

COUNTRY REPORT: DEMOCRATIC REPUBLIC OF CONGO

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Introduction

The Democratic Republic of Congo (DRC) is home to one fifth of Africa's total forest area and an estimated 60 percent of all Congo basin forests.¹ Past research suggests that Congo basin forests as a whole sequester and store 10 to 30 billion metric tons of carbon.² This sequestration is an ecosystem service that is becoming increasingly important as concerns about human-induced climate change grow. The tropical forests of the DRC are the second largest in the world after the Amazon. The DRC ranks fifth in the world for plant and animal diversity and harbours five natural World Heritage sites.³ About 62 percent (1.45 million square kilometres) of the national territory of the DRC is covered by forests,⁴ among which 45 percent (850,000 square kilometres) is composed of primary rainforest or dense humid forests.⁵ The DRC Government estimates that 60 million hectares of forest are suitable for timber extraction, and that the timber production potential is 6 million cubic metres per year. These facts highlight the crucial role of DRC forests in the global climate and help explain the intense international attention on these forests.⁶

This country report focuses on the management of DRC forests. It begins with an overview of the legal and policy framework for DRC forest management. It concludes with a critical analysis of current status of this framework.

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¹ FAO Global Forest Resources Assessment, 2000 - chapter 15: Central Africa.

² Dkamela GP *et al* "Voices from the Congo Basin: Incorporating the Perspectives of Local Stakeholders for Improved REDD Design" (2009) *WRI Working Paper*, Washington DC: World Resources Institute.

³ Nelson J, Kipalu P & Vig S "Field Dialogue on Free, Prior and Informed Consent 21-25 May 2012 Bas Congo and Kinshasa" (2012) Kinshasa: The Forest Dialogue.

⁴ Approximately 86 million ha. Forest Monitor "The timber sector in the DRC: A brief overview" available at www.forestsmonitor.org (accessed 10 October 2013).

⁵ UNEP "Africa Atlas of Our Changing Environment" (2012) available at <http://www.unep.org/dewa/africa/africaAtlas/> (accessed 28 October 2013).

⁶ Streck C *Climate Change and Forests: Emerging Policy and Market Opportunities* (2008) London: Royal Institute of Internal Affairs 202.

Legal Framework for Forest Management in the DRC

The International Context

There is no single, binding international treaty covering every environmental, economic and social aspect of forest management.⁷ In 1992, United Nations member states approved the *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests* ('the Forest Principles'). Sustainable forest management principles are also partially addressed by provisions in the *United Nations Framework Convention on Climate Change* (1992), the *Convention on Biological Diversity* (1992) and the *United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification* (1994). The DRC has ratified each of these treaties.⁸

The Regional Context

The absence of an international sustainable forest management (SFM) treaty has not prevented the adoption of binding regional treaties. The *Southern African Development Community Protocol on Forestry* (2002)⁹ and the *Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa* (2005) exist alongside African regional treaties on environmental protection.¹⁰ These treaties represent a regional commitment to, among other things:

- strengthen national forest law and governance
- develop national policies that can support and influence the sustainable use of forest and woodland resources
- develop national environmental action plans and sustainable development strategies

National Legislation

⁷ Ruis BMGS "No forest convention but ten tree treaties" (2001) FAO, available at <http://www.fao.org/docrep/003/y1237e/y1237e00.htm> (accessed 13 October 2013).

⁸ UNFCCC ratified 9 Jan 1995, CBD ratified 03/12/1994, UNCCD ratified 12/09/1997.

⁹ Ratified by the DRC in 1998, <http://www.sadc.int/about-sadc/overview/history-and-treaty/>.

¹⁰ Such as the East African Protocol of Environment and Natural Resource Management (2005), the Phyto-Sanitary Convention for Africa (1992); the African Convention on the Conservation of Nature and Natural Resources (1968) and its Revised Version of 2003.

