

COUNTRY REPORT: DEMOCRATIC REPUBLIC OF CONGO

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Introduction

The protection of the environment in the Democratic Republic of Congo (DRC) remains a challenging issue that scholars need to research and elaborate on in order to improve the lives of the present and future generations. The implementation and enforcement of the existing legal and regulatory framework pertaining to the environment remains a complex process in DRC. The shocking degradation of the environment in the country should not be justified by the consequences of the armed conflict in the past. This is because the preservation of the environment is at risk in times of peace as well as in times of armed conflict. The challenges pertaining to the management of the environment, the implementation and the enforcement of the legal instruments within the country should attract the urgent attention of the international community. This is because environmental problems such as global warming and air pollution cannot be addressed nationally by one country alone.¹

This report highlights the current environmental legal and regulatory framework and the improvements made through the enforcement of the new law on nature conservation. The proposals of the law on hydrocarbon and the Mining Codes under examination at the National Assembly will also be considered. The structure of the report is as follows: an overview of the current environmental legal and regulatory framework (I); the project on the exploration and the future exploitation of oil in Virunga National Park by Sydney Oil Company (SOCO) and disputes on the cross-border exploitation of natural resources (II); the

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¹ Kihangi Bindu Kennedy, "Environmental legal requirements and the exploitation of natural resources in a post conflict country: A case study of the Democratic Republic of Congo" (2013), *The A38 Journal of International Law*, Vol 1, Ed. 3, p. 1.

exploitation of natural resources and the rights of local communities (III); the justiciability of environmental rights (IV); and concluding remarks (V).

Overview of the Environmental Legal and Regulatory Framework of the Democratic Republic of Congo

The legal and regulatory framework relating to the environment in DRC has been fleshed out by the enactment of new laws and the proposals under examination at the National Assembly:

- *Law No 14/003 of 11 February 2014 on Nature Conservation*: This is a new law enacted to support the national government strategies concerning the conservation of nature. This law repeals the Ordinance Law No 69-041 of 22 August 1969 on the Conservation of Nature and introduces important innovations in the protection of the environment. The innovations include public participation in the decision-making process, local communities involvement in the strategic steps for establishing and managing protected areas, social and environmental impact studies for all projects relating to the creation of protected areas, traditional knowledge on nature conservation, access to biological and genetic resources, just and equitable benefits derived from resources. Strong measures and criminal provisions are defined through six chapters: General Dispositions; Conservation Measures; Biological and Genetic Resources and Traditional Knowledge; Financial mechanisms; Infractions and Punishments and the Final Repeal clauses.

Keeping with its international obligations on the management of the environment, DRC has made an important step on the road to sustainable management of biodiversity and ecosystems through this law. It is however, disappointing to point out that its implementation and enforcement has not been effective. There are no proper mechanisms to allow the public to hold the government accountable should it fail to uphold its obligations. While implementing this law, particular attention should be given to the following provisions:

- Protection of wild fauna and flora species threatened with extinction;
- Management of biological and genetic resources and traditional knowledge of local communities;
- Guarding protected areas against any direct or indirect pollution of waters, rivers and water areas;
- Protection against any exploration or logging, mining, oil and gas areas.

In this vein, a fruitful collaboration between the managers of protected areas, local communities and civil society organizations for the sustainable management of protected areas is required.

In addition, written proposals for new laws are under examination at the National Assembly:

- Proposal of the law on hydrocarbon code. Considering the debate concerning the drafting of a programme for oil exploration and exploitation, there is a critical need to update the Ordinance Law No 81-013 of 2 April 1981 pertaining to General Legislations on Mines and Hydrocarbon and drafting a national policy on Oil exploration and exploitation.²
- Proposal of the revised mining code under examination at the National Assembly.

Project on the Exploration and the Future Exploitation of Oil within Virunga National Park by Sydney Oil Company (SOCO) and Disputes on the Cross-Border Exploitation of Natural Resources

A critical analysis of the balance that needs to be struck between the economic and environmental interests reveals the challenge that DRC faces in the management of natural resources. The case that has gained international attention is that of the oil exploration and exploitation project in Virunga National Park. The boundaries of the park largely coincide with areas under exploration around Lake Albert and Lake Edward. With the authorisation from the government of DRC, the British Company SOCO commenced the activities of oil exploration within the Park. SOCO misrepresented that it had taken all the necessary measures and safeguards to ensure that its operations will not have a negative impact on the environment. The WWF became aware of the misrepresentation and decided to file a complaint with the UK's National Contact Point to bring attention to this violation of the OCED guidelines for multinational enterprises. Thus, the debate has opposed different stakeholder's political leaders, local civil society organizations and international organizations such as UNESCO and WWF while questioning socio-economic and environmental interests of the Virunga National Park and oil economic exploitation interests. It is disappointing to note that local communities are not directly involved in the decision-making process despite the fact that the law adopted in 2011 pertaining to the fundamental principles on the protection of the environment through the Environmental Impact Study

