Review of the National Legal Framework for Mining & Conservation in the DRC

WWF DRC
ABCG Extractive Industries Group Meeting
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Outline

• DRC Overview
• Legal context of Biodiversity and Conservation
• Legal framework of the Mining Sector
  • Mining Code 2002
  • Environmental Obligations/Mechanisms
  • Institutional Framework – Key Responsibilities
• Problems/gaps
• Critical Needs
Democratic Republic of Congo

- 61% of dense forests of central Africa
- 60% land area of Congo Basin
- Sig portion 1.3 bi m³/yr
DRC Context

- Post-conflict
- Reform
- High poverty (DSCRP)
- Corruption
- Abundance of minerals
- Abundance biodiversity
- International conservation engagements
Results of the National Strategic Evaluation of Biodiversity in the Democratic Republic of Congo

At the ninth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP 9):

The Democratic Republic of Congo announces, as part of the implementation of the CBD Programme of Work on Protected Areas, its commitment to create 15 million hectares of new protected areas to include:

- A nation-wide consultation process inclusive of indigenous and traditional communities conducted on the basis of free, prior informed consent;
- A broad set of protected areas governance types including indigenous and local community conservation areas, in keeping with the CBD Programme of Work on Protected Areas.
National DRC Laws

➢ **Forest Code of 29 August 2002**
  - Creation of “Forêts classées”
  - Overall protection statute as public domain
  - Management by the Minister of Environment (MECNT)
  - Beyond forests

➢ **Nature Conservation Law of 22 August 1969**:
  - Covers National Parks (réserves naturelles intégrales)
  - Management by ICCN (Institut Congolais pour la Conservation de la Nature).
  - Prohibit incompatible activities with nature protection
  - Broad interpretation
Key Environmental & Conservation Laws

National DRC Laws

➤ Principles of Environmental Protection Law (19 July 2011):

“Toute activité susceptible de nuire à l'environnement est prohibée dans les aires protégées ainsi que dans les zones interdites. Est nul tout droit accordé dans les limites des aires et zones visées à l’alinéa 1er” (Article 33)

- Prohibit activities that “harm” environment
- Covers protected areas
- No right to be given within these limits that harm environment
National DRC Laws

Principles of Environmental Protection Law (19 July 2011) – CONT...

- “Polluter pays” principle (Art. 12)
- Required ESIA (Art. 21)
- Required environmental “audits” (Art. 23)
- Public involvement (Art. 24)
- Fund for environmental interventions (Art. 25)
- Obligate restoration (Art. 44)
International Conventions (selected)

• **Ramsar** (1994): protection of important wetlands
• **CITES** (1975): Conservation of threatened wildlife and plants
• **Convention on Biological Diversity** (1992)
• **World Heritage Convention**: (1975)
  • protection of World Heritage Sites (5 in DRC)
• **African Convention** on nature and natural resource conservation (1976)

**General Interpretation:**
No mining concessions in protected areas
Mining
Legal Framework for Mining Activities in DRC

FREESTATE 1885-1908
- 1885 State monopoly
- 1887 authorization req’d

BELGIAN COLONY 1908-1959
- 1928 Nat’l Committee Kivu
- 1937 Mining permits, national scope
  Land vs Mining rights
  Address prior concessions

POST INDEPENDENCE
- 1967 1st mining legislation
  artisanal zones created
New Mining Code – 11 July 2002

• **344 articles et 17 headings**

• **Role of the State:** regulation and promotion of the mining sector

• **Steps**: Prospection -- **Research → Exploitation**

• **Rights for Industrial Mining Exploitation:**
  
  Research Permit (PR)
  Exploitation Permit (P.E)
  ′ Discharge Permit (PER)
  Small Mining Exploitation Permit (PEPM)

• **Artisanal Mining Exploitation**
  
  Artisanal Exploiter Card (Individual)
  Artisanal Exploiter Cooperative
Rights for Mining Activities in DRC

Permis de recherche

- 4 ans
- 5 ans

Renouvelable deux fois pour 2 ans
Renouvelable deux fois pour 5 ans

Renouvelable autant de fois pour 15 ans
Permis d'exploitation (30 ans)

