

5.1 Constitutional Requirement for Environmental Protection in DRC

The Democratic Republic of the Congo (DRC), formerly the Belgian Congo and then Zaire, is the largest country in the SADC region. It is endowed with abundant valuable natural resources, including diamonds, cobalt, copper and petroleum. The DRC was a colony of Belgium from 1884 until 1960, when it was granted independence. Since that time, the DRC has not known true democracy, as it has been fuelled with ethnic and civil strife, leading to political and economic instability. As a result of colonialism, at the time of independence the DRC was in a state of extreme underdevelopment, which has been aggravated by the continuing armed conflict taking place within and outside of its borders.

The move towards democracy started when a transitional government was set up in July 2003, with Joseph Kabila as president with four vice presidents representing the former government, former rebel groups, and the political opposition. The transitional government held a successful referendum in December 2005 to accept a new constitution, and elections for the presidency, National Assembly, and provincial legislatures were held in 2006. Kabila was inaugurated as president in December 2006.

The constitution, also known as the Constitution of the Third Republic was adopted by government 18th February 2006. Article 53 states that:

- Every person has a right to a healthy environment and which is favourable to his/her full development.
- The environment must be protected.
- The State must look after the protection of the environment and the health of the people.¹

Article 123 of the Constitution makes provision for laws to be made concerning, *inter alia*, “the protection of the environment and tourism”. Article 203 allows for co-operative governance by central government and the Provincial administrations “to protect the environment, natural sites and landscapes, and the conservation of such sites.”

¹ Translated from the French original.

5.2 Institutional and Administrative Structure

Under the constitution of the Third Republic, the government is composed of a cabinet of Ministers and Deputy-ministers, the number of which varies from one government to the next. The government is headed by the Prime Minister who is appointed by the President. The government is the effective arm of the state in charge of all the country's central administration and in all the domains in which the central government has concurrent jurisdiction with the Provinces.² One of the main priorities of the World Bank's Governance Compact with the DRC government is the process of decentralisation of most government administrative functions, including environmental affairs, to the Provinces.³

At present there are 11 Provinces: Kinshasa, Bas-Congo, Bandundu, Kasai Occidental, Kasai Oriental, Katanga, Maniema, Nord- and Sud-Kivu, Province Orientale and Equateur. However, it is intended to increase the number of provinces to 26 in 2010 to bring government closer to the citizens and render it more effective. This process provides an important opportunity to enhance transparency and effectiveness in government which is currently lacking, but it also poses a daunting management challenge to the government in view of its technical and political complexity, combined with the lack of capacity and political fragility, especially at the provincial level.⁴

Environmental management is dealt with between several ministries and at different levels of government.

5.2.1 Parliamentary Commission for the Environment

The Parliamentary Commission for the Environment has between 50-60 members who are organised into four committees: general environment, mining environment, flora and fauna and environmental control. One of the aims of the Commission is to approve sector laws and policies from an environmental perspective, but by its own admission, the Commission does not have the expertise and knowledge to properly evaluate such laws and policies. Furthermore, there is little coordination or synergy inter-sectorally in policy and law development, resulting in sometimes conflicting policy objectives and legal requirements.

² www.wikipedia.org

³ World Bank (2007) Project Information Document: Enhancing Governance Capacity. Report No AB3435, December 21, 2007.

⁴ Op. Cit. Footnote 3.

5.2.2 Ministry of Environment, Nature Conservation and Tourism

The ministry responsible for the environment in the DRC has experienced several changes in name and associated responsibilities: directorates of nature conservation, land affairs, tourism, water and forests have all been included and excluded at various times since the ministry was created under Ordinance No 75-231 of 22 July 1975. This piece of legislation gave the ministry responsibility for environmental impact studies (*Etudes d'Impact Environnemental* (EIE)).

This was reinforced in Ordinance No 07/018 of 16 May 2007, which specifies the responsibilities of the Ministries, where the President of the DRC gave authority for the management of EIA to the then named Ministry of the Environment, Nature Conservation, Water and Forests (now known as the Ministry of Environment, Nature Conservation and Tourism (MENCT)).⁵ However, in the same Ordinance, the president gave responsibility for all matters relating to mines, including environmental issues, to the Ministry of Mines, specifically to the Director of the Department for the Protection of the Mining Environment (DPEM). This situation has created a conflict between the two ministries where the former has general competence in the environmental sector and the second has limited competence relating to the environment in the mining sector.

There are some 20 Directorates within the MENCT, but an overall organogram was not available. A Canadian Consulting company undertook an institutional review of the MoE in January 2008, with the objective to make recommendations regarding the re-structuring of the Ministry to reduce the number of departments and directorates to allow for more efficient management.

The main Directorates with responsibility for EIA are described below.

Environment – Groupe d'Etudes Environnementales du Congo (GEEC)

In ministerial Order No 044/CAB/MIN/ECN-EF/2006 of 8th December 2006, the MENCT created an agency for EIA administration and approval called *Groupe d'Etudes Environnementales du Congo* (GEEC). A further ministerial order No 008/CAB/MIN-EF/2007 of 3rd April 2007 amended and completed the institution of GEEC.

