



Review of the Legal Framework for Peatland Management in the Democratic Republic of the Congo



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SWAMP

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Cover Photo: Peat sample extracted in Mbandaka.
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Summary

The Cuvette Centrale peatlands of the Congo Basin are a rich natural resource providing a wealth of ecosystems services at local, regional and global levels, notably the vast carbon storage in the rich, peat soil. To-date these areas have remained relatively intact, but there are several potential threats which have the potential reverse the historical trends. Given the importance of these areas, ensuring adequate legal protection and provisions specifically for their sustainable use and management are paramount.

Currently there is no peatland-specific, strategy, policy or legislation in the Democratic Republic of the Congo (DRC). As one step towards strengthening the conservation and sustainable management of these ecosystems a review of international and national legal text was completed outlining existing text related to peatland management. This review has outlined recommendations for strengthening existing legislation and developing a national peatland strategy. Development of a national peatland strategy is a DRC priority. It will be based on the results of multisectoral studies, including this review, and consultations conducted at both national and provincial levels.

From this study the following recommendations were made:

1. Adopt clear national definition of a peatland;
2. Revise current definition of wetland in Law No. 15/026 of December 31, 2015 Relating to Water to explicitly state peatlands are a type of wetlands in accordance with Ramsar Convention's comprehensive definition of wetlands;
3. Clearly define principles of legal protection and protocols for overlapping land use zoning in peatlands in National Peatland Strategy and/or include in ongoing land use planning reform;
4. Adopt clear provisions for peatland protection in the revision of the Forestry Code, capitalizing on the DRC's Sustainable Forest Management Program (PGDF) and the new DRC REDD+ investment plan for 2021-2030 under the National REDD+ Framework Strategy, supported by CAFI, with the aim to consider the high value of peatland forests to sequester carbon and provision of other key ecosystem services;
5. Provide, through a National Peatland Strategy, clear protections for peatlands through legislative reforms including Law No. 15/026 of December 31, 2015 Relating to Water; Law No. 14/003 of February 11, 2014 on the Conservation of Nature; and the Ramsar Convention;
6. Provide specific provisions to take into account customary land tenure of local communities living in and around peatlands;
7. Establish clear institutional arrangements and mechanisms across local, provincial and national levels to facilitate conservation, sustainable management and monitoring of peatlands;
8. Through a National Peatland Strategy, clarify and implement, to the extent possible, the commitments made through international conventions and initiatives for the protection and sustainable management of peatlands, including the Ramsar Convention;
9. Invest in building national capacity and expertise, both institutional and technical, for the sustainable peatland management;
10. Build on the current interest in peatlands in the Congo Basin to advance the DRC government's current agenda and priorities for peatland development and protection;
11. Define a Communication, Information and Education plan in connection with the national capacity building program on peatlands;
12. Ensure an established connection between the National Peatland Strategy and the different international, sub-regional and national initiatives related to peatland management and development;
13. Conduct consultations prior to the development of the National Peatland Strategy to address the multi-sectoral nature of peatland management, taking into account legal considerations;
14. Strengthen capacity of Congolese Environment Agency, facilitating completion of operations and procedures manual and establishing provincial branches.

Introduction

The Cuvette Centrale peatlands spanning the Republic of the Congo (RoC) and the DRC (Figure 1) are the single largest continuous tropical peatland complex in the world estimated to cover 145,500 km² (Dargie et al. 2017). Peat soil is rich in organic matter which has accumulated over thousands of years in various states of decomposition. Peat forests are inundated with water for at least part of the year, which helps to facilitate anaerobic decomposition, defined by the absence of oxygen, allowing for the buildup of the partially decomposed organic matter. This process results in peat forests or peat bogs which are rich in carbon due to the accumulation of organic matter below ground within the peat soil. Depth of peat can vary, and can be several meters deep, the specific depth and volume determining the amount of carbon stored in the peat soil. It is estimated the Cuvette Centrale stores more than 30 Gigatonnes of carbon (Dargie et al. 2017) which is approximately equivalent to the amount of carbon stored in all above-ground biomass in the Congo Basin forest (Verhegghen et al. 2012; Saatchi et al. 2011) making the Cuvette Centrale peatlands an important carbon sink both regionally and globally.

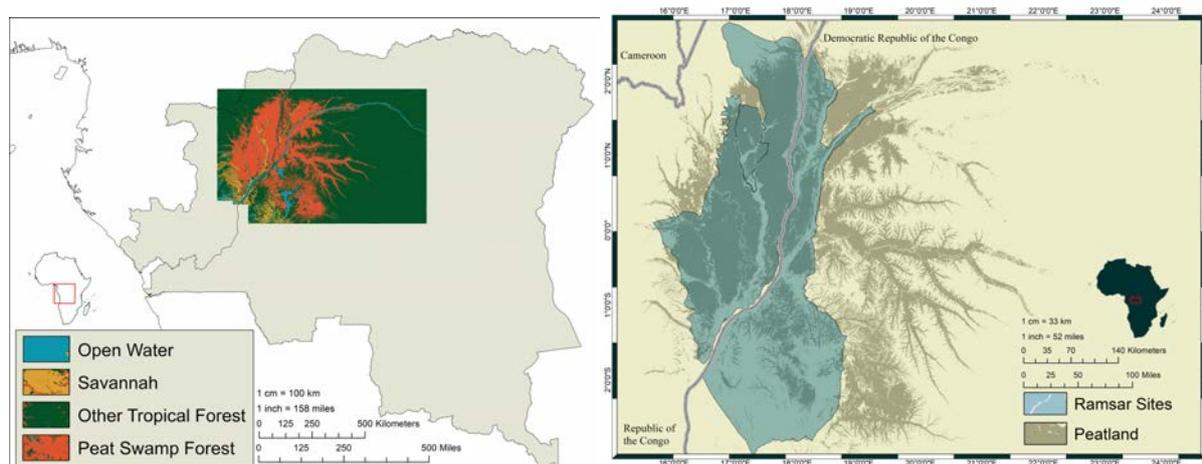


Figure 1: Left: Map of the Cuvette Centrale peatlands spanning the RoC and the DRC, overlay map from Dargie et al. 2017. Right: Ramsar transboundary site overlaid on Cuvette Centrale peatland area, from Dargie et al. 2019.

Peatlands provide additional ecosystem services including hydrological and nutrient cycling, provision of clean water and important habitat for unique and diverse flora and fauna. African forest elephants, buffalo, leopards, chimpanzees, western lowland gorillas and endemic bonobos can be found in the peatland forests of the Cuvette Centrale (Ramsar Convention 2021a). These areas are also important for water bird species though less is known about flora, bird, fish and insect populations. Many communities living in and around peatlands livelihoods depend on resources sourced from these areas. At the same time, peatland ecosystems are very sensitive to disturbance. Once disturbed by degradation or drainage it is both difficult and costly to restore these ecosystems. Disturbance of these rich-carbon areas results in the emission of large amounts greenhouse gases contributing to global warming, which has a negative impact on climate regulation. Disturbance can also exacerbate negative impacts of events such as fire or extreme hydrological events.

To date, the Cuvette Centrale peatlands have remained relatively intact, largely due to restricted access and their remote location. Still, there are several potential geopolitical and local pressures which threaten to disturb these highly sensitive ecosystems (Dargie et al. 2019). These include existing and potential industrial logging and agriculture concessions, mining, and hydrocarbon exploration, in addition to unknown impacts resulting from climate change and development of planned mega-hydroelectric projects. Current zoning of the Cuvette Centrale region includes several overlapping and conflicting land uses including hydrocarbon blocks, logging and industrial agriculture concessions, protected areas and Ramsar sites of wetlands of international importance (Dargie et al. 2019; DRC Forest Atlas; RoC Forest Atlas). These potential threats can be compounded, for example, if roads are put in, this increases accessibility, which could accelerate an increase of activities incompatible with conservation of these fragile ecosystems.

In general, there is still little known about these peatland areas. Recent studies have provided the basis for current understanding of the peatland's extent, formation and carbon storage (Dargie et al. 2017; Davenport et al. 2020; Bocko et al. 2017), but additional research is warranted to increase the knowledge base to facilitate sustainable management of these areas. Additional studies needed include, but are not limited to: refined estimates of peatland extent, characterization and carbon storage; inventory and documentation of biodiversity and species richness; modelling of climate and hydrological cycling; understanding of how local communities use, interact with and value these ecosystems; establishing monitoring systems to track changes in peatland and extent; further assessment and identification of potential degradation and drainage threats and their impacts; documentation of fire's role and use in the landscape; and exploration of incentives for protection and sustainable use of the peatlands.