² Kihangi Bindu Kennedy, « L'exploitation du pétrole du Lac Edouard et la loi environnementale en République Démocratique du Congo », (2011) *Legal aspects of sustainable natural resources, Legal Working Paper Series*, CISD, p. 7.

must take into consideration the rights of local communities through the consultation process.³

Through the Virunga Campaign launched by WWF and UNESCO; the World Heritage Committee called for the cancellation of all Virunga Oil permits stating that oil and mining exploration and exploitation are incompatible with the World Heritage status of the area. The Committee urged the government of the DRC to ensure that companies based in its territory do not damage properties with World Heritage status. According to the Independent Consulting firm Dalberg Global Development Advisors commissioned by WWF, the potential future economic value of Virunga National Park could be more than US1.1 billion per year in “a stable situation characterized by the absence of conflict, secure access to the park, and sufficient resources to protect the ecosystem”. In line with the above, WWF has called on all stakeholders involved in the management of this park to act together towards the protection of the park from oil exploration and exploitation:⁴

- WWF calls on SOCO to publicly commit to cease all exploration within Virunga, respecting the park’s current boundaries, and respecting all World Heritage Sites.
- WWF calls on SOCO investors to warn the company about the risks of stranded assets, reputational risks and operational risks.
- WWF calls on the DRC government to uphold and respect DRC law and regulations that prohibit environmentally harmful activities such as oil exploration and exploitation in protected areas including Virunga.
- WWF calls on all governments to hold accountable those companies proven to circumvent national laws and international treaties in the pursuit of unsustainable financial gains.

According to the WWF, oil exploration and exploitation in Virunga National Park would threaten the long term value of the park, limit sustainable economic development prospects

³ Articles 21 & 22 of the Law No 11/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment; articles 15 & 42 of the Law No 007/2002 of 11 July 2002 on Mining Code; articles 407 & 430 of Decree No 038/2003 of 26 March 2003 relating to Mining Act; article 20 of the Decree of 8 April 2008 defining the content of the environmental impact study in the DRC; articles 66 – 71 of the law No11/022 of 24 December 2011 on fundamental principles relating to agriculture.

⁴ The Economic Value of Virunga National Park, Protecting Virunga National Park: Following Dalberg and WWF report, OECD agency launches examination of company exploring for oil in park, available on: <http://dalberg.com/blog/?tag=the-economic-value-of-virunga-national-park>

in the country, lead to greater instability, harm resident's health and compromise human rights. This statement was drawn from the debate going on in DRC's Bas Congo province relating to the socio-economic impact of oil exploitation by the British Firm PERENCO and its negative effect on the environment in the area (pollution for instance). In addition, according to Olivier Petitjean,⁵ PERENCO intends to expand its operations into other districts of Bas Congo, including into the agricultural area of Mayombe. PERENCO's operations in Bas-Congo are an example of how oil extraction can destroy the environment and the livelihoods of local communities, without giving them anything in return. In Muanda, the 'poorest oil city in the world,' exploitation of petroleum by the Anglo-French company PERENCO has brought no real developmental benefits.

In fact, Virunga National Park is Africa's oldest national park, founded in 1925 and located in the Eastern Part of DRC in the North Kivu Province, a World Heritage Site listed as in danger, and a wetland of international importance. This park remains important because of its diverse habitats that include dense forests, savannahs, rivers, marshland, active volcanoes, permanent glaciers, and snow on Mt Ruwenzori. Virunga contains more species of mammals, reptiles and birds than any other protected area in Africa, and possibly in the world, including important species of elephants, chimpanzees, hippopotami, and other iconic species. Eighty five per cent of Virunga has been included in oil concession blocks.⁶ All stakeholders are waiting for the result of the exploration that has to be released by SOCO or the government in 2015.

Exploitation of Natural Resources, Local Communities Rights and Disputes with regards to the Cross-Border Exploitation of Natural Resources

The exploitation of natural resources in DRC is linked to armed conflicts particularly in the Eastern Part of the country and the extraction of mineral resources. International Crisis Group noted in its report in 2012 that "inadequate legislation, absence of state regulation, a lack of financial transparency and the bureaucracy of this strategic sector risk casting a curse on the oil industry – much like the mining sector – and becoming a new centre of tension between local and foreign interests. Similarly, without an institutionalized dialogue

⁵ Olivier Petitjean, Perenco in the Democratic Republic of Congo: When oil makes the poor poorer, <http://multinationales.org/Perenco-in-the-Democratic-Republic>, September 2014.

