

## COUNTRY REPORT: DEMOCRATIC REPUBLIC OF CONGO

### Recent Developments in Environmental Protection

OLIVER RUPPEL\* & DIGNITÉ BWIZA<sup>§</sup>

#### Introduction

Geographically, the Democratic Republic of Congo (DRC) is the second largest country in Africa with a total land area of 2 344 858 km<sup>2</sup> and 37 km coastline.<sup>1</sup> Its population is estimated at 67 757 577, with a crude birth rate of approximately 42 live births per 1 000 population for 2012 and the average life expectancy of approximately 49 years.<sup>2</sup> The DRC is classified by the World Bank as a low-income country with a GDP of USD 15.65 billion and a growth rate of 6.8 per cent.<sup>3</sup>

The DRC has vast potential and natural wealth but persistent armed conflicts since 1996 have dramatically reduced the national output, government revenue, and increased external debt. Major environmental concerns in the DRC include wildlife poaching, deforestation, mining and ecosystem degradation. The DRC has a large variety of mineral resources (cobalt, copper, niobium, tantalum, petroleum, industrial and gem diamonds, gold, silver, zinc, manganese, tin, uranium, etc.), a huge hydrography, and vast forests. The DRC alone accounts for one-fifth of Africa's total forest area. About 45 per cent of the DRC is covered by primary rain forest and since 2000, approximately two million hectares of this forest has been lost. Major threats in this regard are fuel wood collection, agriculture, and logging. The DRC is home to an enormous biodiversity, including rare animal species such as Okapi and mountain gorillas. Overall, the DRC is known to have more than 11 000 species of plants, 450 mammals, 1 150 birds, 300 reptiles and 200 amphibians.<sup>4</sup> The DRC counts more types

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\* Professor, Faculty of Law, Stellenbosch University (South Africa). E-mail: [ruppel@sun.ac.za](mailto:ruppel@sun.ac.za).

<sup>§</sup> LLB in Private Law, Université Ouverte (DRC); LLM in International Human Rights Law, University of the Western Cape (South Africa). E-mail: [bwizadignite@hotmail.com](mailto:bwizadignite@hotmail.com).

<sup>1</sup> Maps of World (available at <http://www.mapsofworld.com/africa/thematic/largest-countries.html>).

<sup>2</sup> Figures taken from the World Bank (available at [http://data.worldbank.org/indicator/SP.DYN.CBRT.IN?order=wbapi\\_data\\_value\\_2010+wbapi\\_data\\_value+wbapi\\_data\\_value-last&sort=desc](http://data.worldbank.org/indicator/SP.DYN.CBRT.IN?order=wbapi_data_value_2010+wbapi_data_value+wbapi_data_value-last&sort=desc) and <http://data.worldbank.org/country/congo-dem-rep>).

<sup>3</sup> Figures taken from the World Bank (available at <http://data.worldbank.org/country/congo-dem-rep>).

<sup>4</sup> UNEP, *Africa Atlas of our Changing Environment* (2008) (available at <http://www.unep.org/dewa/africa/africaAtlas/>).

of great apes than any other country on earth, including the critically endangered lowland eastern gorilla and the bonobo.

Noteworthy legal developments in environmental protection in the DRC commenced with the adoption of a new *Constitution* on 18 February 2006, which clearly introduced environmental rights and obligations<sup>5</sup> and provided for the creation of other domestic laws concerning, *inter alia*, the protection of the environment and tourism.<sup>6</sup> Subsequently, around a dozen national laws in the DRC were introduced and/or amended to include environmental protection dispositions.

This Country Report is divided into three parts and aims to highlight noteworthy legal progress made in the field of environmental protection in the DRC in 2012. The first part includes an overview of national programmes of environmental protection implemented during the period under scrutiny, and highlights the major obstacles that hindered their implementation and sustainable development. The second part provides an overview of recently enacted environmental jurisprudence, which is then thirdly followed by a conclusion.

### **National Programmes on Environmental Protection**

#### *Forest Law Enforcement, Governance and Trade - FLEGT*

In 2010, the DRC commenced negotiations with the European Union (EU) for a Voluntary Partnership Agreement in the EU's FLEGT action plan. The objective of the establishment of a national FLEGT programme in the DRC is the enhancement of forest management through upgraded respect of the legislation regulating forest exploitation both in the DRC and in the EU by forest exploitation companies.<sup>7</sup> The negotiations, which were suspended for a while, resumed on 31 August 2012 and were still on-going at the time of the drafting of this Report.