For sustainable management and use of peatlands areas it is important to also have a strong policy framework and institutional arrangements which puts in place proper legal protections and guidelines for protection and sustainable use. Lack of such clear arrangements in the Cuvette Centrale peatlands can result in overlapping, conflicting land use zoning as currently observed. In 2017 the DRC and RoC governments agreed to collaborate in the management of three Ramsar sites, wetland areas of international importance, spanning the Cuvette Centrale region across the two countries, making the Lac Télé – Grands Affluents – Lac Tumba transboundary complex the largest transboundary Ramsar site¹ in the world (Figure 1). In 2018, the DRC, the RoC and Indonesia signed the Brazzaville Declaration indicating the three countries' governments commitments to sustainable management and conservation of peatlands. While both of these and other collaborative efforts are appreciable initial steps, currently neither the DRC nor the RoC have an official definition of peatlands nor national peatland-specific policies or provisions.

Nevertheless, with more than two-thirds of the peatlands of the Central Basin, the DRC has embarked on the formulation of a national peatland strategy. In December 2020, the Minister of Environment and Sustainable Development presented the national vision on peatlands: "protecting peatlands for people and nature". This vision is the foundation for the development of the national peatland strategy. The strategy should be based on multi-sectoral studies and stakeholder consultations at the national, provincial and local levels. While DRC's peatlands provide immeasurable ecosystem services to the planet, they are first and foremost livelihood production areas for local communities and indigenous peoples. For the institutional management of peatlands, the Government created the Peatland Management Unit within the Ministry of Environment and Sustainable Development in 2017. It is this structure that oversees national actions for peatland protection and management, including the development of a National Peatland Strategy (see Appendix 1).

To support this effort, this report summarizes the current international and national legal framework as pertains to the sustainable management and use of peatlands in the country. Findings and recommendations of this report can be used as one key resource to guide the development and implementation of a national strategy on peatlands. It is within this context that a review of related existing national and international legal texts and reports was completed by the Congolese organization *Conseil pour la Défense Environnementale par la Légalité et la Traçabilité (CODELT)* with support from the USAID Sustainable Wetland Adaptation and Mitigation Program (SWAMP) as part of U.S. Forest Service International Program's technical assistance program to the government of the DRC². The results of this review are presented here including: 1) a summary of the legal texts and 2) gaps and recommendations to strengthen legal protections for sustainable management of peatlands within the DRC.

¹ Ramsar is the international Convention on Wetlands, an "intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources." <https://www.ramsar.org/about-the-convention-on-wetlands-0> Accessed January 2021

² See Appendix 3 for full methodology

International Agreements and Frameworks

The main international convention on wetlands is the Ramsar Convention of 1971. Other international agreements, though they do not have a specific focus on peatlands, have pertinence to peatlands' ecological significance and management. This includes but not is limited to:

| International Body/Framework/Event | Agreement/Plan/Document/Text |
|---|---|
| The UN Convention on Biological Diversity (CBD) | Strategic plan for 2011-2020 and Aichi Targets |
| UN Framework Convention on Climate Change (UNFCCC) | Paris Climate Change Agreement |
| 2030 Agenda for Sustainable Development | Sustainable Development Goals |
| IUCN 2016 World Conservation Congress | Motion 046 – Securing the future of global peatlands |
| Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) | CITES Strategic Vision 2008-2020 |
| UN Decade on Ecosystem Restoration | Importance of Wetland Restoration |
| United Nations Environment Assembly (UNEA) 4 | UNEP/EA.4/RES.16: Resolution for the Conservation and Sustainable Management of Peatlands |
| Sendai Framework for Disaster Risk Reduction | 30 (g) To promote the mainstreaming of disaster risk assessment, mapping and management into rural development planning and management of, inter alia, mountains, rivers, coastal flood plain areas, drylands, wetlands and all other areas prone to droughts and flooding, including through the identification of areas that are safe for human settlement, and at the same time preserving ecosystem functions that help to reduce risks |

In the DRC, the Department of Sustainable Development (DDD) within the Ministry of Environment and Sustainable Development (MEDD) is responsible for coordinating national initiatives, mainly in the areas of climate and biodiversity. DDD also monitors the country's commitments under international agreements and pledges relating to the environment. This is the case of the National Determined Contribution (NDC) resulting from the Paris Agreement. The Peatland Management Unit also a structure within DDD presenting direct opportunities for coordination and linkages of peatlands as it pertains to international agreements and frameworks.

There are also several regional and peatland-specific initiatives that have recently been launched and/or signed onto. This include the Global Peatlands Initiative, the Brazzaville Declaration and the International Center for Tropical Peatlands. Here a focus is placed on the Ramsar Convention and these regionally-specific initiatives with summaries of each presented in the following sections.

Ramsar Convention

The Ramsar Convention is an intergovernmental treaty, the first modern international environmental convention, whose mission is “the conservation and wise use of wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world” (Ramsar Convention 2021b). There are currently 171 countries who are contracting parties to the convention which host 2,414 Ramsar sites constituting more than 250 million ha of wetlands of international importance (Ramsar Convention 2019; Ramsar Convention 2021c). The joined the convention in 1996 and has four designated Ramsar sites spanning nearly 12 million ha. These include Bassin de la Lufira, Ngiri-Tumba-Maindombe, Parc national des Mangroves and Parc national des Virunga (Ramsar Convention 2021a). The Ngiri-Tumba-Maindombe site covering more than 6.5 million ha is located in the Cuvette Centrale and is approximately twice the size of Belgium or the State of Maryland. This site is part of the transboundary Lac Télé – Grands Affluents – Lac Tumba complex (Figure 1).

Under the Ramsar Convention Contracting Parties have four major obligations which include listing at least one Ramsar site, facilitating wise use of these sites which include conservation and sustainable management considerations in national planning, establishing reserves and providing training, and engaging in international cooperation (Ramsar Convention 2016). The Convention has developed several guidelines and resource materials to assist Contracting Parties in realizing these obligations. Additional responsibilities have been outlined in various recommendations and resolutions.

The Ramsar Convention has identified five main different types of natural wetlands which include, marine (coastal), estuarine (deltas, tidal marshes, mudflats, mangroves), lacustrine (lakes), riparian (rivers and streams) and palustrine (marshes, swamps and bogs) (Ramsar Convention 2016). Peatlands falling within the latter category, make up half of the wetlands globally. Recognizing the important ecological role peatlands Ramsar has adopted several peatland-specific recommendations, resolutions and guidelines on peatlands summarized in Table 1³.

Table Error! Use the Home tab to apply 0 to the text that you want to appear here. Summary of peatland-specific Ramsar events/outcomes.

| Year | Event/outcome |
|------|---|
| 1996 | 6 th Meeting of the Conference of the Contracting Partners to the Convention on Wetlands, Brisbane, Australia: <i>Recommendation 6.1 Conservation of Peatlands</i> |
| 1999 | 7 th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, San Jose, Costa Rica: <i>Recommendation 7.1 A global action plan for the wise use and management of peatlands</i> |
| 2002 | 8 th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, Valencia, Spain: <i>Resolution VIII.17 Guidelines for Global Action on Peatlands</i> <i>Resolution VIII.11 Additional guidance for identifying and designating underrepresented wetland types as Wetlands of International Importance</i> |
| 2015 | Nordic Council of Ministers statement on preserving peatlands 12 th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, Punta del Este, Uruguay: <i>Resolution XII.11 Peatlands, climate change and wise use: Implications for the Ramsar Convention</i> |

³ Also see: <https://www.ramsar.org/themes/peatlands>

| | |
|------|--|
| 2016 | International Workshop on Peatland Conservation and Wise Use in the Context of Climate Change <i>30 Good Reasons to Safeguard Peatlands!</i> |
| 2018 | 13th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, Dubai, United Arab Emirates <i>Resolution XIII.12 Guidance on identifying peatlands as Wetlands of International Importance (Ramsar Sites) for global climate change regulation as an additional argument to existing Ramsar criteria</i> <i>Resolution XIII.13 Restoration of degraded peatlands to mitigate and adapt to climate change and enhance biodiversity and disaster risk reduction</i> |
| 2019 | International workshop: Exploring Synergies for Peatlands – Detecting and enhancing the global importance of peatlands in achieving the Sustainable Development Goals |

While Contracting Parties to the Ramsar Convention do have specific obligations as outlined above, the Convention "... is not a regulatory regime and has no punitive sanctions for violations of or defaulting upon treaty commitments – nevertheless, its terms do constitute a solemn treaty and are binding in international law in that sense" (Ramsar Convention 2016).

