰ a dedicated Facebook page,²¹ through documentation centres, publications, and on request. The Directorate for Communication and Popularisation regularly publishes a newsletter on the VPA process and VPA joint annual reports²² that provide details on progress made. The delayed 2018-2022 communication strategy is currently being developed.

Overall, availability of information on the VPA process, forest revenues, logging permits, and information on concessions, has increased. More sensitive information such as on production and processing, attribution of concession areas, forest management plans and environmental impact assessments is only available on request. This is also true for forestry taxes and fines levied by the forest authorities. Respondents confirmed that information on law enforcement remains the least transparent. For documents available on request, they lamented that the slowness of the bureaucratic process, the administrative culture of secrecy and discretionary powers to grant access can still make it a considerable challenge to obtain information. They also mentioned the lack of organisation, capacity and resources within the forest administration, which impedes progress.

An important step forward regarding transparency is that the forest sector is now included in the national Extractives Industries Transparency Initiative (EITI) process. The Congolese 2017 Transparency code requires companies to disclose payments made to the government. The most recent EITI reports²³ list the payments received by the government, yet only a limited number of companies have reported on their payments so far. It thus remains impossible to reconcile financial flows from the forest sector with government data and to understand the sector's real contribution to the economy. Several interviewees highlighted that further insistence and follow up from civil society is required and currently lacking. There has been some previous collaboration between PGDF and the Publish What You Pay (PWYP) and the Congolese civil society platform involved in the REDD process (CACO REDD), so these groups could join forces to advocate more strongly for increased transparency in natural resource management.

In addition, CSOs have generated their own information through publicly available IFM and IO reports. This is seen as a positive development, further strengthened by the availability of several innovative transparency tools. There is the Congolese Forest Atlas,²⁴ an online tool to help visualise forest concessions which also shows overlaps with other concession types. There is also the real-time Forest Watcher App²⁵ that creates alerts on forest loss based on data from Global Forest Watch.²⁶ While this app was initially developed for forest agents to identify illegal logging, it is increasingly being used by companies, but could also be a powerful tool for local and Indigenous communities to collect relevant information. Finally, the Open Timber Portal²⁷ brings transparency through a web platform compiling information about forest sector compliance. These tools, the transparency VPA commitments, the presence of a civil society IFM and IOs and EITI's progress have been important catalysts for improving

¹⁸ http://www.apvflegtcongo.com/images/pdf/annexe_x_apvcongo-ue.pdf

¹⁹ <http://www.apvflegtcongo.com/>

²⁰ <http://www.mefdd.cg>

²¹ <https://www.facebook.com/apvflegtcongo/>

²² <http://www.apvflegtcongo.com/index.php/telechargements>

²³ 2014 and 2016 EITI report (published in 2016 and 2019 respectively) <https://eiti.org/republic-of-congo>

²⁴ <https://cog.forest-atlas.org> developed by WRI together with the Congolese Ministry of Forest Economy.

²⁵ <https://forestwatcher.globalforestwatch.org/> developed by the University of Maryland.

²⁶ <https://data.globalforestwatch.org/>

²⁷ <https://opentimberportal.org/>

transparency, resulting in more public information. Civil society is therefore better informed and equipped to act against illegal logging.

At meetings of the Joint Working Group (JWG) and Joint Implementation Committee (JIC), information is exchanged between stakeholders, which civil society representatives should report back on to the PGDF. Several respondents mention that this is not done in a systematic way and that the overall flow of information within PGDF needs to be improved. Others highlighted the importance of making information accessible for local and Indigenous communities. Public officials now rely too much on CSOs to take responsibility for disseminating information locally, without giving them the means to do so. As an important next step, CSOs feel that forest authorities should put in place mechanisms to meet the broader information needs of all stakeholders including forest communities, in simple and accessible language.

3.3. Coordination

To promote greater coordination between stakeholders, several VPA implementing structures were established; the Joint Implementation Committee (JIC), the Technical Secretariat (TS), and the Joint Working Group (JWG). The JWG and JIC have clear mandates, work according to set rules, and meet regularly. In addition, A FLEGT Facilitator is in place to ensure the effective engagement and coordination of stakeholders. A VPA theory of change and logical framework were developed to guide VPA implementation work. The process follows a 5-year VPA implementation strategy (2018-2022) and an annual operational workplan). It includes a monitoring and evaluation framework to track progress at every JIC and to keep the momentum going.²⁸ The development of these planning and framework documents are important milestones as they facilitate coordination and indicate a willingness to ensure effective VPA implementation.

Coordination between different ministries and departments remains weak. While 14 ministries are represented in the JIC, there is limited coordination beyond attending these meetings. Some interviewees hope that with the increased involvement of the more powerful Ministry of Finances, stronger coordination can be expected. Forests are increasingly being affected by other sectors, such as large-scale agriculture, mining and oil. Given that different departments have the authority to grant different types of concessions and do so without communicating, there have been many overlaps and the permanent conversion of forests to agriculture or mining, leading to more illegal timber entering the market and undermining the VPA process.²⁹ Decree No. 2009-304 to establish an inter-ministerial coordination committee to resolve overlap issues has not managed to solve the problem. It is hard to implement policies that cover different sectors because they have competing interest in how land is allocated. This could be improved if they were run by dedicated ministries with an overarching long-term vision for a national land use plan. By signing a Letter of Intent under the Central African Forestry Initiative (CAFI)³⁰ (Annex 2), the Congolese government committed to new land reform processes, the Congolese government is committed to new land reform processes, including the participatory development and implementation of a long-awaited national land use plan by 2025. Some respondents are cautiously optimistic that the creation of such a plan could be an important opportunity for civil society to provide relevant and coordinated information that would positively influence the land reform process, especially if they focus on land tenure security and formal recognition of customary land rights. Other interviewees were more critical and fear that the process will focus mainly on the development

²⁸ http://www.apvflegtcongo.com/images/pdf/aide_memoire_ccm6.pdf

²⁹ Between 2008 and 2012, well over half a million hectares of new palm oil and rubber concessions were granted on Congolese forest land. The government never published the contracts, maps or permits for any of them. In every one of them the independent forest monitor found evidence of logging or clearing forest illegally and none of the companies carried out a social and environmental impact assessment. <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/congo-basin-the-coming-storm/>

³⁰ <https://www.cafi.org/content/cafi/en/home/partner-countries/republic-of-congo.html>

of different economic sectors, natural resources and avoiding overlaps, but with limited attention to human rights and community lands.