The DRC adopted the *Forestry Code* in 2002. The Code was the first forest management law to be adopted by the DRC since independence in 1960. The last forest management law dated from the colonial era and was no longer pertinent.¹¹ The *Code* contains several innovations including:

- a requirement that the State adopt a national SFM policy
- a requirement that logging companies and local communities enter into social responsibility contracts; and
- a requirement that all DRC projects undertake mandatory environmental impact assessment.

In 2006, the new DRC Constitution introduced advanced environmental obligations and provided for the creation of various national laws on environmental protection.¹² Subsequently, the DRC has adopted nearly 20 general environmental protection laws and eight forest management laws.¹³

National and International Forest Management Programmes

Other improvements to DRC forest management are occurring through the National Forest Fund and international donor programme. The DRC created the National Forest Fund in 2009.¹⁴ The Fund's objective is to sponsor reforestation activities and support the enforcement of national SFM law and policy. In 2013, the Fund supported reforestation activities in Orientale province.¹⁵ National funds also supplemented international donor programme funds in the following forest management projects:

¹¹ Consell S "Forest Governances in Africa" (2009) *South African Institute of International Affairs*.

¹² "Without prejudice to the other provisions of this Constitution, statutory law determines the fundamental principles concerning: c) the regimes pertaining to real estate, mining, forestry and immovable property; ... o) the protection of the environment and tourism;" (article 123).

¹³ <http://www.leganet.cd>.

¹⁴ provided for by article 81 Forestry Code of 2002; "Focus sur le Fonds Forestier National de la RDC" available at http://www.climat-forum.com/site/index.php?option=com_content&view=article&id=182:focus-sur-le-fonds-forestier-national-de-la-rdc-&catid=35:reportages--enquetes&Itemid=37 (accessed 12 September 2013).

¹⁵ See RADIO OKAPI/ ENVIRONNEMENT available at <http://radiookapi.net/environnement/2013> (accessed 20 November 2013).

Name and date	Partners	Objectives
Reducing emissions resulting from deforestation and forest degradation – REDD (2009-2013) ¹⁶	UN-REDD, Forest Carbon Partnership Facility, UNDP, FAO	To enable direct payments for slow forest loss, to enable provision of funding to establish protected areas and to plant trees
National Forest Mapping (2011-)	Ministry of environment and nature conservation in partnership with World Resource Institute	To improve the quality and availability of information in the forest sector and support transparent and participatory decision-making in SFM ¹⁷
Conservation of Biodiversity and Sustainable Forest Management (2005-2017) ¹⁸	GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) german cooperation	To address the lack of adequate environmental institutions and the lack of suitable concepts to preserve forest and biodiversity in the DRC

Critical Analysis of Current Framework

Continuous Decline of Forest Areas

The aforementioned law reforms and funding initiatives have failed to prevent the decline of total forest areas. In 2012, the deforestation rate was estimated at 0.25 percent (double the 1990 rate). This percentage is expected to increase substantially as a result of infrastructure, farming, mining and biofuel development activities.¹⁹ Between 2000 and 2012, two million hectares of forest were depleted.²⁰ This was partially due to the widespread non-observance of felling laws and a lack of clear legal guidance on management issues such as forest zone subdivision and illegal felling.²¹

¹⁶ Created by Ministerial order n° 004/CAB/MIN/ECN-T/012 of 15 February 2012, completed by Decree n° 09/40 of 26/11/09 on additional details on REDD-DRC structures of implementation.

¹⁷ Atlas Forestier Interactif (AFI) de la République Démocratique du Congo “Lancement officiel de l’Atlas Forestier Interactif de la République Démocratique du Congo” (2011) *forêt&vie* 18.

¹⁸ Decree n° 09/40 of 26/11/09 on additional details on the composition and organisation of the REDD-DRC structures of implementation, Ministerial order n° 004/CAB/MIN/ECN-T/012 of 15 February 2012, UNREDD annual report 2011. visit <http://www.giz.de/themen/en/16089.htm> (accessed 9 October 2013).