Generally, Contracting Parties are strongly recommended to fulfill their obligations to the Convention as well as provide specific legal and planning provisions for wetlands. As part of Recommendation 4.4. (1987), Contracting Parties are advised to "... review their legal mechanisms to ensure that the country's national, provincial, and local laws and institutions impacting upon the conservation and wise use of wetlands and wetland products do not conflict with one another or leave gaps." To support this, the Convention has published guidelines for reviewing laws and institutions, which include:

Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands (adopted by Resolution VII.7; Handbook 3)

These guidelines recommend three main components:

1. Establish a baseline of relevant legal and institutional measures. The aim is to create a comprehensive collection or reference base on the country's laws and institutional measures related to wetlands. The content of the reference base will depend on national circumstances.
2. Assess the baseline. This involves assessing the effectiveness of existing wetland-related legal and institutional measures to promote wetland conservation and wise use and analyzing how sectoral legal and institutional measures directly or indirectly impact wetlands.
3. Recommend changes needed to support the conservation and wise use of wetlands. This includes: 1) repealing legal and institutional measures that promote wetland loss; 2) implementing existing measures more effectively; and 3) prioritizing areas where laws and institutions need to be improved.

Guidelines for developing and implementing National Wetland Policies (Resolution VII.6, 1999; Handbook 2)

As part of wise use for wetlands, including peatlands, at the state level, the Convention calls on States, to develop have a: "National Wetland Policy or equivalent instruments fully in place alongside and integrated with other strategic and planning processes by all Parties, including poverty eradication strategies, water resources management and water efficiency plans, coastal and marine resource management plans, national forest programmes, national strategies for sustainable development, and national policies or measures on agriculture" (Ramsar Convention 2010). Furthermore, several resources on facilitating wise use, including instituting effective management planning have been developed, which include:

New Guidelines for management planning for Ramsar Sites and other wetlands (Resolution VIII.14, 2002, Handbook 18),

Wetland Management Planning – a guide for site managers, a practical guide to Ramsar’s management planning based on Resolution VIII.14 (2002)

Guidelines for establishing and strengthening local communities’ and indigenous peoples’ participation in the management of wetlands (Recommendation 6.3, 1996; Handbook 7)

Further discussion on implications for peatland management and governance in the DRC is expanded upon in the Discussion and Recommendations section.

Regional-specific Initiatives

Global Peatland Initiative⁴

The Global Peatland Initiative (GPI) was formed at the 2016 Marrakech Climate Conference, UNFCCC COP 22 by 13 founding members, which included the Ramsar Convention. The initiative aims to reduce global greenhouse gas emissions by protecting peatlands, which constitute the largest stock of terrestrial organic carbon. The approach to achieve these objectives is both at the national level, developing capacity, creating solutions to address degradation and facilitating sustainable management, and at the global level, providing updated global assessments of peatlands and tracking related international climate change commitments. The DRC remains active in exchanges with the GPI. Currently, the DRC participates in the global GPI project under the implementation of FAO. The DRC is also participating in the definition of the project “Protecting Biodiversity, Carbon and Water Reserves in Peatlands of the Congo Basin.”

Creation of the Lac Télé – Grands Affluents – Lac Tumba transboundary complex

In 2017, the DRC and the RoC signed a Memorandum of Understanding and Plan of Action on the Sustainable Management of the Bi-national of the Two Lakes, Lake Tele and Lake Tumba. Signature of this Memorandum of Understanding and Plan of Action officially created the Lac Télé – Grands Affluents – Lac Tumba transboundary complex, the largest Ramsar site in the world (Ramsar Convention 2017).

Brazzaville Declaration

The Brazzaville Declaration was signed at the Third Meeting of the Global Peatland Initiative Partners in 2018 by the governments of the Democratic Republic of Congo, the Republic of Congo and Indonesia (Brazzaville Declaration 2018). The Declaration demonstrates the will and commitment between the three countries to collaborate and exchange knowledge and experiences for protection and sustainable management of peatlands. The Declaration outlines 11 commitments including:

- i. the need for coordination and cooperation between governments for protection of peatland ecosystems;
- ii. the commitment to setting up multisectoral and multidisciplinary national frameworks for peatlands management in the Congo Basin;
- iii. establishing land use plans and models for both peatland conservation and protection as well as sustainable management and development;
- iv. the need for sustainable investments to facilitate inclusive sustainable economic development for local communities;

⁴ <https://www.globalpeatlands.org/>

- v. operationalization of the Blue Fund for the Congo Basin and the Green Economy Fund in central Africa;
- vi. promoting best management practices in peatlands areas;
- vii. setting up an observatory for monitoring and data collection; and
- viii. creating a Center of Excellence for Training, Research and Innovation.

At present, the implementation of this Declaration is not effective, each member State is managing and implementing national initiatives independently.

The International Center for Tropical Peatlands

Following on the signature of the Brazzaville Declaration, the International Tropical Peatland Center (ITPC) was founded by the Governments of Indonesia, the DRC and the RoC in October 2018, with support from the Government of Peru.

The main objective of the Center is to, “ensure that policy makers, practitioners and communities have access to sound, credible and legitimate information, analyses, and all other tools needed to design and implement conservation and sustainable management of tropical peatlands.” The Center will be established in Jakarta, Indonesia and will:

- i. “Serve as a go-to space for South-South cooperation which supports the dissemination of strategies and practices for tropical peatland management, through coordinating and supporting collaborative international relationships and connecting different stakeholders;
- ii. Conduct and disseminate scientific research on tropical peatland management for sustainable development;
- iii. Become a center of excellence for tropical peatland research to support policy development; and;
- iv. Provide capacity building and technical services.” (ITPC 2021)

Currently the Government of Indonesia is hosting the ITPC Secretariat in Bogor. The Secretariat is coordinated by the Indonesia Ministry of Environment and Forestry with assistance from the Center for International Forestry Research (CIFOR) (ITPC 2019).

Projects

Global Peatlands Initiative Project

This project is an initiative developed in four countries (DRC, Republic of Congo, Peru and Indonesia) by three main partners: the United Nations Environment Programme (UNEP), the Food and Agriculture Organization of the United Nations (FAO) and the Greifswald Mire Center. Currently the program wants to focus on the transfer of skills. In the DRC, the global project is organizing capacity building sessions for national actors on peatland mapping.

CongoPeat

CongoPeat is a research project funded by the UK government's Natural Environment Research Council (NERC) and led by Professor Simon Lewis of University of Leeds. CongoPeat aims to provide decision-makers and civil society with timely, relevant information about the Cuvette Centrale's peatlands by exploring key questions about its past, present and future. This includes: analyzing peat samples to reconstruct historical records of climate in the region including changes in peat carbon over time; expanding upon and refining initial mapping, extent and carbon estimates including field data collection in the DRC; and modelling different development and disturbance scenarios to estimate potential future impacts within these sensitive ecosystems.

Project Protecting biodiversity, carbon and water reserves in the peat bogs of the Congo Basin

Commonly known as the IKI Project, the concept of this project was presented at the first national informational workshop as well as at the meeting of financial and technical partners on peatlands, both organized in Kinshasa in July 2019. Consultations on the project design were held in July 2020. Currently in the project document development phase, this program should focus on five areas: i) enabling environment; ii) biodiversity and habitat; iii) water and climate; iv) peatlands and ecosystems; and v) capacity building and knowledge management. This initiative is led by the United Nations Environment Programme (UNEP).

CHILD Project

Project Child is an initiative supported by the United Nations Environment Programme (UNEP) with funding from the Global Environment Facility (GEF). It will focus on improving livelihoods of local communities. While the program is still being designed, part of it will focus on the peatland protection.

National legal text related to use, management and protection of peatlands in the DRC

Peatlands, by nature are cross-sectoral providing a range of ecosystem services linked to water, forests, biodiversity and livelihoods. As such, the existing laws which apply to peatlands span these sectoral areas including environmental protection and land use planning. While various existing legal texts governing these sectors provide a basic foundation for peatland management and protections, specific provisions for peatlands are still lacking. DRC does not have an official definition of peatlands or any peatland-specific policies. Therefore, to strengthen management and conservation of peatlands there are several adaptations that can be made to the existing legal texts. The current revision of the Forestry Code, the elaboration of the 2021-2030 REDD+ Investment Plan and the land use planning reform all present immediate opportunities that can be leveraged to make some of these changes. Additionally, the integrated REDD+ provincial (PIREDD) programs present an opportunity to facilitate implementation of sustainable land use management planning in areas with peatlands. Finally, development of a national peatland strategy is warranted given the multi-sectoral nature of peatlands

and their ecological significance nationally, regionally and globally. Such a strategy can draw upon analysis and recommendations presented below.

