



UNIVERSITY *of the*  
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## Faculty of Law

**DEPARTMENT OF MERCANTILE AND LABOUR LAW**

**THE IMPACT OF FOREIGN DIRECT INVESTMENT ON THE ENVIRONMENT: A  
CASE STUDY OF THE MINING SECTOR IN CONGO BRAZZAVILLE**

Mini-thesis submitted in partial fulfilment of the requirements for the LLM degree in  
International Trade, Business and Investment Law

by

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## DEDICATION

I dedicate this study to my father, the late Alfred Ndombolo-Nzambi. While I was still a child, he received a scholarship from the Hubert H. Humphrey Fellowship Program in USA. Then he went to study at the University of Minnesota. He spoke fluent English.

I too long cherished the dream of attending an Anglophone university. The present work shows that I attained that 'dream'. Unfortunately, Dad passed away last June before I could graduate.

I also dedicate this work to the following persons: Mr Rigobert Maboundou, and Mr Pierre Oba.

They both played a crucial role in my travel to South Africa.



## ACKNOWLEDGMENTS

I wish to pay tribute to my parents, especially to my father whose death during the writing of this work constitutes my worst regret. Dad, I miss you.

Both my father and my mother sustained me all my life. I pray God to keep my mother alive for a very long time.

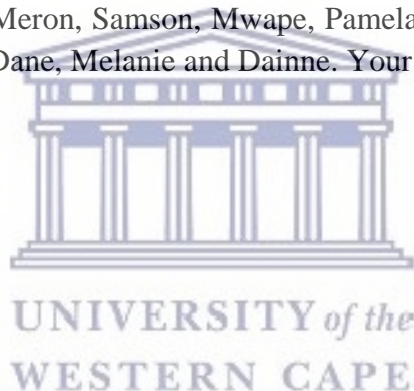
Professor Riekie Wandrag, my supervisor, gave me this wonderful opportunity to study in an Anglophone country. Studying at UWC was a milestone in my life. Thank you.

I am grateful to my lecturers: Prof Patricia Lenagham, Prof Kenneth Mwenda, Dr Enga Kameni, Dr Magalie Masamba and Kholefo Kgler.

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To my son Dombolo Bob Hope Noham who did not see his father during his first eight months. Your father loves you a lot.

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## **KEY WORDS**

Congo-Brazzaville

Foreign Direct Investment

Investment Impact

Mining

Environment

Natural resources



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## ACRONYMS AND ABBREVIATIONS

<b>API</b>	Agency for the Promotion of Investment
<b>BIT</b>	Bilateral Investment Treaty
<b>CEEAC</b>	Economic Community of Central African States
<b>CEMAC</b>	Central African Economic and Monetary Community
<b>CPIDD</b>	Cadre de politique d'investissement pour un développement durable
<b>DGE</b>	Directorate General of the Environment
<b>EIA</b>	Environmental Impact Assessment
<b>EIS</b>	Environmental impact studies
<b>EITI</b>	Extractive Industry Transparency Initiative (EITI)
<b>FDI</b>	Foreign Direct Investment
<b>FOCAC</b>	Forum on China-Africa Cooperation
<b>IFC</b>	International Finance Corporation
<b>ICMM</b>	International Council on Mining and Metals
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>IPR</b>	Investment Policy Review
<b>ISO</b>	International Organization for Standardisation
<b>NIC</b>	National Investment Commission
<b>OECD</b>	Organization of Economic Cooperation and Development
<b>USA</b>	United States of America
<b>SEEAC</b>	Secretariat for Environmental Assessment in Central Africa
<b>SEZ</b>	Special Economic Zone
<b>UNEP</b>	United Nations Environmental Program
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>WRI</b>	World Resource Institute
<b>WTO</b>	World Trade Organization

# TABLE OF CONTENTS

<b>CHAPTER ONE: INTRODUCTION</b> .....	<b>8</b>
1.1 BACKGROUND .....	8
1.2 PROBLEM STATEMENT.....	9
1.3 SIGNIFICANCE OF THE STUDY .....	10
1.4 RESEARCH QUESTION .....	11
1.5 METHODOLOGY .....	12
1.6 CHAPTER OUTLINE .....	12
<b>CHAPTER 2</b> .....	<b>13</b>
2.1 THE HISTORICAL DEVELOPMENT OF FDI IN THE REPUBLIC OF CONGO .....	13
2.2 FOREIGN DIRECT INVESTMENT: DEFINITION AND DEVELOPMENT .....	13
2.2.1 Definition .....	13
2.2.2 Development of FDI in Congo .....	14
2.2.3. A Presentation of the Potentialities of Congo .....	15
2.2.3.1 Advantages of Investing in the Country .....	15
2.2.3.2 Investing in Congo: Problems .....	16
2.2.3.3 Chinese FDI in the Republic of Congo: .....	19
2.2.3.4 French FDI in the Republic of Congo: .....	23
2.2.3.5 Other Sources of FDI in Congo.....	23
2.2.3.6 Covid-19 and the Development of FDI in Congo: .....	24
2.3 CONCLUSION: .....	24
<b>CHAPTER THREE: THE CURRENT LEGAL, INSTITUTIONAL AND REGULATORY BODIES GOVERNING FDI IN THE REPUBLIC OF CONGO</b> .....	<b>26</b>
3.1 INTRODUCTION .....	26
3.2 THE CONSTITUTION OF THE REPUBLIC OF CONGO .....	26
3.3 LAW NO. 6-2003 OF 18 JANUARY 2003: THE CHARTER ON INVESTMENT .....	28
3.3.1 Guarantees Granted to Foreign Investors .....	29
3.3.2 The Investment Review Policy.....	29
3.4. LAW NO. 003/91 OF 23 APRIL 1991 ON THE PROTECTION OF THE ENVIRONMENT .....	33
3.4.1: History and Legal Framework.....	33
3.4.2 Characteristics of an EIA.....	35
3.5. LAW NO. 4-2005 OF 11 APRIL 2005: THE MINING CODE .....	39
3.6. BILATERAL INVESTMENT TREATIES.....	43
3.7. THE INSTITUTIONAL FRAMEWORK GOVERNING FDI IN CONGO-BRAZZAVILLE.....	43
3.7.1. The President of the Republic .....	43
3.7.2 Ministry in Charge of Planning .....	43
3.7.3. Ministry of Mining and Geology.....	44
3.7.4 Ministry of the Environment.....	44
3.7.5. The Agency for the Promotion of Investment (API) .....	44
3.7.6. The Parliament.....	44
3.8. THE INTERNATIONAL AGREEMENT AND POLITICAL STATEMENTS: .....	45
3.8.1. International Agreements.....	45
3.8.2. Political Declarations .....	46
3.9 CONCLUSION: .....	46
<b>CHAPTER FOUR: PROTECTION COMPLIANCE MECHANISMS AND BEST PRACTICES FOR THE PROTECTION OF THE ENVIRONMENT</b> .....	<b>48</b>
4.1 INTRODUCTION .....	48

4.2 OVERVIEW OR DEFINITION OF GOOD OR BEST ENVIRONMENTAL PRACTICES .....	48
4.3. HISTORICAL ROOTS AND THE ROLE OF GOOD OR BEST ENVIRONMENTAL PRACTICES .....	49
4.3.1. <i>Roots of Best Environmental Practices</i> .....	49
4.3.2 <i>Role of Good Environmental Practices</i> .....	49
4.3.3 <i>Different Types of Good or Best practices</i> .....	49
4.3.3.1. The International Council on Mining and Metals (ICMM) and the 10 Principles for Mining and Sustainable Development.....	50
4.3.3.2. Effects of ICMM Principles .....	51
4.4. INTERNATIONAL FINANCE CORPORATION (IFC) .....	52
4.4.1. <i>Presentation</i> .....	52
4.5. CHINESE GOOD PRINCIPLES .....	54
4.5.1. <i>The Guidelines on Environmental Protection for Overseas Investment and Cooperation</i> .....	54
4.6. THE AFRICA MINING VISION: ‘TRANSPARENT, EQUITABLE AND OPTIMAL EXPLOITATION OF MINERAL RESOURCES TO UNDERPIN BROAD-BASED SUSTAINABLE GROWTH AND SOCIO-ECONOMIC DEVELOPMENT’ .....	56
4.7. AGENDA 2063.....	56
4.8. AGENDA 21.....	57
<b>CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>60</b>
5.1. INTRODUCTION: .....	60
5.2. SUMMARY OF FINDINGS .....	60
5.3. RECOMMENDATIONS.....	61
<b>BIBLIOGRAPHY .....</b>	<b>65</b>



# Chapter One: Introduction

## 1.1 Background

The impact of foreign direct investment (FDI), national or local investment on the environment is experienced all around the world. In Indonesia, for instance, multinational companies' production trends indicate that the FDI flows significantly affect CO<sup>2</sup> emissions, which has an impact on environmental degradation.<sup>1</sup> In the Niger Delta, the increase in FDI has adverse consequences resulting in high levels of air pollution.<sup>2</sup>

This explains why, in the Niger Delta, oil represents a danger for surrounding peoples and communities. The impact of oil exploitation has led to many situations such as health degradation and loss of biodiversity.<sup>3</sup> It should be pointed out that, these effects are not only limited to air pollution. In this regard, FDI also exerts severe pressure on the forest.<sup>4</sup> It is common to discover forest degradation in a place where there is a lack of good governance.<sup>5</sup> Furthermore, the degradation of the environment can be the consequence of the exploitation of natural resources by specifically international companies operating in Africa. In addition, in many African countries, environmental measures are not adequately implemented, so environmental damage often occurs.<sup>6</sup> In West Africa, as well as Nigeria, there are other countries experiencing this unfortunate phenomenon. For instance, in the Republic of Guinea, an important and very large area dedicated to the protection of the environment has now been opened for iron-ore prospecting.<sup>7</sup> Like most FDI in Africa, investments from China are focused on sectors that have detrimental effects on the environment.<sup>8</sup> This is why, in the Republic of Congo, many Chinese companies are involved in the mining sectors. Sadly, African leaders and Institutions do not show a serious interest towards the protection of the environment leading Chinese investors to do the same.<sup>9</sup>

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<sup>1</sup> Sasana, Sugiharti & Setyaningsih 'The Impact of Foreign Direct Investment to the Quality of the Environment in Indonesia' (2018), 4 available at <https://doi.org/10.1051/e3sconf/201873> (accessed 20 July 2020)

<sup>2</sup> Kareen, Kari, Alam, Chukwu, et al 'Foreign Direct Investment and Environmental Degradation of Oil Exploitation: The Experience of Niger Delta' (2012) *The International Journal of Applied Economics and Finance* 124.

<sup>3</sup> Kareen, Kari, Alam, Chukwu et al (2012) 125.

<sup>4</sup> Assa BSK 'Foreign direct investment, bad governance and forest resources degradation: evidence in Sub-Saharan Africa', (2017), *Economia Politica*, 2.

<sup>5</sup> Assa BSK (2017) 2.

<sup>6</sup> Assa BSK (2017) 5 & 7.

<sup>7</sup> Edwards, Sloan, Weng et al, 'Mining and the African Environment' (2014) *Policy Perspectives* 2.

<sup>8</sup> Shinn D.H 'The Environmental Impact of China's Investment in Africa' (2016), Vol.49, *Cornell International Law Journal*, 24.

<sup>9</sup> Shinn D.H (2016)19.



The Republic of Congo is expected to become a major economy in the coming years.<sup>10</sup> In light of this, Congo receives significant volume or amount of FDI mainly in the oil sector.<sup>11</sup> Congo-Brazzaville is also where most FDI converges in Central Africa.<sup>12</sup> For all of that, FDI is responsible for severe effects on the environment in the Republic of Congo. In light of this, a Chinese company was forced to repair environmental damage resulting from its activities.<sup>13</sup> For some years now, China has been playing a vital role in the development of African countries as it provides a significant part of FDI.<sup>14</sup> This research will explore the effects of FDI on the environment, specifically in the mining sector in the Republic of Congo, also called Congo-Brazzaville.

## 1.2 Problem Statement

Recently, an important area of peatlands was discovered in the heart of the forest, in the north of the country. The peatlands are of ‘the size of England and store 30bn tonnes of carbon’, and ‘draining the area would release the same amount of carbon dioxide as Japan emits annually’.<sup>15</sup> This is why it is ‘absolutely essential’ to preserve the world’s largest tropical peatlands.<sup>16</sup> In Zoulabouth, 65 Km from Ouessou, a major city in the north of Congo, Chinese companies use significant quantities of mercury to easily extract gold, and this situation results in environmental damage in that area of the country.<sup>17</sup> Decree 2009/415 of November 2009 deals with the Environmental Assessment and it obliges companies involved in the mining sector to conduct an Evaluation Impact Assessment (EIA). Well implemented, this EIA should show the eventual impacts on or threats to the environment that might follow such kind of investments, and how this would affect the lives of surrounding people.

There are other regulations for the protection of the environment, such as Law 003/91 of 23 April 1991, which emphasises the issue of environmental protection by undertaking, among other things, to ‘prevent and combat damage to the environment and the health of persons or

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<sup>10</sup> United Nations Conference on Trade and Development ‘Investment Policy Review of the Republic of Congo’ available at <https://investmentpolicy.unctad.org/publications/131/investment-policy-review-of-the-republic-of-congo> (accessed 24 June 2020).

<sup>11</sup> United Nations Conference on Trade and Development ‘Investment Policy Review of the Republic of Congo’ available at <https://investmentpolicy.unctad.org/publications/131/investment-policy-review-of-the-republic-of-congo> (accessed 24 June 2020).

<sup>12</sup> United Nations Conference on Trade and Development Republic of Congo to promote foreign direct investment in agriculture at <https://unctad.org/en/Pages/PressRelease.aspx?OriginalVersionID=243> (accessed 06 July 2020).

<sup>13</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>14</sup> Patchura P (ed): *The Economy Geography of Globalization* (2011) ch 4.

<sup>15</sup> The Guardian ‘Plan to drain Congo peat bog for oil could release vast amount of carbon’ at <https://www.theguardian.com/environment/2020/feb/28/ridiculous-plan-to-drain-congo-peat-bog-could-release-vast-amount-of-carbon-aoe> (accessed 27 May 2020).

<sup>16</sup> The Guardian ‘Plan to drain Congo peat bog for oil could release vast amount of carbon’ at <https://www.theguardian.com/environment/2020/feb/28/ridiculous-plan-to-drain-congo-peat-bog-could-release-vast-amount-of-carbon-aoe> (accessed 27 May 2020).

<sup>17</sup> Nzikou-Massala M ‘Illegal Gold Mining Creates an Ecological Disaster for Congo-Brazzaville’s Sangha region’ available at <https://pulitzercenter.org/projects/illegal-gold-mining-creates-ecological-disaster-congo-brazzavilles-sangha-region> (accessed 14 August 2020).

their property'.<sup>18</sup> In addition, Congo is party to numerous multilateral environmental agreements.<sup>19</sup>

Mining companies do not follow the process of obtaining a mining permit. This situation, for instance, led Agil Congo to start 'exploitation' whilst the authorities had only issued the mining 'exploration' permit.<sup>20</sup> As in many other African countries, several laws on the protection of the environment have been enacted. However, in practice, these regulations have been violated.<sup>21</sup>

All the same, investment laws have been enacted to ensure that foreign investors are well protected and attractive incentives are extended to them. However, in the same spirit, the investment laws do not mention anywhere the obligation of these investors to protect the environment. The constitution provides for the protection of the environment and sustainable development.<sup>22</sup> The Congolese investment law does not comply with the international model standard investment law. In light of the above development, the country needs to reach, to find, and to achieve a kind of *modus vivendi*.<sup>23</sup> Some sort of compromise between necessary development and the need to also protect the environment is becoming necessary. By so doing, the country can be expected to achieve sustainable development. In spite of all the current regulations on environmental protection, communities are still being affected by activities from the mining industries. The need to protect the environment through effective investment laws has not been addressed. The gap in the law has necessitated this study.

### 1.3 Significance of the Study

This study is an academic one, never undertaken before. It will focus on the impact of FDI in the mining sector in the Republic of Congo, and will contribute to the awareness of this impact on the country. The effects occur mainly because Chinese investors usually negotiate their mining contracts without paying attention to bidding or environmental regulations.<sup>24</sup>

The study will analyse the root cause of this absence, and so demonstrate the necessity for the country to adopt one. The reason for this is that these impacts are not only limited to the environment but go beyond it, affecting the health and the daily life of the surrounding communities.

In this regard, the research seeks to understand the links between FDI and such disasters. For instance, the impact in Nguingoli village (North Congo), where the local population can no

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<sup>18</sup> Law 003/91 of 23 April 1991 on the protection of the environment.

<sup>19</sup> Convention on Biological Diversity, 1992.

<sup>20</sup> Ngounou B 'Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster' available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>21</sup> Ngounou B 'Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster' available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>22</sup> 'Every citizen has the right to a healthy, satisfying and durable environment and has the duty of defending it.' Constitution of the Republic of Congo, Article 41, 2015.

<sup>23</sup> Working agreement

<sup>24</sup> Shinn D.H (2016) 26.

longer utilise its water sources as a result of contamination leading to a condition called ‘Kwaka Nzoka’.<sup>25</sup>

It will also serve as a clear and strong message so that ‘African leaders understand the link between natural resources and economic development’.<sup>26</sup> This should lead them to ‘now demonstrate that environmental protection is not a competing interest for scarce resource, but a complementary one’.<sup>27</sup>

Finally, it will serve as a reminder of Agenda 2063, adopted by the African Union Commission, which should be taken into consideration. Under Agenda 2063, the first aspiration canvasses for ‘a prosperous Africa based on inclusive growth and sustainable development’.<sup>28</sup>

The last goal under this aspiration points out the necessity to ‘put in place measures to sustainably manage the continent’s rich biodiversity, forests, land and waters and using mainly adaptive measures to address climate change risks’.<sup>29</sup> Thus, this research highlights the need for the country to consider the priority area of this goal and include with it environmental protection issues accordingly.

#### **1.4 Research Question**

This asks whether the laws promoting FDI take into account the protection of the environment in Congo-Brazzaville.

To sufficiently answer the research question, other more specific questions must be answered.

- What are the protection and compliances mechanisms, including best practices in investment laws, for the protection of the environment?