¹⁹ Ministry of Environment, Conservation of Nature and Tourism. UNEP “Democratic Republic of the Congo: Readiness Plan for REDD (R-PP)” (2010) at p.37-42; and “Des pays se liguent pour limiter la déforestation” (2013) <http://www.digitalcongo.net/article/91945> (accessed 17 November 2013).

²⁰ “The timber sector in the DRC: A brief overview” available at www.forestsmonitor.org (accessed 30 October 2013).

²¹ Resource Extraction Monitor “Mise en application de la loi forestière et de la gouvernance analyse de la législation forestière de la RDC” (2011) Cambridge: REM.

Non-Observance of Forest Laws

Local communities living adjacent to forest areas are reportedly responsible for illegal timber exploitations amounting to around 50 million cubic meters of wood.²² The wood is cut for activities such as local and international trade, charcoal production, agriculture and the exploitation of other natural resources.²³ Other reported infringers include logging companies and states (primarily China, France, Portugal, Belgium, Italy and the Netherlands). Logging companies operate with impunity. The states import illegal timber and fail to enact measures to stop the trade and import of illegal timber on their territories.²⁴

The DRC government itself has failed to take even the most basic measures to improve logging governance. This is noticeable in the reports of government violations and in the lack of government action on third party violations. For example, the Ministry of Environment and Nature Conservation (MECNT) continues to violate a 2011 law requiring it to publish logging contracts.²⁵ Consequently, information on the legality of wood exploitation cannot be verified.²⁶ This failing is compounded by the civil society outcry over a lack of reforestation programmes notwithstanding the reception of 'reforestation taxes' by the National Forest Fund.²⁷ It also sits uncomfortably alongside a failure to act to stop the illegal exploitation of timber in Bandundu. The Minister of Environment has stated that no timber exploitation permits have been issued in Bandundu for 2013. This statement fails to explain why logging activities have continued since January 2013 and no known action has been taken to address this situation.

Non-observance of forest law has also been displayed by members of the national army (the FARDC). Radio Okapi reported that in August 2013, FARDC soldiers refused to stop the illegal cutting of forest wood for the purpose of making charcoal in *Moba* (Katanga Province).

²² Global Witness *L'art de l'exploitation industrielle au Congo* (2012) at p.4; SODEFOR "les forets en R.D. Congo" (2013) available at <http://www.sodefor.net/home.php?page=les-foret-en-rd-congo> (accessed 8 October 2013).

²³ Radio Okapi "Province Orientale: les orpailleurs de Banyali kilo accusés de détruire l'écosystème", reported 13 August 2013, available at <http://radiookapi.net/environnement/2013/08/13/province-orientale-les-orpailleurs-de-banyali-kilo-accuses-de-detruire-lecosysteme/> (accessed 7 October 2013).

²⁴ Green peace Africa "Cut it Out: illegal logging in the Democratic Republic of Congo" (2013); REM "Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) in the Democratic Republic of Congo" (2013) Kinshasa: EU.

²⁵ Decree n° 11/26 of 20 May 2011 on obligation to publish all contracts regarding any DRC's natural resources.

²⁶ Green Peace Africa "Cut it out" at p.11.

²⁷ Available at <http://radiookapi.net/emissions-2/parole-aux-auditeurs/2012/12/12/comment-se-deroulent-les-activites-de-reboisement-dans-votre-milieu/> (accessed 24 October 2013).

The FARDC soldiers argued that this activity helped them provide for their families since their salaries had been delayed for a long period of time. They allegedly told MECNT employees that they would not stop cutting wood until their salaries were paid.²⁸

The above discussion outlines a variety of actors violating national and international SFM rules and principles. The following section critically analyses the contribution of DRC forest laws to the continuous decline of DRC forests.