Legal texts at the national level under which management of peatlands are addressed directly or indirectly include the following:

1. Law No. 15/026 of December 31, 2015 Relating to Water;
2. Law No. 14/003 of February 11, 2014 on the Conservation of Nature;
3. Law No. 011/202 of 29 August 2002 on the Forestry Code;
4. Law No. 11/009 of July 9, 2011 on Fundamental Principles Relating to Environmental Protection;
5. Decree of June 20, 1957 on Urban Planning

Each legal text is summarized below, also see Appendix I for more comprehensive summaries, with specific recommendations outlined in the Discussion and Recommendations section.

Law No. 15/026 of December 31, 2015 Relating to Water

Law No. 15/026 of December 31, 2015 Relating to Water is the first legal text in the DRC which directly has provisions for wetlands, including a definition of wetlands and the classification of wetlands under the public water domain, thus promoting their conservation and sustainable management/use. This law has the most aligned provisions for addressing the guidelines of the Ramsar Convention and upholding commitments under the Convention in the DRC. More specifically this law:

1. Includes wetlands as part of its purpose (Article 2, Paragraph 2, Point H);
2. Sets out the national definition of a wetland (Article 3, Point 39);
3. Classifies them automatically in the public water domain, thus excluding any possibility of their private appropriation and use incompatible with their ecological functions and vocations (Article 9);
4. Refers to the jurisdiction of the Minister over water resource management to determine the procedure for determining its dependencies (Section 9);
5. Obliges the Government, at various levels, to make an inventory of all water resources, including wetlands, and to take the necessary measures for their protection and conservation (Article 13);
6. Prohibits or, where appropriate, restricts, for reasons of public interest, actions that may affect the balance of aquatic ecosystems or the biological diversity of wetlands of special importance and/or protected areas (Article 101).

By placing wetlands in the public water domain, this law excludes any private appropriation as well as any form of use incompatible with their conservation. As such, these zones are subject to a public law regime and their litigation is submitted to the administrative judge. However, since this status is new, it should consider pre-existing customary rights as vested rights, both because of their constitutional recognition and the importance of local traditional systems. Ignoring customary rights would limit the efficacy of establishing a framework for the conservation and sustainable use of wetlands, in general, and peatlands in particular. Buy-in and support of local communities and populations is essential in any conservation and sustainable management effort within these areas.

Limitations of this law, as currently written, include a more limited definition of wetlands than as outlined under the Ramsar Convention lacking a specific reference to peatlands⁵. The definition as included in Law No. 15/026 of December 31, 2015 Relating to Water is: "...an area of stagnant or flowing water, coastal or inland, mountain, plateau or plain, natural or artificial, consisting of fresh water, marine, brackish, acidic or alkaline." This definition is still general enough that peatlands can be interpreted as falling under it even if they are not specifically referenced. To further strengthen legal

⁵ As currently written, in the event of conflict between the domestic law and the international convention, the provisions of Article 215 of the Constitution proclaim the superiority of the Ramsar Convention, which would therefore definitively include peatlands as wetlands.

protections of peatlands, the national definition of wetlands can be updated and/or additional specific legal text on peatlands can be crafted.

Law No. 011/202 of 29 August 2002 on the Forestry Code

Peatland forests, as found in the Cuvette Centrale, are a specific type of forest, therefore they are also governed by Law n°011/2002 of 29 August 2002 on the Forestry Code. Despite being a type of forest with large significance for carbon storage, the current forestry code contains no specific provisions concerning them. Given the recent global recognition of the importance of these peatland forests for carbon sequestration, biodiversity, ecosystem and hydrological functioning and livelihoods, it could warrant specific provisions for peatland forests be included in the envisaged revision of the Forestry Code.

It is also important that specific attention and provisions are made for peatlands in the Sustainable Forest Management Program⁶ implemented under the framework of the DRC REDD+ Investment Plan 2015-2020⁷, which will continue within the framework of DRC's next REDD+ Investment Plan 2021-2030. This program is being funded by the [Central African Forest Initiative](#), implementation of which will be led by the French Development Agency (Afd). Part of this program involves the adoption and revision of forest policy and law, respectively.

Furthermore, while the current DRC REDD+ Investment Plan has predominately focused on addressing direct and indirect drivers of deforestation, the new edition will include emphasis on biodiversity conservation and sustainable management. This new plan provides further opportunity for direct reference to and inclusion of peatland forests, especially given the large estimations of carbon sequestration and storage.

Law No. 14/003 of February 11, 2014 on the Conservation of Nature

This law focuses on the conservation of biodiversity including preservation of traditional knowledge. Given that peatlands contain endemic and rich flora and fauna, this law has application to these ecosystems. Article 45, first paragraph lists, among other things, wetlands as ecosystems requiring specific protection measures against the risks of introduction of exotic species. It provides as follows: "The State and the Province shall, within the limits of their respective powers, take the necessary measures to prevent the risks of introduction of exotic species that may threaten ecosystems, habitats, wetlands, watercourses and species." Additionally, the Ramsar Convention is listed as one of the international legal instruments that needs to be complied with (see the Law's explanatory memorandum). The National Biodiversity Strategy and Action Plan could be reviewed and the current Law 14/003 on Nature Conservation could also be amended, capitalizing on the Sustainable Forest Management Program.

Law No. 11/009 of July 9, 2011 on Fundamental Principles Relating to Environmental Protection

This law ensures the protection of the ecological integrity of peatlands, as an integral component of the environment, against the negative impacts, direct or indirect, resulting from the implementation of other sectoral public policies, including, for example, mining, oil exploitation, forestry, agriculture, the creation or extension of towns or municipalities, infrastructures, etc. The procedural mechanisms through which this law provides this specific protection are facilitated by the following two decrees:

⁶ <https://www.cafi.org/content/caf/en/home/partner-countries/democratic-republic-of-the-congo/drc-fonaredd-programmes.html> | <https://www.cafi.org/content/caf/en/home/partner-countries/democratic-republic-of-the-congo/the-drc-redd--national-fund/DRC-calls-for-proposals-.html>

⁷ https://redd.unfccc.int/uploads/3262_4_redd_investment_plan_eng.pdf

Decree No.14/019 of August 02, 2014 Fixing the rules of operation of the procedural mechanisms of environmental protection

This decree organizes the procedures for conducting: i) strategic environmental assessments of public policies, plans and programs; ii) environmental and social impact assessments (ESIA); iii) environmental audits; and iv) public inquiries. It presents the ESIA as an *ex-ante* tool for evaluating environmental and social impacts of a project, resulting in the issuance of an environmental compliance certificate if all requirements are met. The decree also presents environmental audits as a tool for controlling environmental compliance. Article 18 of the decree lists the categories of projects subject to ESIA and defines a detailed list in its annex. In Article 19, it outlines the minimum content of the ESIA and in Article 26, it establishes a procedure for the evaluation of the reports submitted. Article 20 announces the elaboration of a manual of procedures for conducting ESIA's by the Congolese Environmental Agency, created by Law 11/009. Finally, it announces, in Article 22, a ministerial decree setting the conditions for the approval of consulting firms.

Organic Decree No. 14/030 of November 18, 2014 setting the statutes of a public establishment, called "Congolese Environmental Agency," abbreviated to "ACE"

This decree, issued by the Prime Minister, in accordance with Article 22 of Law No. 11/009, states the Congolese Environmental Agency is the designated public institution charged with overseeing implementation and approval of ESIA's. More specifically it is in charge of ensuring, "...that environmental protection is taken into account in the execution of any project for the development, infrastructure or operation of any industrial, commercial, agricultural, forestry, mining, telecommunications or other activity likely to have an impact on the environment" (Article 3). All the other aspects that affect its organization and operation remain governed by the provisions of Law n° 08/009 of July 07, 2008 on general provisions applicable to public establishments and by the provisions of the Decree (No. 14/030).

These three texts, Law No. 11/009 and its two aforementioned decrees, together constitute the national mechanism for protecting the environment against the risks of damage and degradation arising from other sectors. They define the main guidance so that the implementation of other policies, programs, sectoral plans and the deployment of related projects are accompanied by tools capable of guaranteeing environmental protection, the conservation of natural ecosystems, including peatlands, and the safeguarding of the stated interests of local populations.