#### *National Plan Combating Desertification (2012)*

Developed to identify factors that aggravate desertification in the DRC, to propose concrete measures to address desertification and attenuate effects of draught; a *National Plan to*

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<sup>5</sup> Articles 48 and 53-55.

<sup>6</sup> Article 123.

<sup>7</sup> Available at

[http://www.euflegt.efi.int/portal/home/vpa\\_countries/in\\_africa/democratic\\_republic\\_of\\_congo/](http://www.euflegt.efi.int/portal/home/vpa_countries/in_africa/democratic_republic_of_congo/).

*Combat Desertification* was finalised in 2012.<sup>8</sup> As Congolese forests are continuously declining, this plan is expected to address the various factors that continuously undermine forest protection in the DRC.<sup>9</sup>

*Supporting Good Governance in Mineral Resources Exploitation (2009-2012)*

Subsequent to the huge lack of transparency in the mining sector,<sup>10</sup> the DRC joined the Extractive Industries Transparency Initiative (EITI), and received funds from the German Gesellschaft für Internationale Zusammenarbeit (GIZ) to install the EITI national office (EITI-DRC).<sup>11</sup> Drafted for a four years period, the programme enables the establishment of a legal framework for the EITI-DRC, the appointment of a national Committee, and the publication - in 2012 of an *EITI-DRC Report (2008-2009)*.<sup>12</sup> The drafting of EITI reports for the DRC faces two significant obstacles: (a) the lack of accuracy of information received from mining exploitation companies operating in the DRC; and (b) the lack of means to verify received information. The *EITI-DRC Tri-annual Plan (2011-2013)* creates an obligation to declare all mining corporations operating in the DRC as a solution to improve accuracy of information on mining activities, and a way to upgrade transparency in the mining sector in the DRC.

*National Programme of Support to the Water Sector Reform (2006-2016)*

The DRC is one of the water-richest countries in Africa. However, only one in four Congolese has access to sterile drinking water, and no more than one in five Congolese benefits from adequate sanitation facilities.<sup>13</sup>

To provide a remedy to these gaps, the German GIZ offered its support in the implementation of a *National Programme of Support to the Water Sector Reform*. The

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<sup>8</sup> RIDDAC RDC: Finalisation du Plan National de Lutte Contre la Desertification (available at <http://www.riddac.org>).

<sup>9</sup> Exploitation Forestière en RDC, Les Irrégularités Persistent (2012).

<sup>10</sup> The lack of transparency in the mining sector, aggravated by the presence on rebel armed groups in the East, prompted the suspension of mining and trading activities by the Congolese Government. Exploitation and exportation of minerals in DRC was banned for 6 months under Decree No. 0705/CAB.MIN/MINES/01/2010 of 20 September 2010. The suspension was withdrawn by Decree 0034/CAB.MIN/MINES/01/2011 of 01 March 2011.

<sup>11</sup> Established by Decree No. 09/27 of 16 July 2009.

<sup>12</sup> EITI, *Rapport de l'administrateur in dependant de l'ITIE sur les revenus 2008-2009* (2012) Fair Links, Paris. The drafting of the *EITI Report (2010-2011)* is expected by April 2013, and the 2012 *EITI Report* is projected for December 2013. See EITI, *Triennial Plan 2011-2013 ITIE-RDC* (2012), 4.

<sup>13</sup> Conservation of Biodiversity and Sustainable Forest Management (available at <http://www.giz.de/themen/en/16089.htm>).

Programme has the ultimate objective to assist the Congolese Government in achieving the following goals:

- steering and implementing the reform of the water sector;
- establishing a clear legal and institutional framework for the water sector;
- promoting policy dialogue between institutions in the water sector; and
- strengthening individual and institutional skills, resources and efficiency.

So far, significant progress has been observed in the management of water resources since the opening of the Programme's activities. The key legal development is the drafting (in September 2010) of a comprehensive water management law, the so-called *Water Code*. The *Water Code* is yet to be promulgated but encompasses ground-breaking concepts for improved water and marine environmental resources management, specifically tailored to the needs and requirements of the DRC.<sup>14</sup> The Programme's perspectives include the lobbying for the promulgation of the *Water Code* and the establishment of effective mechanisms for its legal enforcement.