GEEC is a technical structure within the MoE responsible for the administration of EIA in the country. Its main objectives are:

⁵ Point 36 on p.22 of the Ordinance No 07/018.

- To conduct and coordinate the activities relating to environmental and social impact studies (ESIS);
- To define the procedure of ESIS in the DRC;
- To ensure that the execution of all projects or development programmes is undertaken according to strict environmental and social standards;
- To promote capacity building within Congolese administrative structures and within public and private investors in matters relating to ESIS;
- To promote consultation and information sharing with the public concerning the management of the environment; and
- To present an annual State of Environment report for the country.

The creation of GEEC demonstrates the political will of the DRC government to make sure that all development projects will safeguard the biophysical and social environment. The scope of GEEC extends over all projects which may impact on the environment, across all sectors, with the current exception of mining (see section 5.2.3 below).

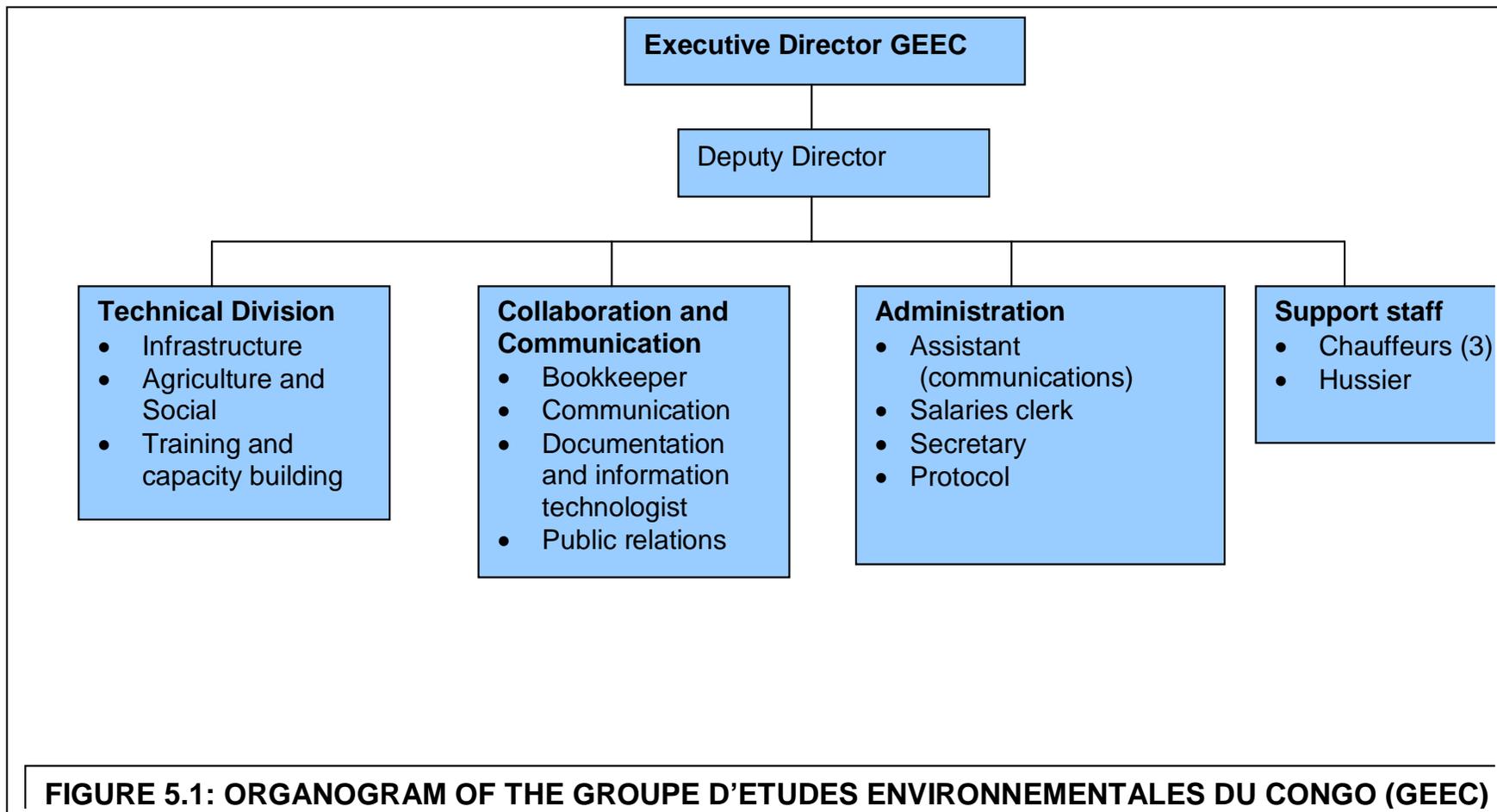
GEEC is composed of five sections, with a total of 9 technical/management personnel and eight administration/support staff (see Figure 5.1). The infrastructure portfolio includes Component A projects relating to roads, water and sanitation, generation and transmission of electricity, anti-erosion works and involuntary resettlement of people. The Social-Agriculture portfolio includes Component B projects such as: distribution and production of genetically modified seed, artisanal fisheries, rehabilitation of rural tracks and roads, community development such as health, education, water and sanitation and social protection of vulnerable people such as the aged, women and AIDS orphans.