The evaluation of this legal mechanism for environmental protection reveals a certain number of pitfalls. The legal and regulatory recognition of the role of the Congolese Environmental Agency as a body for implementing environmental and social management procedures and tools has not yet been accompanied in practice by the technical, institutional, logistical and operational strengthening required to enable it to effectively play the role expected of it. The decree of November 2014, which sets the statutes, organization and operation of the Congolese Environmental Agency, requires the establishment of its provincial branches. These are called upon to conduct strategic environmental assessments of provincial and local policies, programs and plans, approve provincial and local environmental and social impact assessments, etc. These functions are essential to control the risk of damage to peatlands from human activities, whether formal or informal. As a result, support for the provincial deployment of Congolese Environmental Agency is urgently needed, especially in peatland areas, given their high ecological value.

Decree no. 14/019 of August 2, 2014, which organizes the procedure and sets up the environmental and social management tools, makes the Congolese Environmental Agency responsible for producing an Operations Manual and procedures to structure the implementation of environmental management operations (Articles 8, 20, 44). In the absence of this manual, the Agency cannot carry out its strategic environmental assessment missions, review and approval of ESIA reports and conduct environmental audits. This manual, which should contain general and specific provisions applicable to all sectors, including peatlands, must be a priority to strengthen environmental protection.

Decree of June 20, 1957 on Urban Planning

The legal framework for land use planning is mainly constituted by the Decree of 20 June 1957. Despite it originating before independence, it remains the main legal text covering land use planning both in urban and rural lands. Currently, the Congolese Government is implementing land use planning reform, presenting an opportunity to update legal instruments for multi-sectoral spatial governance and national development at all jurisdictional levels.

As part of the implementation of the National REDD+ Framework Strategy, integrated REDD+ programs (PIREDD), based in the main forest provinces and funded by the Central African Forest Initiative, have planned to address the direct and indirect drivers of deforestation and forest degradation. Actions envisaged include the establishment of collaborative land-use planning processes at provincial and local levels. It is important that land use planning is addressed at all administrative levels from the local to provincial to national levels to ensure integrated processes to avoid conflicting land use zoning. This is particularly important for ecologically sensitive areas such as the Cuvette Centrale peatlands. It is also essential, in this context, to take into account other land-use planning mechanisms in these same areas, such as community forests, customary land tenure and consultations with local communities and indigenous peoples, based on the principle of Free, Prior, and Informed Consent⁸.

In addition, under the Ramsar Convention (Article 3.1), States Parties are committed to take wetland conservation into account in their national planning, and to formulate and implement such plans in order to promote, as far as possible, "the wise use of wetlands in their territory". The integration of the requirements of the Ramsar Convention into current land-use planning reform and through the PIREDD programs are two immediate actions that can strengthen peatland management. The Ramsar Convention has published several tools and guidelines that can also be used to ensure this integration.

Finally, given the current land-use conflicts in the Cuvette Centrale region, involving the Ministry of Hydrocarbons, which has announced the upcoming allocation of oil blocks in this area, it is imperative that through the PIREDD programs, strong mechanisms for concerted and integrated land-use planning in this region be adopted and put in place at all levels of government and that clear harmonized land-use guidelines for the various sectoral activities be agreed upon.

Discussion and recommendations

It is important to note that despite the still nascent stage of prioritizing peatlands at the national level, there are several key accomplishments that have already been achieved within the DRC. These include the ratification of the Ramsar Convention on Wetlands in 1996, the adoption of Law No. 15/026 of 31 December 2015 on Water, the establishment of the Peatlands Management Unit created through the Ministerial Order No. 010 of July 27, 2017 (see Appendix 2) as well as the definition of the national peatland vision in December 2020.

Within the Ministry of the Environment and Sustainable Development, the Peatlands Management Unit is uniquely placed to lead the national effort on advancing research, policy and implementation for the sustainable management and protection of the Cuvette Centrale peatlands in the DRC. Elaboration of a National Peatland Policy Strategy is a salient opportunity to address the multi-sectoral nature of peatland management, including legal considerations, as outlined in this report. Part of this effort should further examine institutional arrangements in more detail including linking local, regional and national levels. Additional specific recommendations are as follows.

⁸ See: <https://usfscentralafrica.org/wp-content/uploads/2019/09/USFS-FPIC-2019.pdf> and https://usfscentralafrica.org/wp-content/uploads/2019/09/USFS-Practical_Guide-2019.pdf

Adapting existing legal texts and documents

| Law/Text | Recommendations |
|--|--|
| <p>Law No. 15/026 of 31 December 2015 on Water</p> | <ul style="list-style-type: none"> - Adopt the definition of a wetland as it appears in the Ramsar Convention which explicitly includes peatlands as wetlands (Article 3, Point 29). This would avoid misinterpretations and extend all wetland protections to peatlands. - Adopt the regulatory text provided for in Article 9 of this law, to establish the procedures for the delimitation of wetlands to ensure their protection as resources of the public water domain. - Outline modalities of designating and selecting Ramsar sites and include boundary delimitation and mapping requirements. These modalities should be provided for by law with specific selection criteria (e.g., ecological, botanical, zoological, limnological, or hydrological) suggested by the Ramsar Convention. - Set up a specific program under the next REDD+ Investment Plan to support integrated water resources management including formulation of a national water policy. |
| <p>Law No. 011/2002 of 29 August 2002 on the Forestry Code</p> | <ul style="list-style-type: none"> - Adopt specific conservation and management provisions for peatland forests based on their carbon storage capacity. These provisions are particularly salient for REDD+. The current revision of the Forestry Code and elaboration of the REDD+ Investment Plan 2021-2030 presents immediate opportunities for such considerations. - Another option would be to regulate the legal status of carbon stored in peatlands, given its ecological contribution to climate change mitigation at local, national, regional, and global levels. As part of this, a monitoring system would need to be established. - Include specific references linking the new forest policy to development of a new National Peatland Strategy. - Adopt provisions to grant the status of public forest land to peatland forests, with a view of excluding any possibility of their private appropriation as well as any activity incompatible with the objectives of their conservation. |
| <p>Law No. 14/003 of February 11, 2014 on Nature Conservation</p> | <ul style="list-style-type: none"> - Include peatlands as one of the protected area categories by amending Article 31, Paragraph 2 of this law. |
| <p>Law No. 11/009 of July 9, 2011 on the Fundamental Principles of Environmental Protection</p> | <ul style="list-style-type: none"> - Strengthen the technical, institutional and operational capacities of the Congolese Environmental Agency at National and Provincial levels. - Support the Congolese Environmental Agency in the production of the Operations and Procedures Manual as outlined in Decree No. 14/019 of August 02, 2014, Article 8, 20, 44. This will support the implementation and legitimacy of impact assessments and audits called for under Law No. 11/009 of July 9, 2011. |

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| | <ul style="list-style-type: none"> - Support the establishment of the Congolese Environmental Agency provincial branches with a priority for provinces with peatlands and invest in developing the new branches' technical, institutional and operational capacities. |
| Decree of June 20, 1957 on Urban Planning | <ul style="list-style-type: none"> - Through land and land-use planning reform, peatland areas can be established as “restricted zones” with specific management and protection provisions outlined in management plans including the exclusion of certain types of activities. This would provide a mechanism for their protection without necessarily having to create a formal protected area. It is essential to ensure that customary land rights are recognized and respected in such processes. - Leverage PIREDD programming for Provinces with peatlands to prioritize strengthening the design and implementation of land use plans and zoning, facilitate mapping of these areas and conduct resource surveys and inventories, as appropriate and applicable. PIREDD programs can also provide examples of how to establish institutional arrangements for peatland management integrating local, provincial and national levels. Programming may also be available to support communities living within and around peatland areas providing incentives for sustainable peatland management. - Ensure respect for customary land tenure rights in land use planning processes in peatland areas, including their right to free, prior informed consent, so as to preserve production areas and livelihoods of local communities and indigenous peoples and their traditional knowledge as stated in Law No. 14/003 on Nature Conservation. |
| REDD+ Investment Plan for the period 2021-2030 Sustainable Forest Management Program | <ul style="list-style-type: none"> - Recognize in the new Partnership with CAFI, specifically the upcoming REDD+ Investment Plan 2021-2030, the ecological and global importance of peatlands in the Congo Basin and include peatland provisions and priorities. - Draw on existing mechanisms to facilitate sustainable forest management of peatland forests, for example, community forestry, community conservation, community management and customary community land tenure. - Valorize the high carbon storage of peatland forests as an incentive for payments of ecosystem services schemes through REDD+ or other sustainable forestry programs/initiatives. |

