

Environment under Reconstruction: Environmental Law and Policy in the Democratic Republic of Congo

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Abstract: *The Democratic Republic of Congo (DRC) has vast potential and natural wealth. Persistent armed conflicts since 1996 have, however, dramatically reduced the national output, government revenue, and increased external debt. Commonly known, the DRC is also home to an enormous biodiversity, it has a large variety of mineral resources, a huge hydrography and vast forests. Major environmental concerns inter alia include wildlife poaching, deforestation and mining and ecosystem degradation. This brief report serves to highlight legal progress made in the field of environmental law and policy in the DRC between 2006 and 2012. It outlines problem areas of environmental protection, reflects on national programmes implemented during the period under study while at the same time highlighting some major obstacles to environmental law, policy and sustainable development in the DRC.*

A. Introduction

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 and mining and ecosystem degradation. Commonly known, 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 accounts for one-fifth of Africa's total forest area. About 45 percent of the DRC is covered by primary rain forest and since 2000 approximately two million hectares of forest in the DRC have been lost. Major threats in this regard are fuel wood collection, agriculture, and logging.

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The DRC is home to an enormous biodiversity, rare animal species such as Okapi and mountain gorillas.¹ Having mentioned this, this brief report serves to highlight legal progress made in the field of environmental law and policy in the DRC between 2006 and 2012. It outlines problem areas of environmental protection, reflects on national programmes implemented during the period under study while at the same time highlighting some major obstacles to environmental law, policy and sustainable development in the DRC.

B. Environment under Reconstruction

The law in the DRC reflects the country's history and is the product of different sources, both African and from the former colonial powers. The legal system of the DRC is a civil legal system based on a Belgian version of French civil law, still bearing many elements of African customary law.² According to Article 215 of the 2006 Constitution,³ the Congolese legal system follows the monist approach with regard to the application of international law. However, Articles 214 and 216 limit the operation of Article 215 by requiring domesticating legislation for specified types of international treaties and subjecting the application of international law in the DRC to the Constitution.⁴ From an environmental perspective, various international commitments and memberships do play a role when assessing the legal obligations under international law. The DRC is a party to a broad variety of multilateral environmental legal instruments.⁵ As a member to the African Union (AU),⁶ the Economic Community of Central African States (ECCAS),⁷ the Common Market for Eastern and Southern Africa

- 1 Cf. UNEP (2008). Africa Atlas of our Changing Environment. <http://www.unep.org/dewa/africa/africaAtlas/> (last accessed on 28 December 2012).
- 2 Cf. Hinz MO/ Ruppel OC/ Mapaure C (2012). Knowledge lives in the lake. Case studies in environmental and customary law from southern Africa. Windhoek: Namibia Scientific Society.
- 3 The adoption of a new Constitution was a result of the over throw of president Mobutu's power in 1996 by the opposition coalesced in the AFDL. After a political impasse that lasted from 1997 to 2003, and the adoption of a Government of national unity that ruled the country between 2003 and 2006, the DRC adopted a new Constitution, which was followed by presidential elections.
- 4 The Legal System and Research of the Democratic Republic of Congo (DRC): An Overview; available at http://www.nyulawglobal.org/globalex/democratic_republic_congo1.htm (last accessed on 26 December 2012).
- 5 Cf. United Nations Information Portal on Multilateral Environmental Agreements; available at www.informea.org (last accessed on 26 December 2012).
- 6 For further details on Environmental Law within the AU see Ruppel OC (2013) Environmental Law in the African Union. In: Ruppel OC/ Ruppel-Schlichting (eds), Environmental Law and Policy in Namibia. 2nd edition. Windhoek. Macmillan Education Namibia.
- 7 ECCAS was established in 1983. Members of ECCAS are Angola, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Democratic Republic of Congo, Equatorial Guinea, Gabon, and Sao Tomé and Príncipe.

(COMESA)⁸ and the Southern African Development Community (SADC),⁹ the DRC has made further environmental commitments.