As forests are also central to the climate debate there is the potential to strengthen coordination between the VPA, REDD+ and Nationally Determined Contributions (NDCs) processes (Annex 2). These share common objectives - improved forest governance, reduced illegal logging and deforestation - and have the potential to be mutually reinforcing (Annex 2). There has already been some collaboration between some members of the PGDF and CACO REDD platforms. Civil society has tackled VPA and REDD+ jointly through inputting into the forest code reform process and focusing on governance and social aspects as part of the civil society-led IO.³¹

Several respondents referred to the lack of coordination between donors regarding their Congo climate, forest and land programs, which mostly run in parallel (Annex 2). This is also reflected at the International NGO level. While coordination meetings are organised and valued, they focus mainly on information sharing, mapping of actions, identifying synergies and avoiding duplication. Several respondents felt these could be more efficient and strategic by harmonising actions and spreading tasks when working towards common objectives. Most International NGOs work through one local partner on a project basis, which does not reinforce local platform dynamics, coalition building and strategic positioning. Even within Congolese civil society, many confirm there is significant scope to improve collaboration, both within and between existing platforms³² as they have weak internal governance, capacity and leadership issues.

3.4. Participation

Stakeholder participation is seen by many as a major success of the VPA process, as it has improved the relationships between forest sector actors. This is unprecedented in Congo, where the forest sector used to be fully government-led and controlled. Civil society describes how the VPA provided political space and structures in which CSOs are able to be agents for change. PGDF was created as part of the VPA process. It is an informal alliance of self-selected national NGOs and associations, consisting of human rights, environmental and development organisations. Initially the platform was run by Observatoire Congolais des Droits de l'Homme (OCDH). The PGDF has been restructured and is now supported by a Secretariat and a coordinating team of four people taking up different tasks. Fern has supported the platform and some of its members since 2007.

Civil society has three seats in VPA structures (JIC, TS, JWG), of which two seats are occupied: one for the IFM by *Cercle d'Appui à la Gestion Durable des Forêts* (CAGDF) and one representing PGDF. There is an additional seat for a representative of Indigenous Peoples, which is not filled. With three civil society representatives compared to 14-15 representatives from the government, it is hard to speak of balanced representations but given the Congolese political context, it is a step in the right direction. Obviously having only one -or occasionally two PGDF representatives- in the meetings puts a lot of responsibility on the representative to share information, represent the views of the wider platform based on broad consultation and to provide feedback following the meetings, so that everyone has the same level of information.

Several respondents confirmed that the PGDF is now fully recognised as an active and credible stakeholder in the VPA process and that the platform has evolved substantially since its creation at the start of the VPA process. Its representatives have a good understanding of the process, they are listened to and in continuous dialogue with the other actors while participating at the different meetings.

³¹ <https://loggingoff.info/wp-content/uploads/2018/09/CivilSocietyParticipationAfricaPoshendra.pdf>

³² PGDF, CACO-REDD, PWYP, RENAPAC.

They have built good relationships and are able to influence the process, addressing letters directly to the Minister of Forest Economy when needed.

Others point out that in the last years, the PGDF has lacked a common vision and advocacy strategy and due to lack of funding, time and limited dedication from its coordinators, consultation and feedback has been limited to only a few key members with no wider platform positions being elaborated. To some, this has allowed the government to get back into a more forceful position, while the platform representatives opt for a more consensual approach seeking government approval and shying away from taking a strong stand on more sensitive matters. In addition, several interviewees referred to conflicts of leadership, and non-aligned interests, which hinder the platform to speak with 'one common voice'. One must also not forget that PGDF's members are highly diverse, with different campaigning styles, some being more militant, others favouring a constructive dialogue. This has weakened the overall platform dynamics. Several respondents think the earlier days, when Fern supported and accompanied the PGDF and it was easier to work together, should be reinforced and sustained. In order to address this stagnation, they suggest the platform should engage in an internal dialogue, come up with a clear strategic plan which defines their role, take up their responsibility and weigh more heavily on the VPA implementation process.

Most informants agree that one of the major shortcomings of the VPA process is that there has not been any direct representation of local and Indigenous communities to date. To explain why, they refer to challenges to identify people who can achieve 'consensus' as representatives, but they also mention capacity issues and the need for continuous assistance, resources and training to sustain effective and meaningful participation. At the same time, this matter has not been a high priority for donors or the government. But PGDF also did not prioritise communities' full engagement and involvement in the process, even though they did strongly defend the rights of local and Indigenous communities throughout the VPA process.

During the VPA implementation phase, there was a slight improvement. Indigenous and local communities still do not occupy their seat in the VPA implementing structures, but they are now represented in the PGDF through regional focal points. Effective consultation took place at the grassroots level during the process for the revision of the Forest Code³³ and communities also directly participated in independent observations. *L'Organisation pour le Développement et les Droits de l'Homme au Congo* (ODDHC) and Azur & Développement conducted awareness raising missions on VPAs, REDD+ and community rights in many localities³⁴ and OCDH organised community dialogues³⁵ in early 2019, including a lobby tour of community representatives in Brazzaville. Another success was increasing the participation of marginalised groups, including women, in discussions on community forestry and forest governance as part of the CoNGOs project.³⁶ This entailed working with journalists and community radio networks to raise awareness about key issues through video and other media. These approaches helped to inform and empower communities to advocate for their rights by identifying their needs and priorities, an important step towards inclusiveness. However, it is up to the PGDF to ensure that they go beyond these project-based actions and ensure full participation.

Regarding Indigenous Peoples, the dedicated platform Réseau National des Peuples Autochtones du Congo (RENAPAC)³⁷ works with focal points in all regions, who are regularly involved and consulted. RENAPAC had leadership issues in 2016, but now has a dedicated team in place and is keen for increased collaboration with PGDF. Both PGDF and RENAPAC have mechanisms in place to share

³³ <http://www.natureplus.be/ref/assistance-technique-projet-dappui-a-gestion-durable-forets-congo-page/>

³⁴ <https://bit.ly/33ZEzWc> - Malleon, R & Kamkuimo P. 2017. Tackling deforestation through linking REDD+ and FLEGT project. Final Evaluation.