Ramsar Convention

| Key requirements under Ramsar Convention related to peatlands | Current status in the DRC |
|---|--|
| Assess national legal and institutional frameworks in regards to provisions for peatlands | This report fulfills this requirement. |

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| <p><i>Source: Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands; adopted by Resolution VII.7; Ramsar Handbook 3, 4th Edition</i></p> | |
| <p>Effectively implement National Wetland Policies or equivalent instruments, alongside and integrated with other strategic and planning processes, including poverty eradication strategies, water conservation and water resource management plans, coastal and marine resource management plans, national forest programs, national sustainable development strategies, and national agricultural policies or measures</p> <p><i>Source: Ramsar, Handbook 2 on National Wetland Policies, p. 6</i></p> | <p>This will be a focus of the development and implementation of the National Peatland Strategy.</p> |
| <p>Reduce peatland degradation;</p> <p>Promote their restoration;</p> <p>Improve management practices for peatlands and other wetland that are important sinks for greenhouse gases; and</p> <p>Establish peatlands pilot sites to raise awareness on peatland restoration, wise use and management in the context of climate change, protection of habitats of endemic and rare species and water supply.</p> <p><i>Source: Resolution XII.I I, Peatlands, climate change and wise use: implications for the Ramsar Convention</i></p> | <p>This will be a focus of the development and implementation of the National Peatland Strategy.</p> |

National Peatland Strategy

Given the multi-sectoral nature of peatlands and their management, it is strongly recommended that the DRC develop a National Peatland Strategy as currently planned in the Peatland Valorization Roadmap. In the process of elaborating such a policy the following considerations should be taken into account:

1. Adopt a national definition of peatlands. This definition should be compatible and convergent with the definition of "wetland" in Law No. 15/026 of 31 December 2015 on Water.
2. Explicitly recognize and respect customary tenure of land and forest rights including peatlands. The importance of free, prior and informed consent should be underscored and mechanisms for benefit sharing should be established in peatland development programs, as provided for in Law No. 14/003 of 11 February 2014 on nature conservation.
3. Specifically describe the multifaceted values of peatlands, with emphasis on carbon storage, maintenance of the hydrological cycle and preservation of biodiversity.
4. Establish direct links between the Strategy and the updated Forestry Code as well as the national REDD+ process and new REDD+ Investment Plan. Where possible and relevant link international conventions and commitments to peatland management as a tool to reinforce their protection and sustainable management. Outline specific linkages as appropriate.
5. Outline protections of peatlands provisioned for by:
 - Law No. 15/026 of 31 December 2015 on Water
 - Ramsar Convention
 - Law No. 14/003 of February 11, 2014 on Nature Conservation

This should include clarifying specific authorities implicated and their respective responsibilities.
6. Clarify how to address and resolve conflicting land use zoning in peatland areas and what kinds of land use can be prioritized and which land uses should be prohibited. The current

land use planning reform presents an opportunity to provide the necessary legal and technical clarifications.

7. Outline institutional arrangements for peatland management including linking local, regional and national levels, identifying existing structures, and where appropriate suggest new administrative management or coordination units.
8. Link peatlands to international commitments, conventions and initiatives to which the DRC is a signatory/party.
9. Clearly outline key commitments under the Ramsar Convention related to peatland management in the DRC.

Development of a national strategy will require public and thematic consultation across different stakeholder groups, with inclusion of local communities, indigenous communities and civil society. Strong political leadership and support of this process will be essential. Parallel to this process it is also important to continue to strengthen technical and institutional capacity at all levels. This includes expanding upon initial research efforts and increasing the number of experts as well as operational capacity for program and project implementation at national, provincial and local levels. Further advancement of intentions stated in the Brazzaville Declaration and through the establishment of the International Tropical Peatland Center, can be key to this process. Specifically establishing a Center of Excellence for Training, Research and Innovation could be invaluable to improving capacity and expertise in the region. Finally, low-emission development strategies and programs which support both local communities and provincial and national governments while facilitating sustainable management and will be key in ensuring protection of these important rich ecosystems.

Conclusion

The Congo Basin's peatlands, most of which are found in the DRC, provide a vast source of wealth in the form of carbon storage, biological diversity, hydrological and nutrient cycling and support of local communities. Fortunately to-date these ecosystems have remained relatively intact with low levels of degradation and drainage. This provides a unique opportunity for both Congo's to take preventative actions now to ensure protection and sustainable management of these important, rich, ecosystems. Review of the existing legislative framework as summarized in this report for the DRC is one important step in this process. Establishment of a National Peatland Strategy and adoption of, at a minimum, some of the recommendations outlined in this report to amend existing legislation, in particular the Forestry Code and land use planning text through the ongoing land use planning reform, two immediate opportunities, should be seized upon. The multi-sectoral nature of peatlands protection, use and management makes it imperative that effective provisions are put in place which apply across sectors to ensure protection and sustainable management of these sensitive ecosystems. The current strong engagement and leadership of the DRC's government should be capitalized upon to advance legislative, technical and institutional processes for peatland protection and sustainable management.

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Appendices

Appendix I: Summary of National Laws in the DRC as pertains to peatlands

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|---------------------------------------|--|
| Title | Law No. 15/026 of December 31, 2015 relating to Water |
| Date in force | December 31, 2015 |
| Purpose | <p>To ensure the sustainable and equitable management of water resources consisting of groundwater and surface water, both continental and maritime, in accordance with Articles 9 and 48 of the Constitution.</p> <p>To define the nature and regimes for water development, protection and use as an economic resource, and for inter-state cooperation for transboundary lakes and rivers.</p> |
| Summary | <p>This Act:</p> <ul style="list-style-type: none"> - Determines the basic principles for the management of water resources, whether continental waters, maritime waters or transboundary waters; - Determines the uses of water that are permitted and their respective use regimes; - Organizes the public water service and determines its general principles, the modalities of its management, its price, the rules of sanitation in urban areas as well as the principles of protection of aquatic ecosystems; - Sets out the principles for the management of disasters affecting water resources; - Establishes mechanisms for settling conflicts over the use of water resources; - Organizes a special regime for the penal protection of water resources; and - Concludes with transitional, repealing and final provisions. |
| Level of application | National |
| Link to wetlands and peatlands | <p>The water regime has direct links to peatlands in that:</p> <ul style="list-style-type: none"> - They are defined as wetlands, governed by the national legal framework for water management; - They are defined as public water domains, governed by the national legal framework for water management; - Their management, as an aquatic ecosystem, is entrusted to the Ministry having water in its attributions; - It is, moreover, the only Congolese legislative text to have not only defined wetlands, but to have reserved some provisions for them. |

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|----------------------|--|
| Title | Law No. 011/2002 of 29 August 2002 on the Forestry Code |
| Date in force | August 29, 2002 |
| Purpose | <p>To establish the regime applicable to the conservation, exploitation and development of forest resources throughout the national territory.</p> <p>To ensure the promotion of rational and sustainable management of forest resources so as to increase their contribution to the economic, social and cultural development of present generations, while preserving forest ecosystems and forest biodiversity for the benefit of future generations.</p> |

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|---------------------------------------|---|
| Summary | <p>This text:</p> <ul style="list-style-type: none"> - Organizes a forestry regime based on the affirmation of the principle of public ownership of forests, with customary possession rights for local communities; - Provides for a classification of forests, according to the uses that the State decides to make of them: i) classified forests, ii) protected forests and iii) permanent production forests; - Establishes two modalities for the allocation of forest concessions: adjudication as the main method and, exceptionally, by mutual agreement, when the concession is requested for activities other than the industrial exploitation of timber (in particular, the enhancement of environmental services); - Puts in place new institutions for the specific handling of a certain number of aspects of forest governance; - Enacts measures relating to the protection of forests and forest restoration operations; - Revise forest taxation and affirm new principles in the area of taxation, including the distribution between the central, provincial and local level; - Establishes a system for forest protection, which includes clear penalties for forest offences; - Submits, in its transitional provisions, all former forest titles (letters of intent and timber supply guarantees) to conversion |
| Level of application | National |
| Link to wetlands and peatlands | <p>The forest regime has very direct links with peatlands, in that:</p> <ul style="list-style-type: none"> - In addition to their status as wetlands, governed by the law on water, peatland forests are also, in the context of the DRC, natural forest ecosystems, dense and humid, governed by the Forestry Code; - Their soil is made up of organic residues from natural forests, governed by the Forestry Code; - They capture and sequester forest carbon resulting from the partial decomposition of organic matter from natural forests, also governed by the Forestry Code; - They are located in the heart of the Cuvette Centrale, an area of the forest estate, governed by the Forestry Code. |