DRC Forest Laws – Critical Analysis

It is well known that a variety of economic and political factors create barriers to the effective implementation of forest laws in the DRC. The question is to what extent are the problems rooted in the laws themselves? A critical analysis of the *Forest Code 2002* ('the Code') reveals that forest laws in the DRC are maladaptive for three reasons.

First, the structure of the current legal framework lacks context sensitivity. For instance, article 127 of the Code provides that offences are to be investigated and reported by forest inspectors. This assumes that forest inspectors are present in all forest areas. There are, however, no forest inspectors in most DRC forest areas. Further, the Code assumes the existence of fully functioning legal, administrative, infrastructure and personnel systems. In reality, such systems are non-existent. Most institutions essential for the implementation of forest laws were destroyed during the period of armed conflict. Another Code provision lacking context sensitivity is article 126. This article stipulates that an unprosecuted forest offence expires five years after it was perpetrated. The *Forest Code 2002* was developed in the later stages of the 1996-2003 armed conflict. In 2002, almost all DRC legal infrastructures were not functional, and it was not realistic to assume that they would become functional and able to investigate all forest offenses within the next five years. This means that many forest offences perpetrated between 2002 and 2008 will remain unpunished. Moreover, some forest areas remain under the control of armed rebel forces. It is likely that offences occurring in these areas will also go unpunished. Lastly, there are a number of complementary measures necessary for the Code to have full effect in all areas of the country. In many places, these measures are yet to be implemented.

²⁸“Katanga: les militaires refusent de respecter interdiction de coupe de bois à Moba” available at <http://radiokapi.net/environnement/2013/08/18/katanga-les-militaires-refusent-de-respecter-linterdiction-de-la-coupe-de-bois-moba/#more-158768> (accessed 20 October 2013).

The second reason the Code is maladaptive is that its goal does not sufficiently consider the DRC's development needs. Its primary purpose is to regulate forest exploitation in the interests of environmental protection. This purpose fails to acknowledge the vital role of forests in the economic development of the DRC and in achieving the Millennium Development Goals. Further, the Code does not take into consideration the extensive economic and social values that forests hold for civil society and specific groups. For example, wood is the main source of energy in the DRC, accounting for about 80 percent of national household energy consumption.²⁹ Also, the exploitation forest resources provides for the livelihoods of millions of forest and rural dwellers.

Finally, the Code is maladaptive because it is monocentric. It proposes only state-based responses to problems arising in the forest sector (via the judiciary). It does not provide for substantial involvement of local authorities or local communities in forest management. The above facts suggest that the *Forest Code* does not effectively address the problems it was intended to solve.

Conclusion

The DRC is part of a global move towards SFM. It has adopted international forest management rules and regional forest management treaties. The DRC has also promulgated national forest laws. It is possible for decentralised funding programmes to offset some of the failures of the national legal framework. However, this possibility is yet to eventuate. The programmes implemented during the last decade have failed to adequately accommodate the particularities affecting forest management in the DRC.

The international instruments to which the DRC have subscribed oblige the DRC to implement a legal framework for the regulation of forests. Although the DRC has complied with this obligation, it is clear that the resulting laws are maladaptive. There is thus an urgent need to review current forest laws. For DRC forest laws to be effective, they must take account of the socio-economic and political particularities prevailing in the country, provide for adaptive and alternative implementation measures and ensure the active participation of local communities in forest management and forest law implementation. Further, it is incumbent upon the Congolese legislature to adopt the complementary laws necessary for implementation of the *Code*. Moreover, all existing laws related to forest management

²⁹ Debroux L, Hart, T, Kaimowitz, D, Karsenty, A and Topa, G (Eds.) *Forests in Post- Conflict Democratic Republic of Congo: Analysis of a Priority Agenda* (2007) A joint report by teams of the World Bank, Center for International Forestry Research (CIFOR) *et al.*

should be compiled in one document to facilitate easy reference for legal practitioners and others involved in the exploitation and management of forests and the enforcement of forest laws. This task would be greatly assisted by the development and adoption of a global forest policy.