#### **Specific Objectives:**

To achieve this objective, the work will emphasise the following specific objectives:

- To examine the historical development of FDI in the Republic of Congo;
- To look at the current institutional and regulatory bodies governing FDI in Congo;
- To explore the protection and compliance mechanisms and best practices for the protection of the environment;
- To make recommendations to improve the regulation of FDI, and the protection of the environment in the Republic of Congo.

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<sup>25</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>26</sup> Shinn D.H (2016) 19.

<sup>27</sup> Shinn D.H (2016) 19.

<sup>28</sup> African Union ‘Our Aspirations for the Africa We Want’ available at <https://au.int/en/agenda2063/aspirations> (accessed 24 June 2020).

<sup>29</sup> African Union ‘Our Aspirations for the Africa We Want’ available at <https://au.int/en/agenda2063/aspirations> (accessed 24 June 2020).

## **1.5 Methodology**

The work is a desktop study. Materials are found in the university library and on the internet. Primary sources include literature from the Republic of Congo, and specifically the Constitution, the Charter on investments, and the laws on the protection of the environment.

Secondary sources include books, journal articles, news opinions and other credible materials needed to achieve this goal.

## **1.6 Chapter Outline**

Chapter One:

This chapter presents the entire work including the background, the problem statement, the significance of the study, the research question and objectives, the methodology, and the chapter outlines.

Chapter Two:

This chapter will concentrate on the presentation of the historical development of FDI in the Republic of Congo.

Chapter Three:

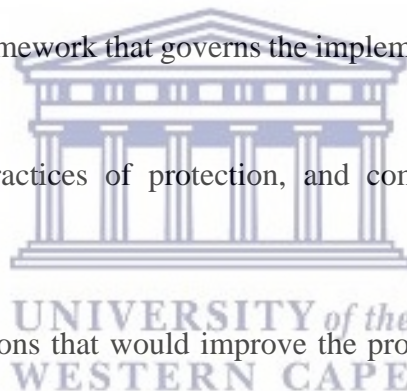
The chapter will present the framework that governs the implementation of FDI in the country.

Chapter Four:

This will explore the best practices of protection, and compliance mechanisms for the protection of the environment.

Chapter Five:

This focuses on recommendations that would improve the protection of the environment by FDI.



# Chapter 2

## 2.1. Introduction

### 2.2 The Historical Development of FDI in the Republic of Congo

Foreign Direct Investments plays a key role in the economic development of most African countries .<sup>30</sup> From its side, the World Economic Forum Global Agenda Council on Trade and Finance asserts that FDI is a worthy tool that may lead to prosperity within a country.<sup>31</sup> When associated with the environment, FDI can be seen as a source of disastrous consequences for biodiversity in a country.<sup>32</sup>

For many years, many countries and regions have been seeking best opportunities in order to regulate foreign investment, mainly due to the sustainable development goals, and more specifically because of its adverse impact on the environment.

This chapter will provide the meaning or the definition of the concept of FDI and its development and present the historical progress of FDI in Congo.

### 2.3 Foreign Direct Investment: Definition and Development

#### 2.3.1 Definition

In his thesis, talking about FDI, Kondo asserts that it is a ‘catchy’ expression, which is commonly used in some circles.<sup>33</sup> Despite its popular usage, Kondo adds that dissent still exists on the meaning of the term FDI.<sup>34</sup> In the 1960s, statistics revealed that FDI had started to gain in volume and this trend led it to be considered as part of the neo-classical theory, assimilated with the international capital trade.<sup>35</sup> Lall and Narula consider FDI as a tool that contributes to development.<sup>36</sup> Many definitions have been given of FDI; however, fundamentally it is seen or perceived as an investment destined to get shares in a company located in a different jurisdiction from the investors, who do not always become the owners of the company.<sup>37</sup> It is in this context that the International Monetary Fund, through the Balance of Payments Manual,

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<sup>30</sup> Adekele AI FDI-Growth Nexus in Africa: Does Governance Matter? (2014), Vol.39, *Journal of Economic Development*, 111.

<sup>31</sup> World Economic Forum ‘Foreign Direct Investment as a Key Driver for Trade, Growth and Prosperity: The Case of a Multilateral Investment Agreement’ available at [http://www3.weforum.org/docs/GAC13/WEF\\_GAC\\_GlobalTradeFDI\\_FDIKeyDriver\\_Report\\_2013.pdf](http://www3.weforum.org/docs/GAC13/WEF_GAC_GlobalTradeFDI_FDIKeyDriver_Report_2013.pdf) (accessed 26 September 2020).

<sup>32</sup> Organization for Economic Co-Operation and Development Global Forum on International Investment: *Foreign Direct Investment and the Environment: Lessons from the Mining Sector* (2002) 2.

<sup>33</sup> KONDO T *Investment Law in a Globalised Environment: A proposal for a new Foreign Direct Investment Regime in Zimbabwe* (Published LLD Thesis, (University of the Western Cape, 2017) 36.

<sup>34</sup> KONDO T *Investment Law in a Globalised Environment: A proposal for a new Foreign Direct Investment Regime in Zimbabwe* (Published LLD Thesis, (University of the Western Cape, 2017) 36.

<sup>35</sup> Jones J & Wren C *Foreign Direct Investment and the Regional Economy* (2016) 27. See also Faeth I *Foreign Direct Investment in Australia: Determinants and Consequences* (2010) 37.

<sup>36</sup> Lall S & Narula R ‘Foreign direct investment and its role in economic development: Do we need a new agenda?’ 2004 *The European Journal of Development Research* 447.

<sup>37</sup> International Monetary Fund *Balance of payment manual* 4 ed (1977) 136. See also United Nations Conference on Trade and Development (UNCTAD) *Training manual on statistics for FDI and the operations of TNCs* (2009) 35.



distinguishes the direct investor, who is a resident of a country who gets shares which are lasting in a company based in another country (direct investment enterprise).<sup>38</sup> According to the International Monetary Fund (IMF), this lasting interest necessitates the existence of a partnership between both parties involved in the transaction, and a strong influence of the investor on the management of the company.<sup>39</sup> In addition, the IMF specifies direct investment enterprise only exists once the direct investor succeeds in getting at least 10 per cent of the shares of the direct investment enterprise.<sup>40</sup> However, more details need to be given to clarify thorough misunderstandings about FDI.<sup>41</sup> In fact, FDI implies that the investor is from a country different from where he is investing and it does not automatically result in ownership.<sup>42</sup> Moreover, FDI is linked with the place where the director investor stays.<sup>43</sup> Sornarajah considers FDI as the movement of possessions from one economy to another. This move has the objective to build economic growth in the latter economy.<sup>44</sup> This definition given by Sornarajah will be considered and used in this thesis.

### 2.3.2 Development of FDI in Congo

From 1999 to 2000, FDI flows reached record levels before starting to decline in 2001.<sup>45</sup> During the previous year, the world's total inflows had hit 1.3 trillion US dollars.<sup>46</sup> That level was far higher than that of the previous year.<sup>47</sup> Most of the economies which attract these inflows and generate the outflows are western nations.<sup>48</sup> Besides western countries, China is also a source of FDI. In Congo-Brazzaville, 2003 is considered as a milestone year in terms of FDI development. The reason lies in the fact that, since then, outward foreign direct investment (OFDI) of China has attained highest point.<sup>49</sup>

The entire FDI inflows in Central Africa were equivalent to US\$ 12.1 billion in 2014. This represents almost 22 per cent of the entire inflows of the continent at the same period, with US\$53.9 billion. Statistics indicate that within the same year (2014), FDI inflows into this area

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<sup>38</sup> International Monetary Fund *Foreign Direct Investment: Trends, Availability, Concepts, and Recording Practices* (2004) 3.

<sup>39</sup> International Monetary Fund *Foreign Direct Investment: Trends, Availability, Concepts, and Recording Practices* (2004) 3.

<sup>40</sup> International Monetary Fund *Foreign Direct Investment: Trends, Availability, Concepts, and Recording Practices* (2004) 3.

<sup>41</sup> International Monetary Fund *Foreign Direct Investment: Trends, Availability, Concepts, and Recording Practices* (2004) 3.

<sup>42</sup> International Monetary Fund *Foreign Direct Investment: Trends, Availability, Concepts, and Recording Practices* (2004) 3.

<sup>43</sup> International Monetary Fund *Foreign Direct Investment: Trends, Availability, Concepts, and Recording Practices* (2004) 3.

<sup>44</sup> Sornarajah M *'The International Law on Foreign Investment'* 3 ed (2010) 9.

<sup>45</sup> Organisation for Economic Co-Operation and Development 'Foreign Direct Investment: Maximising Benefits, minimising costs' (2002) 6-7.

<sup>46</sup> Organisation for Economic Co-Operation and Development *Foreign Direct Investment: Maximising Benefits, minimising costs* (2002) 7.

<sup>47</sup> Organisation for Economic Co-Operation and Development *Foreign Direct Investment: Maximising Benefits, minimising costs* (2002) 7.

<sup>48</sup> Organisation for Economic Co-Operation and Development *Foreign Direct Investment: Maximising Benefits, minimising costs* (2002) 7.

<sup>49</sup> Koenrich J 'The Rise of Chinese OFDI in Europe' available at [https://link.springer.com/chapter/10.1057/9780230361577\\_10](https://link.springer.com/chapter/10.1057/9780230361577_10) (accessed 08 October 2020).

of the continent, FDI inflows were respectively US\$ 8.3 billion and US\$12.1 billion, and constitute an improvement of 45 per cent.<sup>50</sup>

### 2.3.3. A Presentation of the Potentialities of Congo

#### 2.3.3.1 Advantages of Investing in the Country

Congo holds assets that are attractive to FDI. However, it also presents some aspects that can scare away investors. Among assets are the following: nature has endowed Congo with enormous quantities of oil, potassium, iron ore and phosphate.<sup>51</sup> Wide stretches of land are available, even if only a very small percentage of that is suitable for farming.<sup>52</sup> All these assets are considered as the fundamental wealth of the country, and investments are essentially directed towards oil and forestry.<sup>53</sup> The first country involved in forestry was China, followed by France.<sup>54</sup>

The country belongs to several regional and worldwide organisations such as the Central African Economic and Monetary Community (CEMAC), the Economic Community of Central African States (CEEAC) and the World Trade Organization (WTO).<sup>55</sup>

The size of the population in Congo is modest and is mostly concentrated around main towns.<sup>56</sup> Since the country's economy has been affected by the fall in oil prices, it has seemed obvious to open the national market with the objective to become, within a few years, a leading economy.<sup>57</sup> In order to achieve this objective, the authorities are implementing foreign trade zones (Economic Special Zones, SEZ).<sup>58</sup> The implementation of these SEZ is undertaken through a partnership between Congo and China.<sup>59</sup> The project is expected to enhance the economy and bring many other opportunities to the country, which is experiencing a very bad time, essentially due to the fall in oil prices.<sup>60</sup> The following are the four SEZ: Brazzaville,

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<sup>50</sup> KPMG 'What influences foreign direct investment into Africa: Insights into Africa Capital Markets 2015' (2017) 23.

<sup>51</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>52</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>53</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>54</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020).

<sup>55</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>56</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>57</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>58</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>59</sup> ESRI 'Congo-Brazzaville Special Economic Zone' available at <https://www.arcgis.com/apps/MapJournal/index.html?appid=601cc6b65fd84f60bd9c97d462711d00> (accessed 12 October 2020).

<sup>60</sup> ESRI 'Congo-Brazzaville Special Economic Zone' available at <https://www.arcgis.com/apps/MapJournal/index.html?appid=601cc6b65fd84f60bd9c97d462711d00> (accessed 12 October 2020).

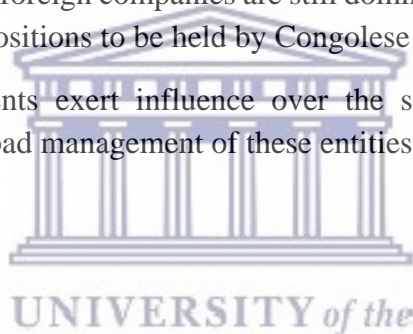
Ouesso, Oyo-Ollombo and Pointe-Noire.<sup>61</sup> Moreover, the country grants freedom to investors in these SEZ to repatriate their funds.<sup>62</sup>

### 2.3.3.2 Investing in Congo: Problems

To determine whether foreign entrepreneurs are still interested in the country, one should consider whether the country is attractive to investors or not. In fact, the Republic of Congo cannot be regarded as an economy where investing is easy. The following can be seen as the causes of that situation: the high levels of poverty, the problem of corruption, political violence associated with very bad management of the economy, and the economy's total reliance on the oil sector.<sup>63</sup> Electricity and water are not available continuously.<sup>64</sup> Besides, the country's ranking by ease of doing business is not promising, at 180 in 2020 and in 2019.<sup>65</sup> Unfortunately, this observation is common throughout the African continent as almost all states share bad performance in terms of ease of doing business.<sup>66</sup> However, the country has enacted new legislation that is expected to be more favourable to foreign investors.<sup>67</sup>

In order to become a more attractive destination to foreign investors, Congolese authorities took a number of measures meant to facilitate the establishment of these investments, including the creation of new bodies or new entities, and the conclusion of foreign partnerships between Congo and some countries. Stimulation measures are also part of them.<sup>68</sup> Nevertheless, senior positions in the management of foreign companies are still dominated by foreigners despite the legislation that requires these positions to be held by Congolese citizens.<sup>69</sup>

Different ministerial departments exert influence over the same entities causing chaotic situations that may lead to the bad management of these entities.<sup>70</sup>



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<sup>61</sup> ESRI 'Congo-Brazzaville Special Economic Zone' available at <https://www.arcgis.com/apps/MapJournal/index.html?appid=601cc6b65fd84f60bd9c97d462711d00> (accessed 12 October 2020).

<sup>62</sup> ESRI 'Congo-Brazzaville Special Economic Zone' available at <https://www.arcgis.com/apps/MapJournal/index.html?appid=601cc6b65fd84f60bd9c97d462711d00> (accessed 12 October 2020) and Santander Trade 'Congo Foreign Investors' available at [www.santandertrade.com](http://www.santandertrade.com) (accessed 11 September 2021)

<sup>63</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 12 October 2020).

<sup>64</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 12 October 2020).

<sup>65</sup> World Bank Group *Doing Business 2020: Comparing Business Regulations in 190 economies* (2020) 4. See also A World Bank Group Flagship Report 'Doing Business 2019: Training for Reforms' 16 ed 11.

<sup>66</sup> World Bank Group *Doing Business 2020: Comparing Business Regulations in 190 economies* (2020)11.

<sup>67</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020).

<sup>68</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 14 October 2020).

<sup>69</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 14 October 2020).

<sup>70</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020).



FDI in Congo reached higher levels in 2014 at US\$5.5 billion, causing the country to become the foremost FDI destination in Central Africa.<sup>71</sup> However, the most important part of these FDI inflows is directed towards the oil sector.<sup>72</sup> Therefore, the country needs to diversify its economy in order to boost its development.<sup>73</sup> In this regard, Congolese authorities took some initiatives that would allow the country to reach a state of economic development called ‘Emergence’ by 2025. These measures are designed to improve the investment environment of the country.<sup>74</sup> To achieve this objective, Congo will rely on the Bretton Woods Institutions’ recommendations established in 2016.<sup>75</sup> It should be pointed out that Congolese laws are permissive towards investors.<sup>76</sup> To get a general idea of the situation of oil in the country, major French and American oil companies, and the National Society of Oil in Congo (Société Nationale des Pétroles du Congo) have injected huge amounts of money into the Moho Nord oil field.<sup>77</sup> In the same way, to reduce the dependency of the country on oil, foreign investors are attracted to mining activities.<sup>78</sup>

Furthermore, Congo’s geographic position will be enhanced by the alteration of means of transport between the two main towns.<sup>79</sup> China is the major investor, followed by western countries such as France, the United States and other western countries.<sup>80</sup> This explains why China is involved in the development or the building of so much Congolese infrastructure.<sup>81</sup>

**Table 1: Development of FDI in Congo.**

Foreign Direct Investment	2017	2018	2019
FDI Inward Flow (million)	4,417	4,315	3,366

<sup>71</sup> Privacy Shield Framework ‘Republic of Congo-O-Executive Summary’ available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed 23 September 2020).

<sup>72</sup> Privacy Shield Framework ‘Republic of Congo-O-Executive Summary’ available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed 23 September 2020).

<sup>73</sup> Privacy Shield Framework ‘Republic of Congo-O-Executive Summary’ available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed 23 September 2020).

<sup>74</sup> Privacy Shield Framework ‘Republic of Congo-O-Executive Summary’ available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed 23 September 2020).

<sup>75</sup> Privacy Shield Framework ‘Republic of Congo-O-Executive Summary’ available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed 23 September 2020).

<sup>76</sup> Privacy Shield Framework ‘Republic of Congo-O-Executive Summary’ available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed 23 September 2020).

<sup>77</sup> LLOYDS BANK ‘Congo: Investing in Congo’ available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020)

<sup>78</sup> LLOYDS BANK ‘Congo: Investing in Congo’ available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020).

<sup>79</sup> LLOYDS BANK ‘Congo: Investing in Congo’ available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020).

<sup>80</sup> LLOYDS BANK ‘Congo: Investing in Congo’ available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 13 October 2020).

<sup>81</sup> LLOYDS BANK ‘Congo: Investing in Congo’ available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 16 October 2020).

USD)			
FDI Stock (million USD)	21,265	25,580	28,946
Number of Greenfield Investments	3	1	1
Value of Greenfield Investments (million USD)	35	10	38

Source: UNCTAD, 2016.

This figure gives us an insight into FDI progress during three years. It shows that, between 2017 and 2018, the amount of FDI was nearly the same in terms of inward flow. In the following year, the decrease started and was significant. Concerning FDI stock, it clearly appears that it was in constant upward progress during those three years.