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| Title | Law No. 14/003 of February 11, 2014 on the Conservation of Nature |
| Date in force | February 11, 2014 |
| Purpose | <p>To establish, in accordance with Article 202, Item 36, Letter F, of the Constitution, the rules relating to the conservation of biological diversity, the sustainable use of its constituent elements and the fair and equitable access to and sharing of the benefits arising from the exploitation of biological and genetic resources.</p> <p>Contribute to ensuring, <i>inter alia</i>, the conservation of ecosystems and natural habitats, the protection of species of wild fauna and flora and sustainable development in protected areas.</p> |
| Summary | This law: |

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| | <ul style="list-style-type: none"> - Outlines principles that constitute obligations of the State, provinces and decentralized territorial entities (ETD⁹) in the conservation of natural, biological and genetic resources, ecosystems, natural sites and monuments located on the national territory; - Determines measures for the conservation and sustainable use of biodiversity, in terms of species of fauna and flora; - Establishes rules for the creation and management of protected areas, including the modalities for delegating to private persons the creation or management of protected areas; - Prescribes measures for the protection of ecosystems, habitats, wetlands, watercourses and species against the risks of introduction of exotic species into the national territory; - Establishes the regime for the protection of biological and genetic resources and associated traditional knowledge, including the modalities for access to these resources and knowledge and for the sharing of the resulting revenues; - Establishes modalities for international trade in endangered species of wild fauna and flora; - Provides mechanisms for financing the national biodiversity strategy and action plan; - Establishes the penal protection regime for biodiversity and associated traditional knowledge. |
| Level of application | National |
| Link to wetlands and peatlands | <p>The biodiversity conservation regime has links to peatlands in that:</p> <ul style="list-style-type: none"> - Peatlands are true biodiversity havens; they are home to many animal and plant species, most of which are rare and protected (birds, amphibians, reptiles, insects, plants...), and/or endemic. All these species and their habitats are governed by the Law on Nature Conservation. - In the case of attributing the extent of peatlands as protected areas, the main legal framework of reference will be the law relating to nature conservation, which determines the modalities of creation and management of protected areas. - If there is local traditional knowledge about peatlands and their sustainable use, it will be protected by the Law on Nature Conservation both in terms of access and revenue sharing mechanisms. |

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| Title | Law No. 11/009 of July 9, 2011 on the Fundamental Principles of Environmental Protection |
| Date in force | July 09, 2011 |
| Purpose | <p>To establish the fundamental principles related to the protection of the environment, in accordance with Article 123, Point 15 of the Constitution.</p> <p>To promote the sustainable management of natural resources, to address risks, to fight against all forms of pollution and environmental threats, and to improve the quality of life of the population while respecting the ecological balance.</p> |
| Summary | This law: |

⁹ A decentralized territorial entity is a subdivision of the national territory, with financial and administrative autonomy. In the context of the DRC, these are sectors or chefferies, for rural areas, and towns and communes, for urban areas.

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| | <ul style="list-style-type: none"> - Affirms with regard to the State, the provinces and the decentralized territorial entities⁹ specific obligations to ensure the protection of the environment; - Prescribes fundamental principles of environmental protection and management of natural resources with a view to achieving sustainable development; - Establishes procedural mechanisms for environmental protection and more specifically: i) strategic environmental assessments of sectoral public policies, plans and programs; ii) environmental and social impact studies of sectoral projects with environmental impacts; iii) environmental auditing; iv) public inquiry; - Establishes a financing mechanism for environmental research, biodiversity conservation, clean-up operations, pollution prevention and control, and rehabilitation and restoration of polluted or degraded sites or landscapes; - Prescribes measures for the management and conservation of natural resources; - Prescribes measures to address risks and combat pollution and threats, including requirements for classified facilities, protection of receiving environments, management of chemical products, waste management, management of genetically modified organisms, management of natural disasters and emergency situations; - Establishes a system of environmental civil liability and environmental criminal law protection; - Establishes transitional, repeal and final provisions. |
| Level of application | National |
| Link to wetlands and peatlands | <p>This legislation also has implications for peatlands in that:</p> <ul style="list-style-type: none"> - It makes all Central, Provincial, and decentralized territorial entities⁹ sector policies, plans, and programs that are likely to have negative ecological impacts on peatlands subject to environmental assessments; - It submits all sectoral projects whose implementation is likely to have impacts on peatlands and local communities to an environmental and social impact assessment and the submission of a corresponding environmental management plan; - It allows for environmental audits to be carried out in peatlands with a view to determining potential impacts on peatlands as a component of the environment; - It controls the installation of classified facilities and their exploitation of peatland areas; - It provides benchmarks to establish the legal, administrative, civil and criminal liability in environmental matters of the responsible project holders or perpetrators of acts related to the destruction of peatland ecosystems. |

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| Title | The decree of June 20, 1957 on Urbanism |
| Date in force | June 20, 1957 |
| Purpose | To determine the legal regime for the conduct of land use planning operations. |
| Summary | <p>This text:</p> <ul style="list-style-type: none"> - Organizes land use planning on both urban and rural land, applying to both forest and non-forest land; |

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| | <ul style="list-style-type: none"> - Establishes land use plans as a tool for implementing land use planning processes and categorizes it into four types: general land use plan of the Congo; Provincial land use plan; local land use plan; and the specific land use plan; - Organizes the procedure for the preparation and approval of development plans and defines the powers of various institutions, authorities and administrations in the conduct of development operations as well as the modalities for public consultation and the exercise of remedies by affected persons. |
| Level of application | National |
| Link to wetlands and peatlands | <p>This decree also has implications for the protection of peatlands, in that:</p> <ul style="list-style-type: none"> - It is the appropriate legal framework for the coordination of the processes of establishing inventories of the country's natural capital, in terms of natural resources, both renewable and non-renewable, including peatland inventories and mapping; - It allows for centralized analysis of inventory data and provides support for spatial allocation decisions, including peatland areas; - Provides, through the processes of elaboration and approval of land-use plans at different scales, a framework for the conduct of technical and institutional arbitrations between different ministries and sectoral actors and for concerted decisions on spatial allocations; this reduces the risks of conflicts and overlapping rights and titles that can have a negative impact on peatlands; - Allows, through management plans, to set management priorities in peatland areas that account for ecological and biodiversity functions, protecting them from potential encroachment by other sectors; - Makes it possible to lay the foundations for irregularities in decisions or acts that affect the territory, including peatlands, and to have them sanctioned accordingly. |

Appendix 2: Roles and responsibilities of the DRC Peatland Management Unit

In 2017, the Minister of the Ministry of Environment and Sustainable Development (MEDD) signed Order No. 010 of July 27, 2017¹⁰, creating the DRC Peatland Management Unit as a public service unit within the Sustainable Development Department (DDD) under MEDD. This Peatland Management Unit comprises two implementing bodies: the Stakeholder Committee; and the National Coordination of the DRC Peatland Management Unit.

The Stakeholder Committee has the following mission:

1. To approve the identification and localization maps of peatlands throughout the National Territory;
2. To approve the framework for the development of the National Strategy for Peatland Management in the DRC;
3. Define the orientations and guidelines for sustainable peatland management and decide on the priority actions to be carried out;

¹⁰ Ministerial Order No. 010/CAB/MIN/EDD/AAN/RBR/TNT/05/2017 of July 25, 2017 on the creation, composition and organization of the peatland management unit in the Democratic Republic of Congo, Peatland Management Unit, DRC

4. To approve the work plans of the National Coordination of the DRC Peatland Management Unit;
5. Ensure the monitoring, oversight and rollout of the implementation of the Peatland Management Strategy;
6. To mobilize significant resources to ensure the operationalization of the National Peatland Management Strategy and to set the management and redistribution modalities to the parties involved at different levels;
7. To carry out any other duties entrusted by the Government of the Republic within the framework of the mandate.

The National Coordination of the DRC Peatland Management Unit for attributions:

1. Organize and coordinate the mapping of peatlands throughout the Democratic Republic of Congo;
2. Submit a framework for the development of the National Peatland Management Strategy for approval by the Stakeholder Committee;
3. Elaborate the National Strategy for Peatland Management in the Democratic Republic of Congo and ensure its implementation;
4. Ensure the daily management of the National Coordination of the DRC Peatland Management Unit and monitor the implementation of the activities planned in the annual work plan so that they lead to the expected results;
5. Ensure coordination of peatland management in the Democratic Republic of Congo, with key stakeholders identified in the National Peatland Management Strategy and interested technical-financial partners, including linkages with other similar initiatives in the Congo Basin and elsewhere;
6. Invite and ensure a participatory approach to peatland management through the involvement and consultation of different stakeholders, including forest communities and indigenous peoples;
7. To plan the implementation of the decisions of the Stakeholder Committee and their execution, in coordination with the competent structures;
8. Identify and mobilize qualified national and international experts to deal with problems in the field, in the management of peatlands;
9. Ensure effective collaboration with other existing national climate change initiatives;
10. Act as Secretariat of the Stakeholder Committee.