³⁵ <https://loggingoff.info/library/rapport-de-la-tournee-de-plaidoyer-des-communautes-locales-et-populations-autochtones-brazza-ville-25-30-mars-2019/>

³⁶ <https://www.iied.org/congos-ngos-collaborating-for-equitable-sustainable-community-livelihoods-congo-basin-forests>

³⁷ <http://renapac.ifaway.net/>

information, raise awareness, consult and feedback to ensure forest communities' priority issues can be included in a bottom-up fashion. In Cameroon and the Central African Republic there is direct representation of local communities and Indigenous Peoples in the JIC and JWG,³⁸ with varying level of success, but PGDF could clearly learn from these examples through liaising with their regional partners.

3.5. Capacity

Through increased participation in the VPA, the platform increased members' capacity, allowing them to grow stronger, and enhancing their capacity to influence policy processes and decisions. During the negotiation phase, advocacy skills were key, while during the implementation stage more technical skills are required, such as for the legal reform process, and for working with the IFM, conducting IO and assessing implementation of the CLVS. Several interviewees point out that the PGDF consists mainly of human rights organisations with a legal background, which meant they inputted well into the PGDF's legal working group and during the forest code reform. However technical skills on forestry, climate and land tenure issues are weak and limit PGDF's capacity to make good use of, for example, IFM reports.

Others pointed out that civil society's advocacy skills need further strengthening as PGDF could be more strategic in their positioning. They refer to the fact that there are hardly any exchanges with the FLEGT Facilitator or the EU Delegation when preparing meetings. Increasing interaction would allow them to highlight priority issues up front. It would also ensure they are able to follow up interventions to ensure their issues are taken on board and that they solicit a reaction. This would improve interventions in the JWG and JIC and mean they are more likely to get their priority actions on the annual meeting's agenda.

Throughout the VPA process there have been opportunities to learn due to funding to participate in trainings³⁹ and regional exchanges with other Congo Basin platforms organised by the African Community Rights Network. Groups have learnt from participating in events like EU FLEGT Week, Chatham House Illegal Logging meetings, and Fern lobby tours. International NGOs' assistance⁴⁰ has also helped strengthen skills by organising exchanges with parliamentarians, enabling access to technical reports and developing tools such as a manual on civil society-led IO, an online Congo Forest Atlas and the Forest Watcher app.

Organisations working at the national level have mainly benefited from the capacity building. There needs to be a shift to the local level as local associations have valuable knowledge and a legitimate right to participate and defend their rights. Their input will benefit the long-term sustainability of VPA. The PGDF platform includes members who excel at advocacy, others in research, communication or analysis. Capacity building should therefore be tailored to address individual needs. Members could be a resource pool able to play key roles at different stages based on their abilities. This approach is being adopted through the Normalised System for External Independent Observations (SNOIE),⁴¹ where seven PGDF members share tasks based on their skills and geographical presence.

Thanks to the VPA process, CSOs have strengthened their capacity to influence and monitor the implementation of a wider set of policies and legislation, not only in forestry but also in other land use sectors (land, mines, agriculture) and on overarching governance issues.

³⁸ <https://cidt.org.uk/eucfpr/fr/objectifs-du-projet/> ,

³⁹ <https://cidt.org.uk/portfolio/improving-forest-governance/>

⁴⁰ By Fern, Well Grounded, ClientEarth, CIDT, RFUK and FPP.

⁴¹ <https://forest4dev.org/2019/05/10/sept-osc-retenues-pour-tester-le-snoie-congo/>

4. Progress on Civil Society's Governance Priorities

4.1. Legal reform

Engagement in the VPA has provided a good opportunity to promote legal reform in Congo. Civil society managed to stall the Forest Code reform process by insisting on a wide consultation process. Many interviewees consider this to be one of civil society's main VPA achievements. Thanks to political support and donors such as AFD allocating budget, unprecedented consultation of local and Indigenous communities was carried out in all forest regions. With the support of ClientEarth,⁴² PGDF's legal working group⁴³ ensured that communities' rights⁴⁴ are reflected in the new Forest Code. Other positive new elements include a whole chapter on community forestry, conversion timber, and the REDD+ process. This was achieved because CSOs spoke with one voice, making it hard for the government to dismiss them. PGDF's input into the reform process was valued in the JIC. The draft Forest Code reportedly took around 80 per cent of their comments into account resulting in a fair and legitimate law. After a 7-year long process, the government finally signed the new Forest Code on 27 February 2019,⁴⁵ There were many iterations of the process and in the version submitted to Parliament some priority issues were watered down,⁴⁶ but many remain.

During the June 2019 JIC meeting, participants agreed that the process for drafting the Forest Code's accompanying decrees should be inclusive and involve a multi-stakeholder working group. In general, law reform processes are slow in Congo due to a lack of political will to enact new laws and a lack of capacity and technical assistance. Congo is notoriously slow in getting implementation decrees developed and approved,⁴⁷ so civil society needs to remain vigilant and insistent to ensure that the Forest Code reform process is completed.

Another large challenge remains. Congo scores very low on forest law enforcement. Maximum penalties for illegal logging are dissuasive, but the actual penalties imposed are a fraction of the possible maximum. No court cases are known to have taken place and no logging license has ever been revoked.⁴⁸ The IFM observed cases in which logging companies continued to breach the same regulations, despite having been caught and fined. Monitoring and forest law enforcement remains hugely under-resourced and there is no formal coordination between forest agencies and other relevant parts of government. Efforts have been made to engage anti-corruption agencies in the coordination mechanisms set up to oversee the VPA, but these have not been successful.⁴⁹ It thus remains to be seen if the adoption of the new Forest Code and the development of implementing texts will really result in equitable and just solutions. In order to ensure solid progress, CSOs need to stay alert and engaged in IFM and civil society-led IO to highlight infractions through different media channels to widen the public debate and push more strongly for law enforcement.