In 2010, the country attracted a greater amount of FDI inflows than during the following years.<sup>82</sup> That same year, these FDI inflows played a major role in the economy as their percentage of the GDP increased.<sup>83</sup> We can also note that the share of foreign investment in the country during the last four years of 1980s represented 0.8%.<sup>84</sup> This percentage grew to 7.3% during the four years, 1995 to 1999, and reached 23.7% of the total GDP in 2010.<sup>85</sup>

The reason for the growing role of FDI in Sub-Saharan economies, including the Republic of Congo, is to compensate for the lack of finance that affects these countries.<sup>86</sup> Nevertheless, despite this growth in FDI, the region did not grow economically.<sup>87</sup>

Foreign investors are still converging on Congo.<sup>88</sup> Statistics from the World Investment Report reveal that FDI inflows fell from US\$ 4.3 billion in 2018 to 3.3 billion in 2019.<sup>89</sup>

**Table 2: Top 20 Rankings by FDI Performance Index.**

Economy	1993/1995	2002/2004	2006/2008
Hong Kong	11	7	1
Bulgaria	93	8	2
Congo	8	41	3
Angola	23	2	4
Belgium		6	6
Singapore	2	6	6
Malta	20	25	7
Guinea	126	93	8
Georgia	114	17	9

<sup>82</sup> Adekele AI (2014) 115.

<sup>83</sup> Adekele AI (2014) 117.

<sup>84</sup> Adekele AI (2014) 117.

<sup>85</sup> Adekele AI (2014) 117.

<sup>86</sup> Adekele AI (2014) 117.

<sup>87</sup> Adekele AI (2014) 117.

<sup>88</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>89</sup> LLOYDS BANK 'Congo: Investing in Congo' available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<b>Jordan</b>	132	38	10
<b>Guyana</b>	1	39	11
<b>Panama</b>	31	37	12
<b>Lebanon</b>	116	9	13
<b>Madagascar</b>	110	95	14
<b>Bahrain</b>	45	30	15
<b>Gambia</b>	29	111	16
<b>Estonia</b>	15	20	17
<b>Moldova, Republic of</b>	60	44	18
<b>Bahamas</b>	56	15	19
<b>Kazakhstan</b>	19	13	20

This table reveals that from 1993 to 2008, even if the flows of FDI were going down, Congo still remained an attractive destination, among the first twenty FDI destinations in the world.

### 2.3.3.3 Chinese FDI in the Republic of Congo:

The first ties between the two countries, China and Congo, go back to the end of 1920s when Congo started building the railway that linked the two main towns, Brazzaville and Pointe-Noire.<sup>90</sup> Bokilo writes:

Difficulties led to desertion of black workforce. In this chaos, French authorities used Chinese workers to back up native laborers. Recruitment of Chinese took place in Kwang-Chou-Wan and Hong Kong. The government chartered a ship with 800 Chinese men. After two months of navigation, they landed in July 1929 at Pointe-Noire (today's economic capital of Congo Brazzaville). Four hundred were sent to a Chinese camp (with huts) in M'Boulou (major labor force tank in Mayombe). Chinese were progressively replacing local workers.<sup>91</sup>

That assistance paved the way to the establishment of diplomatic relationship between the two states in the middle of the 1960s.<sup>92</sup> At the end of these building works, some Chinese citizens made the decision not to go back home, but to stay in Congo.<sup>93</sup>

Historically, that moment can be regarded as the early stages of Chinese interest in the country.<sup>94</sup> This has put the Asian giant in the position of being the leading country among Congo's foreign partners.<sup>95</sup> Exchanges between the two countries have made rapid progress

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<sup>90</sup> Niambi NI 'Bilateral Cooperation between China and Congo: The Other Side of the Ledger' (2018), *Open Journal of Political Science*, 229 available at <https://www.scirp.org/journal/ojps>.

<sup>91</sup> Niambi NI (2018) 229.

<sup>92</sup> 22 February 1964

<sup>93</sup> Niambi NI (2018) 229.

<sup>94</sup> Niambi NI (2018) 229.

<sup>95</sup> Santander Trade 'Congo Foreign Investors' available at [www.santandertrade.com](http://www.santandertrade.com) (accessed 11 September 2021)

since the beginning of the 21<sup>st</sup> century.<sup>96</sup> Most of the large projects in Congo are undertaken by Chinese investors.<sup>97</sup>

In this way, the building of new infrastructure in the country has benefited from Chinese enterprises.<sup>98</sup>

In the late 1990s, after the end of the civil unrest, China took a major contribution in the rebuilding of the capital city of Congo.<sup>99</sup> That contribution was undertaken in various ways that are similar to FDI.<sup>100</sup> It can be said that Congo benefits from Chinese investments.<sup>101</sup> As the situation of the Congolese debt towards China is difficult, China takes advantage of its extractive resources as a means of repayment.<sup>102</sup> At the beginning of this century, a great change appeared in the relation between both countries, characterised by the appearance of a new actor, the private sector.<sup>103</sup> Previously, Chinese activities in the country were done under the auspices of the government.<sup>104</sup> The private sector indicated a change of direction by allowing Congo to receive an extraordinary amount of money at the start of projects resulting from public and private intervention.<sup>105</sup>

A quick glimpse at the relations between both countries reveals that for two years, Chinese investments and other financial assistance increased.<sup>106</sup> This was essentially because during that period massive building of infrastructure was undertaken in the country.<sup>107</sup> These huge investments were also motivated by the aim to make the country an emerging economy within a few years.<sup>108</sup> Unfortunately, the sudden fall in oil prices could no longer allow the main foreign investor in the country to continue to give financial support to Congo indefinitely.<sup>109</sup> At that time, the economic situation in Congo was so difficult that even international financial institutions were reluctant to intervene in the country.<sup>110</sup>

In order to tackle this situation Congolese authorities sought support from China by granting it a special status, together with a handful of other African countries.<sup>111</sup>

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<sup>96</sup> Congo: 'China and Congo' available at [www.fmprc.gov.cn](http://www.fmprc.gov.cn) (accessed 14 September 2021).

<sup>97</sup> Bounou-Bazika J.C 'Economic relations of China with the Republic of Congo' Centre for Studies and Research on Economic Analyses and Policies (CERAPE) (2008) 2.

<sup>98</sup> Niambi NI (2018) 230.

<sup>99</sup> Niambi NI (2018) 229.

<sup>100</sup> Niambi NI (2018) 229.

<sup>101</sup> Niambi NI (2018) 229.

<sup>102</sup> Natural Resource Governance Institute: Prêts adossés à des ressources naturelles: pièges et potentiels (2020) 10

<sup>103</sup> Bounou-Bazika JC (2008) 1.

<sup>104</sup> Bounou-Bazika JC (2008) 1.

<sup>105</sup> Bounou-Bazika JC (2008) 1.

<sup>106</sup> Niambi NI (2018) 234.

<sup>107</sup> Niambi NI (2018) 233.

<sup>108</sup> Santander Trade 'Congo Foreign Investment' available at [www.santandertrade.com](http://www.santandertrade.com) (accessed 11 September 2021).

<sup>109</sup> Niambi NI (2018) 233.

<sup>110</sup> Niambi NI (2028) 233.

<sup>111</sup> Niambi NI (2018) 233.

**Table 3: Partial Insight into some Exchanges of the Sino-Congo Bilateral Cooperation.**

No	Chinese Projects and Activities in Congo Brazzaville	Budget, Donations and Investments	Start or Years or Finalisation's Year
1	The Mayéyé mining exploration permits in Lekoumou (South of the country) given to Zhengwei Technique Congo	1.2 billion CFA	2017
2	Kola-Banda mining exploration permits in Niari (South of the country) given to Saison Zhong	3 billion CFA	2017
3	The Chinese company CIETS Industries Sarl is going to invest in cashew nuts in Loudima (Niari department in the south Congo)	53 billion CFA	2017
4	The vice-governor of the Export-Import Bank of China, Sun Ping, declares the financing of 42 projects	24 billion USD	2016
5	Modernisation of Maya-Maya's airport	119 billion CFA	2006
6	Congo, SNPC (15%); the Congolese state (12%) and Mag Minerals Potash Congo (1.5%). Construction works will be executed by China State Construction Engineering. This bank intends to hire 200 agents over 5 years	30 billion CFA	2016

Source: NIAMBI NI (2018), 232-233.

This table derived from NIAMBI demonstrates the heavy investments made by China in the Congolese economy. The mining sector, which generates adverse impacts on the environment, received important shares of Chinese FDI.

In this way, the country was reopened to FDI from China, considering its geographical situation and its position as a major oil producer in the area.<sup>112</sup>

In order to glorify the special relationship that exists between China and the Republic of Congo, just after being appointed, the Chinese president included Brazzaville (Congo) as a destination during his first trip to Africa. During his visit, he said China would grant Congo US\$ 20 billion to invest in economic sector.<sup>113</sup>

It is known worldwide that Chinese investment in Africa is directed towards activities that have detrimental effects on the environment.<sup>114</sup> Moreover, the fact that the most important share of

<sup>112</sup> Niambi NI (2018) 234.

<sup>113</sup> Pulitzer Center 'China's Congo Plan' available at <https://pulitzercenter.org/reporting/chinas-congo-plan> (accessed 11 October 2020).

<sup>114</sup> Bosshard P 'Chinese Environmental Footprint in Africa' *Working Papers in African Studies* (2008) 5.



Congolese national wealth relies on oil may cause serious doubts about respect for the environment.<sup>115</sup> Mining activities have now been given a significant position in the Congolese national policy to reduce the dependency on oil.<sup>116</sup> The Republic of Congo should pay far more attention to environmental issues, as the country is not yet ready or prepared to deal with environmental consequences.<sup>117</sup>

However, an important part of the mining sector in Congo is not yet industrialised.<sup>118</sup> Furthermore, mining's national production remains modest.<sup>119</sup> The mineral resources of the country have not been well estimated.<sup>120</sup> Over fifteen years, one can see a renewal of mining activity.<sup>121</sup> Ten years ago, the Congolese mining authorities issued mining permits to various companies.<sup>122</sup>

This renewal of activities indicates that important investments were involved.<sup>123</sup> According to some experts, mining and energy activities will have to play an important role in the future.<sup>124</sup> These activities bring legitimate concerns about supervision of environmental requirements, as Chinese companies are not concerned about this.<sup>125</sup>

The experts add that the country is endowed with a huge quantity of mineral resources.<sup>126</sup> The investments that China has embarked on in the African continent are strongly coupled with other forms of bilateral cooperation.<sup>127</sup> Chinese investments also take place in sensitive environmental areas.<sup>128</sup>

China is also investing in the continent because African and, *ipso facto*, Congolese natural resources, will satisfy China's need for these resources.<sup>129</sup> To help the Republic of the Congo

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<sup>115</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>116</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>117</sup> World Bank 'Country Partnership Framework for the Republic of Congo for the Period FY20-FY24' (2019) 9.

<sup>118</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>119</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>120</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>121</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>122</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 45.

<sup>123</sup> Commission des Forêts d'Afrique Centrale & World Bank *Deforestation trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013) 46.

<sup>124</sup> Privacy Shield Framework 'Congo (Republic of the) Country Commercial Guide' available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-Executive-Summary> (accessed 20 October 2020).

<sup>125</sup> World Development Bank *China's Trade and FDI in Africa* n° 126 (2011) 30. See also Center for International Forestry Research *Chinese Trade and Investments and the Forests of the Congo Basin: Synthesis of the scopy studies in Cameroon, Democratic Republic of Congo and Gabon* (2011) 2.

<sup>126</sup> Privacy Shield Framework 'Congo (Republic of the) Country Commercial Guide' available at [www.privacyshield.gov/article?id=Republic-of-Congo-Executive-Summary](https://www.privacyshield.gov/article?id=Republic-of-Congo-Executive-Summary) (accessed 20 October 2020).

<sup>127</sup> World Development Bank *China's Trade and FDI in Africa* n° 126 (2011) 16.

<sup>128</sup> Bosshard P (2008) 5.

<sup>129</sup> Ruhr-Universita Bochum *China's Import on Africa-The role of Trade, FDI and Aid* (2014) 2.

receive financial assistance from the International Monetary Fund that would boost its economy, China agreed to renegotiate Congo's debt.<sup>130</sup> In this regard, the Congolese government stated:

The debt is an obstacle to the conclusion and the continuation of relations with the IMF within the framework of the extended facility which was concluded in July 2019. That's the point that sometimes hurts our country.<sup>131</sup>

#### 2.3.3.4 French FDI in the Republic of Congo:

A few years ago, French shareholding from France in Congo was so high that it made that country the main investor in the country.<sup>132</sup> Its presence in the country is also important as numerous French investors are present in Congo and hire thousands of Congolese workers.<sup>133</sup> The French presence in Congo is visible in various fields, and is funded mostly throughout an agency dedicated to providing French assistance abroad.<sup>134</sup> The French Petroleum Company possesses the most shares in the country.<sup>135</sup>

#### 2.3.3.5 Other Sources of FDI in Congo

The Republic of Congo concluded a Bilateral Investment Treaty (BIT) with the North American continent.

##### ➤ Cooperation US Congo

Diplomatic ties between the two countries were concluded in 1960 when Congo got its independence from France.<sup>136</sup> Moreover, at the beginning of 1990 s, Congo signed a bilateral investment treaty with the US. One should note that American investors recognize that lack of good governance hamper their activities in Congo.<sup>137</sup> The Abundance of natural resources still attract American investors. In this vein, the American Ambassador in the Republic of the Congo heralded in 1998 "Congo is a rich country. The most important sector of investment is oil. There are American companies already working on it and I am working to get new companies in".<sup>138</sup> These investments are directed towards oil and mine sectors. The IMF is

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<sup>130</sup> South China Morning Post: Diplomacy: China agrees to second debt restructure for Republic of Congo available at [www.scmp.com](http://www.scmp.com) (accessed 15 September 2021).

<sup>131</sup> Nikkei Asia: International Relations: China agrees to reschedule Congo Republic's \$2.4bn debt available at [www.asia.nikkei.com](http://www.asia.nikkei.com) (accessed 15 September 2021).

<sup>132</sup> Ministère de l'Europe et des Affaires Etrangères 'Congo' available at <https://www.diplomatie.gouv.fr/en/country-files/congo/> (accessed 20 October 2020).

<sup>133</sup> Ministère de l'Europe et des Affaires Etrangères 'Congo' available at <https://www.diplomatie.gouv.fr/en/country-files/congo/> (accessed 20 October 2020).

<sup>134</sup> Ministère de l'Europe et des Affaires Etrangères 'Congo' available at <https://www.diplomatie.gouv.fr/en/country-files/congo/> (accessed 20 October 2020).

<sup>135</sup> Ministère de l'Europe et des Affaires Etrangères 'Congo' available at <https://www.diplomatie.gouv.fr/en/country-files/congo/> (accessed 20 October 2020).

<sup>136</sup> U.S. Embassy in the Republic of the Congo: Policy & History 'available at [cg.usembassy.gov](http://cg.usembassy.gov) (accessed 20 March 2023).

<sup>137</sup> 2020 Investment Climate Statements: 'Republic of the Congo' available at [www.state.gov](http://www.state.gov) (accessed 20 March 2023).

<sup>138</sup> Ministère de l'Economie et des Finances : 'United States' Amabasaddor received in audience' available at [www.finances.gouv.cg](http://www.finances.gouv.cg) (accessed 20 March 2023).

expected to contribute to the improvement of the business climate in Congo and the US as a prominent member of the institution will have to play a significant role.<sup>139</sup>

➤ Cooperation UK-Congo

The United Kingdom and the Republic of the Congo signed a BIT at the end of 1989s and it entered into force the following year.<sup>140</sup> It is recognized that UK and Congo do not develop strong economic partnership.

The same kind of agreements have been concluded with many European, Asian and African countries.<sup>141</sup> The mining potential of the country is still attracting various companies from all around the world.<sup>142</sup> However, since the end of 2010, the export of minerals or copper to China has been going down.<sup>143</sup> China is now supplied by a neighbouring country.<sup>144</sup> With regard to timber, Congo is of the biggest exporters to China.<sup>145</sup> In Central Africa, the country is ranked second.<sup>146</sup>

### 2.3.3.6 Covid-19 and the Development of FDI in Congo:

The outbreak of Covid-19 affected the economic situation, as the only sector that remained attractive to investors was oil.<sup>147</sup> Meanwhile, the Organization of Economic Cooperation and Development (OECD) predicted that, due to this health crisis, African countries would receive less investment than previously.<sup>148</sup> This analysis has also been shared by another organisation which asserted that Covid-19 would cause a disastrous reduction in FDI in the world during 2020 and the following year.<sup>149</sup>

## 2.4 Conclusion:

Richly endowed with natural resources, Congo will remain an attractive destination for foreign investors. However, these investments often show interest in sectors that can affect the environment and the health of the population dangerously. This is why the Congolese authorities are called upon to make sure that these investments are beneficial to the economic

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<sup>139</sup> Ministère de l'Economie et des Finances : 'United States' Amabbasaddor received in audience' available at [www.finances.gouv.cg](http://www.finances.gouv.cg)

<sup>140</sup> UNCTAD: 'Investment Policy Hub' at [investmentpolicy.unctad.org](http://investmentpolicy.unctad.org) (accessed 21 March 2023).

<sup>141</sup> Privacy Shield Framework 'Republic of Congo-2-Bilateral Investment Agreements' available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-Bilateral-Investment-Agreements> (accessed 20 October 2020).

<sup>142</sup> USGS 2012 Mineral Yearbook: *Congo (Brazzaville)* (2012) 11.1.

<sup>143</sup> Center for International Forestry Research *Chinese Trade and Investments and the Forests of the Congo Basin: Synthesis of the scopy studies in Cameroon, Democratic Republic of Congo and Gabon* (2011) 14.

<sup>144</sup> Center for International Forestry Research *Chinese Trade and Investments and the Forests of the Congo Basin: Synthesis of the scopy studies in Cameroon, Democratic Republic of the Congo and Gabon* (2011) 15.

<sup>145</sup> Center for International Forestry Research *Chinese Trade and Investments and the Forests of the Congo Basin: Synthesis of the scopy studies in Cameroon, Democratic Republic of Congo and Gabon* (2011) 14.

<sup>146</sup> Center for International Forestry Research *Chinese Trade and Investments and the Forests of the Congo Basin: Synthesis of the scopy studies in Cameroon, Democratic Republic of Congo and Gabon* (2011) 16.

<sup>147</sup> Fitch Solutions 'Covid-19 Outbreak to Weigh on Congo-Brazzaville's Growth In 2020' available at [www.fitchsolutions.com](http://www.fitchsolutions.com) (accessed 10 October 2020).

<sup>148</sup> Organization for Economic Cooperation and Development *Covid-19 in Africa: Regional socio-economic implications and policy priorities* (2020) 1.