With regards to managing the influences of other sectors on peatlands and public participation, the Peatland Management Unit plans to establish thematic groups, consisting of focal points from different ministries with possible have implications for peatland protection. The idea would be, on the one hand, to promote institutional and technical dialogue with a view to harmonize decisions that integrate peatland protection and, on the other hand, to use the ongoing sectoral reform processes within the framework of the REDD+ Investment Plan to create points of junctions, particularly with regard to the ongoing formulation of forest policy and other sectoral policies that have an impact on peatlands (land tenure, land use planning, agriculture, energy, etc.). Finally, these thematic groups are also envisaged to provide a framework for the participation of stakeholders and experts in discussions and decision-making processes related to peatlands.

Appendix 3: DRC institutional roles and responsibilities

| Institutions | | Roles and responsibilities |
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| National level | | |
| Parliament | | |
| | | <ul style="list-style-type: none"> - Review and update legislation to ensure the protection and sustainable management of peatlands - Ensure parliamentary control over the actions of the Government in relation to the sustainable management of peatlands |
| Ministry of Environment and Sustainable Development (MEDD) | | |
| Minister | | <ul style="list-style-type: none"> - Initiate the adoption of legislation that falls within its areas of management or revisions to such legislation and adopt new regulatory provisions that incorporate peatland preservation - Ensure that peatland conservation is also mentioned and included in related legislation as a national priority - Provide support to strengthen the institutional capacity of the divisions and units of the Ministry for peatland management and protection |
| Department of Sustainable Development (DDD) | of | <ul style="list-style-type: none"> - Monitor DRC's performance in meeting the objectives and targets of international commitments, including wetlands, climate change, biodiversity, water, restoration, etc. Meet reporting requirements as outlined in international agreements. These include the Ramsar Convention, the Convention on Biological Diversity, and the UNFCCC Paris Agreement. - Collect and maintain the national greenhouse gas inventory, including estimates of peatland contributions to greenhouse gas removal and emissions |
| | <i>Peatland Management Unit (UGT)</i> | <ul style="list-style-type: none"> - Develop and implement the National Peatland Strategy - Ensure the coordination of peatland management in the Democratic Republic of Congo, with the main actors identified in the National Peatland Strategy and interested technical and financial partners, including the link with other similar initiatives at the Congo Basin level and elsewhere - Encourage and ensure a participatory approach to peatland management through the involvement and consultation of various stakeholders, including forest communities and indigenous peoples - Identify and mobilize qualified national and international technicians to address peatland management issues on the ground - Ensure effective collaboration and alignment with other existing national climate change initiatives - Monitor the evolution of the peatland subject area at the international level, and facilitate DRC participation in international conversations - Support valuation of the high carbon storage in peatlands as an incentive to pay for ecosystem services through REDD+ or other sustainable forestry programs/initiatives |
| | <i>CNREDD</i> | <ul style="list-style-type: none"> - Support the identification of harmonization between interventions defined in the REDD+ |

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| | | Framework Strategy and the pillars of the National Peatland Strategy |
| | <i>Climate Change Division</i> | - Include peatlands in the revised DRC NDC and national greenhouse gas inventory |
| | <i>Biodiversity Division</i> | - Promote the protection of peatland biodiversity |
| Department of Water Resources Department | | - Include peatland protection in the National Water Policy (to be developed) - As Focal Point of the Ramsar Convention, ensure adherence to the convention and its guidelines in DRC |
| Department of Forest Inventory and Zoning (DIAF) | | - Complete the forest inventory of national forests, including peatland areas - Map and monitor changes in forest cover, including deforestation and forest degradation in peatland areas |
| Congolese Environment Agency (ACE) | | - Provide a framework to facilitate social and environmental impact assessments and audits at national, provincial and local levels |
| Congolese Institute for Nature Conservation (ICCN) | | - Consider the possibility of designating specific areas of peatlands as protected areas, to enhance their protection |
| National REDD+ Funds (FONAREDD) | | |
| | | - Build on existing mechanisms to facilitate sustainable management of peatland forests, such as community forestry, community conservation, community management, and customary community land tenure, by coordinating and monitoring REDD+ initiatives in DRC |
| Ministry of Land Management | | |
| | | - Coordinate zoning processes for different land uses and arbitrate conflicting interests in zoning, including peatland areas, for concerted and harmonized decisions - Strengthen the protection of peatlands by recognizing their importance in zoning - Leverage integrated REDD programs (PIREDD) for Provinces with peatlands to strengthen the design and implementation of land use and zoning plans, facilitate mapping of these areas, and conduct resource surveys and inventories, as appropriate and necessary. PIREDD programs can also provide examples of how to establish institutional arrangements for peatland management by integrating local, provincial and national levels. These same programs can also support communities living in and around peatland areas by providing incentives for their sustainable management. |
| Provincial level | | |
| Provincial Assembly | | - Take additional legislative measures at the provincial level to strengthen the protection of peatlands - Ensure the implementation of the Provincial Government's decisions on peatland protection and management |
| Provincial Governor | | - Establish by provincial by-laws the Provincial Development Plan for the Province, taking into account peatland management and conservation priorities |
| Provincial Ministry of Planning | | - Ensure the inclusion of sustainable management and protection of peatlands in the Provincial Development Plan |

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| Provincial Minister in charge of land use planning | - Initiate and coordinate the process of developing a Provincial Land Use Plan that incorporates peatland preservation and sustainable peatland management |
| ACE Provincial Chapter | - Review and approve strategic environmental assessments of provincial and local land use plans and impact assessments that may affect peatland areas |
| Local level | |
| Chieftdom or Sector Council | <ul style="list-style-type: none"> - Ensure the integration of sustainable management and protection of peatlands in the Local Development Plan - Ensure the integration of sustainable management and protection of peatlands in the ETD Development Plan - Ensure the monitoring of the action of the Executive Committee of the chieftdom or the sector in terms of peatland protection |
| Sector or chieftdom Chief | <ul style="list-style-type: none"> - Establish by chieftdom or sector decree the local development plan, integrating peatland preservation and sustainable management of peatlands - Establish by chieftdom or sector decree the ETD Development Plan, integrating peatland preservation and sustainable management |
| Representative in charge of the Plan | - Initiate and coordinate the Local Development Plan process integrating peatland preservation and sustainable peatland management |
| Representative in charge of land use planning | - Initiate and coordinate the process of developing the Local Development Plan, integrating peatland preservation and sustainable peatland management |
| Technical and Financial Partners | |
| - Work with the Peatland Management Unit and other government and non-government agencies at the local, provincial and national levels to fund, develop and implement peatland programs that promote sustainable management and protection through improved knowledge and mapping, sustainable management, policy and institutional frameworks, planning and conservation. | |

Appendix 4: Methodology of this legal review

The Congolese NGO Conseil pour la Défense Environnementale par la Légalité et la Traçabilité (CODELT) was recruited by USAID’s Sustainable Wetlands Adaptation and Mitigation Program (SWAMP), through the U.S. Forest Service International Programs (USFS), one of the technical implementing partners of SWAMP, to complete an analysis of policy and legal text related to peatlands in the DRC.

Initial consultations were held with the DRC Peatland Management Unit Coordinator, USFS and CODELT outlining the terms of reference and approach for the review. CODELT then undertook the study reviewing key relevant documents including: relevant international legal texts, notably the Ramsar Convention, the Convention on Biodiversity, the Convention to Combat Desertification and national legal texts, principally the Forestry Code, the Law on Water, the Law on Nature Conservation, the Law on Fundamental Principles for the Protection of the Environment. Furthermore, selected unstructured stakeholder interviews were held.

Analysis of documents at the national level focused on: identifying national legal texts that referred international commitments on peatland preservation; assessing the level of legal and institutional protection offered, identifying the merits or achievements and the pitfalls of the system in place; and proposing modifications for holistic and consolidated legal protection of peatlands, taking into account their cross-cutting nature and multifunctionality.

A report was drafted presenting the findings of the review including outlining key recommendations, which was then updated based upon feedback received. This report is a modified version of the initial draft.