⁴² <https://www.clientearth.org/using-forest-law-defend-community-rights-republic-congo/>

⁴³ Consisting of 8-10 lawyers from CJJ, ODDHC, OCDH, FGDH, CAGDF, member organisations of PGDF.

⁴⁴ Including substantive rights (such as sharing of benefits, access to resources and ownership and usufruct rights) and procedural rights (such as access to information, participation, consultation and access to justice/conflict solving mechanisms).

⁴⁵ <https://loggingoff.info/flegt-vpas/flegt-vpa-countries/republic-of-congo/?lang=fr>

⁴⁶ FPIC is no longer in the final version and was replaced by the vague wording of 'free opinion'. The previously foreseen multi-stakeholder Commission deciding on classifying and declassifying forests is replaced by an inter-ministerial body. (Tanja Venisnik, pers. comm.).

⁴⁷ It took eight years for the implementing decrees of the IP law to be developed unilaterally. The Transparency code still awaits implementing texts two years after it got adopted. Also the new Land Code 2018 does not have implementation decrees.

⁴⁸ https://www.illegal-logging.info/sites/files/chlogging/Lawson_Republic_of_Congo_PP_2014.pdf

⁴⁹ It took eight years for the implementing decrees of the IP law to be developed unilaterally. The Transparency code still awaits implementing texts two years after it got adopted. Also the new Land Code 2018 does not have implementation decrees.

4.2. Social benefits and community rights

VPA contains a commitment (the social safeguards' article), to understand and monitor how the VPA impacts on livelihoods and try to minimise negative effects.⁵⁰ In Congo, logging companies and the state have a range of legal obligations towards communities. The two main ways to ensure access and benefit sharing are through the social obligations and the Local Development Fund (LDF).⁵¹

The social obligations are mandatory for all companies and typically cover social infrastructure. They are negotiated between the company and the state, with no representation or consultation with local and Indigenous communities. They are not properly implemented and procedures are too complex, leading to communities not getting the benefits they are legally owed.⁵² While these obligations are open to abuse at many levels, including elite capture of benefits within the communities, they have the potential to significantly decentralise power if a proper monitoring structure is put in place. Interviewees feel the situation is expected to change in the context of the new Forest Code, which is stipulating a model or template for social obligations.

The LDF is a voluntary access and benefit sharing scheme in community development areas (CDA)⁵³ through the financing of micro-projects of community interest.⁵⁴ It is developed after the forest management plans are approved. Many interviewees refer to the recent positive progress on validating more forest management plans⁵⁵. This would pave the way for increased community areas inside forest concessions.⁵⁶ The VPA has made the LDF mandatory⁵⁷ and triggered improvements in securing payments into the LDF. A multi-stakeholder body manages the CDA, including representatives from local communities and NGOs. To date the FDL has been implemented by only a few companies and several comment that fund management has been a source of conflict, has been badly managed, and has lacked transparency. Local and Indigenous communities have not been well supported and lack the capacity to properly develop and implement community projects. In 2015 a set of three manuals were developed through a consultative process to guide identification, elaboration, financial management, monitoring and evaluation of income-generating projects, which will be useful in standardising the process.⁵⁸ For many civil society respondents, the LDF is a priority to follow up, as is accompanying communities to develop microprojects and ensure they get access to the benefits they are entitled to.

The previous Forest Code recognised customary user rights for local and Indigenous communities within forest concessions, but these rights are restricted to the community development areas, set aside for subsistence and community development.⁵⁹ During its revision, civil society lobbied hard to include provisions on the creation, organisation and evaluation of community forestry,⁶⁰ with the hope of enlarging community rights beyond the CDA, and the elaboration and validation of a simple management plan. This is a major step forward and offers the future potential for communities to manage their forests sustainably and to receive the benefits. In Congo, a national roadmap on community forestry⁶¹ was developed in 2017 between PGDF and the administration. A principle demand was that

⁵⁰ https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf

⁵¹ <https://www.fern.org/news-resources/how-much-do-communities-get-from-logging-social-obligations-in-the-logging-sector-in-cameroon-ghana-liberia-and-republic-of-congo-249/>

⁵² https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf

⁵³ CDAs are a sub-set of the concession's forest management plan that provides for the uses of land and resources (fishing, farming, hunting, gathering timber and non-timber forest products) of the local people within a concession.

⁵⁴ https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf

⁵⁵ In 2019, 28 out of 53 attributed concessions have a forest management plan, which is a significant improvement compared to before, with several more currently awaiting approval. http://www.apvflegtcongo.com/images/pdf/concessions_amenagees.pdf, http://www.apvflegtcongo.com/images/pdf/concessions_forestieres_attribuees.pdf

⁵⁶ <https://www.fern.org/fileadmin/uploads/fern/Documents/VPA-Update-December-2018.pdf>

⁵⁷ The legality definition includes the LDF as a criterion 'the formal commitments made by the company for a better contribution to local development are respected' with an associated indicator' http://www.apvflegtcongo.com/images/pdf/apv_congo_ue

⁵⁸ <https://www.fern.org/fileadmin/uploads/fern/Documents/fern%20how%20much.pdf>

⁵⁹ <https://www.forestpeoples.org/sites/default/files/documents/Community%20Forestry%20in%20RoC%20-%20WEB.pdf>

⁶⁰ <https://loggingoff.info/wp-content/uploads/2019/09/17723IIED-Fern-CF-briefing.pdf>

⁶¹ <https://loggingoff.info/library/feuille-de-route-de-la-foresterie-communautaire-issue-de-latelier-de-dialogue-national-tenu-les-9-et-10-fevrier-2017-a-brazzaville-republique-du-congo/>

logging companies uphold their social and environmental obligations and thus give back areas of land for community activities. The Congolese Minister of Forest Economy has been supportive and even became an ambassador for participatory forestry in the Congo Basin. In January 2019 a collaborative agreement was signed between the Forestry Department, *Forum pour la Gouvernance des Droits Humains* (FGDH) and OCDH to create two community forest pilots of around 3,000 hectares in the Sangha Region.⁶²

As such, the VPAs have shone a positive spotlight on the social obligation systems and even gone beyond this by introducing the concept of community forestry into national legislation. It will be important for civil society to keep this on the agenda, to share lessons learned from pilot sites and to continue to identify opportunities to claim community rights and FPIC.