#### *Programme of Reinforcement of Biodiversity (2009-2012)*

To address the recurrent killing of protected species in the DRC,<sup>15</sup> the IUCN sponsored this programme with a central theme of 'Conservation of biodiversity and life'. This theme is apportioned into four major fields:

- climate change;
- the production and distribution of energy;
- the modern methods of management of ecosystems for the human wellbeing; and
- the economy of markets.

Nonetheless, damages to biodiversity in the DRC remain alarming.<sup>16</sup> Researchers contend that the real damage to biodiversity in the DRC remains largely unknown and might be much

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<sup>14</sup> Among the significant innovations contained in the draft of the *Water Code* is the provision for technical capacity subsequent to decentralisation of the DRC. The *Constitution of the DRC* (2006) provides for decentralisation of governmental duties and the division of the country from 11 into 26 provinces. The decentralisation was effective within 36 months of the adoption of the *Constitution* but is yet to be implemented. The majority of national laws adopted in the DRC after 2006 do not take into account specificities peculiar to decentralisation.

<sup>15</sup> For instance, only 6 000 hippopotamus persisted in the DRC after the armed conflict, from the ± 22 000 hippopotamus counted before the conflict. Other species such as white rhinoceros, mountain gorillas and elephants were also killed at a large scale. A total of 190 species living in the DRC are mentioned on the IUCN's list of endangered species. IUCN, *Programme 2009-2012 in DRC* (2012), 5.

more extensive than reported. Wide regions of the DRC's national territory remain unexplored and might be the sanctuary of undiscovered animal and plant species. Some of these species might even have disappeared before their discovery. A timid development resulting from this Programme is however the development of ecotourism in selected protected areas of the DRC.

#### *Conservation of Biodiversity and Sustainable Forest Management (2005–2013)*

The Programme was created with GIZ funding to address the lack of adequate environmental institutions and the lack of suitable concepts to preserve forest and biodiversity in the DRC. Its main objective is to strengthen the performance of national institutions responsible for nature conservation in maintaining the integrity of protected areas and biodiversity.<sup>17</sup> Furthermore, the Programme supports the introduction of forest concessions (areas where logging is permitted), based on sustainable forest management principles. The intended outcomes of this Programme are as follows:

- an improvement in the performance of institutions in charge of maintaining the integrity of protected areas and their biodiversity;<sup>18</sup>
- an institutional reform of the MECNT;<sup>19</sup>
- an increase in the number of specialised employees (more than 600 forest engineers were trained);
- the creation of a conversion process for the allotment of forest concessions; and
- the ratification of the *Central African Forest Commission Treaty* in 2009.<sup>20</sup>

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<sup>16</sup> L. Debroux, T. Hart, D Kaimowitz, A Karsenty & G. Topa (Eds.), *Forests in Post-Conflict Democratic Republic of Congo - Analysis of a Priority Agenda (2007)* Joint Report by teams of the World Bank, Center for International Forestry Research (CIFOR), Jakarta.

<sup>17</sup> Available at <http://www.giz.de/themen/en/16089.htm>.

<sup>18</sup> Ibid.

<sup>19</sup> This reform involves a reduction of the number of MECNT Directorates from 23 to 12, the creation of a new Division of Community Forestry, mandatory retirement of over age staff, new recruitments, and improved synergy with ICCN. The reform has three main objectives: (1) institutional strengthening of MECNT, (2) community participation in forest management, and (3) management of protected areas and support to ICCN.

<sup>20</sup> For more information on the commission (Commission des forêts d'Afrique centrale COMIFAC) (available at <http://www.cbf-fund.org/en/>).

## Obstacles to Environmental Protection in the DRC

Environmental protection in the DRC faces numerous obstacles including:

- *Lack of funds:* Funding constraints significantly limit the implementation of national programmes of environmental protection at a large scale. Less than 1 per cent of the national budget of the DRC is allocated to environmental protection,<sup>21</sup> and barely covers the minimum expenses of environmental protection programmes required. National programmes of environmental protection disappeared one after another due to a lack of funds or were simply never put into place.<sup>22</sup> National programmes currently under conception are likely to face the same obstacle as the DRC budget allocated to environmental protection is yet to be increased.
- *Inability of the Government to abide by national environmental laws:* Several duties assigned to the central Government and to the MECNT under national laws are not complied with by government institutions (such as the law which imposes a duty on the central and provincial Governments to effectively manage waste in a manner that preserves a good quality of environment and health).<sup>23</sup> Significant piles of waste are found in most of the DRC's towns, and very little is done by the Government to remove them. Local environmental NGOs engage in waste management by coordinating waste collection campaigns in selected towns, but their work remains dispersed and ineffective. A few numbers of private companies propose domestic waste collection services (in the example of POUBEL NET in Bukavu) but the price they charge (between US\$5 and US\$20) is not accessible to the majority of the population.
- *Gap between legislation and practice:* Many of the lawyers who draft environmental laws in the DRC ignore the realities prevailing on the ground. Subsequently, many environmental laws do not address problems they are meant to solve, as they are based on theories, speculations, and projections. It is thus difficult to understand the