<sup>149</sup> United Nations Conference on Trade and Development *World Investment Report 2020* (2020) 2.



growth of the country, as well as the improvement of the social well-being of the communities surrounding these projects. In short, they should ensure the reconciliation of the country's need to develop through FDI, and the protection of the environment, in order to achieve sustainable development. The authorities should not forget the fact that the country is neither ready nor prepared to deal with huge environmental disasters.<sup>150</sup>

The following chapter will present the current legal, institutional and regulatory bodies governing FDI in the Republic of Congo.



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<sup>150</sup> World Bank 'Country Partnership Framework for the Republic of Congo for the Period FY20-FY24' (2019) 9.

# Chapter Three:

## The Current Legal, Institutional and Regulatory Bodies Governing FDI in the Republic of Congo

### 3.1 Introduction

Today, the role which institutions play in the economic development of a country is widely acknowledged.<sup>151</sup> The economic progress of a nation depends on the quality of these institutions.<sup>152</sup> The Congo, engaged in a development process, has not been left behind. It has endowed itself with institutions able to serve as basis for its economic development. This chapter will consist of presenting and assessing the quality of legal, institutional and political bodies governing FDI in the Republic of the Congo.

### 3.2 The Constitution of the Republic of Congo

The different Congolese constitutions open the boundaries of the national territory to every investor, national or foreigner. The previous constitution allowed everyone to invest in the field they desire.<sup>153</sup> The current constitution does the same.<sup>154</sup>

Furthermore, that freedom or right granted to every person to invest is reaffirmed by Law No. 6-2003 of 18 January 2003, that institutes the Investment Charter in the Republic of Congo. National and foreign investors in the country benefit from the same rights. No one enjoys better advantages than others do.<sup>155</sup> The country is not yet equipped with a tool that deals with outward investment.<sup>156</sup>

Today, there exists no doubt that the mining sector is a driver of environmental degradation and social conflicts. Opening up the country to foreign investors is not easy, and the framework that regulates these investments is unsuitable.<sup>157</sup>

In this regard, the Investment Policy Review realised by an international institution came to the conclusion that the country's legislation related to investment does not conform to

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<sup>151</sup> Dani R 'Getting Institutions Right' (2004) *CESifoDICE Report*, 10.

<sup>152</sup> Dani R (2004) 10.

<sup>153</sup> 'Every person has the right to enterprise in the sectors of his choice, within the respect of the Constitution of the Republic of Congo' (Art.27).

<sup>154</sup> 'Every person has the right, within the respect for the law, to engage in activity (*entreprendre*) in the search of his choice'. Constitution of the Republic of Congo, Article 48, 2015.

<sup>155</sup> Privacy Shield Framework 'Republic of Congo-3-Legal Regime' available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-Legal-Regime> (accessed 29 October 2020).

<sup>156</sup> Privacy Shield Framework 'Republic of Congo-Openness to & Restriction on Foreign Investment' available at <https://www.privacyshield.gov/article?id=Republic-of-Congo-openness-to-foreign-investment> (accessed on 30 October 2020).

<sup>157</sup> 2020 Index of Economic Freedom 'Republic of Congo' available at <https://www.heritage.org/index/country/republiccongo> (accessed 30 October 2020).

international standards in terms of practices and the protection of guarantees.<sup>158</sup> The development of the country is also hampered by red tape.<sup>159</sup>

To find a remedy, it appears both necessary and urgent for the Congolese government to adopt a new framework inspired by what is currently considered as a suitable model, the ISSD model.<sup>160</sup> In the future, Congo will have to adopt some of the above measures in order to comply with international standards.<sup>161</sup>

Investors and investments shall strive, through their management policies and practices, to contribute to the development objectives of the host states and the local levels of governments where the investment is located.<sup>162</sup>

On all occasions, the investor or investment shall comply with the minimum standards on environmental impact assessment and screening that the Parties shall adopt at the first meeting of the Parties, to the extent, these are applicable to the investment in question.<sup>163</sup>

Investors, their investment and host state authorities shall apply the precautionary principle to their environmental impact assessment and to decisions taken in relation to a proposed investment, including any necessary mitigating or alternative approaches to the investment, or precluding the investment if necessary.<sup>164</sup>

Investments shall, in keeping with good practice requirements relating to the size and nature of the investment, maintain an environmental management system. Companies with over 250-500 employees, or in areas of resource exploitation or high-risk industrial enterprises, shall maintain a current certification of ISO 14001 or an equivalent standard. Emergency response and decommissioning plans shall be included in the environmental management system process.

The IPR indicates too that Congolese authorities acknowledge the fact that legal and institutional factors contribute to the failure of private investment.<sup>165</sup> Amongst these failures, it points out the uneasy implementation of some legal provisions, the scattered state, and the inefficiency of institutions.<sup>166</sup>

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<sup>158</sup> Conférence des Nations unies pour le Commerce et le Développement: *L'Examen de la politique d'Investissement de la République du Congo* (2014) 8 &10.

<sup>159</sup> Conférence des Nations unies pour le Commerce et le Développement: *L'Examen de la politique d'Investissement de la République du Congo* (2014) 8.

<sup>160</sup> Won K 'China's Bilateral Investment Treaties with African States in Comparative Context', (2015), Vol 49, *Cornell International Law Journal*, 170.

<sup>161</sup> Won K (2015), 170.

<sup>162</sup> Won K (2015), 171.

<sup>163</sup> Won K (2015), 171.

<sup>164</sup> Won K (2015), 171.

<sup>165</sup> Conférence des Nations unies pour le Commerce et le Développement: *L'Examen de la politique d'Investissement de la République du Congo* (2014) 8.

<sup>166</sup> Conférence des Nations unies pour le Commerce et le Développement: *L'Examen de la politique d'Investissement de la République du Congo* (2014) 8.

The Constitution, adopted in 2002, gives a determinant place to the environment.<sup>167</sup> The Constitution highlights, the protection of the environment and health.<sup>168</sup> Thus, according to article 35 of that Constitution, Congolese citizens must benefit from a healthy and sustainable environment and they have to protect it.<sup>169</sup>

The Constitution assigns to the government the responsibility to protect and conserve the environment. This has led the Republic of Congo to be regarded as a country really committed in the protection of its environment.<sup>170</sup>

### 3.3 Law No. 6-2003 of 18 January 2003: The Charter on Investment

The Investment Charter, enacted in 2003, is the main legal instrument regulating investment in the Republic of Congo. The Charter is complemented by other legal documents that give more details on the process that potential investors have to follow in order to invest in the country.<sup>171</sup>

The Ministry in charge of Planning determines Congo's policy on investment. The National Investment Commission (CNI) created by Decree No. 2000-57 of 22 April 2003 aims at putting into practice this national policy.<sup>172</sup> Some of the main duties attached to that CNI are the following:<sup>173</sup>

- The implementation of economic regulation on investment;
- Ensuring compliance with the commitments made by authorised firms to different regimes of the Charter of investment;
- Submitting an annual report to the chief Executive on development related investment and the application of the Charter of investment;
- Certifying the end and the installation of an undertaking to their investment charter;
- Deciding on 'force majeure'.

CNI's meetings have to be organised regularly during the year, and are summoned by its chairperson.<sup>174</sup> All economic entities operating in Congo are subject to the charter. However, there are some laws which reserve activities such as small shops and bakeries for Congolese

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<sup>167</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2014) 44.

<sup>168</sup> Constitution of the Republic of Congo, Art. 35, 36, 37, 38, and 63 (2002).

<sup>169</sup> Constitution of the Republic of Congo, Article 35 (2002).

<sup>170</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 44.

<sup>171</sup> Decree N°2000-30 of 18 February 2004.

<sup>172</sup> Fortune of Africa 'National Investment Commission' available at <https://fortuneofafrica.com/congobrazzaville/2014/02/06/national-investment-commission-of-republic-of-congo/> (accessed 31 October 2020).

<sup>173</sup> Fortune of Africa 'National Investment Commission' available at <https://fortuneofafrica.com/congobrazzaville/2014/02/06/national-investment-commission-of-republic-of-congo/> (accessed 31 October 2020).

<sup>174</sup> Fortune of Africa 'National Investment Commission' available at <https://fortuneofafrica.com/congobrazzaville/2014/02/06/national-investment-commission-of-republic-of-congo/> (accessed 31 October 2020).

only.<sup>175</sup> Likewise, artisanal mining is prohibited to foreigners<sup>176</sup>. It should be said that the Charter also deals with activities that are sources of negative impacts on the environment.<sup>177</sup>

### 3.3.1 Guarantees Granted to Foreign Investors

The Charter also grants important rights to foreign businesses, which allow them to import and export natural resources, some equipment, or any material useful to their investment.<sup>178</sup> This last right raises serious concerns, as some materials, products or equipment used in mining activities are harmful, not only to the environment, but also to people. Because of these rights granted to businesses, Congo is seen as a very accessible destination in Central Africa.<sup>179</sup>

On the other hand, if we consider the sad classification issued by the Ease of Doing Business Index, we find out that there still exist various factors which constitute obstacles to investment, and they contribute to making the country a place where investing is not easy.<sup>180</sup> To get out of this situation, the Congolese authorities took some initiatives meant to enhance the investment climate.<sup>181</sup> The national authorities asked for technical assistance from an international organisation, the United Nations Conference on Trade and Development (UNCTAD), which advises them on the right way to improve the investment in its various aspects.<sup>182</sup> The required advice has been issued, and is called the Investment Review Policy (IPR).<sup>183</sup>

### 3.3.2 The Investment Review Policy

The IPR aimed at improving the framework that regulates investment in the Republic of Congo.<sup>184</sup> It also noticed that strong tools can have a positive impact on various aspects, mainly on the environment.<sup>185</sup> The IPR is based on ‘Le Cadre de politique d’investissement pour un

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<sup>175</sup> Law 19-2005 of 24 November 2005 Regulating the exercise of the profession of trader in the Republic of Congo.

<sup>176</sup> Law n° 4-2005 of 11 April 2005 that institutes the Mining code

<sup>177</sup> Fortune of Africa ‘National Investment Commission’ available at <https://fortuneofafrica.com/congobrazzaville/2014/02/06/national-investment-commission-of-republic-of-congo/> (accessed 31 October 2020).

<sup>178</sup> Fortune of Africa ‘Investment Guarantees in the Republic of Congo’ available at <https://fortuneofafrica.com/congobrazzaville/2014/02/06/national-investment-commission-of-republic-of-congo/> (accessed 1 November 2020).

<sup>179</sup> Fortune of Africa ‘Investment Guarantees in the Republic of Congo’ available at <https://fortuneofafrica.com/congobrazzaville/2014/02/06/national-investment-commission-of-republic-of-congo/> (accessed 1 November 2020).

<sup>180</sup> International Trade Administration ‘Republic of Congo-country Commercial Guide’ available at [www.trade.gov](http://www.trade.gov) (accessed 05 October 2021)

<sup>181</sup> United Nations Conference on Trade and Development ‘Investment Policy Review of the Republic of Congo’ available at <https://investmentpolicy.unctad.org/publications/131/investment-policy-review-of-the-republic-of-congo> (accessed 02 November 2020).

<sup>182</sup> United Nations Conference on Trade and Development ‘Investment Policy Review of the Republic of Congo’ available at <https://investmentpolicy.unctad.org/publications/131/investment-policy-review-of-the-republic-of-congo> (accessed 02 November 2020).

<sup>183</sup> United Nations Conference on Trade and Development ‘Investment Policy Review of the Republic of Congo’ available at <https://investmentpolicy.unctad.org/publications/131/investment-policy-review-of-the-republic-of-congo> (accessed 02 November 2020).

<sup>184</sup> Conférence des Nations unies pour le Commerce et le Développement: *L’Examen de la politique d’investissement de la République du Congo* (2014) 4.

<sup>185</sup> Conférence des Nations unies pour le Commerce et le Développement: *L’Examen de la politique d’investissement de la République du Congo* (2014) 3.



développement durable’ (CPIDD). In English, this is ‘the investment policy framework for sustainable development’, with its 11 fundamental principles.<sup>186</sup> Chapter 1 of the IPR addresses all aspects that regulate FDI.<sup>187</sup> In this regard, in 1999, the United Nations had already asserted that numerous African governments had taken measures meant to promote a far better investment climate.<sup>188</sup> A study involving a large number of African countries shows that those initiatives cover a variety of aspects.<sup>189</sup> One reason, which can explain the negative impact of FDI on the continent, is the lack of interest in the environment by government authorities.<sup>190</sup> They feel more concern about other aspects that affect the daily life of citizens.<sup>191</sup> However, the catastrophic consequences of loss of biodiversity is reminding them of their responsibility to take action.<sup>192</sup> These actions result in environmental measures.<sup>193</sup>

The role that institutions can have in the development of FDI is so important that it has resulted in a study.<sup>194</sup> This study seeks to understand whether foreign investors have a link with the natural wealth of a country and the framework that governs their management.<sup>195</sup> The study is very useful in the context of Congo as the country is endowed with considerable natural resources and is a major African state recipient of FDI.<sup>196</sup> The need for the research is also underlined by the fact that the continent is one of the main producers of natural resources.<sup>197</sup> All the same, the presence of suitable FDI institutions contributes to an efficient investment business climate.<sup>198</sup>

**Table 1: Quality of Institutions in Africa<sup>199</sup>**

Region	Corruption		Effectiveness of rule of law	
	Mean	Deviation	Mean	Standard deviation
<b>Non-SSA</b>	0.64	0.10	0.57	0.17

<sup>186</sup> Conférence des Nations unies pour le Commerce et le Développement: *L’Examen de la politique d’Investissement de la République du Congo* (2014) 4.

<sup>187</sup>Conférence des Nations unies pour le commerce et le Développement: *L’Examen de la politique d’Investissement de la République du Congo* (2014) 4.

<sup>188</sup> United Nations Conference on Trade and Development *Foreign Direct Investment in Africa: Performance and Potential* (1999) vii.

<sup>189</sup> United Nations Conference on Trade and Development *Foreign Direct Investment in Africa: Performance and Potential* (1999) 5.

<sup>190</sup> Shinn D.H (2016) 27.

<sup>191</sup> Shinn D.H (2016) 29.

<sup>192</sup> Shinn D.H (2016) 29.

<sup>193</sup> Shinn D.H (2016) 29.

<sup>194</sup> International Growth Centre *Foreign Direct Investment, Natural resources and Institutions* (2013). The paper seeks to understand the link which exists between FDI, natural resources and the quality of institutions.

<sup>195</sup> International Growth Centre *Foreign Direct Investment, Natural Resources and Institutions* (2013) 2.

<sup>196</sup> International Growth Centre *Foreign Direct Investment, Natural Resources and Institutions* (2013) 2 and LLOYDS BANK ‘Congo: Investing in Congo’ available at <https://www.lloydsbanktrade.com/en/market-potential/congo/investment> (accessed 11 October 2020).

<sup>197</sup> International Growth Centre *Foreign Direct Investment, Natural Resources and Institutions* (2023) 1.

<sup>198</sup> United Nations Conference on Trade and Development World Investment Report 179

<sup>199</sup> International Growth Centre *Foreign Direct Investment, Natural Resources and Institutions* (2013) 33.

Countries				
SSA Countries	0.69	0.12	0.48	0.18
Top Eight Oil Exporting Countries in SSA	0.72	0.12	0.40	0.08

**Notes:** The data are averaged from 2000-2009, and range from zero to one. A higher number on the left implies more corruption and, on the right, a more effective legal system.

The oil exporting countries are Angola, Cameroon, Chad, Congo Republic, Equatorial Guinea, Gabon, Nigeria, and Sudan.

From this table, one can say that the ineffectiveness of rule of law and corruption are characteristic of their institutions.

Violation of environmental regulations by Chinese investors is not limited only to the Republic of Congo. Other African countries are also experiencing the disrespect by Chinese investors for national environmental legislation.<sup>200</sup> Chinese or foreign investors are not the only ones who should be blamed or condemned for such behaviour, as Congolese officials also bend the rules.<sup>201</sup> International development organisations understand and back African states in their search to improve their investment climate.<sup>202</sup> To reach this objective, UNCTAD's Investment Policy Review (IPR) recommended that the country adopt fundamental measures that would enhance the quality of the investment institutional framework, and bring more FDI into the country.<sup>203</sup> When receiving these recommendations from UNCTAD, in Geneva, in Switzerland, on 21 April 2015, the Congolese Ministry in charge of Planning declared:

The analysis of the IPR needs to drive our efforts to undertake the necessary legislative, regulatory and institutional reforms to improve the investment climate and to contribute towards our ambition to become an emerging market economy by 2025.<sup>204</sup>

From his side, Mr James Zhan who was at the time UNCTAD's Director of Investment and Enterprise added:

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<sup>200</sup> Wilson Center: 'China Exim Bank in Africa' available at <https://www.wilsoncenter.org/event/china-exim-bank-africa> (accessed 15 November 2020).

<sup>201</sup> Ngounou B 'Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster' available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>202</sup> International Growth Centre 'Foreign Direct Investment, Natural Resources and Investment' (2023) 2;

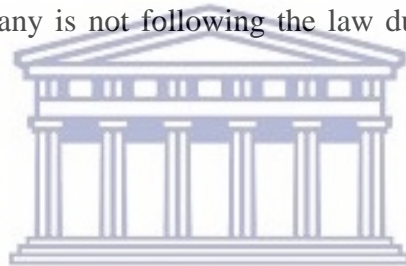
<sup>203</sup> United Nations Conference on Trade and Development 'Republic of Congo to promote foreign direct investment in agriculture' available at <https://unctad.org/en/Pages/PressRelease.aspx?OriginalVersionID=243> (accessed 15 November 2020).

<sup>204</sup> United Nations Conference on Trade and Development 'Republic of Congo to promote foreign direct investment in agriculture' available at <https://unctad.org/en/Pages/PressRelease.aspx?OriginalVersionID=243> (accessed 15 November 2020).

