

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

The Cuvette Centrale peatlands of the Congo Basin are an extremely rich natural resource, providing a wealth of ecosystem services at local, regional, and global levels, notably in the form of vast carbon storage in the rich peat soil. Currently, there is neither peatland-specific legislation, policy, or strategy nor a clear national definition of a peatland in the Republic of Congo (Congo). In an effort to strengthen the conservation and sustainable management of peatlands, a review of international and national legal texts was completed by the Institut Cerveau Vert 2063 (a legal clinic that contributes to the implementation of the African Union's Agenda 2063), highlighting the main legal texts likely to apply to peatlands. This policy brief first emphasizes key international agreements ratified by Congo and regional initiatives relevant to peatlands. It then describes the main existing national legal texts related to the use, management, and protection of peatlands in Congo and provides recommendations to strengthen existing legislation and guide the development and implementation of a national peatland strategy.

## GLOBAL AND REGIONAL PEATLAND-SPECIFIC FRAMEWORKS AND INITIATIVES

- Congo has ratified major international environmental law agreements such as the Ramsar Convention on Wetlands in 1996. In the most recent submission of the Nationally Determined Contribution (NDC) for Congo in August 2021 under the United Nations Framework Convention on Climate Change (UNFCCC), peatlands are mentioned but there are no specific targets or commitments related to them.
- Adaptation of Congolese national law to international agreements (such as the Ramsar Convention, the United Nations Convention on Biological Diversity, the UNFCCC, or the African Convention on Conservation of Nature and Natural Resources) is needed to meet the requirements of the conventions to which Congo has adhered in its sovereign capacity. In this regard, Congo needs more expertise and resources to fulfill the objectives and meet the requirements of these texts for their application in the country.
- Congo has launched or signed onto several global and regional peatland-specific initiatives, including:
  - The Global Peatlands Initiative in 2016 (Congo is one of the four initial partner countries);
  - The creation of the largest Ramsar site in the world in 2017, namely the Lac Télé – Grands Affluents – Lac Tumba transboundary complex and its sustainable management strategy (2017-2026) with a cooperation agreement signed by Congo and Democratic Republic of Congo (DRC);
  - The Brazzaville Declaration in 2018 for Congo, DRC, and Indonesia to collaborate and exchange knowledge and experiences for the protection and sustainable management of peatlands;
  - The International Centre for Tropical Peatlands established in 2018 by Indonesia, DRC, and Congo and supported by Peru.



## ADAPTATION OF EXISTING NATIONAL LEGAL TEXTS

Many legislative and regulatory texts, that are directly or indirectly linked to peatland management, exist in Congo but remain insufficient for effective management, protection, and sustainable use of peatlands. The below table presents the main existing laws related to peatland management and provides recommendations to support the country in adapting these texts and taking peatlands into account.