When required, GEEC convenes a multi-sectoral committee of about 20 people to review EIAs, with representatives from MENCT (through the *Direction des Etablissements Humaines et Protection de l'Environnement*), ICCN, Agriculture, Health, etc, however, it was reported that the Directorate of Sustainable Development, which carries responsibility for *inter alia* climate change, desertification and biodiversity, does not have an opportunity to comment on EIAs.

GEEC is a new organisation and needs the promulgation of the Framework Law on the Environment (see section 5.3.4 below) to start functioning fully.

Sustainable development

The Directorate of Sustainable Development was created by Ministerial Order No CAB/MIN/AFF-ET/049/01 of 3rd December 2001 with the aim of assuring the implementation of the activities, recommendations and resolutions of the World Commission on Sustainable Development and of the Conference of the Parties to the Conventions on Biodiversity,



Climate Change and Desertification. The Directorate comprises a Director and four divisions, each with two personnel: Biodiversity, Climate Change, Desertification and Sustainable Development. The secretariat comprises six support/administrative staff, giving a total of 15 staff in the Directorate.

5.2.3 Ministry of Mines

The only activities which have a formal requirement for an EIA in the DRC are exploration, mining and quarrying. Since the mining sector is one of the most active parts of the economy and has the potential to incur serious environmental impacts, the following discussion will provide background to the administrative and institutional structure of the Ministry of Mines, as well as that of the MENCT..

Directorate of Mines

The Directorate of Mines is responsible for inspecting and supervising mining activities and quarry works with regard to safety, health, work procedures, production, transport, sale and social matters.

Department in Charge of the Protection of the Mining Environment

Article 15 of the Mineral Code makes provision for the establishment and powers of a Department in Charge of the Protection of the Mining Environment (DPEM). In co-ordination with the other State entities responsible for the protection of the environment, the DPEM within the Ministry of Mines exercises the powers which are devolved to it by the present Code and by all other regulations regarding the protection of the environment, in particular:

- a) The definition and the implementation of the mining regulations concerning environmental protection with regard to:
 - The rules governing exploration;
 - The rules governing artisanal miners;
 - The guidelines for exploration and exploitation activities for mines and quarries
 - The conditions to supervise the obligations with regard to environmental protection.
- b) The technical evaluation of the Mitigation and Rehabilitation Plan in relation to the prospecting operations for mineral substances classified as mines and quarries; and,
- c) The technical evaluation of the Environmental Impact Study (EIS) and the Environmental Management Plan of the Project (EMPP) presented by the applicants requesting mining or quarry exploitation rights.

The DPEM has 40 staff in its Kinshasa head office and 5 staff in each of the Provincial offices i.e. a total of 55 provincial staff. The DPEM has specialists with degrees in a range of subjects: mining engineering, geology, agronomy, metallurgy, chemistry, sociology, biology, environmental studies, law and economics. They underwent one month of training on the implementation of the environmental provisions of the Mining Code and EIA by Professor Musibono of the University of Kinshasa, funded by the World Bank in 2004, but there has been limited follow-up. Unfortunately therefore, the DPEM is not effective due to a number of factors:

- Lack of experience and limited training;
- Lack of funding, even for office basics like paper, cartridges, computers;
- Poor salaries;
- Lack of equipment in offices e.g. computers, and to carry out monitoring e.g. GPS, portable pH meters etc;
- Lack of vehicles;
- Difficulties in access to remote sites (no roads, cost of air travel);
- Not enough analytical laboratories with proper equipment.

Notwithstanding these problems, the DPEM has processed many EIAs and environmental management plans since it was set up in 2004.

One of the biggest challenges facing the DPEM is the fact that the requirements of the Mining Code and Regulations are not being applied on site by the mining companies and DPEM lacks the capacity to monitor on-site compliance and control. However, in his speech at *Les Journées Minières* in March 2008, the Director of DPEM stated that they intend to commence inspections of mines and quarries in 2008 to evaluate the level of compliance with the legal requirements contained in their approved environmental management plans.

One of the other Directorates in the Ministry of Mines is the Technical Unit for the Coordination and Planning of Mines (CTCPM). This unit comprises 12 personnel whose mission it is to provide support and information to the mining companies – including EIAs and site restoration work. However this has apparently caused a conflict of interests.

5.3 Policy and Legal Framework for EIA

5.3.1 National Environmental Action Plan

In response to Agenda 21 of the United Nations Conference on the Environment and Development held in Rio de Janeiro in 1992, the DRC formulated its national Environmental

Action Plan (NEAP) (*Plan National d'Action Environnemental*, (PNAE)) in 1997. The PNAE was developed with input from approximately 520 people representing public institutions, universities, research, the private sector and NGOs. The main finding was that the system of management of the country's natural resources was deficient and that a legal framework was urgently required. It was also found that environmental management was spread over a wide range of sectors, which precluded the formulation of a coherent environmental policy to focus attention and resources on environmental protection.⁶

The major issues identified in the PNAE were:

- Daily destruction of the environment as a result of extreme poverty, population growth and general ignorance about environmental matters;
- Water pollution, together with the absence of national water quality standards;
- Soil degradation in areas with high population densities;
- Air pollution resulting from agricultural, industrial and the energy industries;
- Urban degradation and insalubrious conditions resulting from a combination of poor planning, the inability of municipal authorities to control the influx of migration to the cities, as well as population growth.