Even if communities are not directly represented in the VPA, PGDF members ensured that community rights-related issues made it into the legality definition. During the VPA negotiation process, the adoption of the national Indigenous Peoples' Law - recognising Indigenous community tenure rights and requiring FPIC - was a condition from the local NGOs for the signing of the VPA.⁶³ The 2011 Indigenous Peoples' law is considered by many to be the most advanced in the Congo Basin in terms of legislation protecting Indigenous Peoples' rights. Regrettably, to date this has not resulted in better living conditions, nor has it improved recognition of their rights. To make matter worse, implementation decrees were developed only eight years later without any consultation. OCDH tried to influence the process, but most interviewees agree the decrees are very weak, in particular the one regarding FPIC. In the Forest Code version submitted to Parliament, the FPIC concept was taken out and watered down, clearly demonstrating the administration's resistance to take it on.

Currently 98 per cent of the Congolese forest domain is under government control, the remaining 2 per cent assigned to local and Indigenous communities.⁶⁴ To complicate matters, the Parliament passed a new Land Tenure Act in 2018 that may hamper communities' ability to uphold customary rights, as it establishes an administrative procedure for all land titling that contradicts provisions of the Indigenous People's Law.⁶⁵ The latter recognises Indigenous Peoples' customary rights, the Land Tenure Act does not. While the government sees the legislation as a step forward to clarify land tenure, interviewees condemn the lack of consultation and the speed by which the text was adopted.

The CAFI initiative promises a participatory land reform process and the development of a national land use plan, respecting customary land rights. But if the inconsistencies between the above laws and the legal dualism between customary and statutory law are not solved, community rights will not be recognised. The extent to which the ongoing reform process will consolidate community land ownership remains to be seen. It will be important for the PGDF to identify opportunities to advocate for community rights and FPIC.

4.3. Monitoring

The Congolese VPA is unique because it includes three types of monitoring to ensure effective implementation. They each have a different focus but are complementary: the independent auditor focuses on the government's performance according to LVS criteria and indicators; the independent forest monitor focuses more on the timber companies and what is happening in the concessions. Civil society-led independent observations focus mainly on respect of community rights, access and benefit sharing and companies' social obligations.

⁶² <https://loggingoff.info/wp-content/uploads/2019/09/17723IIED-Fern-CF-briefing.pdf>

⁶³ https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf

⁶⁴ http://rightsandresources.org/wp-content/uploads/GlobalBaseline_complete_web.pdf

⁶⁵ <https://www.fern.org/fileadmin/uploads/fern/Documents/VPA-Update-December-2018.pdf>

4.3.1. Independent Auditor (IA)

A consortium consisting of the three consultancies (Sofreco, NEPC and CTFC) was appointed as independent auditor in September 2015. In June 2017 the first audit was done in South Congo, but the report was never validated. The second planned audit in the North was cancelled and the principal auditor replaced. In 2018 and 2019 a total of nine audits were conducted. Out of the 42 LVS criteria, non-compliance was found in 90 per cent of cases, highlighting that a lot of work needs to be done to ensure timber legality.⁶⁶ An action plan was set up with a request for corrective actions to address non-compliance. The easiest were acted upon, but the more complex ones still need to be addressed. In principle unannounced audits are foreseen in the VPA but have yet to be conducted. A complaint mechanism⁶⁷ was put in place in 2016 but only one complaint was received in 2018 from a company. Given the large amount of non-compliance, this system is premature and expected to only be operational once there are FLEGT licenses.⁶⁸

The audit reports are discussed at JIC meetings and consist of a public summary and a more detailed confidential part discussing compliance with each of the LVS criteria. The government decided that the public summaries will also remain confidential until there are FLEGT licenses. While IA and IFM work in independent parallel processes, informal exchanges take place and IFM reports are a relevant source of information for audit missions. In the JIC the IA reports are given more weight, whereas IFM reports are being dealt with directly by the Ministry of Forest Economy and Sustainable Development (MEFDD).

4.3.2. Independent Forest Monitor (IFM)

Congo is unique in the sense that Resource Extraction Monitoring (REM), an international NGO and CAGDF, a national NGO fulfilled the IFM role since 2007, even before VPA negotiations started. The IFM is an independent third party, who has the authority to document whether illegal activities are taking place in logging concessions.⁶⁹ This role is further formalised in the new Forest Code. The Congolese VPA foresaw that national civil society will eventually fulfil the IFM role and since 2014, CAGDF is effectively the IFM.⁷⁰

CAGDF published 38 reports⁷¹ between January 2010 and December 2018 highlighting a series of infractions and non-compliance of different companies active in Congo, such as the absence of environmental impact studies, the lack of forest management plans, non-paid taxes and fraudulent felling of trees. They found breaches of regulations in every logging concession they visited. However, based on 12 years of IFM, CAGDF noticed a significant decrease in the number of infractions and confirms that having a forest management plan positively impacts companies' performance. Certified logging companies in the North perform well and risks for illegal logging are low. Also, in the South the situation is gradually improving, but there are still some companies with significant problems.

One of the main achievements of the IFM is that it has created an openness and mentality change within the government, which has resulted in increased information on infractions and illegalities, being publicly available.⁷² However, while the government has acted in response to specific infractions, it has failed to systematically follow up and act on IFM reports findings. The largest challenge remains actual

⁶⁶ Independent auditor, personal communication.

⁶⁷ Mailbox: plaintes.ais.flegt.congo@gmail.com

⁶⁸ Independent auditor, personal communication.

⁶⁹ https://www.globalwitness.org/documents/10979/im-vpasfinalweb_en.pdf

⁷⁰ https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf

⁷¹ Available on <http://cagdf.org/rapports/>, <http://www.apvflegtcongo.com/>, <http://www.observation-congo.info/>, <https://loggingoff.info/library/>.

⁷² The legality definition includes the LDF as a criterion 'the formal commitments made by the company for a better contribution to local development are respected' with an associated indicator' http://www.apvflegtcongo.com/images/pdf/apv_congo_ue

law enforcement. Regrettably, the IFM does not have insight, nor access to information on prosecutions, fines, sanctions, collected taxes, or suspended activities other than hearing about it informally or when they revisit concessions.