Some key environmental laws have been drafted prior to the 2006 Constitution.¹⁰ It is, however noteworthy, that national legal developments in environmental protection in the DRC mainly commenced with the adoption of the 2006 Constitution. During the 45 years preceding the 2006 Constitution, the DRC already had 8 previous “Constitutions”.¹¹ The 2006 Constitution introduced environmental rights and obligations such as the right to clean drinking water (Article 48); the right to a healthy environment and the duty to protect the environment (Article 53); the obligation of the State to protect the environment and to ensure health of populations (Article 54); and the obligatory control of domestic and international toxic waste resulting from economic activities (Article 55). Article 123 of the Constitution provides for laws to be made concerning, *inter alia*, the protection of the environment and tourism. To protect amongst others the environment, natural sites and landscapes, Article 203 allows for cooperative governance by central government and the provincial administrations.

Subsequent to the 2006 Constitution, between 2006 and 2012, various national laws were introduced and/or amended to improve environmental protection dispositions,¹² which reflects

- 8 COMESA Member States are Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Seychelles, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.
- 9 SADC was established by signature of its constitutive legal instrument, the SADC Treaty. The community currently counts 15 states among its members, namely Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe; For Environmental Law in SADC in General see Ruppel OC (2012). SADC Environmental Law and the Promotion of Sustainable Development. SADC Law Journal Vol. II No. 2: 246-280 available at http://www.sadcjournal.org/modules/scrubite/pninclude/s/xinha/plugins/ExtendedFileManager/images/Vol2_2012SADC%20ENVIRONMENTAL%20LA W.pdf (last accessed on 28 November 2012).
- 10 Ordinance n° 52-443 of 21 December 1952 containing measures to protect springs, groundwater aquifers, lakes and water courses against pollution and water wastage and to control water rights; Ordinance n° 69-041 of 22 August 1969 on the Conservation of Nature, protecting all species of fauna and flora in protected areas (national parks and related reserves); Hunting Ordinance n° 082-002 of 28 May 1982; Forest Ordinance n° 011/2002 of 29 August 2002, which sets out the law applicable to the conservation, exploitation and development of forestry resources; and the Mining Ordinance n° 007/2002 of 11 July 2002, which specifies the need for Environmental Impact Assessments to be conducted for certain activities.
- 11 Loi fondamentale du 19 juin 1960, Constitution du 1er août 1964, Constitution du 24 juin 1967, Loi constitutionnelle du 15 août 1974, Acte constitutionnel harmonisé du 2 avril 1993, Acte Constitutionnel de la transition du 9 avril 1994, Décret-loi constitutionnel du 27 mai 1997 et Constitution de la Transition du 3 avril 2003.
- 12 Ordinance n° 043/CAB/MIN/ECN-EF/2006 of 8 December 2006 on environmental and social impact assessment obliges corporations undertaking development projects in the DRC to conduct an assessment of the environmental and social impact of their activities; Ordinance n° 070 CAB.MIN-ENER/2006 of 9 December 2006 amending Ministerial Order n° E/SG/0/0133/C/93 of 17 March 1993 regulates the acquisition process of an authorisation for surface and subsurface water exploitation; Ordinance n° 020/CAB/MIN/ECN-EF/2006 of 20 May 2006 establishes a list of protected

a certain degree of legislative commitment regarding environmental protection. Unfortunately, however, less than 1% of the national budget is allocated to environmental protection,¹³ which barely covers the minimum expenses of environmental protection programmes required. Consequently, the highest amount of funds invested in national programmes of environmental protection comes from international donors. The following section aims to undertake a brief analysis of main sectorial national environmental protection programmes executed in the DRC between 2006 and 2012:

I. Forest management

62% of the national territory of the DRC is covered by forest.¹⁴ The Government estimates that 60 million hectares of forest are suitable for timber extraction, and that the timber production potential is of 6 million m³ per year. The national wood energy consumption is about 72 million m³ per year, representing 80% of the national household energy consumption.¹⁵ As sustainable management of the Congolese forests continuously faces various challenges, forest management became a central concern for international donors assisting the DRC's