In order to combat these problems as well as the weak and disparate legal framework, the PNAE recommended a five-year programme (1997-2002) of interventions in eight areas:

- Institutional development;
- Water resources management;
- Soil resources management;
- Atmospheric pollution;
- Management of the urban environment;
- Natural ecosystems;
- Cultural and historical heritage; and
- Natural disasters (floods, volcanic eruptions, etc).

In 1997, the cost of these interventions was estimated to be US\$85 million. Unfortunately, by 2008 few if any of the planned interventions, as set out in the PNAE have been implemented due to a lack of an overarching environmental policy for the country and a lack of funding. To address this, the Ministry of Environment submitted a proposal to its financial partners (FAO, WB, UN-GEF) in February 2008 to develop an updated PNAE, but this was not available at the time of writing.

⁶ Programme des Nations-Unies pour le Développement (UNDP) (1997): *Plan National d'Action Environnemental. Document Synthèse*, September 1997.

5.3.2 Mining Code: Law No 007/2002

The DRC was assisted from 1999-2002 by the World Bank in the development of the Mining Code and its regulations. At the time there was no other framework law for EIA in the DRC and so it was necessary to include EIA provisions in the *Code Minier* or Mining Code. To date, the Mining Code is still the only promulgated legislation specifying the need for EIAs to be conducted for certain activities.

The Mining Code specifies the need for an environmental impact study (EIS), a mitigation and rehabilitation plan (MRP) and an environmental management plan for the project (EMPP). These are defined in the Mining Code as follows:

Environmental Impact Study (EIS): *A priori* scientific analysis of the foreseeable potential effects a given activity will have on the environment, as well as the analysis of the acceptable levels thereof and the mitigating measures to be taken to ensure the conservation of the environment, subject to the best technology available, at a viable economic cost;

Mitigation and Rehabilitation Plan (MRP): Plan required for the operations relating to a mineral or quarry exploration right or a Temporary Quarry Exploitation Licence pursuant to which a holder undertakes to carry out certain mitigation measures of the impact of his activities on the environment, as well as rehabilitation measures where said activities take place, including the holder's undertaking to provide a financial guarantee to cover or guarantee the mitigation and rehabilitation costs of the environment;

Environmental Management Plan of the Project (EMPP): Environmental specifications of the project consisting of a programme for the implementation and monitoring of measures contained in the EIS in order to eliminate, reduce and possibly offset the damaging consequences

The Mining Code applies to all commercial activities associated with prospecting, exploitation, processing, transportation and sale of mineral substances, as well as artisanal mining activities. However, the exploration and extraction of liquid or gaseous hydrocarbons are excluded from the Mining Code because they are governed by separate laws.⁷

5.3.3 Regulations

Regulations pertaining to mining are contained in Decree No 038/2003 of 26th March, 2003. These regulations set out, *inter alia*, the contents of EIA and EMP reports (see section 5.4

⁷ Art. 2 of the Mining Code.

below). The Regulations contain a number of Annexures, but the ones which relate specifically to the environment are:

- Annex II: Financial surety for rehabilitation
- Annex III: Environmental Code of Conduct for Prospectors
- Annex VII: Mitigation and Rehabilitation Plan (MRP)
- Annex VIII: Guidelines for preparing an MRP
- Annex IX: Guidelines for preparing an EIS and EMPP
- Annex X: Closure measures
- Annex XII: Classification of mining wastes and their characteristics (standards for effluents)
- Annex XII: Sensitive environments
- Annex XIII: Method for the measurement of noise

The requirements of the Mining Regulations are extremely onerous and focus on process rather than outcomes. This causes three problems: smaller companies either just ignore the regulations or pay lip-service to the requirements; secondly, it makes any form of compliance auditing impossible; and thirdly, the rigidity of the regulations makes it difficult for flexibility, innovation and technological improvements to be implemented.

5.3.4 Proposed Framework Law on the Environment

At present, there is no framework law for EIA in the DRC, however, there is a Ministerial Order No 043/CAB/MIN/ECN-EF/2006 of 8th December 2006 which obliges all projects, old and new, to have an EIA. While this is encouraging, a Ministerial Order does not carry the legal weight of a Law.

A Framework Law on the Environment is in draft (*Loi Cadre sur l'Environnement*) (version 5 of 18 September 2007). The objective of this law is to set the fundamental principles relative to the management and protection of the environment against all forms of degradation in order to allow for the rational exploitation of natural resources, to fight against all forms of pollution and to improve the quality of life of the population, both present and future.