Several interviewees regret that to date, PGDF has not been able to use more IFM reports for advocacy purposes and to push for increased law enforcement. To some extent this is due to the technical nature of these reports and PGDF's need for more support to analyse the reports, develop advocacy briefs and identify opportune moments to use this information. CAGDF's mandate is also complicated. In 2014 PGDF designated CAGDF to be the IFM, so in principle CAGDF should provide feedback to the platform. However, given that their mandate lies with the government, the IFM is not totally independent and reports are often only made public several months after their visit when some observations have become obsolete. Despite this, many agree that there is more scope for collaboration and exchange between PGDF and CAGDF, with CAGDF perhaps taking on a more thematic approach to tackle civil society's priority issues or to share best practices. PGDF could explain what type of field information would be useful for advocacy purposes - e.g. respect for community rights, compliance with social obligations, the functioning of the LDF - while CAGDF's findings could be less technical.

To conclude, IFM is strong at generating evidence but weak at tracking impact. The main IFM achievement is that it has created an openness with the government and a different way of collaborating. It has therefore improved transparency and ensured delicate information is publicly available, even if this has not yet resulted in systematic law enforcement.

4.3.3. Civil society Independent Observations (IO)

The Congolese VPA also created a role for civil society-led independent observers to monitor social and governance aspects. IO has no formal mandate and is generally conducted by local NGOs or communities in collaboration with national NGOs. Different PGDF members have previously engaged in self-mandated IO on a project basis with some positive outcomes.

AZUR Développement and FGDH set up a system to monitor governance indicators based on the VPA legality grid and REDD+ safeguards, which included FPIC, benefit sharing and redress mechanisms.⁷³ They also engaged in raising communities' awareness about the operators' social obligations. This empowered community leaders to demand and obtain an official investigation into a Chinese logging company that failed to respect its obligations. Through the media, IO work has sparked the interest of the wider Congolese public. Another success was the Minister of Mines' decision to suspend all mining permits in forested areas, following an IO report into illegal gold in logging concessions.⁷⁴ An OCDH IO mission on conversion timber in the Sangha region⁷⁵ revealed that Atama⁷⁶ focused more on harvesting high-value timber than on developing oil palm plantations, thereby evading taxes, the need for social obligations and engaging in illegal logging, while negatively impacting local livelihoods. These findings led to a joint decree from the Ministries of Agriculture and Land in 2018 limiting agricultural deforestation permits to a maximum of five hectares – this was an important victory. These reports were published on the respective organisations' websites, www.loggingoff.info,⁷⁷ and the Congo Basin Forest Partnership site.⁷⁸ Local civil society groups felt that their IO encouraged constructive dialogue between civil society and forest law enforcement authorities.

⁷³ <https://loggingoff.info/wp-content/uploads/2017/08/Independent-forest-monitoring-REDD-FLEGT-ENRTP-project.pdf>

⁷⁴ <https://www.fern.org/de/ressourcen/hailing-some-positive-changes-in-the-republic-of-congo-290/>

⁷⁵ <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/republic-of-congo-atama-plantations-is-today-a-source-of-discontent-for-local-communities-and-the-entire-nation/>

⁷⁶ Atama Plantations SARL is a subsidiary of the Malaysian company Wah Seong Corporation Berhad (WahSeong), a company listed on Bursa Malaysia. It is an oil, gas and industrial services company. So no previous expertise with palm oil exploitation which is quite strange. For more info <https://www.palmwatchafrica.org/tag/palm-oil/page/4/>

⁷⁷ <https://loggingoff.info/flegt-vpas/flegt-vpa-countries/republic-of-congo/>

⁷⁸ <http://pfb-cbfp.org/actualites/items/mission-Sangha.html>

These initial efforts were laudable and empowering, allowing civil society to gain familiarity with IO principles. However, they were done in an ad hoc fashion and linked to short-term funding. Some interviewees mention that the delays between mission and reports was long, and that reporting quality was poor. As a result, several reports were contested by the government and donors. There is thus a need to improve IO ways of working to ensure that the findings are credible, legitimate and impactful. As part of the projects 'Citizens' Voice for Change'⁷⁹ (CV4C) and 'Normalised System for External Independent Observations' (SNOIE),⁸⁰ seven PGDF members are currently being trained to conduct IO, to harmonise reporting according to high professional standards and in an organised fashion, with a clear division of roles based on expertise and local presence.

Several interviewees agree that IO is a positive companion to IFM, as it results in more eyes on the ground, increased public information and spreads tasks so that any risks are carried broadly as a platform. Many suggest that more reflection on increased synergies between IO and IFM is needed, as this will further unify civil society's voice. Many platform members are also keen to go beyond forest concessions and focus on conversion timber. Some propose that PGDF should increase ownership of CLVS and use IO to empower local communities to evaluate how it performs locally. At the same time, others warn that CSOs need to be careful, as beginners' mistakes or incorrect reports could discredit efforts and progress made so far. In June 2019, civil society representatives decided not to participate in the 10th JIC as there was no openness from the government for them to present and discuss IO. While the government is hesitant to take IFM further, PGDF also needs to communicate clearly about how IO will be done, explaining what the purpose is and where the added value lies, as this is currently misunderstood.

⁷⁹ <https://cidt.org.uk/cv4c/>

⁸⁰ <https://forest4dev.org/2019/05/10/sept-osc-retenues-pour-tester-le-snoie-congo/>



5. Recommendations

5.1. Future priorities for civil society

To improve forest governance and recognition of community rights through VPA implementation or other credible land, forest, climate and natural resources processes, current and upcoming priorities for civil society should be:

- Improve civil society-led independent observations (IO) and advocate for their acceptance
- Increase collaboration between PGDF, IO and IFM with a focus on community rights, access and benefit sharing, LDF and social obligations
- Support local and Indigenous communities to access benefits
- Start pilot Community Forestry projects and share lessons learned
- Ensure direct representation and involvement of Indigenous and local communities in VPA implementation and increase local collaboration
- Contribute to the development of the implementation texts of the new Forest Code
- Identify advocacy opportunities to influence the land reform process and liaise with other civil society coalitions
- Inform the general public about the importance of governance by increasing visibility in both traditional and social media
- Continue to campaign for increased transparency
- Start an internal PGDF process to agree a strategic plan to be more involved in the VPA implementation process with common priorities and an annual workplan including identifying funding opportunities.