Law/Text	Description and/or recommendation(s)
<b>Law No. 33-2020 of July 8, 2020, on the Forest Code</b>	<ul style="list-style-type: none"> <li>✓ Article 78 of the text is one of the few existing provisions in the environmental legal framework of Congo which designates the term "peatlands" and sets out an obligation for the State to protect these "specific ecosystems" and ensure their sustainable management.</li> <li>▲ A legal definition of the concept of peatlands beyond that of "specific ecosystem" is needed as well as the total prohibition of any mining or oil-advanced research activity in the peatland area (Art. 177 and 178). Furthermore, any degradation, deterioration, or drainage of peatlands should be recognized as an offense in Article 237 (in which, only peat extraction is currently seen as an offense).</li> </ul>
<b>Law No. 28-2016 of October 12, 2016, on the Hydrocarbons Code</b>	<ul style="list-style-type: none"> <li>✓ Article 3 excludes peat from fossil fuels.</li> <li>✓ Article 86 subjects the development of any petroleum operation to compliance with international treaties (including the Ramsar Convention) and environmental protection national laws. It compels the service provider to ensure the conservation of natural resources (including those present in peatlands) and the protection of the environment.</li> <li>▲ Currently, articles 25 to 27 and 42 identify the Congolese Cuvette basin (peatland area) as part of the exploitable public petroleum domain. A provision excluding wetlands and more specifically peatlands, from any oil exploitation perimeter should be included.</li> </ul>
<b>Law No. 4-2005 of April 11, 2005, on the mining code</b>	<ul style="list-style-type: none"> <li>✓ Article 4 excludes peat from the enumeration of fossil energy substances.</li> <li>✓ The code incorporates the precautionary principle through the environmental impact study as one of the conditions for granting authorization to operate mines or quarries (art.50) and imposes on the Administration of mines and authorized control bodies the obligation to preserve the environment (including peatlands) (art. 126).</li> <li>▲ Articles 128 to 130 do not set any limit to the exploitation of mining, gas, or oil resources in peatlands, apart from a simple obligation to rehabilitate and restore when the integrity of forests has been impacted. This type of exploitation should therefore be restricted or prohibited.</li> </ul>
<b>Law No. 3-2010 of June 14, 2010, on the organization of inland fishing and aquaculture</b>	<ul style="list-style-type: none"> <li>▲ Currently, articles 26, 28, 34, and 41 establish free delivery of the various permits authorizing fishing with modern or artisanal means; these measures could encourage the intensification of fishing activities and lead to a reduction in aquatic resources, particularly in peatlands. <ul style="list-style-type: none"> <li>→ The issuance of charged permits authorizing fishing could be introduced, except for local communities and indigenous populations who have customary rights.</li> </ul> </li> <li>▲ Articles 83 to 98 should introduce prison sentences for offenses, especially in cases of extremely serious offenses such as fishing with explosives or pollution of the aquatic environment (art.91). These articles currently only provide for fines, the quantum of which is often low and therefore not very dissuasive.</li> </ul>
<b>Law No. 8 of July 26, 2010, on the protection of national, cultural, and natural heritage</b>	<ul style="list-style-type: none"> <li>▲ In Articles 60 and 70, prison sentences for offenses such as altering, parceling out, or carrying out unauthorized works on some inventoried or classified sites such as peatland areas should be introduced.</li> </ul>
<b>Law n°003/91 April 1991, on the protection of environment</b>	<ul style="list-style-type: none"> <li>▲ The text, promulgated before the ratification of the Ramsar convention by Congo, does not include any specific provision on wetlands and peatlands.</li> <li>▲ Article 2 mentions the obligation of an environmental impact study, but clear guidelines and transparency are needed for effective realization. Local communities and indigenous peoples' rights to land and resources must be recognized (cf. article 13 which currently excludes any user rights).</li> </ul>
<b>Law n°21-2018 of June 13, 2018, on the water code</b>	<ul style="list-style-type: none"> <li>▲ Integrate wetlands, and more specifically peatlands, in the hydraulic public domain so that wetlands and peatlands benefit from the legal regime applicable to the hydraulic public domain (Article 6).</li> </ul>
<b>Law No. 21-2018 of June 13, 2018, setting the rules for land occupation and acquisition</b>	<ul style="list-style-type: none"> <li>▲ Include wetlands, and more specifically peatlands, in the list of lands in the rural domain that are prohibited from occupation, acquisition or exploitation except by local communities and indigenous peoples who have customary rights (Article 42)</li> </ul>
<b>Law n°37-2008 of November 28, 2008, on wildlife and protected areas</b>	<ul style="list-style-type: none"> <li>▲ Include wetlands and peatlands in the listing of the typology of protected areas so that the regime applicable to protected areas provides in situ protection to fauna and flora species that are threatened with extinction in peatlands (Articles 5 and 6).</li> </ul>

# DEVELOPMENT OF A NATIONAL PEATLAND STRATEGY FOR CONGO

Elaboration of a National Peatland Strategy is a salient opportunity to address the multi-sectoral nature of peatland management, including legal considerations. It will require public and thematic consultation across different stakeholder groups, with the inclusion of local communities, indigenous communities, and civil society. It will also be important to explore synergies with related processes (REDD+, land use planning, etc.). Specific recommendations for the development of a National Peatland Strategy for Congo are as follows:



1. Adopt a clear national definition of wetlands and more specifically of peatlands;
2. Develop a legislative or regulatory text devoted to the management and protection of wetlands, including peatlands, in order to have a specific legal regime applicable to these ecosystems;
3. Define institutional arrangements for peatland management at local, regional, and national levels;
4. Conduct an in-depth analysis of specific threats to peatlands in Congo and of the overlapping land uses in and around peatlands;
5. Clearly define principles of legal protection and protocols for overlapping land use zones in peatland areas in the national peatland strategy;
6. Implement specific and clear repressive measures for the protection of peatlands and wetlands;
7. Recognize the right of associations, organizations, and non-governmental organizations defending peatland ecosystems to take active legal action and to prosecute peatland-related violations;
8. Strengthen the capacities and responsibilities of public and private stakeholders in the field of peatland protection and management;
9. Make clear provisions for the protection of local communities and indigenous peoples' customary rights to land and resources;
10. Provide clear guidance and transparency for carrying out environmental impact studies;
11. Develop a plan to increase training, research, and expertise in areas related to peatland science and management;
12. Develop a program to explore possible payment mechanisms for ecosystem services, including through REDD+ and other sustainable forestry programs and initiatives;
13. Analyze mitigation options in peatland landscapes to contribute to national climate change mitigation goals defined in the NDC and the Paris Agreement.

## REFERENCE & ACKNOWLEDGEMENTS:

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*PHOTO: Measuring and taking a sample from an extracted carbon-rich peat core in the peatland forests of Republic of the Congo | Roni Ziade*



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