Chapter 6 of the draft Framework Law deals with Environmental and Social Assessments. Article 51 requires all development projects which may have an impact on the environment to submit an Environmental and Social Impact Study (ESIS). This applies equally to all public works carried out by the State, Provinces or other public enterprises which could have a significant impact on the environment.

Importantly, Article 51 requires all multi-sectoral or sectoral plans, programmes and projects to be subjected to a Strategic Environmental Assessment (SEA). Unfortunately it appears that policies have been excluded from the need for an SEA.

Notwithstanding the prescriptions of Article 51, Article 53 requires that an Environmental Impact Notice, rather than an ESIS must be submitted for small projects which may not have a significant impact on the environment.

It is intended that those activities requiring an ESIS or an Environmental Impact Notice will be listed in a Decree, which will also stipulate the required contents of the ESIS and Environmental Impact Notice reports. It is also envisaged that EIA guidelines will be prepared for each sector.

While many feel that it may be difficult to remove responsibility for EIA for mines from the Ministry of Mines, the 2006 Constitution gives the mandate for all matters relating to the environment to the Minister of Environment. However, at the concluding session of the Journées Minières on 17 March, 2008, no mention was made by the various speakers from the Ministry of Mines of the possible change in responsibilities for mining EIAs. This sectoral split in responsibilities may still cause an administrative problem in the future.

5.3.5 Permits and Licences

A **Prospecting Certificate** is required for all prospecting for minerals in the DRC. The holder of a Prospecting Certificate is required to comply with all applicable regulations pertaining to the protection of the environment.⁸

Any person is allowed to explore or exploit minerals in the DRC so long as they are in possession of a valid **Mining or Quarry Exploitation Licence**, granted by the relevant government entity.⁹ The Mining or Quarry Exploitation Licence will not be granted unless the applicant has submitted and had approved the documents making up the '*Plan Environnemental*', which includes an EIS and EMPP/MRP. However, mining is not allowed in areas designated by the President as Prohibited Areas on account of their environmental sensitivity.¹⁰

⁸ Art. 20 of the Mining Code.

⁹ Art. 5 of the Mining Code.

¹⁰ Art. 6 of the Mining Code.

5.3.4 Environmental Standards

The environmental quality standards applicable to mining operations are provided in Annex IX together with details on monitoring frequency, monitoring locations, calculations and measurement techniques. The following tables showing standards for water quality, air pollution and noise are included in Annex IX and are repeated below in Tables 5.1 – 5.4.

Table 5.1: Maximum concentration of contaminants in water (mining)

Determinant	Maximum Concentration mg/l (except where indicated)
Temperature at the edge of the mixing zone	5°C above the maximum ambient temperature of the receiving waters and a maximum of 3°C if the ambient water temperature is 28°C or more
Oil and Grease	20
Biological oxygen demand	50
Acute toxicity	More than the acute level specified for freshwater fish and crustaceans
pH	6-9 units
Suspended solids	100
Arsenic	0.4
Copper	1.5
Cyanide, total	2.0
Iron	6.0
Lead	0.5
Mercury	0.002
Nickel	1.0
Zinc	10.0
Hydrocarbons	10.0

Table 5.2: Threshold limits for air pollution within the mining rights area

Nature of Contaminant	Threshold limit mg/m ³
Arsenic	0.5
Carbon monoxide	29
Copper	1
Free silica	5
Cyanure d'hydrogène	11
Hydrogen sulphide	14
Lead – emissions and fumes	0.15
Nitrogen dioxide	6
Solid particles	10
Sulphur dioxide	5

Table 5.3: Threshold limits for air pollution outside the mining rights area

Nature of Contaminant	Threshold limit g/m ³
Particulate matter (<10 µm): Annual average	100
Average maximum in 24 hrs	500
Nitrogen oxide as NO ₂ : Annual average	100
Average maximum in 24 hrs	200
Sulphur dioxide Annual average	100
Average maximum in 24 hrs	500

Table 5.4: Maximum sound levels

Terrain	Nighttime dB(A)	Daytime dB(A)
Built up residential areas with schools, hospitals or other sensitive teaching or health establishments	40	45
Areas with permanent commercial activities, hunting, fishing or other recreational activities.	50	55
Areas with mostly industrial or agricultural activities	70	70

Where no DRC standards exist, MENCT will adopt the World Bank Guidelines from the Pollution Abatement Handbook, 1998. However, a partnership is being developed between the Congolese Office for Quality Control and Standards and the MENCT to develop more national standards.

5.4 EIA Procedural Framework for Mining in DRC

With the exception of the temporary exploitation of quarries, all mining operations require an environmental impact study (EIS) and an environmental management plan for the project (EMPP) to be approved before operations can commence, in accordance with the provisions of Chapter V of the Mining Regulations.

The EIS and the EMPP must be deposited at the same time as the request for mining rights and must be approved by the competent authority as a condition of granting the mining rights.¹¹

¹¹ Art. 406 of the Mining Regulations.

Prospecting for minerals and an application for a temporary quarry exploitation licence require only an MRP to be compiled.

5.4.1 Environmental Impact Study

Annex IX of the Mining Regulations provides detailed guidelines and requirements for the preparation of an environmental impact study. The applicant for a mining or quarrying exploitation licence must compile the EIS and EMPP according to the form and content defined in the Mining Regulations and its Annexes.