5.2. What should the EU and the Congolese government do?

The EU should improve coordination between the forest, land and climate initiatives in which it is involved, while ensuring funding remains available for civil society to play an active role within VPA implementation and related processes. The EU, through both DG DEVCO and its Delegation in Brazzaville must keep VPA momentum going, and continue to push for progress towards FLEGT licenses, for completion of the forest code reform in an inclusive manner, and for VPA decentralisation to the local level. It is important that the EU supports direct representation, access to information and involvement of local forest communities (as legitimate rightsholders), while making the resources available.

The Congolese government needs to finalise the ongoing legal reform processes by ratifying the new Forest Code and its implementation decrees. This should be done in an inclusive manner through a multi-stakeholder land reform process that not only focuses on economic development but also strengthens customary community rights to their land. In order to be effective and fair, the Congolese government needs to improve inter-ministerial coordination, engage in systematic law enforcement and tackle corruption, while being open to civil society-led independent observations and supporting community forestry pilots.

6. Conclusion

Civil society regards the VPA as integral part of achieving the forest governance improvements experienced in Congo. The VPA process is seen as particularly improving participation, with civil society being fully on board, making valuable contributions and playing an active role in the implementation phase. The civil society platform was able to build its capacity to access and analyse information, to advocate for its priorities and to engage meaningfully in the process. A long yet inclusive Forest Code reform process took most of civil society's priorities on board. This is an important achievement. Civil society has also played a key role in independent forest monitoring for several years and hopes to expand this role so it is carried more broadly by PGDF members. The great merit of the IFM is that it has created an unprecedented openness in dealings with the government, and increased accountability and transparency (more information on illegalities and infractions are now in the public domain). Access to information has been made easier through innovative tools, further reinforced by the EITI's inclusion of the forest sector. These are important steps, but stakeholders must go further by ensuring that local and Indigenous communities are directly represented and fully involved in the process. Transparency should also be increased with the publication of more sensitive information. Implementing decrees for the Forest Code and other reform processes need to be completed and enforced, and capacity building must continue.

But changing the balance of power is always going to be a slow and stepwise process and fundamental governance challenges persist. For example, law enforcement is done in an ad hoc fashion, and lack of coordination between ministries and sectors results in overlapping concessions, land conflicts, lack of respect for community rights, and illegal conversion timber. All of this undermines progress achieved by the VPA which is still seen as a useful tool to address priority issues and strategic objectives. But to deliver on its potential it needs to become fully operational, with FLEGT licenses on the market in a near future.

The context has changed since VPA negotiations began. There are now more processes and reforms taking place in the EU and the Congo impacting forests and forest peoples (including climate, REDD+, land reform, mining and agro-industrial development). Civil society needs to identify worthwhile opportunities and new levers beyond the VPA and fight for the same governance priorities and multi-stakeholder approach across processes and policies. There are also clear power shifts in terms of trade; more than 70 per cent of timber exports go to China and there is an increasing Chinese economic influence in Africa. Despite this, the EU remains an important economic, political and development partner with a key role in trade and development and as a donor.

Fern should continue to push for positive change in Brussels, focussing on EU climate, trade, and development agendas that have an impact on forests and forest peoples. It should also strengthen its building of coalitions within civil society in Congo by supporting advocacy work and identifying linkages and creating opportunities for dialogue between its partners and EU decision makers. Fern should also increase collaboration with other International NGOs, to build the capacity of the PGDF and its members, based on their needs and objectives. This could be done through agreeing common objectives under an overall agreed PGDF strategy and then breaking into working groups based on members' expertise and campaigning styles, with each member focusing on their specialised topic. Fern is in a good position to inform PGDF's workplan by linking them to research institutes, other platforms, and media organisations.

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8. Annexes

Annex 1. List of interviewees

Congolese civil society organisations

CJJ	Lilian Laurin Barros
CJJ	Inès Gady Mvoukani
FGDH	Maixent Agnimbat
OCDH	Nina Cynthia Kiyindou Yombo
ODDHC	Sylvie Mfoutou Banga
Azur Développement	Phons Louis Ntombou
RENAPAC	Guy Serge Ngoma & Roch Euloge Nzobo
RPDH	Christian Mounzé
CAGDF	Alfred Nkodia

International NGOs

ClientEarth	Tanja Venisnik
Fern	Marie-Ange Kalenga
Fern	Saskia Ozinga
Fern	Indra Van Gisbergen
FPP	Lassana Koné
Gaiachain	Brad Mulley
PWYP	Elisa Peter
Well Grounded	Emma Almeras

Research organisations

CIDT	Aurelian Mbzibain
EFI FLEGT Unit	Laurent Cerbonney
EFI REDD Unit	Pascal Douard
WRI	Eric Parfait Essomba

Donors

AFD	Cyril Brulez
EU DG DEVCO	Lucile Broussolle
DfID - KPMG	Thomas Pichet

Consultants

Previous independent auditor	Philippe Casanova
Independent Auditor	Alexandre Boursier
Independent	Rodrigue Ngonzo
Independent	Patrice Kamkuimo

Annex 2. List of forest governance related initiatives and commitments in Congo

REDUCING EMISSIONS FOR DEFORESTATION AND FOREST DEGRADATION (REDD+)

<http://theredddesk.org/countries/republic-congo> - <https://www.unredd.net/regions-and-countries/africa/congo-the.html> - <https://forestcarbonpartnership.org/country/congo-republic>

The National REDD+ Coordination (CN-REDD) is responsible for advancing, coordinating and implementing the REDD+ process at national level. It is part of the Ministry of Forest Economy and Sustainable Development (MEFDD). The National REDD+ Committee (CONA-REDD) is a proposed multi-stakeholder body that steers the REDD+ process and coordinates across sectors, including forestry, mining, agriculture and energy. Civil society organisations and indigenous people's groups have established CACO-REDD+, a platform for coordinating their engagement in the REDD+ process. The Republic of the Congo is a beneficiary of the World Bank's Forest Carbon Partnership Facility (FCPF) and a partner country of UN-REDD. It is also involved in the Central African Forest Initiative (CAFI). Congo began its REDD+ readiness activities in 2008, its National REDD+ Strategy was validated in 2017, which was complemented by a comprehensive REDD+ National Investment Framework (NIF). See also CAFI below.