⁶ The Economic Value of Virunga National Park, Protecting Virunga National Park: Following Dalberg and WWF report, OECD agency launches examination of company exploring for oil in park, available on: <http://dalberg.com/blog/?tag=the-economic-value-of-virunga-national-park>

with civil society and genuine decentralization, provinces and communities where fossil fuel reserves are located may not benefit from the revenues, which could fuel resentment and further weaken national cohesion”.⁷

In addition, it has been emphasized that cross-border natural resources namely oil reserves and minerals are at the heart of the misunderstanding, mistrust and tensions between DRC and several other countries such as Uganda, Angola, Burundi, Zambia and Congo Brazza Ville. To date, border demarcation program is dealing with problems relating the allocation of exploration blocks in disputed areas between DRC and Uganda and between DRC and Angola. Dealing with the dispute between DRC and Uganda, both countries have signed agreements “Ngurdoto Accord”, that is at the heart of debates relating to its implementation. On the other side, the necessity of having a comprehensive and amicable agreement to end disputes between DRC and Angola is an urgent matter that needs to be addressed.

Civil society organizations within the country have been more concerned about the level of corruption taking place in the mining sector, mismanagement, and the abuse of human rights. The Resources Network Coalition in the country has been campaigning for the adoption of a legal framework on fossil fuels that would bring more transparency and ensure public participation, in line with international norms. Indeed, DRC has not yet established a proper legal code for oil operations, and the sector is still governed by out-dated and an incomplete sets of rules, which fail to deal with social and environmental issues.

The DRC finally joined the Extractive Industries Transparency Initiative (EITI) after having missed several opportunities to do so since 2005. One believes that the government will act according to international standards dealing with accountability and transparency for good management of the extractive sector and economic growth. Olivier Petitjean points out that “the ultimate goal is ensuring that decisions about the exploitation of oil in the Congo and the social and environmental impact thereof will be taken in a democratic and transparent

⁷ Black Gold in the Congo: Threat to Stability or Development Opportunity? Available on <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/188-black-gold-in-the-congo-threat-to-stability-or-development-opportunity.aspx>

manner, weighing all the costs and benefits, and ensuring that these benefits will be distributed fairly to the population of the DRC".⁸

Justiciability of Environmental Rights

The 2006 Constitution of DRC that has paved the way to constitutionalism and democracy entrenches environmental rights as fundamental human rights. On the one hand, the right to a healthy environment is constitutionally guaranteed, on the other hand, citizens must defend the environment in order to give effect and meaning to the right guaranteed. Public authorities must ensure that the good health of the population is protected through the protection of the environment. Under the constitutional umbrella, the law of 2011 integrates the right to a healthy environment, which is an individual and collective right, and provides the public with a mechanism to hold the government accountable should it fail in implementing the right.⁹

Unfortunately, there is a critical gap between the legal provisions and the reality on the ground. Environmental rights (such as the right to have access to clean drinking water, the right to decent housing, the right to electricity) provided by the constitutional bill of rights are not respected. Obviously, political leaders are more concerned by their economic gain at the expenses of the environment. Judges are ill prepared to deal with cases relating to environmental matters. Moreover, the public are unaware of the mechanisms provided to hold the government accountable. Jurisprudences on matters of the environment are lacking within the country to further the understanding on environmental rights and other related environmental matters. Considering the political picture portrayed by the government, one is skeptical of the government's willingness in implementing the above rights and meeting the UN Millennium Development Goals. It seems there is a long journey ahead.

⁸Olivier Petitjean, Perenco in the Democratic Republic of Congo: When oil makes the poor poorer, <http://multinationales.org/Perenco-in-the-Democratic-Republic>, September 2014.

⁹Article 46 of the Law No 11/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment; article 134 of the law No 11/2002 of 29 August 2002 on Forestry Code of 2002 of the Democratic Republic of Congo.

Concluding Remarks

In spite of the fact that the Democratic Republic of Congo has been developing an impressive legal and regulatory framework pertaining to the environment, the degradation of the environment is distressing. All efforts towards the implementation and enforcement of the above legal texts do not bear fruits due to political whims. Discussions on environmental matters do not have concrete impact on the ground. The project on the exploration and/or the future exploitation of oil in Virunga National Park, recognized by UNESCO for its outstanding natural value in 1979 and described as a World Heritage Site, is a strong illustration of political leaders undermining environment concerns. In the context of a weak state, poor governance, massive poverty, insecurity and lack of a national political environment plan, an oil rush will certainly have a great impact; unless the government adopts effective steps to avert such a devastating scenario. Environmental education programs within the country need to be drafted and implemented. Certainly, the improvement of the legal and regulatory framework in place is needed within the country. However, this will only be meaningful through the process of implementation and enforcement and its impact at the ground. A good life is still possible in DRC for the benefit of present and future generations.