animal species in the DRC with reference to the list under the Convention on International Trade in Endangered Species of Wild Fauna and Flora Ordinances n° 008/CAB/MIN/ECN- T/2008 and n° 082/CAB/MIN/FINANCES/2008 of 11 April 2008 on taxes for timber exploitation attempt to regulate the taxation of timber exploitation, providing for taxes for the cutting of wood and the processing of wood (Article 5); Ordinance n° CAB.MIN/MBB/SGA/GPFP/JSK/035/2009 of 20 March 2009 creates a unit in charge of environmental disputes resolution to ensure protection of populations against negative effects of environmental pollution; Ordinance n° 107/CAB/MIN/ECN-T/15/JEB/09 of 20 August 2009 establishes a National Forestry Zoning Steering Committee to improve land use planning; Ordinances n° 001/CAB/MIN/ENVIRO/2010 and n° 409/CAB/MIN/TVC/001 of 21 January 2010 establish a Marine Pollution Control Centre with the objective to implement the MARPOL Convention (Article 3) and to control activities of private marine companies in charge of marine waste management in the ports of Matadi, Boma and Banana; Ordinance n° 001/CAB/MIN/ECN-T/27/JEB/10 of 8 January 2011 on the creation of a natural reserve '*Triangle de la Ngiri*' placing 5500 km² of the *Equateur* District under special protection, by declaring it a natural reserve for protection of water reserves in the Congo basin and of various animal species indexed in the *Ngiri* area (Articles 1-2); Ordinance n° 002/CAB/MIN/ECN- T/03/JEB/11 of 19 January 2011 regulates the boundaries of the protected hunting territory of Luama Katanga; Ordinance n° 11/009 of 09 July 2011 provides fundamental principles for environmental protection adopting a significant number of international environmental law principles; Ordinance n° 11/022 of 24 December 2011 on fundamental principles of agriculture was essentially adopted to address issues related to agriculture, it gave significant attention to environmental protection as agricultural problems also engender deforestation and threatening biodiversity.

- 13 MECNT, Rapport National synthèse sur le développement durable en République Démocratique du Congo (2012) Kinshasa: UN DESA, RIO+20 & UNDP, at p. 9.
- 14 Approximately 86 million ha; cf. The Timber Sector in the DRC: A Brief Overview, at p. 1, available at www.forestsmonitor.org (last accessed on 10 November 2012).
- 15 Debroux L., Hart T., Kaimowitz D., Karsenty A., & Topa G. (Eds.) Forests in Post-Conflict Democratic Republic of Congo – Analysis of a Priority Agenda (2007) Jakarta: Joint report by teams of the World Bank, Center for International Forestry Research (CIFOR).

Government in environmental protection. The majority of the funds received by the DRC for environmental protection were directed toward forest management projects. Four noteworthy programmes on forest management were undertaken in the DRC between 2006 and 2012:

In 2010, the DRC commenced negotiations with the European Union (EU) for a Voluntary Partnership Agreement in the EU's Forest Law Enforcement, Governance and Trade (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.¹⁶ 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.

The DRC was chosen by the Oversight Board of the United Nations Collaborative Initiative on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD) as one of the pilot countries to be prepared for reduction of emissions resulting from deforestation and forest degradation. Between 2009-2010, efforts focused on the preparation of the installation of the REDD programme in the DRC.¹⁷ The programme includes initiatives to protect forests, biodiversity and wildlife, and activities relevant for the enforcement of environmental laws. The REDD programme in the DRC was cited as an example of best practice with regards to consultation and participation of local populations and civil society,¹⁸ despite unremitting challenges.¹⁹

Since 2006, improving the traceability of wood exported from the DRC is one of the objectives of the DRC's Government. A 'National plan of action against deforestation' was adopted the same year but remains ineffective. In 2011, a 'wood exploitation permit'²⁰ and 'provincial forest councils'²¹ were created. The provincial forest councils, were assigned the objective to improve forest management at regional levels and to take decisions on sustainable management of forests. Both are currently being progressively installed. In 2009, Decree n° 08/03 of 21 May 2009 created a National Forest Council, tasked to coordinate the activities of the provincial forest councils. On 19 January 2011, the Ministère de l'Environnement, Conservation de la Nature et Tourisme (MECNT) launched an interactive forests mapping

16 Available at http://www.euflegt.efi.int/portal/home/vpa_countries/in_africa/democratic_republic_of_congo/ (last accessed on 7 November 2012).