‘The recommendations of this IPR have the potential to support sustainable development in the Congo.’<sup>205</sup> The IPR also points out the fact that Congolese authorities do not show real enthusiasm when it comes to implementing measures that they themselves have taken.<sup>206</sup> The impact of these initiatives is now seen as limited.<sup>207</sup> This situation can be attributed to the excessive number of institutions put in place.<sup>208</sup> Their reduction is one way to enhance the concrete implementation of the salutary reforms.<sup>209</sup>

Assa wrote that the weakness at the institutional level, which prevails in Africa, contributes to accelerating the environmental degradation by FDIs.<sup>210</sup> Furthermore, it has now been proved that the continent is not equipped with the solid institutional frameworks that could sustain FDI.<sup>211</sup> This finding might explain why some FDIs involved in the mining sector in Congo do not comply with legislation, and damage the environment and the lives of people.<sup>212</sup> From their side, Abdulkareem and Abdulkakeem assert that States with weak institutional frameworks remain undeveloped, while those equipped with solid institutions experience better economic situations.<sup>213</sup> This explains why the Republic of Congo, with its abundant natural resources, ranks poorly in terms of economic development and social progress.

It is obvious that Chinese financial involvement in the continent often occurs in environmentally sensitive places.<sup>214</sup> It is also obvious that the legal framework within these countries where these investments take place is generally poorly enforced.<sup>215</sup> For instance, in North-Congo, a Chinese company is not following the law during its activities in sensitive



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<sup>205</sup> United Nations Conference on Trade and Development ‘Republic of Congo to promote foreign direct investment in agriculture’ available at <https://unctad.org/en/Pages/PressRelease.aspx?OriginalVersionID=243> (accessed 15 November 2020).

<sup>206</sup>–United Nations Conference on Trade and Development ‘Republic of Congo to promote foreign direct investment in agriculture’ available at <https://unctad.org/en/Pages/PressRelease.aspx?OriginalVersionID=243> (accessed 15 November 2020)

<sup>207</sup> United Nations Conference on Trade and Development ‘Republic of Congo to promote foreign direct investment in agriculture’ available at <https://unctad.org/press-material/republic-congo-promote-foreign-investment-agriculture> (accessed 20 November 2020).

<sup>208</sup> United Nations Conference on Trade and Development ‘Republic of Congo to promote foreign direct investment in agriculture’ available at <https://unctad.org/press-material/republic-congo-promote-foreign-investment-agriculture> (accessed 20 November 2020).

<sup>209</sup> United Nations Conference on Trade and Development ‘Republic of Congo to promote foreign direct investment in agriculture’ available at <https://unctad.org/press-material/republic-congo-promote-foreign-investment-agriculture> (accessed 20 November 2020).

<sup>210</sup> Assa BSK (2017) 8.

<sup>211</sup> International Growth Centre *Foreign Direct Investment, Natural Resources and Investment* (2003) 16.

<sup>212</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>213</sup> Abdulkhareem A & Abdulkakeem AK ‘Weak economic institutions in Africa: a destiny or design’ *Institutional Journal of Social Economic* (2009) 2.

<sup>214</sup> Bosshard P (2008) 2 & 5. See also Nathan Andrews, Nene Ernest Khalema, N’Dri T.Assié-Lumumba *Millennium Development Goals (MDGs) in Retrospect Africa’s Development Beyond 2015*, Springer

<sup>215</sup> Bosshard P (2008) 2.



sectors.<sup>216</sup> This situation has resulted in destroying the quality of water and making it undrinkable.<sup>217</sup>

And so people started to struggle. This is why, in order to safeguard the protection of nature, African states, and Congo especially, are encouraged to tackle this situation by adopting effective environmental requirements.<sup>218</sup> This corresponds to the conclusion of the IPR, when it formulates the necessity to achieve reforms.

The impact of Chinese investment has become so serious a concern that it has led African Union to call all those concerned to ‘ensure that China pays more attention to the protection of the environment in its investment practices’.<sup>219</sup> Criticisms towards lack of environmental requirements from Chinese investors has emerged too among Bretton Woods institutions. In this regard, Paul Wolfowitz, at that time serving as chairperson of the World Bank worried:<sup>220</sup>

Almost 80% of the world commercial banks respect (the Equatorial Principles) when they finance projects. The large Chinese banks do not apply them. True, they are relatively new to this type of activity in Africa. But they should not make the same mistakes which France and the United States have made in Mobutu’s Zaire ... Let’s be honest, this would be terrible, a true scandal.

Bosshard thinks that the necessity to combat bribery and the pressure on nature depends on African countries and China.<sup>221</sup> This means that Congolese authorities are responsible for that situation.

### **3.4. Law No. 003/91 of 23 April 1991 on the Protection of the Environment**

This law constitutes the framework instituted to manage the protection of the environment in the Republic of Congo.

#### **3.4.1: History and Legal Framework**

At the beginning of the 1990s, prior to the 1992 Earth Summit held in Rio de Janeiro in Brazil, the necessity to carry out an Environmental Impact Assessment (EIA) became obvious in the Congo Basin Region for all projects which could have adverse impacts on nature.<sup>222</sup> To this effect, the Republic of Congo enacted law No. 003/91 of 23 April 1991 on the protection of

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<sup>216</sup> Pulitzer Center ‘Illegal Gold Mining Creates an Ecological Disaster for Congo’s Brazzaville’s Sangha Region’ available at <https://pulitzercenter.org/projects/illegal-gold-mining-creates-ecological-disaster-congo-brazzavilles-sangha-region> (accessed on 17 November 2020).

<sup>217</sup> Pulitzer Center ‘Illegal Gold Mining Creates an Ecological Disaster for Congo’s Brazzaville’s Sangha Region’ available at <https://pulitzercenter.org/projects/illegal-gold-mining-creates-ecological-disaster-congo-brazzavilles-sangha-region> (accessed on 17 November 2020).

<sup>218</sup> African Union *Meeting of the Task Force on Africa’s Strategies Partnership with Emerging Powers: China, India and Brazil* (2006) 5

<sup>219</sup> African Union *Meeting of the Task Force on Africa’s Strategies Partnership with Emerging Powers: China, India and Brazil* (2006) 5.

<sup>220</sup> Bosshard P (2008) 9.

<sup>221</sup> Bosshard P (2007) 17.

<sup>222</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 1.

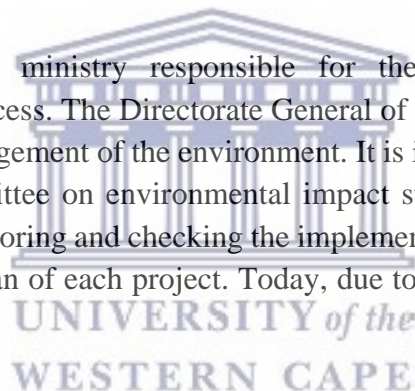
the environment. According to Article 2 of this law ‘every socio-economic development project must include an impact study’, in other words an EIA.<sup>223</sup> We all know that mining projects which expand in the country, are socio-economic development projects. Therefore, in conformity with this, these projects require an EIA. Nowadays, the EIA is seen as an indispensable tool when we talk about the management of the environment.<sup>224</sup> To achieve this goal, public bodies were created.<sup>225</sup>

The obligation to carry out an EIA in the Republic of Congo was introduced by Decree No. 86-775 30 years ago.<sup>226</sup> A more recent decree was adopted in 2009.<sup>227</sup>

Law 003/91 of 23 April 1991 is backed by decree No. 2009/415 of 20 November 2009, which defines the scope, the content and the procedures under which the study and the environmental and social impact statement should be undertaken.<sup>228</sup>

Another one is decree No. 835/MIME/DGE of 06 September 1999, that provides the framework related to the implementation of the EIA.<sup>229</sup> It is important to also mention memorandum No. 001647/MDDEFE/CAB-DGE of 25 May 2010 that determines the organisation and operation of the technical validation committee of EIAs,<sup>230</sup> as well as memorandum No. 002521/MDDEFE/CAB-DGE of 29 July 2010, which determines the financial cost of the review of the terms of reference and of the reports by the committee in charge of the validation.<sup>231</sup>

At the governing level, the ministry responsible for the environment conducts the implementation of the EIA process. The Directorate General of the Environment (DGE) is the entity put in place for the management of the environment. It is in charge of the functioning of the technical validation committee on environmental impact studies. Its duties also include environmental and social monitoring and checking the implementation of rules required by the environmental management plan of each project. Today, due to numerous factors, EIA is not well implemented in Congo.<sup>232</sup>



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<sup>223</sup> Netherland Commission for Environmental Assessment *Congo-Brazzaville: EIA profile* (2009) 1.

<sup>224</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 44.

<sup>225</sup> Ministries, directorates general, services...

<sup>226</sup> Netherland Commission for Environmental Assessment *Congo-Brazzaville: EIA profile* (2019) 1.

<sup>227</sup> Decree n°2009/415 of 20 November 2009.

<sup>228</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 44.

<sup>229</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 44.

<sup>230</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 44.

<sup>231</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 44.

<sup>232</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 116.

### 3.4.2 Characteristics of an EIA

The country does not have guidelines for conducting EIA.<sup>233</sup>

Scope of ESIA applications:

According to article 4 of the decree 2009/415, all projects liable to cause impacts necessitate an ESIA or environmental social impact. These are respectively categories A and B.

Contents of the EIA report:

An ESIA contains many parts. Those with regard to the situation that occurred in the North Congo are:<sup>234</sup>

- An analysis of the initial state of the site including its socio-economic, natural and human environment, and natural resources that could be potentially affected;
- A detailed description of the project activities for the proposed investment, reasons and technical justification for the selected site;
- Analysis of the likely impacts on the project site and immediate surroundings. The types of impacts include for example negative, positive, direct, indirect, temporary, permanent, cumulative, social, cultural and economic.
- An indication of the environmental risks for a neighbouring state resulting from the proposed activity.

So one can say that, if well implemented, the EIS would show the potential impacts of mining activities and therefore would therefore lead Congolese authorities and Chinese investors to remedy matters by adopting appropriate measures. They are:

- The presentation of an environmental, social and health management plan;
- Mitigation measures and their implementation and financial programming, and an emergency and risk management plan; and
- Measures to prevent populations in mining areas from suffering from diseases, and walking long distances to fetch water.

When they invest abroad, Chinese investors are advised to comply with local legislation. Nevertheless, some countries do not have powerful environmental laws.<sup>235</sup> Those Chinese mining projects that take place overseas, mainly in Africa, are the consequence of what is called the 'going out strategy' policy,<sup>236</sup> which encourages Chinese investors to start businesses overseas,<sup>237</sup> for example, in Congo-Brazzaville.

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<sup>233</sup> Netherland Commission for Environmental Assessment *Congo-Brazzaville: EIA profile* (2019) 2.

<sup>234</sup> Netherland Commission for Environmental Assessment *Congo-Brazzaville: EIA profile* (2019) 5.

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<sup>236</sup> Greenovation: Hub: 'China's Mining Industry at home and Overseas: Development, Impact and Regulation' (2014), 6.

<sup>237</sup> Greenovation: Hub: 'China's Mining Industry at home and Overseas: Development, Impact and Regulation' (2014), 6.

Environmental damage resulting from mining activities can be seen as the consequence of poor enforcement of regulations in many African countries.<sup>238</sup>

The challenge of implementing the measures that have been adopted in order to tackle environmental issues in a country is not just common to African countries; China has also experienced the same situation.<sup>239</sup> The topic is so important that, many years ago, during the Forum on China-Africa Cooperation held in China (FOCAC), it led African states and China to ‘intensify cooperation in environmental protection, share experiences and boost sustainable development on both sides’.<sup>240</sup> At the same time, a European organisation, together with Chinese authorities, agreed on a battery of measures which would tend to better the protection of the environment in Africa.<sup>241</sup>

**Table 2:** Assessment criteria for legal standards and practice related to carrying out an approval of the EIA.<sup>242</sup>

Criteria used	Description
<b>Coverage</b>	Percentage of investments subject to EIA; in practice, number of EIAs completed out of potential number
<b>Quality of texts</b>	Presence, exhaustiveness, clarity, coherence
<b>Public nature of procedure</b>	Explicit statement of EIA as a public procedure, specifying the documents to be published, and instructions for their publication
<b>Manual</b>	Developing one or more explanatory manuals for the procedure
<b>Financial soundness</b>	Soundness of the financial system of the branches of government managing the EIA system; provision of adequate funds for public-sector EIA
<b>Advance information requirement</b>	Requirement to provide adequate information about the project in advance; requirement to publish this information
<b>Screening</b>	Reliability of the procedure, use of independent expertise, involvement of the environmental inspectorate
<b>Requirements</b>	Requirement to consider all aspects of sustainability; to describe the alternatives at the same level of detail as the proposed project; to use quantitative data, use certified providers, mention uncertainties or gaps in

<sup>238</sup> United Nations Conference on Trade and Development *Economic Development in Africa: Rethinking the Role of Foreign Direct Investment* (2005) 51.

<sup>239</sup> Greenovation: Hub ‘China’s Mining Industry at Home and Overseas: Development, Impact and Regulation’ (2014), 7.

<sup>240</sup> Shinn D.H (2015) 30.

<sup>241</sup> Shinn D.H (2015) 30.

<sup>242</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 23.

	knowledge
<b>Scoping</b>	Reliability of the procedure, requirement for public participation, use of independent expertise, involvement of the environmental inspectorate
<b>Review</b>	Reliability of the procedure and criteria, requirement for public participation, use of independent expertise, involvement of the environmental inspectorate, requirement to compile a publicly available report
<b>Monitoring</b>	Requirement to monitor the main impacts of the project, description of methods and criteria, definition of responsibilities and frequency of visits. In practice this entails the administration's ability to monitor adequately
<b>Knowledge of texts</b>	Percentage of potential users familiar with the texts
<b>Institutional capacity</b>	Ratio of the number of students processed to the number of procedures that can be processed
<b>Expertise in managing the procedure</b>	Percentage of managers available who are adequately educated for the specific task, availability of and access to good institutional memory
<b>Outside expertise</b>	Use of external expertise at all stages of the procedure

It should be recognised that mining projects will always generate adverse environmental impacts.<sup>243</sup> Nevertheless, with great effort, and sincere and real commitment, those impacts can be contained.<sup>244</sup> We also note that protecting the environment requires constant and permanent effort since the framework dedicated to it needs improvement.<sup>245</sup>

When investors from China start their businesses in Africa in the mining sector, they often tend to depend on the institutions they find on the ground to tackle the environmental issues.<sup>246</sup> And yet, as already stated, it is obvious that those institutions are not strong.

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<sup>243</sup> Greenovation: Hub: 'China's Mining Industry at home and Overseas: Development, Impact and Regulation' (2014) 6.

<sup>244</sup> Greenovation: Hub: 'China's Mining activities at home and Overseas: Development, Impact and Regulation' (2014) 6.

<sup>245</sup> Greenovation: Hub: 'China's Mining activities at home and Overseas: Development, Impact and Regulation' (2014) 6.

<sup>246</sup> Greenovation: Hub: 'China's Mining activities at home and Overseas: Development, Impact and Regulation' (2014) 9.



Many scholars have pointed out the weakness of African institutions. For instance, Jackson and Rosberg argue that African institutions are characterised by their weakness.<sup>247</sup> They add that institutions which exist in various African countries remain undeveloped compared to those established in other countries.<sup>248</sup>

In their opinion, legislation and other measures in these states have not been seriously implemented.<sup>249</sup> From these findings, one may ask whether, as concluded by both authors, African states still ‘exert control’ over their territories.<sup>250</sup>

In other words, is Congo exerting control over its territory while foreign investors in mining do not comply with its regulations? When using the phrase ‘exercise control’ over territory, those authors were talking about the will to apply legislation in a country.<sup>251</sup>

Bräutigam and Knack wrote that, for many years, the Institutions of Bretton Woods had warned that ‘the litany of Africa’s governance development problems is a crisis of governance’.<sup>252</sup> They share the view that inefficient institutions, bribery, and poor implementation of legislation give a sad image of African nations.<sup>253</sup>

They emphasise that ‘Governance’ is so worrying on the continent that Bretton Woods Institutions made the decision to include it as a condition for granting financial assistance to African states. They stress that inefficient state capacity and institutions in Africa are among the root causes of this weak governance.<sup>254</sup> To stress the fundamental, determining role that governance may play to the development of the continent, Koffi Annan, a former UN secretary general, stated: ‘Good governance is perhaps the single most important factor in eradicating poverty and promoting development.’<sup>255</sup>

Moreover, Agenda 2063 of the African Union contains an aspiration: ‘An Africa of good governance, democracy, respect for human rights, justice and the rule of law.’<sup>256</sup>

In fact, if Congolese institutions were effective, it would not be possible for mining companies not to comply or not to follow due processes before starting their activities. The weakness of institutions in charge of the protection of the environment or mining in North-Congo is also reported by NGOs instead of those in public administration.<sup>257</sup>

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<sup>247</sup> Jackson R.H. & Rosberg C.G ‘Why Africa’s Weak States Persist: The Empirical and the Juridical in Statehood’ (1982) Vol.35, N° 1, *World Politics*, 1.

<sup>248</sup> Jackson R H & Rosberg C.G (1982) 1.

<sup>249</sup> Jackson R. H & Rosberg C.G (1982)3.

<sup>250</sup> Jackson R.H & Rosberg C.G (1982) 6.

<sup>251</sup> Jackson R.H & Rosberg C.G (1982) 6.

<sup>252</sup> World Bank *Sub-Saharan Africa: From Crisis to Sustainable Growth: A long-Term Perspective Study* (1989), 60.

<sup>253</sup> Bräutigam & Knack ‘Foreign Aid, Institutions and Governance in Sub-Saharan Africa’ (2004), Vol. 52, N°2, *JSTOR*, 255.

<sup>254</sup> Bräutigam D.A & Knack S (2004) 259.

<sup>255</sup> Mukum Mbaku J ‘Deepening good governance: Inclusion, democracy, and security Foresight 23

<sup>256</sup> African Union ‘Agenda 2063’

<sup>257</sup> Nzikou-Massala M ‘Illegal Gold Mining Creates an Ecological Disaster for Cong-Brazzaville’s Sangha region’ available at <https://pulitzercenter.org/projects/illegal-gold-mining-creates-ecological-disaster-congo-brazzavilles-sangha-region> (accessed 14 August 2020).

Shinn estimates that African governments do not show a keen interest in environmental policy.<sup>258</sup> They prefer giving more priority to combatting plagues such as disease, poverty.<sup>259</sup>

According to the German institution involved in bringing assistance overseas (GIZ), problems of a lack of governance are characterised by the table below.