NATIONAL DETERMINED CONTRIBUTIONS (NDCs) - PARIS AGREEMENT

https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Congo%20First/NDC_Congo_RAPPORT.pdf

In 2015, at the 21st CoP of the UNFCCC in Paris, the parties agreed on a new climate treaty to set their post-2020 climate actions, based on their national priorities, circumstances and capabilities. These climate action plans were submitted to the UNFCCC before CoP21 and were then known as the Intended Nationally Determined Contributions (INDC). Following ratification of the agreement the INDCs cease to be intentional and become a commitment to action. This starts the Review & Preparation Phase (2016-2020), after which the Implementation Phase starts (2020-2030). The countries have the option of reviewing and improving the transparency and ambition before starting implementation.

As the key framework to guide national climate policy, NDCs offer a platform that could be used to raise the profile of forest governance in climate debates. With regards to forest governance, the Republic of Congo NDCs commit to several governance reforms in its mitigation measures including the adoption of a new forest law, improving sustainable forest management, adopting a national land use plan, certification of all logging companies and creating a forest observatory. Regrettably, participation of civil society representatives was limited to attending meetings with no previous information and no time for consultation of the civil society platforms.

CENTRAL AFRICAN FOREST INITIATIVE (CAFI)

<https://www.cafi.org/content/cafi/en/home/partner-countries/republic-of-congo.html>

The CAFI initiative supports the development of the Congolese REDD+ National Investment Framework (NIF). The NIF is an overarching strategic document which sets the priority policies and measures to foster land use and natural resource management. This long-term initiative (2020-2025) will support land use plans for sustainable economic development while making commitments in key growth sectors such as agriculture, mining and hydrocarbons as well as minimizing climate change impacts through the protection of its biodiverse peatlands and forests.

A Letter of Intent was signed on 3 September 2019 between the Republic of Congo and France, clearly outlining the priority objectives of CAFI including among others land use planning, secure land tenure, ending forest conversion by promoting agriculture in savannah regions, forest governance and sustainable forest management. The letter includes important references to FLEGT VPAs, ending conversion of forests and recognition of local and indigenous community rights, while insisting on a multi-sectoral policy dialogue and a participatory approach to land use through extensive and transparent consultation mechanisms.

Commitment of 65,000,000 USD (Norway, France, EU, AFD, DfID, BMU).

AFRICA PALM OIL INITIATIVE (APOI)

<https://www.tfa2020.org/en/activities/african-palm-oil-initiative/>

APOI is the Tropical Forest Alliance (TFA) 2020 first signature initiative and public-private partnership which aims to reduce tropical deforestation across the globe. Its goal is to help transition the palm oil sector in West and Central Africa to become a sustainable driver of long-term, low-carbon development in a way that is socially beneficial and protects the tropical forests of the region

At the UNFCCC CoP22 on 16 November 2016, the Republic of Congo signed the Marrakech Agreement together with six other African countries to jointly protect 70% of all African forests against the overexploitation of palm oil. Congo is currently in Phase 1, the Engagement phase, in which a series of national workshops are held following an in-country dialogue with government and TFA partners, which will result in a signed regional accord on responsible palm oil production. In one of the workshops, the country said it was committed to promote future palm oil development (only) in the savannah zone.

EXTRACTIVES INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

<http://www.itie-congo.org/>

The EITI is the global standard to promote the open and accountable management of extractive resources, such as oil, gas and mineral resources. The EITI standard requires the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public. EITI seeks to strengthen both public and private governance, promote understanding of natural resource management and provide data to inform reforms for great transparency and accountability in the extractives sector.

The Republic of Congo joined EITI in 2007 and includes the forest sector in its EITI reporting since 2013 based on a voluntary government decision. As in every EITI implementing country the process is supported by a coalition of government, companies and civil society (Publish What You Pay platform).

CONGO BASIN FOREST PARTNERSHIP (CBFP)

<https://pfbc-cbfp.org>

The Congo Basin Forest Partnership was launched in 2003. It is a multi-stakeholder partnership that aims to enhance natural resource management and improve the standards of living in the Congo Basin. CBFP works in close relationship with the Central African Forests Commission (COMIFAC), that coordinates regional forest and environmental policy to promote the conservation and sustainable management of the Congo Basin's forest ecosystems. The Republic of Congo is one its members. CBFP further includes the Civil Society College that is led by CEFDHAC and ACRN, the African Community Rights Network, which is coordinated by Maixent Agnimbat, from FGDH, one of the PGDF members.

CONGO BASIN SUSTAINABLE LANDSCAPES PROGRAM

<https://bit.ly/2nleHTW>

This programme is part of the Global Environment Facility's Sustainable Forest Management Impact Program, which aims to transform the course of development and produce multiple benefits for biodiversity, climate change, and land degradation by addressing the long-term health of three high-priority biomes: drylands landscapes, the Amazon and the Congo Basin. This six-year programme will address the drivers of forest loss and degradation in the region. The program will work to create a better enabling environment for forest governance, support land use planning, strengthen the management and financing of protected areas, and decrease the impacts of natural resource use by local communities and the private sector and was launched in March 2019. It will be implemented by UNEP, IUCN, WWF, WB and the governments of the six Congo Basin countries, including the Republic of Congo.

THE AFRICAN FOREST LANDSCAPE RESTORATION INITIATIVE (AFR100)

<https://afr100.org/content/republic-congo>

AFR100 is a country-led effort to bring 100 million hectares of land in Africa into restoration by 2030. It aims to accelerate restoration to enhance food security, increase climate change resilience and mitigation, and combat rural poverty. The Republic of Congo became a member in 2016 and committed to 2 million hectares of restoration through the establishment and sustainable management of tree plantations, through sustainable forest management and certification of natural forests and through commodity tree-crop systems development and agroforestry. This approach is in alignment with its National REDD+ Strategy and climate response mechanisms.