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<sup>21</sup> MECNT, *Rapport National synthèse sur le développement durable en République Démocratique du Congo* (2012) Kinshasa: UN DESA, RIO+20 & UNDP, at 9.

<sup>22</sup> *Democratic Republic of Congo Country Report* (2011) (available at [www.congoforum.be/upldocs/eiu.pdf](http://www.congoforum.be/upldocs/eiu.pdf)).

<sup>23</sup> Article 56, law No. 11/009 of 09 July 2011. Subsequently, a national directorate was created by Ministerial Order No. CAB.MIN/MBB/SGA/GPFP/JSK/035/2009 of 20 March 2009. Furthermore, although article 57(a) of Law No. 11/009 of 09 July 2011 prohibits the abandonment of domestic or industrial waste susceptible to cause damage to the environment, health and to produce uncomfortable odours; rarely are any offenders arrested for such offences. (A. Panda, *Obstacles à la Gestion efficiente de déchets solides en RDC: cas de la ville de Bukavu* (2011) (available at <http://ircwsscc.wordpress.com/2011/03/09/obstacles-a-la-gestion-efficiente-de-dechets-solides-en-rdc-cas-de-la-ville-de-bukavu/>)).

legislator's ideas, which generates further complications in implementation and enforcement.

- *Political instability:* The control and exploitation of mineral resources remain the main source of instability<sup>24</sup> and mining activity has caused water pollution, deforestation and soil erosion. Environmental protection is harder in regions of the eastern DRC under the control of rebel-armed groups, and environmental issues reported in these areas cannot be addressed.<sup>25</sup>
- *Lack of environmental pollution impact assessment:* The DRC does not undertake regular evaluation of environmental conditions and their impact on the health of nationals. Thus, the consequences of polluted environment on the health of local population in the DRC, remains unknown.<sup>26</sup>
- *Absence of mechanisms of coordination of the cooperation between various sectors:* National environmental, economic and social policies of the DRC were shaped in extremely arbitrary manner that does not enable cooperation between various sectors affecting environmental protection. This often generates conflict between various relevant environmental institutions. For instance, although the *Mining Code* calls for collaboration between the mining department and the MECNT, this is not done in practice. There is an apparent animosity between the two organisations, and the lack of a clear mechanism to regulate conflicts arising between these institutions results in serious difficulties.<sup>27</sup>
- *Overlapping institutional mandates:* There are several examples of overlapping institutional mandates in environmental protection in the DRC. Take for example the MECNT's Direction of Human Establishments and Environmental Protection and the Ministry of Mines' Department in Charge of the Protection of the Mining Environment.

<sup>24</sup> See generally Global Witness, 'Congo's Mineral Trade in the Balance: Opportunities and Obstacles to Demilitarisation' (2011). Section 1502 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* states that 'the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterised by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein'.

<sup>25</sup> Beyers et al, *Resource Wars and Conflict Ivory: The Impact of Civil Conflict on Elephants in the Democratic Republic of Congo - The Case of the Okapi Reserve* (2011) PLoS ONE; UNESCO 'Emergency appeal for Okapi Wildlife reserve (DRC) following murderous raid by poachers' (available at [http://www.unesco.org/new/en/media-services/singleview/news/emergency\\_appeal\\_for\\_okapi\\_wildlife\\_reserve\\_drc\\_following\\_murderous\\_raid\\_by\\_poachers/](http://www.unesco.org/new/en/media-services/singleview/news/emergency_appeal_for_okapi_wildlife_reserve_drc_following_murderous_raid_by_poachers/)).