An inadequate fiscal regime
A lack of both capacities and clear definition of responsibilities within and between state institutions
The absence of a uniform legal framework for the extractive sector; instead we see individual contracts, contradictory legislation, poor transparency and competition between individual ministries
Inadequate regional harmonisation and cooperation between governments of countries that share resources
Negative impacts in extractive regions caused by lack of involvement of municipalities in designing the frameworks for resource extraction
Excessive expectations of the population regarding the benefits of extraction
Inefficiency and mismanagement caused by corruption
Failure to meet human rights obligations

Source: GIZ, 2014.

This figure shows various manifestations that the absence of governance can take, including human rights violations and corruption. Strong measures must be taken in order to reverse the situation.

### 3.5. Law No. 4-2005 of 11 April 2005: The Mining Code

In Central Africa, the rule of law with regard to mining activities is not easy to comprehend.<sup>260</sup> The region is characterised by contradictory legislation, and cooperation between different ministries is inefficient, and throws into disarray all partners engaged in the mining sector.<sup>261</sup>

The main legal mining instruments of countries of this area demand environmental protection.<sup>262</sup> Article 132 of the Congolese mining law requires mining exploitation to take place with due regard for safety and the health of workers, the protection of the environment and of water sources, and the rehabilitation of sites.<sup>263</sup>

Unfortunately, the governmental bodies in charge of monitoring the EIA and/or the environmental management plan do not function well.<sup>264</sup> One of the main global financial organisations has pointed out problems, which have already been mentioned by various other

<sup>258</sup> Shinn D.H (2015) 27.

<sup>259</sup> Shinn D.H (2015) 29.

<sup>260</sup> World Bank *Deforestation Trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013), 7.

<sup>261</sup> World Bank *Deforestation Trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013), 7.

<sup>262</sup> World Bank *Deforestation Trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013), 7.

<sup>263</sup> Law n° 4-2005 of 11 April 1991 that institutes the mining code.

<sup>264</sup> World Bank *Deforestation Trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013), 7

sources. These problems include poor governance, poor contract negotiation, and poor institutional capacity.<sup>265</sup>

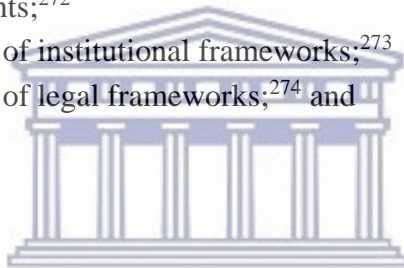
For the purpose of EIA, the institutional and the legal environments that were established are until now often unfinished and inefficient.<sup>266</sup> The reasons for this sad reality are explained in this chapter.<sup>267</sup>

To tackle this situation, countries from the Congo Basin set up national environmental associations at the end of the 1990s.<sup>268</sup> Later these national organisations combined and put in place at sub-regional level the Secretariat for Environmental Assessment in Central Africa (SEEAC).<sup>269</sup> SEEAC seeks to promote the taking into account of environmental assessment in Central Africa by acting as a destination for discussion by scholars or experts on EIA issues.<sup>270</sup>

Despite the fact that the idea of the mining code is attractive, some provisions do not contribute to sustainable development.

The main failures of the mining code include:

- The code contains a legal vacuum on different rights and commitments assigned both to the country and to mining companies;<sup>271</sup>
- Provisions on the protection of the environment are not clear or suited to sustainable development requirements;<sup>272</sup>
- Weakness or deficiency of institutional frameworks;<sup>273</sup>
- Weakness or deficiency of legal frameworks;<sup>274</sup> and



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<sup>265</sup> World Bank *Deforestation Trends in the Congo Basin: Reconciling Economic Growth and Forest Protection* (2013), 7

<sup>266</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 1.

<sup>267</sup> Unfavourable framework, inadequate regulatory instruments (legislation and regulations that are not fully applied; the limited power and capacity of the structures in charge of environmental assessment, gaps in administrative coordination; deficiencies in the collecting and management of environmental information, insufficient human resources and lack of awareness, information and public participation; etc..

<sup>268</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) 1.

<sup>269</sup> Burundi, Cameroon, Gabon, Equatorial Guinea, the Central African Republic, Democratic Republic of the Congo, Rwanda, São Tomé and Príncipe, and Chad.

<sup>270</sup> Secretariat for the Environmental Assessment in Central Africa: *Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations* (2004) iv.

<sup>271</sup> OPO F.U 'Atelier national: Améliorer les effets structurants du secteur des ressources minérales dans les pays de la Communauté économique d'Afrique Centrale: Négociation des contrats: Le cadre légal, réglementaire et institutionnel' (2016) 7.

<sup>272</sup> OPO F.U 'Atelier national: Améliorer les effets structurants du secteur des ressources minérales dans les pays de la Communauté économique d'Afrique Centrale: Négociation des contrats: Le cadre légal, réglementaire et institutionnel' (2016) 9.

<sup>273</sup> OPO F.U 'Atelier national: Améliorer les effets structurants du secteur des ressources minérales dans les pays de la Communauté économique d'Afrique Centrale: Négociation des contrats: Le cadre légal, réglementaire et institutionnel' (2016) 5.

<sup>274</sup> OPO F.U 'Atelier national: Améliorer les effets structurants du secteur des ressources minérales dans les pays de la Communauté économique d'Afrique Centrale: Négociation des contrats: Le cadre légal, réglementaire et institutionnel' (2016) 5.



- The mining law does not specify conditions or terms of rehabilitation of sites after exploitation.<sup>275</sup>

Unfortunately, it has been observed that mining companies such as the one situated in Sangha department do not comply with Congolese mining law.<sup>276</sup> For example, Agil Congo, without being granted an ‘exploitation permit’ by the ministry in charge of mining, started to exploit that permit. In fact, the ‘exploration’ permit that was issued does not allow a mining company to start ‘exploitation’.<sup>277</sup>

As in many other African countries, a number of laws on the protection of the environment have been enacted. However, in practice, this legal framework has been violated.<sup>278</sup> Those violations occur simply due to lack of following through with the implementation of the control agreements.<sup>279</sup> If Chinese investors were showing a keen interest in Africa, the Chinese government would not blame ‘irresponsible practices’ and the main Chinese leader would not call on Chinese who start businesses in Africa to pay more attention to African legislation.<sup>280</sup> Considering this situation, one can agree with Jackson and Rosberg that African states do not control some of the activities which take place within their boundaries.<sup>281</sup> According to them, at a moment of their historic development, some countries have lost what characterises ‘states’.<sup>282</sup>

To have a general idea of the violation of law in Congo, a website revealed that Chinese logging companies do not comply with national legislation. This website added that a very high quantity of forestry exportation is not carried out legally.<sup>283</sup> Chinese do not always accept the charges of its environmental damages. This is why reacting to Paul Wolfowitz, World Bank President who strongly criticised the environmental footprint of China, a Chinese official reacted in these terms: ‘China has adopted the principle of non-interference of other nation’s internal affairs in its foreign relations. China does not accept any country imposing its values, social systems and ideology upon China. Neither will China allow itself to do so to others’.<sup>284</sup>

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<sup>275</sup> OPO F.U ‘Atelier national: Améliorer les effets structurants du secteur des ressources minérales dans les pays de la Communauté économique d’Afrique Centrale: Négociation des contrats: Le cadre légal, réglementaire et institutionnel’ (2016) 7.

<sup>276</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>277</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>278</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>279</sup> OPO F.U ‘Atelier national: Améliorer les effets structurants du secteur des ressources minérales dans les pays de la Communauté économique d’Afrique Centrale: Négociation des contrats: Le cadre légal, réglementaire et institutionnel’ (2016) 13.

<sup>280</sup> Bosshard P (2008), 11.

<sup>281</sup> Jackson R.H & Rosberg C.G (1982)1.

<sup>282</sup> Angola, Chad, Ethiopia, Nigeria, Sudan Uganda, and Zaire (DRC).

<sup>283</sup> Bosshard P (2008) 15.

<sup>284</sup> Bosshard P (2008) 11.

This attitude is one of the factors that explain the lukewarm attitude of the Chinese towards respect for the environment.

However, many important companies involved in the mining sector comply with Environmental Impact Assessments (EIA).<sup>285</sup> They should also implement thorough mitigation processes.<sup>286</sup> Nevertheless, state supervision and implementation of the EIA is generally inefficient, and sometimes does not exist.<sup>287</sup> This is frequently observed in the Congo basin region.<sup>288</sup> This reality contributes to worsening the EIA procedure.<sup>289</sup> A few years ago, a South African institute concluded that institutional frameworks on the continent do not function well.<sup>290</sup> Therefore one should not be astonished to see Congolese citizens suffering from diseases caused by environmental damage because mining companies fail to fulfil their legal obligations.

Shinn adds his voice to those who think that in the continent, institutions do not have enough influence. However, he notes some interesting aspects; in the midst of this news, encouraging examples have emerged from countries which are equipped with good environmental laws.<sup>291</sup>

The OECD has undertaken a study on the 'Environmental Impacts of Foreign Direct Investment in the Mining sector in Sub-Saharan Africa'.<sup>292</sup> The study focused on six countries.<sup>293</sup>

When it came to consider the case of Mali, there is evidence that foreign mining actors implement measures better than the nationals do. For this reason, Mali does not face adverse regulatory consequences or impacts.<sup>294</sup>

As article 3 of the Final Declaration of the Rio Conference, held in Brazil in 2012, states that environmental assessment fits or is compatible with sustainable development:

We therefore acknowledge the need to further mainstream sustainable development at all levels integrating economic, social and environmental aspects and recognizing their interlinkages, so as to achieve sustainable development in all its dimensions.

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<sup>285</sup> Edwards P, Sloan S & Weng 'Mining and the African Environment' (2013), *Policy Perspective*, 6 & 7.

<sup>286</sup> Edwards P, Sloan S & Weng (2013) 6.

<sup>287</sup> Edwards P, Sloan S & Weng (2013) 7.

<sup>288</sup> Edwards P, Sloan S & Weng (2013) 7.

<sup>289</sup> Edwards P, Sloan S & Weng (2013) 7.

<sup>290</sup> Neil Renwick, Jing Gu & Song Hong 'China and African Governance in the Extractive Industries' available at <https://journals.openedition.org/poldev/2547> (accessed 27 January 2021).

<sup>291</sup> Shinn D.H (2015) 44.

<sup>292</sup> Organisation for Economic Co-Operation and Development

<sup>293</sup> These countries are the following: South Africa, Zambia, Ghana, Mali, Tanzania and Kenya

<sup>294</sup> Organisation for Economic Co-Operation and Development' Environmental Impacts of Foreign Direct Investment in the Mining Sector in Sub-Saharan Africa' (2002) 21.

A country may have good laws but the problem starts when it comes to their effectiveness.<sup>295</sup> This shows that within a country, the role or the effectiveness of its institutions play a vital role.<sup>296</sup>

Jackson and Rosberg think that the capacity of African states relies on three conditions, which are: first, in the continent, political power lies with the person rather than the institution. Secondly, entities or structures in charge of applying regulations (the apparatus of power) are ‘underdeveloped’ when it comes to financial resources and the use of these resources. Considering its size, the number of people, and the financial resources one can say that the continent is not well equipped compared to other continents. Furthermore, there is a lack of trained personnel.<sup>297</sup>

It is now almost three decades since Jackson and Rosberg concluded that Congo-Brazzaville together with a few other countries should be criticised for their inefficient administration.<sup>298</sup> It is no exaggeration to claim that, in spite of the years that have passed, the functioning of the Congolese administration remain chaotic.

### **3.6. Bilateral Investment Treaties**

The country has signed more than 10 bilateral investment treaties (BIT) with countries such as Italy, USA, North Ireland, Germany and the Republic of Korea. Not one contains any provision for the protection of the environment.<sup>299</sup>

### **3.7. The Institutional Framework Governing FDI in Congo-Brazzaville**

The following institutions are those involved in promoting investment and protecting the environment:

#### **3.7.1. The President of the Republic**

After laws have been adopted by the Parliament, the President of the Republic promulgates them.<sup>300</sup> The President of the Republic promulgated Law No. 6-2003 of 18 January 2003 that instituted the Investment Charter in the Republic of Congo. Under the Constitution, the President leads the Council of Ministers.<sup>301</sup> The Council determines the terms under which research into mining activities begin.<sup>302</sup>

#### **3.7.2 Ministry in Charge of Planning**

The National Investment Commission (CNI), created by Decree N° 2000-57 of 22 April 2003, is under the supervision of this minister.

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<sup>295</sup> Shinn D.H (2015) 39.

<sup>296</sup> Shinn D.H (2015) 39.

<sup>297</sup> Jackson R. H & Rosberg C.G (1982) 8.

<sup>298</sup> Jackson R. H & Rosberg C.G (1982) 9.

<sup>299</sup> Conférence des Nations unies pour le Commerce et le Développement: *L'Examen de la politique d'investissement de la République du Congo* (2014) 10.

<sup>300</sup> Constitution of the Republic of Congo (2015), art. 85.

<sup>301</sup> Constitution of the Republic of Congo (2015), art. 84.

<sup>302</sup> Law n°4-2005 of 11 April 1991, Art.135.

### 3.7.3. Ministry of Mining and Geology

The Ministry of Mining and Geology approves holders of mining permits to start mining research and exploitation. This approval is granted after public inquiry has been completed following conditions determined by the Council of Ministries.<sup>303</sup> According to article 126 al. 2 of the mining law, officers who belong to the mining administration are responsible for technical control of equipment, installations, and the industrial environment.<sup>304</sup> Article 131 stipulates that agents or officers of the administration can, at any time visit mining sites.<sup>305</sup>

### 3.7.4 Ministry of the Environment

The involvement of this minister in the management of investment has already been mentioned. Through the directorate general of the environment, the administration in charge of the environment conducts the EIA.

### 3.7.5. The Agency for the Promotion of Investment (API)

The Agency is a government entity instituted by Law No. 19-2012 of 22 August 2012.<sup>306</sup> Its activities really started six years ago and it is led by two structures.<sup>307</sup> The API is commissioned to:

- Implement the national investment policy by promoting and facilitating private investment;
- Improve the business environment; and
- Design and promote a brand image to attract foreign economic partners.<sup>308</sup>

### 3.7.6. The Parliament

In some African states, parliaments serve as the intermediary between national and international legislation.<sup>309</sup> In this way, they help African states to domesticate international law, and to introduce them into local legislation.<sup>310</sup> This is why, for example, in the Republic of Congo, the role of the National Assembly consists in adopting international laws with the aim of implementing them at local or national level.<sup>311</sup> Article 124 of the Constitution stipulates that the Parliament adopts laws.<sup>312</sup> The Parliament is considered as an institution governing

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<sup>303</sup> Law n°4-2005 of 11 April 2005

<sup>304</sup> Law n° 4-2005 of 11 April 2005 that institutes the Mining code.

<sup>305</sup> Law n° 4-2005 of 11 April 2005 that institutes the Mining code.

<sup>306</sup> Ministry of economy, Industry and Public Portfolio 'Agency for the Promotion of Investment' available at [www.economie.gouv.cg](http://www.economie.gouv.cg) (accessed 11 October 2021).

<sup>307</sup> Ministry of economy, Industry and Public Portfolio 'Agency for the Promotion of Investment' available at [www.economie.gouv.cg](http://www.economie.gouv.cg) (accessed 11 October 2021).

<sup>308</sup> Ministry of economy, Industry and Public Portfolio 'Agency for the Promotion of Investment' available at [www.economie.gouv.cg](http://www.economie.gouv.cg) (accessed 11 October 2021)

<sup>309</sup> Manyuchi A.E 'African Structures for Governing Foreign Direct Investment: A Critique' (2017), *Strategic Review for Southern Africa*, Vol 39, N° 1, 148.

<sup>310</sup> Manyuchi A.E (2017) 148.

<sup>311</sup> Manyuchi A.E (2017) 148

<sup>312</sup> Constitution of Congo (2015).

FDI.<sup>313</sup> According to the Constitution, Parliament exerts control over the Government.<sup>314</sup> This means that the Parliament controls various ministries which deal with FDI or the protection of nature, such as the Ministries of Planning, of Mining and of the Environment. This control permits the administration to detect all violations of legislation. These violations can be attributed to administrations themselves, or to mining companies extracting in the country. The parliament also approves the agreements between Congolese government and mining companies.

Among the criticisms of Parliament, lack of training to sensitise parliamentarians about the environment or sustainable development issues has been cited. To remedy this lacuna, different types of workshops have been organised for parliamentarians.

### **3.8. The International Agreement and Political Statements:**

#### **3.8.1. International Agreements**

- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

The Basel Convention was adopted at the end of 1990 s. and entered into force at the beginning of 1990 s.<sup>315</sup> The Republic of the Congo has ratified this Convention.<sup>316</sup> According to the preamble to the Convention, Parties (including Congo) admit that hazardous wastes are detrimental to human life and nature. Article 8 al 2 obliges Parties (including Congo) to adopt all kind of measures intended to safeguard human life and nature. Mining activities often generate waste that is hazardous to the environment. The outbreak of diseases such as ‘Kwaka Nzoto’ (scientific name: scabies) has affected the health of people because water sources have become polluted and contaminated.<sup>317</sup> According to this convention, there are substances, which may destroy the environment.<sup>318</sup>

- **The Bamako Convention on the Ban of the Import into Africa and the control of Transboundary Movement and Management of Hazardous Wastes within Africa**

Article 4 (al.1) stipulates that the Bamako Convention is a treaty of African States, which does not allow the movement of hazardous wastes into the continent.<sup>319</sup> It became effective in 1998.

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<sup>313</sup> Manyuchi A.E (2017) 148.

<sup>314</sup> Article 142.

<sup>315</sup> UNEP: ‘Basel Convention’ available at [www.basel.int](http://www.basel.int) (accessed 21 March 2023).

<sup>316</sup> Law n°23-2006 of September 2006 that allows the acceptance of the Basel Convention.

<sup>317</sup> Ngounou B ‘Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster’ available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020).

<sup>318</sup> ‘Substances or wastes which, by interaction with air or water, are liable to give off gases in dangerous quantities’ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Annex III (1989).

<sup>319</sup> Bamako Convention on the Ban of the Import into Africa and the control of Transboundary Movement and Management of Hazardous Wastes within Africa (1998).