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

18 UN- REDD Programme Engaging Civil Society in REDD: Best Practice in the Democratic Republic of Congo (2009).

19 Rights, forests and climate briefing series "Consultation with indigenous peoples and others affected by REDD initiatives in the DRC: An example of best practice?" (2010). Forest People Programme.

20 Circular note (005/CAB/MIN/ECN-T/15/JEB/2011 of 15 August 2011).

21 Order n° 034/CAB/MIN/ECN-EF/2006 of 5 October 2006.

initiative,²² which is expected to provide updated information on the forest zones of the DRC.²³

II. *Combatting Desertification*

Developed with the aim 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 combat desertification was finalised in 2012.²⁴ Although significant, the efforts of the DRC Government in forests management are not sufficient.²⁵ Protection of forests have been undermined by illegal timber exploitation; violation of the new process of conversion of previous forest concession titles;²⁶ the lack of management plans of forest concessions; the lack of follow up and settlement of forest concessions conflicts; the lack of clear subdivision of forest zones; the lack of adapted human and material means to control forest exploitation; the absence of a common land use policy between MECNT, the Ministry of Agriculture, and the Ministry of Mines; the lack of dissuasive fines to be paid in case of violation of forest management norms;²⁷ unsatisfactory involvement of stakeholders in decision making; the lack of mechanisms for exchange and dissemination of information; corruption; uncontrolled agriculture expansion; illegal logging; and bushfires. As a consequence Congolese forests are still threatened and continuously declining.

22 Atlas Forestier Interactif (AFI) de la République Démocratique du Congo.

23 Lancement officiel de l'Atlas Forestier Interactif de la République Démocratique du Congo" forêt & vie. (2011), at p. 18.

24 RIDDAC RDC: Finalisation du Plan national de lutte contre la desertification, available at <http://www.riddac.org> (accessed 15 November 2012).

25 Cf. Exploitation forestière en RDC, les irrégularités persistent (2012).

26 In an effort to improve forestry management under the new Forest Code of 2002, the Government repealed 163 logging contracts detained by logging companies (25.5 million hectares of forest) from those obtained during the war or in its aftermaths, plagued by corruption. Controversially, between 2006 and 2010 the DRC Government granted 108 new exploitation titles (around 15.5 million hectares of forest) in violation of the moratorium linked to the 2002 Forestry Code. The World Bank agreed to provide US\$ 90 million of development aid to the DRC with the conditions: (a) that the Government of the DRC would not issue new concessions granting logging companies the right to exploit forests, and (b) that the Government of the DRC would not renew existing concessions contracts. It is alleged that many of the new titles were granted without proper consultations of provincial authorities and local and indigenous communities, fuelling new tensions among stakeholders in a country where natural resources have been at the heart of conflict for decades. [CIFOR, WB & CIRAD "Forests in Post-conflict DRC: an analysis of priority agenda" (2007) available at http://www.illegal-logging.info/approach.php?a_id=70 (last accessed on 5 November 2012); Brahic C (2007). Protected! Congo forest is logged regardless; available at <http://www.newscientist.com/article/dn11585-protected-congo-forest-is-logged-regardless.html> (last accessed on 5 November 2012).

27 Cf. Mise en application de la loi forestière et de la gouvernance analyse de la législation forestière de la RDC (2011).

III. Mineral Resources Exploitation

A large variety of natural mineral resources are found in the DRC.²⁸ Their control and exploitation remained the main source of instability in the DRC through the period under scrutiny,²⁹ and amounted to environmental damages including among others water pollution, deforestation, and soil erosion. The main national programmes that addressed issues of mineral exploitation include the following: Subsequent to the huge lack of transparency in the mining sector,³⁰ the DRC joined the Extractive Industries Transparency Initiative (EITI) – an international initiative – aiming to reduce illegal exploitation of mineral resources. It received funds from the German Gesellschaft für Internationale Zusammenarbeit (GIZ) to install the EITI national office (EITI-DRC).³¹ Drafted for a four years period (2009 – 2012), the ‘Supporting good governance in mineral resources exploitation’ programme enabled 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 2008-2009.³² The drafting of EITI reports for the DRC faces two significant obstacles: (a) the lack of accuracy of information received from mining exploitation companies operational in the DRC, and (b) the lack of means to verify received information. The EITI-DRC tri-annual plan 2011-2013 provides for the establishment of 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.