<sup>26</sup> This includes air pollution (resulting from metallurgy; petrol and cement exploitation; wood combustion in the production of charcoal; slash-and-burn agriculture and fuel wood collection; manufacturing activities and transport), marine and water pollution, and so forth. See further: IUCN, *Strengthening Voices for Better Choices in the Democratic Republic of Congo: When All Voices are Heard, Forest Stakeholders Work Together* (2009), 1.

<sup>27</sup> For instance, there is no arbitration institution to address issues that arise in a conflict of competence between the mining, agriculture and forest sectors regarding the process of allocation of lands. This is aggravated by the lack of a clear national and regional development plan.

The mandate of the first includes environmental rehabilitation in mining areas and the conduct of environmental assessments in mining areas, which is basically the same mandate as the later.<sup>28</sup> This overlap of mandates causes serious problems in cooperation between the two Departments.

### **Environmental Case Law**

The judicial system of the DRC was significantly undermined by the armed conflicts of 1996 and 2003, from which it is still recovering. To date, there is neither a central database of cases examined by local courts and tribunals, nor an official journal (national or provincial) in which legal decisions and case law can be published. At most Universities environmental law is not offered at all, or at best as an elective course. This needs improvement in order to enable future lawyers to appreciate the enormity of environmental problems at the global, regional and national level and the role of law in the sustainable utilisation of natural resources and environmental management. This is also necessary to facilitate the coming into being of a more critical mass of lawyers who are conversant with environmental law. It would also increase the number of judges, magistrates, prosecutors, legal practitioners and councillors able to understand environmental law and sustainable development.

The judicial system in the DRC thus still faces numerous obstacles that specifically hinder the legal implementation of national environmental law including the following:

- lack of special courts to examine environmental disputes and offences;
- limited knowledge of environmental legislation by Congolese magistrates;
- lack of an updated compilation of national laws regulating environmental protection; and
- the absence of environmental personnel, programmes and structures provided for by national environmental laws.

An illustrative example of the latter is the proposed establishment of sworn agents of environmental protection.<sup>29</sup> No information has transpired to date on efforts undertaken to appoint these agents, who would play a significant role in the enforcement of national environmental laws by identifying and referring environmental offences for prosecution.

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<sup>28</sup> Other tasks of the Direction include: evaluation of the effects of the human activities on the environment; development of spaces; and prevention of activities that causes air, water and soil pollution.

<sup>29</sup> Article 71, Law No. 11/009 of 09 July 2011.

The same law<sup>30</sup> provided for the creation of national and provincial emergency plans to address environmental catastrophes. No information is available on whether these plans have been successfully drafted and are ready to be implemented if such incidents occur.

As a result, no environmental case law examined by local judicial institutions could be found. Yet, this does of course not imply that there are no violations of the environment, environmental laws or the prevalence of environmental conflicts in the DRC.

## Conclusion

Despite the significant number of laws and regulations adopted and/or amended to meet international standards of international environmental law, the financial support of international donors for the implementation of national programmes aimed at the consolidation of environmental protection and the enforcement of sustainable development in the DRC; environmental protection in the DRC is yet to generate significant positive impacts and the quest toward sustainable development remains trivial.

While some of the aforementioned laws no doubt contribute to the protection of the environment, the Government of the DRC, with its respective Ministries, must continue to endeavour to improve, perfect and adjust existing laws and where necessary enact new laws. Without any doubt, this process will be time consuming, is ongoing and will require financial support.

To address the continuous decline of the environment and improve the quest of sustainable development in the DRC, there is a need to undertake more interdisciplinary research that navigates the legal and socio-economic particularities that affect the environmental sector in the DRC and to establish a suitable system of environmental protection.

Lastly, the future success of the DRC's efforts to sustainably use, control, manage and safeguard its natural resources will depend to quite some extent on the different legal instruments that are available in order to develop a target-oriented environmental legislative framework. In the aforementioned context, and in line with the recent *United Nations Security Council Resolution 2078 (2012)*, the 'linkage between the illegal exploitation of natural resources, illicit trade in such resources and the proliferation and trafficking of arms as one of the major factors fuelling and exacerbating conflicts in the Great Lakes region of

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<sup>30</sup> Articles 64 & 65.

Africa' cannot be overemphasized and 'the regional efforts of the International Conference on the Great Lakes Region (ICGLR) against the illegal exploitation of natural resources' must be encouraged.<sup>31</sup>

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<sup>31</sup> Adopted by the Security Council at its 6873rd meeting, on 28 November 2012.