Annex I of the Convention includes mercury as a hazardous substance.<sup>320</sup> Unfortunately, a Chinese mining company uses that mercury in the North Congo. This has resulted in pollution and the contamination of water.<sup>321</sup> The Republic of the Congo is a Party to the Bamako Convention.<sup>322</sup>

### 3.8.2. Political Declarations

#### ➤ Declaration of the United Nations Conference on the Human Environment

Earlier, in the 1970s, the Declaration of the United Nations Conference on the Human Environment stressed that ‘Science and technology ... must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems’.<sup>323</sup>

#### ➤ The Rio Declaration

The Rio Declaration declared, ‘environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority’.<sup>324</sup> According to the Rio Declaration’s principle 17: ‘environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a component national authority’.

International agreements are binding.<sup>325</sup> Hence, Congolese institutions have to comply with them. On the other hand, political statements are not legally binding but have political or moral significance.<sup>326</sup>

### 3.9 Conclusion:

The Republic of Congo, like other states, has adopted a framework intended to regulate the activities generated by FDI. To this end, the government has passed legislation, created institutions and initiated policies.

Unfortunately, analysis of these devices reveals many limitations. Thus, the current FDI framework seems incompatible with environmental protection.

This situation should challenge the authorities to think about ways to make FDI more environmentally friendly.

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<sup>320</sup> Bamako Convention on the Ban of the Import into Africa and the control of Transboundary Movement and Management of Hazardous Wastes within Africa, Annex I (1998).

<sup>321</sup> Nzikou-Massala M ‘Illegal Gold Mining Creates an Ecological Disaster for Congo-Brazzaville’s Sangha region’ available at <https://pulitzercenter.org/projects/illegal-gold-mining-creates-ecological-disaster-congo-brazzavilles-sangha-region> (accessed 14 August 2020).

<sup>322</sup> United Nations Environment Programme : *Rapport du Secrétariat de la Convention de Bamako* (2018) 25.

<sup>323</sup> Principle 18.

<sup>324</sup> Principle 17.

<sup>325</sup> American Society of International Law ‘Treaties as Binding International Obligation’ available at [www.asil.org](http://www.asil.org) (accessed 12 October 2021).

<sup>326</sup> Team World in Definition Translations ‘Definitions for political statement’ available at [www.definition.net](http://www.definition.net) (accessed 12 October 2021).

It is widely recognised that African institutions are not keen to enforce legislation. The continent is a place where the environmental framework is not taken into account.<sup>327</sup>

African leaders do not show a keen interest in the preservation of nature. The time has come for them to demonstrate that taking into account the protection of the environment is not merely a way for them to attract investors.<sup>328</sup> By doing so, they will comply with ecological, social and economic goals, backed by the main worldwide organisations and agencies.<sup>329</sup> To succeed, environmental assessment has to follow steps that include an eager commitment of partners involved in that process and an efficient methodology, raising the awareness of all actors to focus on sustainable development.<sup>330</sup>

Above all, Congolese political leaders should at all time keep in mind that the Republic of Congo is their own country, and that it belongs to all who live there. Therefore, they should take measures that really contribute to the development of the country. Let us conclude with these words from Montesquieu:

*When I go to a country,*

*I don't investigate whether it has good laws,*

*But whether they execute the ones they have, because good laws are everywhere.*<sup>331</sup>

The next chapter will be dedicated to protection compliances mechanisms, and best practices for the protection of the environment.



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<sup>327</sup> Bosshard P (2008) 15.

<sup>328</sup> Shinn D (2015) 43.

<sup>329</sup> Secretariat for the Environmental Assessment in Central Africa: Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations (2004) 14.

<sup>330</sup> Secretariat for the Environmental Assessment in Central Africa: Evolution of Environmental Impact Assessment Systems in Central Africa: The role of national professional associations (2004) 15.

<sup>331</sup> Le Prestre, 1997.

# Chapter Four:

## Protection Compliance Mechanisms and Best Practices for the Protection of the Environment

### 4.1 Introduction

Natural resources can be a source of great good ... or dreadful ill. The key element is not the resource itself, but how it is exploited. An orderly mining regime, operating within a transparent and predictable legislative and fiscal framework, can be a major source of prosperity for governments and people. Without it, mineral wealth ... will be a magnet for the greedy and corrupt to line their own pockets at the expense of the people.<sup>332</sup>

As has already been stated, mining activities give rise to debate because of ecological damage. A mining projects has many steps. Any of them may affect the environment, or cause ill health. To remedy these impacts, throughout the world numerous initiatives have been taken in order to make the mining sector more advantageous to countries, and to integrate attention to environmental aspects and practices. At the origin of these tools or practices, one finds multiple stakeholders. This chapter will present these practices, their history, their use, their diversity, and the changes they are expected to bring.

This diagram shows the steps during mining exploitation. The procedure requires good practices to avoid environmental impacts.

**Diagram: A main life cycle**<sup>333</sup>



### 4.2 Overview or Definition of Good or Best Environmental Practices

Before continuing, it is necessary to have a clear understanding of good or best practices. The International Labour Organization (ILO), based in Geneva, Switzerland, has developed three characteristics that can help understand what good or best practices are:

- First, they are a set of practices that have demonstrated through their implementation that they are 'good'. However, according to the same source (the ILO), this judgement is not objective.
- Secondly, as they are 'good', other institutions can reproduce this set of practices.

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<sup>332</sup> Organization for Economic Co-Operation and Development 'Foreign Direct Investment': Lesson from the mining sector (2002) 195.

<sup>333</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 8.

- Thirdly, details concerning these practices should be available to everyone.<sup>334</sup>

Some policies have the strength of law and are complemented by institutions capable of ensuring that they are followed. Other policies provide general guidance, without clear details on how they will be implemented. Some policies, such as the World Bank's Safeguard Policies, establish minimum social and environmental standards for investments. Other policies proactively encourage or require investment in environmentally or socially beneficial projects.<sup>335</sup>

### **4. 3. Historical Roots and the Role of Good or Best Environmental Practices**

#### **4.3.1. Roots of Best Environmental Practices**

The acknowledged right of countries to development leads them to seek opportunities to enhance the well-being of their citizens. According to article 2 of the ACHPR, 'all people shall have the right to their economic, social and cultural development with regard to their freedom and identity and in enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development'.<sup>336</sup>

In this regard, states expect to reach this goal through mining activities. Unfortunately, this sector activity is far from meeting the expectations. Mining generates pollution and destroys the environment. To remedy this sad reality, scholars, academics, political leaders and many other stakeholders such as international organisations are seeking means to regulate mining's effect on nature and society.<sup>337</sup>

#### **4.3.2 Role of Good Environmental Practices**

Environmental and social guidelines can have a positive contribution to the management of natural resources. When investing abroad, one of the main concerns of an investor is to seek methods that help to minimise or reduce environmental degradation in the host country.<sup>338</sup> In this regard, the World Resource Institute holds that 'Environmental and social policies, either at the national or international level, can help mitigate risks to both the investor and host countries.'<sup>339</sup>

#### **4.3.3 Different Types of Good or Best practices**

There exists a large diversity of good practices established by various institutions.

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<sup>334</sup> International Labour Organization 'Sustainable Mining: How good practices in the mining sector contribute to more and better jobs (2017) 24.

<sup>335</sup> World Resource Institute 'Environmental and Social Policies in Overseas Investments: Progress and Challenges for China' (2013) 10.

<sup>336</sup> Article 22 (1) and (2) of the ACHPR

<sup>337</sup> International Finance Corporation 'Sustainable and Responding Mining in Africa:: A Getting Started Guide' (2004) 4.

<sup>338</sup> World Resource Institute 'Environmental and Social Policies in Overseas Investments: Progress and Challenges for China' (2013) 10.

<sup>339</sup> World Resource Institute 'Environmental and Social Policies in Overseas Investments: Progress and Challenges for China' (2013) 10.

### 4.3.3.1. The International Council on Mining and Metals (ICMM) and the 10 Principles for Mining and Sustainable Development

#### 4.3.3.1. A Presentation of the International Council on Mining and Metals (ICMM)

The International Council on Mining and Metal (ICMM) is an international organisation intended to make the mining sector clean.<sup>340</sup> The ICCM asserts that economic development should not destroy the environment.<sup>341</sup> Companies which adhere to ICMM are required to make a positive contribution to managing mining in accordance with environmental principles.<sup>342</sup>

The ICMM published 10 principles at the beginning of the 2000s. These 10 principles are:<sup>343</sup>

1. Ethical business.
2. Decision-making.
3. Human rights
4. Risk management.
5. Health and safety.
6. Environmental performance.
7. Conservation of biodiversity.
8. Responsible production.
9. Social performance.
10. Stakeholder engagement

#### Principle 3: Human rights

Through this principle, the ICMM establishes the link that exists between environment and human rights. This explains why some assert that ‘Human rights issues in the mining industry in Africa can include security, corruption, discrimination, child labour, labour conditions, environmental damage, land acquisition and resettlement, loss of culture and local community economic development along with specific issues for indigenous peoples.’<sup>344</sup>

Mining activities have to take into consideration human rights aspects during all the processes.<sup>345</sup> This include the necessity to include and to consult all stakeholders concerned.<sup>346</sup> This also means that states have to recognise and implement human rights. Carefully managed, mining can provide positive environmental benefits such as:<sup>347</sup>

- Managing risk
- Reduction of negative impact
- Building reputation

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<sup>340</sup> Member requirements available at [www.icmm.com](http://www.icmm.com) (accessed on 13 January 2022)

<sup>341</sup> International Council on Mining and Metals: Mining Principles: Performance expectations (2020) i.

<sup>342</sup> International Council on Mining and Metals ‘Company members’ available at [www.icmm.com](http://www.icmm.com) (accessed on 12 march 2012).

<sup>343</sup> International Council on Mining and Metals: Mining Principles: Performance expectation (2020) 1&6.

<sup>344</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 16.

<sup>345</sup> United Nations Development Programme: Extracting Good Practices: A Guide for Governments and Partners to Integrate Environment and Human Rights in the Governance of Mining Sector 13.

<sup>346</sup> United Nations Development Programme: Extracting Good Practices: A Guide for Governments and Partners to Integrate Environment and Human Rights in the Governance of Mining Sector 13.

<sup>347</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 9.



- Building relationships with investors and the financial community
- Building relationships with government and the local community

Therefore, according to the United Nations Human Rights Council, ‘States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking into account appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudications.’<sup>348</sup> It also adds its Guiding Principles are binding on all countries.<sup>349</sup>

### **Principle 5: Health and Safety**

This principle implies that mining companies have the duty to take measures that respect the rights of people surrounding the mining site.<sup>350</sup> Measures towards the reduction of diseases are fundamental.<sup>351</sup> Such measures would be of great benefit for communities in the vicinity of mining extraction in Congo-Brazzaville. We are aware that in these areas people are suffering from ill health.

#### **4.3.3.2. Effects of ICMM Principles**

The ICCM Principles indicate that if companies operating in the mining sector initiate dialogue with partners, and with stakeholders such as communities, this will enable them to have a better understanding of communities’ aspirations, their needs, and their desires.<sup>352</sup> That way, these companies will serve not only their own interests but also those of communities.

According the IFC, implementing ICCM Principles will permit companies to:

- Reinforce reputation;
- Establish and maintain dialogue with investors and the financial community; and
- Establish and maintain dialogue with communities surrounding mining sites.<sup>353</sup>

In order to achieve sustainability, a company involved in mining extraction is expected to go through the following steps:<sup>354</sup>

- Understand the issues: Companies are required to know the main concerns of their stakeholders. They can be related to corruption, or to natural situations.

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<sup>348</sup> United Nations Human Rights: Guiding Principles on Business on Human Rights (2011) 13.

<sup>349</sup> United Nations Human Rights: Guiding Principles on Business on Human Rights (2011) 3.

<sup>350</sup> International Council on Mining and Metals ‘Health and Safety’ available at [www.icmm.com](http://www.icmm.com) (accessed on 23 January 2022).

<sup>351</sup> International Council on Mining and Metals ‘Health and Safety’ available at [www.icmm.com](http://www.icmm.com) (accessed on 23 January 2022).

<sup>352</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2004) 11.

<sup>353</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2004) 9.

<sup>354</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 9.

- Engage with stakeholders: Companies should be aware of the fundamental issues of their partners. This could be achieved through dialogue. For that, numerous instruments are available, and the International Finance Corporation (IFC) has published some of them.

Chapter three of this work shows that lack of transparency can undermine the development of a nation. Thus, these principles could remedy this sad reality in promoting or encouraging transparency and accountability. For example, many African states, including the Republic of Congo, have joined an organisation which obliges its members to publish revenues from mining extraction.<sup>355</sup> This organisation is called the Extractive Industry Transparency Initiative (EITI). EITI-Congo undertook in minute detail the examination of national mining revenues.<sup>356</sup>

#### 4. 4. International Finance Corporation (IFC)

##### 4.4.1. Presentation

The International Finance Corporation (IFC) is part of the Bretton Woods Institutions<sup>357</sup>. It is an important international organisation that brings assistance to the private sector.<sup>358</sup> It provides assistance to states through investments with a focus on sustainable economic development.<sup>359</sup> Important volumes of FDI require the involvement of financial institutions.<sup>360</sup>

This leads to the conclusion that financial institutions play an essential role in the development of mining projects.<sup>361</sup> For example, to start its activities, a mining activity needs a minimum investment of US\$ 700 million to 1 billion.<sup>362</sup> The IFC is an important financier for mining activities in Africa.<sup>363</sup> As proof of this financial commitment on the continent, the IFC has invested huge amounts of money in the New Africa Mining Fund, whose objective is to boost mining projects in South Africa.<sup>364</sup>

The IFC Performance Standards on Environmental and Social Sustainability were published in the middle of 2006, and revised six years later. For the IFC, these are a condition for the

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<sup>355</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 12.

<sup>356</sup> Republic of the Congo ‘Overview and role of the EITI’ available at [www.eiti.org](http://www.eiti.org) (accessed 04 September 2022)

<sup>357</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 2.

<sup>358</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 2

<sup>359</sup> International Finance Corporation: Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 2

<sup>360</sup> Organization for Economic Co-operation and Development: Financial Institution and the Greening of FDI in the Mining Sector: (2002) 2.

<sup>361</sup> Organization for Economic Co-operation and Development: Financial Institution and the Greening of FDI in the Mining Sector: (2002) 2.

<sup>362</sup> Organization for Economic Co-operation and Development: Financial Institution and the Greening of FDI in the Mining Sector: (2002) 2.

<sup>363</sup> Organization for Economic Co-operation and Development: Financial Institution and the Greening of FDI in the Mining Sector: (2002) 2.

<sup>364</sup> International Finance Corporation ‘IFC provides Financing to Junior Mining Sector in South Africa’ available at [www.pressroom.ifc.org](http://www.pressroom.ifc.org) (accessed on 08 march 2022).

granting of loans to private sector companies. They are made up of the following Eight Performance Standards:

1. Assessment and management of environment and social risks and impacts;
2. Labour and working conditions;
3. Resource efficiency and pollution prevention;
4. Community health, safety and security;
5. Land acquisition and involuntary resettlement;
6. Biodiversity; Conservation and Sustainable management of living natural resources;
7. Indigenous peoples; and
8. Cultural heritage.

With regard to the situation which prevails in the mining sector in the Republic of Congo, most of these Performance Standards are involved. In fact, considering for example, the fourth Performance Standard (community health, safety and security), it can be asserted that damage caused by the development of mining activities seriously affects communities as it pollutes sources of water; this situation leads to health problems.<sup>365</sup>

These eight Performance Standards indicate the different steps that companies have to comply with in order to get access to financial resources from the World Bank.<sup>366</sup>

In the Congolese context, these principles are determining, as entities involved in mining extraction mostly originate from the private sector. If they are in need of more financial resources from the World Bank, they must comply with its requirements.<sup>367</sup>

Performance Standard 1 refers to the Evaluation Impact Assessment (EIA). Law 003/91 of 23 April 1991 on the protection of the environment obliges all entities whose activities can have adverse consequences on the environment to conduct an EIA.<sup>368</sup> This requirement is not only limited to the Republic of Congo. It is an international requirement. In fact, investors are aware of the EIA. However, the weakness of supervising authorities contributes to making these EIAs inefficient.<sup>369</sup> Changes and new measures are called for to reverse this trend.

Performance Standards 2 to 8 focus on ways to minimise environmental impacts.<sup>370</sup>

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<sup>365</sup> Ngounou B 'Congo Brazzaville: Chinese Agil Congo suspended for environmental disaster' available at <https://www.afrik21.africa/en/congo-brazzaville-chinese-agil-congo-suspended-for-environmental-disaster/> (accessed 24 June 2020)

<sup>366</sup> International Finance Corporation 'IFC Performance Standards on Environmental and Social Sustainability' (2012) 2.

<sup>367</sup> International Finance Corporation 'IFC Performance Standards on Environmental and Social Sustainability' (2012) 2.

<sup>368</sup> International Finance Corporation 'IFC Performance Standards on Environmental and Social Sustainability' (2012) 3.

<sup>369</sup> Edwards P, Sloan S & Weng (2013) 7

<sup>370</sup> International Finance Corporation 'IFC Performance Standards on Environmental and Social Sustainability' (2012) 3.

The IFC's Sustainability Framework is made up of the IFC's Policy and Performance Standards on Environmental and Social Sustainability and the IFC's Access to Information.<sup>371</sup> The Policy on Environmental and Social Sustainability provides the IFC's vision on how environmental and social requirements should be managed.

#### **4.5. Chinese Good Principles**

Chinese demand for African natural resources is known worldwide.<sup>372</sup> There have been criticisms from many scholars that Chinese investors do not implement the laws of host countries.<sup>373</sup> In response to these criticisms, Chinese authorities started to give more importance to environmental issues through various initiatives. Consequently, Chinese and African governments decided to 'intensify cooperation in environment protection, share experiences and boost sustainable development on both sides'.<sup>374</sup> One should note that the Import-Export Bank of China, the main Chinese financial entity furnishing assistance to companies investing overseas, advises them to use good environmental practices.<sup>375</sup> Then, at the beginning of the 2010s, two Chinese institutions decided together to issue a fundamental document whose purpose was to transform Chinese vision on the protection of the environment of host countries. This document is called 'Guidelines on Environmental Protection for Overseas Investment and Cooperation'.