Traceability of natural resources produced in the DRC remains a hard task.³³ Decree n° 09/57 of 03 December 2009³⁴ created a Centre of Certification of Mineral Resources produced in the DRC – C.E.E.C’. The C.E.E.C was assigned, among other duties, the responsibility to

- 28 African Trader (Promoting Business in Africa); available at <http://africantrader.co/website/index.php/about-us.html> (last accessed on 5 November 2012).
- 29 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, “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”.
- 30 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 n° 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.
- 31 Established by Decree n° 09/27 of 16 July 2009.
- 32 EITI, Rapport de l’administrateur en dependant de l’ITIE sur les revenus 2008-2009 (2012) Paris: Fair links. The drafting of the EITI report 2010-2011 is expected by April 2013, and the 2012 EITI report is projected for December 2013. See “Triennial plan 2011-2013 ITIE-RDC” (2012), at p. 4.
- 33 Crisis Group ‘Conflict minerals in the DRC’ available at <http://www.crisisgroup.org/en/publication-type/key-issues/country/conflict-minerals-in-drc.aspx> (last accessed on 12 November 2012).
- 34 Amended by Decree n° 11/28 of 7 June 2011.

ensure traceability of minerals produced in the DRC.³⁵ Nevertheless, traceability of minerals produced in the DRC remains impossible and mining exploitation continue to fuel activities of rebel armed groups in the East of the DRC.

IV. Water Management

The DRC is one of the water-richest countries in the world. 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.³⁶ The DRC experience various deficiencies in the water sector management including the lack an appropriate legal framework; the lack of a coordinated water resource planning; and the lack of efficient water providers and well-qualified personnel to work in the water sector.

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 programme is to be executed within ten years (2006 to 2016) with the ultimate objective to assist the Congolese Government in 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. 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.³⁷ The programme's perspectives include the lobbying for the promulgation of the Water Code and the establishment of effective mechanisms for its legal enforcement.

V. Biodiversity Protection

Biological diversity has to be safeguarded and conserved. The term conservation is defined as the management of human use of the biosphere, so that it may produce the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of the future generations. Thus, conservation embraces the preservation, mainte-

35 Article 5(2), Decree n° 11/28 of 7 June 2011.

36 Conservation of biodiversity and sustainable forest management; available at <http://www.giz.de/hen/en/16089.htm> (last accessed on 5 November 2012).

37 Among the significant innovations contained in the draft of the Water Code is the provision for technicalities subsequent to decentralisation of the DRC. The Constitution of the country form 11 provinces into 26 provinces. The decentralisation was effective within 36 months after the adoption of the Constitution of 2006 (2009) 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.

nance, sustainable utilisation, restoration, and enhancement of the natural environment. Efforts to maintain the diversity of biological resources are urgently required at local, national, and international level – Southern Africa and the DRC, as part of this region, is no exception. Biodiversity and the ecosystem also face various problems in the DRC. Massive killing of protected animal species was reported throughout the period under study, specifically in the East of the country where rebel armed groups are alleged the responsibility of such acts.³⁸

To address the killing of protected species in the DRC, the IUCN sponsored a four years Programme of Reinforcement of Biodiversity. The central themes of the programme include conservation of biodiversity and life; 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.³⁹ Besides, researchers contend that the real damages to biodiversity in the DRC remain largely unknown and might be much more massive than reported. Wide regions of the DRC's national territory remains unexplored and might be the sanctuary of undiscovered animal and vegetal species. Some of these species might even have disappeared before their discovery. A timid development resulting from this programme is however to note: the development of ecotourism in selected protected areas in the DRC contributes to efforts of conservation.