The EIS must include the following information (please note that the Regulations and the Annexes provide exhaustive details of what should be addressed in the EIS and the list below is merely a summary of the requirements):

Identification of the project and proponent:

- Name, contact and business details of the mining (or quarrying) company, and any mining sub-contractors if used;
- Name and contact details of the company that compiled the EIS;
- State the nature of the mining right required;
- Provide a map at a scale of 1:20,000 showing the co-ordinates of the mining area;
- Identify all land owners within and around the mining right area and show on a 1:20,000 scale map.

Detailed description of the project:

- Nature and extent of the mineral deposit;
- Mining methods, volumes expected, quantities of overburden to be removed, location of ore stockpile sites, explosives to be used, blasting details, mining equipment schedules etc;
- Site clearance works including removal of vegetation, cut and fill, blasting, schedule of equipment etc;
- Methods of mineral treatment and processing, including the basic processing method, location of the plants(s), types of equipment and plant to be used, chemical agents, hydrocarbons and lubricants, all emissions and effluents, solid and liquid waste disposal etc;
- Proposed mine dewatering programme, including nature and number of pumps, volumes to be pumped, quality of the water to be pumped from underground, possible utilisation of pumped water and the discharge of such water;
- Effluent treatment programme including volumes, sources, and description of the effluent discharge sites, whether they be into natural water courses (aquatic environment) or constructed effluent dams or evaporation ponds;

- Water consumption: identify all points of demand, volumes, sources of freshwater, recycling opportunities, clean storm water runoff management, as well as a water demand management plan, aimed at reducing the amount of freshwater consumed and maximising the amount of recycling and reuse of water on the mine;
- A plan showing the location of all mine infrastructure such as the process plant, ore stockpile sites, conveyors, compressors, smoke stacks, water treatment plants, workshops and garages, storage areas for chemicals and explosives, all pipelines, power lines, substations, mine haul roads and mineral transfer routes, waste disposal sites, storm water management systems, sewerage pipes and treatment plant, tailings and slimes dams, final effluent treatment and disposal infrastructure and all underground structures;
- Geochemistry of the ore and waste products, especially those which contain sulphides and other acid-producing minerals.

Detailed environmental description of the mining rights area and surroundings:

Where possible the EIA study team must make use of existing plans e.g. the biodiversity plan, and/or published research on the area in question. If there are no existing data, the consultants are required to conduct new studies according to the methods and techniques described in the Regulations and Annex IX:

- Topography, geology and soil utilisation;
- Climate and air quality;
- Water resources;
- Hydrogeology, including modelling of contaminants and flows;
- Terrestrial fauna and birds, including habitat on site and migration patterns;
- Vegetation mapping with identification of different ecosystems, identification of rare and protected species;
- Identification of sensitive environments on and adjacent to the site.

Detailed socio-economic description:

- Identification of all settlements on and around the site, including the local government authorities;
- Sources of income of the local communities;
- Demographic profile of all affected parties;
- Current levels and sectors of employment;
- Tracks and paths used by the local communities through the mining area.

Impact assessment:

Annex IX provides details regarding the analysis of impacts that should be undertaken and requires that for every aspect of the operation, the consultant must identify the positive and

negative impacts, the direct and indirect impacts and the risks associated with those impacts on the environment of the site and in the surrounding areas.

Each impact must be evaluated in terms of:

- The intensity and scale of the impact, based on the degree of environmental perturbation, degree of environmental sensitivity, vulnerability, uniqueness or rarity of the component being affected;
- The spatial extent of the impact;
- Duration of the impact and its reversibility;
- Frequency of the impact and its probability of occurrence;
- Level of uncertainty or confidence in the prediction;
- Benefits for the affected parties and the risks to the safety and wellbeing of these communities;
- Cumulative effects of the proposed development with others in the vicinity.

The analysis of impacts should include at least the following: noise and vibration, air quality, surface and groundwater resources, community health and the risks of accidents.

5.4.2 Environmental Management Programme for the Project and Mitigation and Rehabilitation Plan

Title V of Annex IX of the Mining Regulations spells out in great detail the contents of the EMPP and the MRP. The holder of, or applicant for a mining right must present a mitigation and/or rehabilitation plan for each negative impact identified in the EIS for each phase of the project. If possible, alternative measures should be provided and an analysis made of the residual impacts after mitigation has been applied.

The EMPP/MRP must address in detail the following:

- Noise attenuation;
- Control of vibrations;
- Air emissions;
- Water pollution;
- Soil degradation;
- Rehabilitation of mine wastes and residues;
- Worker safety and occupational health;
- Safety and health of affected parties and local communities in the areas surrounding the mine;
- Emergency plans;

- A closure plan detailing the measures to be undertaken to eliminate the risks to the health and safety of people, limit the production and propagation of harmful substances into the receiving environment, e.g. acid mine drainage, and to leave the mine site in a state acceptable to the local community and compatible with some future land use. The details of the closure plan are set out in Articles 95-105 of Annex IX.