Renouvelable autant de fois pour 5 ans
Permis d'exploitation des rejets (5 ans)

Renouvellement ne peut excéder 10 ans
Permis d'exploitation de petite mine (10 ans)
Environmental Obligations

- **Prospector’s Code of Environmental Conduct**
  - Commitment to minimize negative environmental impact
  - General, difficult to monitor/control

- **Plan d’Atténuation et de Réhabilitation (PAR)**
  - Must be approved before Research activities

- **Environmental Impact Assessment (EIE)**
  - Initial state & foreseen impacts
  - Before exploitation

- **Environmental Management Plan for Project (PGEP)**:
  - Implementation measures to address environmental & social damages
  - Before exploitation

- **Artisanal exploitant Code of Conduct**
  - Operational rules – basic: cooperate with local authorities, no permanent structures, report accidents, no use explosives...
  - Little to no environmental obligations
Other Environmental Protection Mechanisms

- **Registration & Environmental Reports of Mining Activities:**
  - Required daily documentation of mining activities & regular reporting

- **Environmental Protection Financial Obligations**
  - **Suretés financières**: Financial collateral for execution of environmental obligations
  - **Provisions financières**: Guarantee of rehabilitation of mining site (0.5% of total investment)

- **Prohibited Areas** (zones interdites)
  - The DRC President can prohibit mining activity in certain zones for environmental protection

- **Environmental Adjustment Plan**
  - Prior concessions (before 2002) must have Environmental Adjustment Plan (like PAR)
4 categories (Article 2 réglement minier 2003):

- **Protected zones** – “zones protégées”:
  - National park, hunting reserve, reserves, botanical & zoological gardens
- **Reserve zones** – “zones de réserve” :
  - Natural reserves, biosphere reserves, forest reserves
- **Restricted zones** – “zones de restriction” :
  - Land inside a national park, forest nursery
- **Prohibited zones** – “zones interdites” :
  - Zones where mining is prohibited because of conflict, incompatible activity, environmental protection, etc.
Institutional Framework - Management Entities

- **Head of State** – President of the Republic

- **Ministry of Mines**: Implementation of mining policy
  - Allocate/revoke mining rights, authorize exports, institute artisanal zones, submit deposits for tender, authorize transformations, establish forbidden areas, etc

  - **Cadastre Minier (CAMI)**: Procedure for granting mining titles
  - **Mining Environmental Protection Division**: responsible for environmental protection compliance
    - **Permanent Evaluation Committee** - Responsible for review of PAR, EIE et PGEP

  - **SAESSCAM** – public service for technical assistance and supervision of small-scale and artisanal mining

  - **Technical unit for planning of mining** (CTCPM) responsible for the design and development of policy in the mining sector.
Key Contradictions

Between Mining Code & Environmental Laws

According to the Mining Code:
• Possible concessions within “zones of restriction” (defined as national parks) with *prior authorization* of a “competent authority” (Article 6 réglement minier)
• Allow *overlap* of concessions with “reserve zones” (Article 5)

According to the Nature Conservation Law 1969
• No incompatible activity with nature conservation in national parks (Art. 3)

According to the Law on the Principles of Environmental Protection
• Prohibition of activities harmful to the environment in protected areas (Art. 33)
Mining concessions within Protected Areas – industrial & artisanal activity

- Lack of overall landuse/Master plan
- Problems with protected area delimitation
- Weak capacity of ICCN, MECNT & overall government enforcement
Itombwe Reserve & BANRO gold mining
Critical Gaps / Needs

- National landuse/Master plan and strategic development plans for mining zones
- Clearly defined legal limits of protected areas
- Specific guidelines for environmental obligations
  - Codes of Conduct
  - EIA, Environmental management plan
- Harmonization among laws
- Monitoring / control mechanism for monitoring environmental plans / obligations
  - Stable funding sources
  - Involvement of other key sectors
Conclusion

• Improved legal foundation to support conservation, but many aspects still unclear
  • Contradictions among laws
  • Unclear, sometimes overlapping, responsibilities
  • Problems with definitions

• Environmental obligations still too general

• Huge difficulty with monitoring

• Enforcement and implementation are critical