The protection of biodiversity in the DRC also received support from the GIZ. The Conservation of Biodiversity and Sustainable Forest Management Programme (2005-2013) was created 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 performances of national institutions responsible for nature conservation in maintaining the integrity of protected areas and biodiversity.⁴⁰ 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 include an improvement in the performance of institutions in charge of maintaining the integrity of protected areas and their biodiversity;⁴¹ an institutional reform of the MECNT;⁴² an increase of the number of specialised employees (more than 600 forest engineers were trained); the creation

38 For instance, only 6 000 hippopotamus persisted in the DRC after the armed conflict, from the \pm 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), at p. 5.

39 Debroux et al. 2007.

40 Available at <http://www.giz.de/themen/en/16089.htm> (last accessed on 5 November 2012).

41 Ibid.

42 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.

of a conversion process for the allotment of forest concessions; and the ratification of the Central African Forest Commission Treaty in 2009.⁴³

C. How to solve Environmental Problems?

The judicial system of the DRC suffered profound damages from 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. So far 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 lack of special courts to examine environmental disputes and offences; limited knowledge of environmental legislation by Congolese magistrates; the lack of an updated compilation of national laws regulating environmental protection; and the inexistence 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.⁴⁴ 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 offenses to judicial instances. The same law⁴⁵ provided for the creation of a national and provincial emergency plans to address environmental catastrophes. No information is available on whether this plan has been successfully drafted and is ready to be implemented if such incident occurs.

Consequently to the challenges mentioned above, no environmental case law examined by local judicial institutions could be found. Yet, this does of course not at all imply that there are no violations of the environment, environmental laws or the prevalence of environmental conflicts in the DRC. Environmental protection in the DRC is yet to generate significant positive impact and the quest toward sustainable development remains trivial. The main obstacles to effective environmental protection in the DRC are due to the lack of funds, which significantly limits the implementation of national programmes of environmental protection

43 For more information on the commission (Commission des forêts d'Afrique centrale COMIFAC); available at <http://www.cbf-fund.org/en/> (last accessed on 12 November 2012).

44 Article 71, Decree n° 11/009 of 9 July 2011.

45 Articles 64 and 65.

at a large scale. These programmes disappeared one after another due to a lack of funds or were simply never put into place.⁴⁶ 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.

The inability of the Government to abide to national environmental laws is another obstacle. Several duties assigned to the central Government and to the MECNT under national laws are not abide to by governmental institutions. For instance, the law places upon the central and provincial Governments the duty to effectively manage waste in a manner that preserves a good quality of environment and health.⁴⁷ However, 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 NGOs of environmental protection engage in waste management by coordinating waste collection campaigns in selected towns of the DRC, yet theirs 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.

The gap between legislation and practice must still be overcome. 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 legislator's ideas, which generates complications in implementation and enforcement.

Political instability makes environmental protection harder in regions of the eastern DRC, which are under the control of rebel-armed groups. Therefore, significant environmental issues have been reported in those areas, which cannot be addressed effectively.⁴⁸

The lack of environmental pollution impact assessments constitutes another problem. The DRC does not undertake regular evaluation of environmental conditions and their impact on

46 Democratic Republic of Congo Country Report (2011) available at www.congoforum.be/upldocs/eiu.pdf (last accessed on 12 November 2012).

47 Article 56, Decree n° 11/009 of 9 July 2011. Subsequently, a national directorate was created by Ministerial order n° CAB.MIN/MBB/SGA/GFPF/JSK/035/2009 of 20 March 2009. Furthermore, although article 57(a) of law n° 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; rare are the person arrested for such offences. (Panda AP, "Obstacles à la Gestion efficiente de déchets solides en RDC: cas de la ville de Bukavu" (2011) available at <http://irewssc.wordpress.com/2011/03/09/obstacles-a-la-gestion-efficiente-de-dechets-solides-en-rdc-cas-de-la-ville-de-bukavu/> (last accessed on 10 November 2012).