In addition to the EMPP/MRP, the holder of, or applicant for a mining right must put together and submit a detailed budget and financial plan to implement the EMPP/MRP.

5.4.3 Public Consultation Programme

The public consultation programme should be conducted during the drafting of the EIS in order to provide the public with information about the project and to obtain the comments of the public. The principles, methods and programme of consultation of interested and affected parties must be described in an annex attached to the EIS. The Annex report should include details about the meetings held, attendance and location of the meetings, questions raised and answers provided, as well as the author's conclusions about the consultation programme.

5.4.4 Submission and Review of EIA and EMPP

Article 42: Environmental Evaluation

In accordance with the provisions of Article 15 of the Mining Code and the provisions concerning each type of mining and/or quarry right, the Department responsible for the Protection of the Mining Environment evaluates the EIS and the EMPP/MRP. At the end of the evaluation, it provides its opinion on the environmental aspects to the Mining Registry, within the deadline/time period set forth for each type of mining and/or quarry right.

Within a maximum period of **5 working days** following receipt of the opinion on the environmental aspects, the Mining Registry proceeds:

- a) to display the opinion on environment aspects provided by the Department responsible for the Protection of the Mining Environment, in the premises set forth in the Mining Regulations. A copy of the opinion on the environmental aspects is provided to the applicant.
- b) to send the file relating to the application, including the opinions of the Registrar and Department, to the competent authority for a decision.

Article 43: The decision to grant rights

Upon receiving the file relating to the application, together with a favourable opinion from the registrar, and if applicable, favourable technical and environmental opinions, the competent authority makes its decision regarding the granting of the rights, and sends it to the Mining Registry within the specified time period to render a decision for each type of application for mining or quarry rights.

Article 44: The decision to refuse to grant rights

Upon receiving the file relating to the application with an unfavourable opinion from the registrar, and if applicable, unfavourable technical and environmental opinions, the authority makes its decision regarding the refusal of the rights, and sends it to the Mining Registry within the specified time period to render a decision for each type of application for mining or quarry rights.

Article 75: Time limit for the environmental evaluation for the application for the Exploitation Licence

The environmental evaluation of the EIS and the EMPP/MRP relating to an application for an Exploitation Licence must be carried out within a period not exceeding **180 working days**, from the date that the file containing the application is sent by the Mining Registry Directorate to the Department responsible for the Protection of the Mining Environment of the Ministry of Mines.

Article 76: Minister's decision

If the registrar and technical opinions following the processing of the application for the Exploitation Licence are favourable, but the environmental opinion has not been issued yet, the Minister may make a **preliminary and conditional decision** within a period of **20 working days**, from the date that the file containing the application is sent to him by the Mining Registry, and postpones his final decision to grant or refuse the Licence until he has received the environmental opinion.

The Minister's preliminary and conditional decision has the effect of definitively ratifying the registrar and technical opinions. The final decision on the granting of the application is conditional on receipt of a favourable environmental opinion. The Minister makes and sends his reasoned decision to grant or refuse the Exploitation Licence to the Mining Registry within a period of **30 working days**, from the date he receives the environmental opinion sent by the Mining Registry.

Article 80: Renewal of the Licence

The Licence is renewable for successive periods of fifteen years if the holder, *inter alia*, obtains approval for an updated EIS and EMMP/MRP;

The time period allowed for the environmental evaluation for the approval of the update of the EIS and EMMP/MRP cannot exceed **90 working days** calculated from the date the file is sent by the Mining Registry to the Department Responsible for the Protection of the Mining Environment of the Ministry of Mines.

After the evaluation, the Mining Registry sends the application file, together with the technical opinion of the Directorate of Mines, to the Minister within a maximum period of **5 working days**, from the time the environmental opinion is received.

5.5 Other Relevant Environmental Legislation in DRC

As mentioned above, legislation concerning the environment in the DRC is spread between a number of ministries and laws. Both the ministries and the laws are continuously being updated and changed and therefore, the following is merely a guide to possible relevant legislation. The reader is urged to check the latest situation.

ASPECT	MINISTRY	AGENCY/DEPARTMENT	RELEVANT LEGISLATION	COMMENTS
General environment	Environment, Nature Conservation, and Tourism	Groupe d'Etudes Environnementales du Congo (GEEC)	Plan National d'Action Environnemental (PNAE) Decree No 002 of 18 March 1997 Arrêté Ministériel No 043 of 8 th December 2006 Framework Law on the Environment (draft)	Defines all the actions required to implement better environmental management at national level in line with Agenda 21. Provides for the creation, organisation and operation of a national network for environmental information (Reseau National pour L'Information Environnementale) Requires an EIA for all projects. Makes provision for EIA for listed projects, defines the principles of environmental management, and makes provision for the development of an environmental policy, management of natural resources, including water, air and soil, public enquiries, hazardous substances, wastes, noise and odours, mines, quarries and hydrocarbons. This law would repeal article 16 of the Mining Code.
Water Resources (including the coastal zone, rivers, wetlands and lakes)	MENCT		Ordinance 52-443 of 21 December 1952	Contains measures to protect springs, groundwater aquifers, lakes and water courses against pollution and water wastage and to control water rights
Water supply infrastructure (dams, bulk water pipelines)	Ministry of Infrastructure, Public Works and Reconstruction		Ordinance 81/23 of 14 February 1981	Creation of an action committee for water and sanitation
Sanitation and waste water treatment	Local government			
Water quality and pollution control	MENCT Mines Local government		Draft Framework Law on the Environment	Makes provision for the conservation, management and utilisation of water for domestic, industrial and artisanal use.