48 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/single-view/news/emergency_appeal_for_okapi_wildlife_reserve_drc_following_murderous_raid_by_poachers/ (last accessed on 10 November 2012).

the health of nationals. Thus, the consequences of polluted environment on the health of the local population largely remain unknown.⁴⁹

Moreover, in the absence of mechanisms of coordination cooperation between various sectors is still insufficient. National environmental, economic and social policies of the DRC were shaped in extremely autonomous ways. This does not enable cooperation between various sectors affecting environmental protection. It often generates conflicts between various institutions of environmental protection. For instance, although the Mining Code calls for the collaboration between some of its departments and the MECNT, this does not happen 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.⁵⁰ Overlapping institutional mandates in environmental protection are not the exception in the DRC.

To address the continuous decline of the environment and in order to improve the quest of sustainable development in the DRC, there is an enormous need to undertake more interdisciplinary research that navigates legal and socio-economic particularities affecting the environmental sector and to propose a more suitable system of environmental protection in the DRC. The Ministry of Environment, Nature Conservation and Tourism (MECNT) is the main organ in charge of environmental affairs in the country. It has the mandate to 'promote, supervise, and coordinate all activities relating to the environment.'⁵¹ The MECNT supervises the work of three independent departments: the Congolese Institute for Nature Conservation (ICCN),⁵² the Congolese Botanical and Zoological Institute (IBZC)⁵³ and the National Office

- 49 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. IUCN Strengthening voices for better choices in the Democratic Republic of Congo: When all voices are heard, forest stakeholders work together (2009), at p. 1.
- 50 For instance, there is no arbitration institution to address issues that arise in a conflict of competence between the mining, agriculture and forest sectors throughout the process of allocation of lands. This is aggravated by the lack of a clear national and regional development plan.
- 51 MECNT currently has 11 Directorates: 8 Specialised Services, and 4 branches that deal mainly with biodiversity and tropical forestry. Although the main powers are centralised at national level, meaningful powers were decentralised to provincial institutions. For instance, provincial MECNT branch have the power to issue various permits for natural resources exploitation, to control 'dangerous' substances harmful to environment, and to confiscate animal trophies (however, such substances have to be transferred to Kinshasa), the power to open or close hunting and fishing seasons, issue hunting and fishing permits, and permits for the legitimate detention of protected animals.
- 52 The ICCN has in charge the management of protected areas in the DRC's. Its mandate is to control and patrol the protected areas, to collect and analyse data from the field and to facilitate tourism activities where possible. ICCN's vision is to ensure the conservation and the effective and sustainable management of biodiversity in the national network of protected areas of the DRC in cooperation with local communities and other partners for the well being of the Congolese people and all humanity.
- 53 *Institut de Jardin Botanique et Zoologique du Congo*, which has the mandate to coordinate activities and linked to vegetal resources in the DRC.

of Tourism (ONT).⁵⁴ However, much still needs to be done in order to improve its environmental protection mandate and make it more efficient. While some of the aforementioned laws – no doubt – contribute to the protection of the environment, the Government with its respective Ministries must continue to improve, perfect and adjust existing – and where necessary to enact new – laws. Without any doubt, this process demands time, financial support and is of continuous nature.

D. Concluding Remarks

The root causes for environmental degradation as experienced worldwide also apply to the DRC. They are closely related to human action, economic activity and insufficient policies. The direct causes for environmental degradation include overexploitation, over-consumption, pollution and a wide range of activities that have a direct impact on the environment. Major threats to the DRC's environment include among others armed conflict, overexploitation of natural resources, unsustainable harvesting of wild plants and wildlife, soil erosion and water pollution, climate change but also alien invasive organisms that threaten the survival of indigenous species.

The aim of environmental protection can only be achieved by a concerted effort of different means. Traditional legal methods include the establishment of protected areas, the regulation of harvesting and trade in certain species, the management of habitats and ecosystems, and the prohibition of alien and invasive species. Pollution control and the management of hazardous substances are other effective ways to contribute to the preservation of the environment.

The DRC has started to take up the challenge and to conserve species and ecosystems to limit the increasing rate of loss of biological diversity in various aspects. The challenge is, however, not an easy one and it takes time to realise this ambitious aim in the best possible manner. 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 and to develop a more 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 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.⁵⁵

54 The national office of tourism is in charge of all tourism activities.

55 Adopted by the Security Council at its 6873rd meeting on 28 November 2012.