ASPECT	MINISTRY	AGENCY/DEPARTMENT	RELEVANT LEGISLATION	COMMENTS
			Ordinance 52-443 of 21 December 1952 Regulation on lake and water course contamination and pollution of 1 July, 1914	Contains measures to protect springs, groundwater aquifers, lakes and water courses against pollution and water wastage and to control water rights. Grants local authorities the power to determine the protection areas for streams, lakes and other water sources which may constitute a source of drinkable water
Waste management - hazardous - non-hazardous	MENCT Local government		Draft Framework Law on the Environment	Makes provisions for the control of urban, industrial and medical wastes. All foreign waste is considered to be dangerous and the Act prohibits the sale, purchase, importation, transit or stockpiling of any nuclear or dangerous wastes from other countries.
Air quality and ozone depleting substances	MENCT Mines		Draft Framework Law on the Environment Code Minier Law No 007/2002 of 11 July 2002	Makes provision to protect air quality and prohibits the importation, manufacture and use of equipment which contains ozone depleting substances Air quality guidelines are contained in the Regulations of the Code Minier
Mines	Mines	Department in charge of the Protection of the Mining Environment (DPEM)	Code Minier Law No 007/2002 of 11 July 2002 Mining Regulations Decree No 038/2003 of 26 March 2003	Specifies the need for an EIS, MRP and EMPP Set out inter alia the contents of EIA and EMP reports
Forests and forestry	MENCT	Department of Forests	Forest Code Law No 011/2002 of 29 August 2002	Sets out the law applicable to the conservation, exploitation and development of forestry resources. It stipulates the rules applicable to silviculture, research, transformation and trade of forestry products and promotes biodiversity and the protection of natural habitats, fauna and tourism
Energy - Oil and gas	Energy SNEL	Commission National de l'Energie	Code for Oil Exploitation, 2008	

ASPECT	MINISTRY	AGENCY/DEPARTMENT	RELEVANT LEGISLATION	COMMENTS
exploration - generation (hydro, etc) - renewables - transmission - distribution				
Roads	Transport and Communication Routes	L'Office des Routes (non-urban) L'Office de Voiries et Drainage (urban)	Decree 03/027 of 16 September 2003 Ordinance 71-023 of 26 March 1971 Ordinance 87-331 of 16 September 1987	To define the allocation of roles between the Ministries of Roads and Infrastructure Ordinance to create L'Office des Routes Ordinance to create L'Office de Voiries et Drainage
Agriculture and Fisheries	Agriculture Rural Development <i>(responsible for all agricultural activity)</i>	Department of Agriculture Department of Fisheries		
Land management	Land Affairs <i>(responsible for land register)</i>			All land in the DRC is State owned and has to be leased from the State
Biodiversity protection and conservation	MENCT	Institute Congolaise pour la Conservation de la Nature (ICCN)	Regulation 69-041 of 22 August 1969 Ordinance 75-232 of 2 July 1975 Ordinance 76-252 of 22 September 1976 Ordinance 78-190 of 5 May 1978	Nature conservation. For the creation of an inter-ministerial committee for the environment, nature conservation and tourism Delegation of certain services to the Dept of Environment, Nature Conservation and Tourism Creation of the National Institute of Nature Conservation

ASPECT	MINISTRY	AGENCY/DEPARTMENT	RELEVANT LEGISLATION	COMMENTS
Housing and urban development	Urban Planning and Housing			
Heritage resources	Art and Culture			
Trans-boundary issues	Foreign Affairs		MoU between the States of the Congo Basin, July 1997	Cooperation in the area of environmental information

ACRONYMS

CTCPM	Technical Unit for the Coordination and Planning of Mines
DPEM	Department in Charge of the Protection of the Mining Environment
DRC	Democratic Republic of the Congo
EIA	Environmental Impact Assessment
EIE	Etude d'Impact Environnemental
EIS	Environmental Impact Study
ESIS	Environmental and Social Impact Study
EMPP	Environmental Management Plan for the Project
FAO	Food and Agriculture Organisation
GEEC	Groupe d'Etudes Environnementales du Congo
I&APs	Interested and Affected Parties
ICCN	Institute Congolaise pour la Conservation de la Nature
MENCT	Ministry of Environment, Nature Conservation and Tourism
MRP	Mitigation and Rehabilitation Plan
NEAP	National Environmental Action Plan
NGO	Non-governmental Organisation
NRM	Natural Resources Management
PNAE	Plan National d'Action Environnemental
SADC	Southern African Development Community
UN-GEF	United Nations Global Environmental Facility
USAID	United States Agency for International Development
WB	World Bank

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