##### **4.5.1. The Guidelines on Environmental Protection for Overseas Investment and Cooperation**

It has been almost ten years since the Chinese Ministry of Commerce and the Ministry of Environmental Protection issued these guidelines.<sup>376</sup> The guidelines take into account various aspects such as the political and legal framework related to China's investments in African nations.<sup>377</sup> Unfortunately, Chinese investors are not obliged to comply with them.<sup>378</sup> This means that implementation depends on their own will. As a result, their significance is reduced. This situation does not augur well for the future of the environment, since it is known that

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<sup>371</sup> International Finance Corporation 'IFC Performance Standards on Environmental and Social Sustainability' (2012) 2.

<sup>372</sup> The Economist Times 'Rising environmental costs of Chinese investments in Africa' available at *m.economist.com* (accessed on 05 march 2022).

<sup>373</sup> The Economist Times 'Rising environmental costs of Chinese investments in Africa' available at *m.economist.com* (accessed on 05 march 2022).

<sup>374</sup> Shinn D.H (2016) 30.

<sup>375</sup> Shinn D.H (2016) 30;

<sup>376</sup> 28<sup>th</sup> February 2013.

<sup>377</sup> Global Witness 'Chinese Guidelines for Environmental Protection in Foreign Investment and Cooperation' available at *www.globalwitness.org* (accessed 05 march 2022).

<sup>378</sup> Global Witness 'Chinese Guidelines for Environmental Protection in Foreign Investment and Cooperation' available at *www.globalwitness.org* (accessed 12 march 2022).

Chinese companies are reluctant when it comes to applying the laws of host countries.<sup>379</sup> The Guidelines consist of 21 provisions, and here are some of them.<sup>380</sup>

Article 1: These Guidelines are hereby formulated in order to direct enterprises in China to further regularise their environmental behaviours in foreign investment and cooperation activities, timely identify and prevent environmental risks, guide enterprises to actively perform their social responsibilities of protection, set up good international images for Chinese enterprises, and support the sustainable development of the host country.

Article 2: These Guidelines are applicable to the environmental protection of Chinese enterprises in foreign investment and cooperation activities, which shall be abided by enterprises consciously.

Article 12: Enterprises are advocated to carry out environmental due diligence on the target enterprise before acquiring overseas enterprises, focusing the evaluation on the hazardous wastes formed in its historical operation activities and the soil and underground water pollution, as well as environmental debts of the target enterprises related thereto. Encourage enterprises to take favourable environmental practices for the purpose of reduction of potential risks of environmental liabilities.

Article 16: Encourage enterprises to conduct clean production, promote recycling, reduce pollution from the source, improve the resource use efficiency, and reduce generation and emission of pollution in the course of production, service and product use.

Article 22: Encourage enterprises to research and learn from the principles, standards and practices with respect to environmental protection that are adopted by international organisations and multilateral financial institutions.

As it appears, the Guidelines cover a large number of the main issues that mining projects can face. In fact, as already described in this mini-thesis, pollution of water that occurred in the North-Congo has caused ill health among the population.

The Guidelines are relevant in the Congolese context, as Chinese companies are the most involved in the mining sector. They are also relevant because Chinese investments are those with the most adverse effects on nature.

Unfortunately, the non-binding character of the Guidelines is detrimental to the protection of the environment, since Chinese investors are not obliged to comply with them.<sup>381</sup> However, those communities who suffer as a result of these investments can engage in judicial action against the investors for not taking into account the environmental regulations of host countries.

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<sup>379</sup> Global Witness ‘Chinese Guidelines for Environmental Protection in Foreign Investment and Cooperation’ available at [www.globalwitness.org](http://www.globalwitness.org) (accessed 12 march 2022).

<sup>380</sup> Ministry of Commerce of the People’s Republic of China Ministry of Environmental Protection of the People’s Republic of China ‘Guidelines for Environmental Protection in Foreign Investment and Cooperation’ available at [English.mofcom.gov.cn](http://English.mofcom.gov.cn) (accessed on 05 marc 2022).

<sup>381</sup> Global Witness ‘Chinese Guidelines for Environmental Protection in Foreign Investment and Cooperation’ available at [www.Globalwitness.org](http://www.Globalwitness.org) (accessed 05 march 2022).



#### **4.6. The Africa Mining Vision: ‘Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development’**

The main African political leaders established the Africa Mining Vision in February 2009 at the African Union meeting.<sup>382</sup> This meeting took place after the African ministers in charge of mining met in October 2008.<sup>383</sup>

Through this initiative, the continent has sought the means to make mining contribute better to development by taking into account the protection of the environment.

The vision:

- A sustainable well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender and ethically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities;
- A mining sector that has become a key component of a diversified, vibrant and globally competitive industrialising African economy; and
- A mining sector that has helped establish a competitive African infrastructure.

When one considers the African Mining Vision, one can easily assert that, more than ten years after its adoption, it remains only an ‘aspiration’, as the situation related to the management of mining is still problematic. Transparency around mining is far from being achieved. Considering this reality, the Republic of the Congo and the whole African continent need something that goes beyond texts and rules. The continent is in need of WILL.

#### **4.7. Agenda 2063**

Agenda 2063 is a set of seven aspirations adopted by the Africa Union six years ago. It is aimed at shaping the African continent during the current century. The Agenda is ‘rooted in Pan Africanism and African Renaissance and provides a robust framework for addressing past injustices and the realisation of the 21st Century as the African Century’. Amongst these aspirations, two are strongly linked to this study. They are:

Aspiration 3: ‘An Africa of good governance, democracy, respect for human rights, justice and the rule of law.’

This aspiration implies that by 2023 the continent should be equipped with reliable institutions which people and citizens can rely on to fight, for example, corruption. This aspiration is important, as the continent is commonly known as a place where institutions are not strong.<sup>384</sup>

Aspiration 1: ‘A prosperous Africa based on inclusive growth and sustainable development.’

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<sup>382</sup> African Union ‘AMV-African Mining Vision’ available at *au.int* (accessed 06 marc 2022).

<sup>383</sup> African Union ‘AMV-African Mining Vision’ available at *au.int* (accessed 06 marc 2022).

International Growth Centre ‘Foreign Direct Investment, Natural Resource and Institutions’ (2013) 23.

Well implemented, these principles and good practices will allow our continent to achieve ‘A prosperous Africa based on inclusive growth and sustainable development’ and, more particularly, they will ensure that ‘Africa’s unique natural endowments, its environment and ecosystems, including its wildlife and wild lands are healthy, valued and protected, with resilient economies and communities’.<sup>385</sup>

It is obvious that tremendous progress have been made. Consider, for instance, the adoption of the Law on the Protection of the Environment (1991), the Sustainable Development Act (2022) and the National Commission for the Fight against Corruption. Today, when one considers the current situation prevailing in the Republic of the Congo, one cannot but hesitate to assert that the road to the fulfilment of Agenda 63 is still long. In fact, Congolese society is corrupt, and rotted by multiple problems like the inefficiency of the rule of law, and a lack of good governance. Agenda 63 remains an empty promise.

#### 4.8. Agenda 21

Agenda 21 is a set of measures taken or adopted by governments during a world meeting held in Brazil in 1992.<sup>386</sup> It aims at playing a role in every sector where human behaviour destroys nature.<sup>387</sup> Agenda 21 appears, therefore, as the response of Heads of States to combat the numerous problems the world is facing.<sup>388</sup>

According to this important instrument, States:<sup>389</sup>

- should make their laws and regulations more effective;
- should establish judicial and administrative procedures for legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law;
- could usefully receive support from legal reference and support services, including competent intergovernmental and non-governmental organisations; and could usefully establish a cooperative training network for sustainable development law; and should develop integrated strategies to maximise compliance with its laws and regulations relating to sustainable development.

Its significance: Agenda 21 is not a binding instrument.<sup>390</sup> In order to address the new challenges that are the protection of nature and prosperity, governments have made the decision

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<sup>386</sup> Sustainable Development Goals ‘Agenda 21’ available at [www.sustainabledevelopment.un.org](http://www.sustainabledevelopment.un.org) (accessed on 06 September 2021)

<sup>387</sup> Sustainable Development Goals ‘Agenda 21’ available at [www.sustainabledevelopment.un.org](http://www.sustainabledevelopment.un.org) (accessed on 06 September 2022).

<sup>388</sup> United Nations Sustainable Development: United Nations Conference on Environment, Rio de Janeiro, Brazil, 3 to 14 June 1992, Agenda 21 (1992)

<sup>389</sup> UNEP Enforcement of Environmental law: Good practices from Africa, Central Asia, Asean Countries and China’ (2004) 3.

<sup>390</sup> Wikipedia ‘Agenda 21’ available at [en.m.wikipedia.org](https://en.m.wikipedia.org) (accessed on 13 march 2022).

to build and institute an international partnership. Through that initiative, they want to achieve a sustainable development.<sup>391</sup>

Today, 30 years after its adoption, one can say its implementation has not been fully achieved, since some aspects, such as the efficiency of national regulations and laws, remain a problem. Perhaps the explanation lies in the fact that the Agenda was not compulsory.

**Table: Stakeholder expectation for sustainable mining**<sup>392</sup>

Government	Companies	Civil Society / Communities
<ul style="list-style-type: none"> <li>• Local economic development</li> <li>• Address capacity needs of the local government</li> <li>• Poverty reduction</li> <li>• More prosperous and resilient communities</li> <li>• Better infrastructure</li> <li>• Shared prosperity</li> <li>• Clean environment</li> </ul>	<ul style="list-style-type: none"> <li>• Mitigate risks</li> <li>• Reputational issues</li> <li>• Social licence to operate</li> <li>• Increased development impact</li> <li>• Responding to shareholder concerns</li> <li>• Reduce negative impact</li> </ul>	<ul style="list-style-type: none"> <li>• Improve well being</li> <li>• Build capacity</li> <li>• Reduce poverty</li> <li>• Respect for human rights</li> <li>• Access to improved infrastructure and services (water, energy, education, health, security)</li> <li>• Access to jobs and income generation activities</li> <li>• Clean environment</li> </ul>

The above table describes the way mining activity would bring satisfaction to stakeholders.



#### 4.9 Conclusion:

It is generally acknowledged that mining activities have negative effects on the environment. In order to counter these adverse impacts, various institutions such as the World Bank, UNEP and OCDE have issued many tools for the attention of governments and mining companies including good practices or voluntary guidelines whose implementation is designed to mitigate environmental risks and make the mining sector environment more friendly.

In this way, the Republic of the Congo together with the rest of the continent will achieve that 'prosperous Africa based on inclusive growth and sustainable development' which people from the continent hope for. It would also allow the African Charter on Human and People's Rights,

<sup>391</sup> United Nations Sustainable Development United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3 to 14 June 1992 (1992) 4.

<sup>392</sup> International Finance Corporation; Sustainable and Responsible Mining in Africa: A Getting Started Guide (2014) 8.

through its article 24 which declares that ‘All peoples shall have the right to a generally satisfactory environment, favourable to their development’, to flourish.

To achieve this goal, the Republic of Congo, like many other African states, should show a real will to implement its legislation and put in place strong and reliable institutions.

The next chapter will present the recommendations and the conclusion.



# Chapter Five:

## Conclusions and Recommendations

### 5.1. Introduction:

This chapter marks the end of this work. It comprises two sections. The first is dedicated to the findings of the mini-thesis. They provide answers to the objectives presented in chapter one. These objectives are the following:

- To examine the historical development of FDI in the Republic of Congo;
- To analyse the current institutional and regulatory bodies governing FDI in Congo; and
- To explore the protection and compliance mechanisms and best practices for the protection of the environment.

The second section presents the study's recommendations. These recommendations furnish answers to the research question, which is 'Whether the laws promoting FDI take into account the protection of the environment in Congo-Brazzaville', and makes recommendations to enhance the protection of the environment.

### 5.2. Summary of Findings

The first chapter asserts that FDI causes environmental disasters all around the world. This is not a phenomenon which occurs only in Africa.<sup>393</sup> The Republic of the Congo is an important destination of FDI in Africa,<sup>394</sup> but the framework that regulates mining is not fully observed.<sup>395</sup> The investment law contains lacunae on the protection of the environment by foreign investment.<sup>396</sup>

The chapter shows that mining activities are detrimental to the environment, and have adverse consequences for the well-being of surrounding communities, and that this results from the non-compliance of Congolese investment law with international standards.<sup>397</sup>

Chapter two focuses on the genesis of FDI in Congo.<sup>398</sup> It indicates that FDI plays a fundamental role in the development of a nation.<sup>399</sup> China is one major foreign investor present in the country.<sup>400</sup> Their investments are generally harmful to the environment and to people,<sup>401</sup> concentrated on natural resource exploitation. Congo is not an appealing country for foreign investments. The reason lies in the fact that the country ranks poorly at ease of doing business. Bad governance, corruption, poor implementation of law, political instability and dependence

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<sup>393</sup> Chapter 1, Paragraph 1.

<sup>394</sup> Chapter 1, Paragraph 1.

<sup>395</sup> Chapter 1, Paragraph 1.

<sup>396</sup> Chapter 1, Paragraph 1.

<sup>397</sup> Chapter 1, Paragraph 1.

<sup>398</sup> Chapter 2, Paragraph 2.1.

<sup>399</sup> Chapter 2, Paragraph 2.1.

<sup>400</sup> Chapter 2, Paragraph 2.2.3

<sup>401</sup> Chapter 2, Paragraph 2.3.3.3.



on oil extraction are among factors that explain this situation.<sup>402</sup> The need to diversify the national economy becomes clear. The essential part of FDI goes to oil extraction.<sup>403</sup> It also appears that national legislation on investment is permissive towards foreign investors, which is why they are reluctant to respect law.<sup>404</sup>

Chapter three shows how much institutions, regulations and laws regarding FDI are essential to the development of FDI within a country.<sup>405</sup> In this regard, the country enacted the Charter on Investment. In the meanwhile, it is acknowledged that the Congolese, and more broadly African, legal and institutional frameworks are fragile and poor.

Thus, it appears legitimate in this situation for national authorities to seek better means to enhance this framework. The chapter also asserts that some materials or products used in mining extraction are dangerous both for the environment and for human communities. According to an important international organisation, Congolese law, which backed the investment, does not comply with international standards.<sup>406</sup> The chapter reveals that red tape is not favourable to development.<sup>407</sup> It is acknowledged that mining activity is a source of ecological disaster.<sup>408</sup>

Chapter four deals with best or good environmental practices that can make mining activities sustainable. The chapter starts by presenting their genesis. It also indicates that these practices are various, as they have been developed by numerous international organisations such as the International Finance Corporation, which belongs to the World Bank, and the International Council on Mining and Metals (ICMM). This chapter shows that there exist environmentally friendly instruments.

### **5.3. Recommendations**

The above findings lead the mini-thesis to make the following recommendations, which aim at making mining activities sustainable in the Republic of the Congo:

#### **Government:**

Should implement measures prescribed by the Investment Review Policy (IPR) to enhance and improve the investment framework. The current framework regulating the investment in Congo is unsuitable according to UNCTAD, which issued the IPR. The Ease of Doing Business Index also indicates that there are numerous factors that are obstacles to investment. The Investment Policy Review, through its recommendations, aims at enhancing and improving the investments' framework. Two of these measures are as follow:

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<sup>402</sup> Chapter 2, Paragraph 2.2.3.2.

<sup>403</sup> Chapter 2, Paragraph 2.2.3.2.

<sup>404</sup> Chapter 2, Paragraph 2.2.3.2

<sup>405</sup> Chapter 3, Paragraph 3.1.

<sup>406</sup> Chapter 3, Paragraph 3.2.

<sup>407</sup> Chapter 3, Paragraph 3.2.

<sup>408</sup> Chapter 3, Paragraph 3.2.

‘Investors and investments shall strive, through their management policies and practices, to contribute to the development objectives of the host states and the local levels of governments where the investment is located’.

‘Investors, their investment and host state authorities shall apply the precautionary principle to their environmental impact assessment and to decisions taken in relation to a proposed investment, including any necessary mitigating or alternative approaches to the investment, or precluding the investment if necessary’

Should adopt a new law on investment in order to integrate or to take into account provisions which should normally appear on the investment legislation. The current framework contains lacunas which lead to its weakness. ISSD model law that complies with international standards should inspire that law.

Should be equipped with strong institutions that will regulate FDI. One is aware that there exists a link between institutions and quality of FDI. Strong institutions exert a positive influence on FDI. What occurs in North-Congo where mining companies do not comply with national requirements, and start their operations without paying attention to legislation is indicative of the weakness of national institutions.

Should show more interest towards nature. Like most African governments, the Congolese government is more focused on combating diseases and poverty than on protecting the environment.

Should establish or adopt a framework intended to deal with corruption. That framework could contain more severe punishments for those involved in corruption (investors and civil servants). Cancellation of a mining permit or its banning could dissuade investors from bribing.

Should institute coordination or cooperation between different ministries involved in mining. Lack of coordination between these different ministries exerting influence on mining sector results in bad management of this sector. Thus, coordination would be more efficient;

Should adopt and implement measures encouraging or in favour of good governance on mining. It is well known that lack of good governance hampers the development. This result in the inefficiency of institutions intended to regulate FDI. Lack of good governance has negative impacts on mining activities. In fact, if Congolese institutions could be effective, adverse impacts of mining extraction in the North Congo would not occur.

Should avoid using material, product or equipment in mining activities that are harmful not only to the environment but also to people. Article 132 of the Congolese mining law requires mining exploitation to be done with regard to safety, health of workers, and protection of the environment and water sources. Unfortunately, in North-Congo,

people or communities are experiencing destruction of the environment, of the quality of water due to the use of some products such as mercury, which is toxic. The import or the use of mercury should be prohibited.

Should make sure that mining laws should specify conditions or terms of rehabilitation of sites after exploitation.

Should show real commitment in implementing law. Congolese authorities are reluctant when it comes to implementing law. Legislation is little applied.

Should diversify its economy in order to boost its development and avoid its dependency on oil. This diversification would attract more FDI in the country and contribute to its prosperity. This could be achieved by encouraging, promoting or developing other economic sectors such as mining.

Should make sure provisions on the protection of the environment appear clear and suited to sustainable development requirements.

Should be more strict in conducting IES and in monitoring their implementation. The officers in charge of conducting or implementing IES should be honest, serious and conscious. In short, they have to be professional.

Should realise regular controls on mining sites to verify mining law in practice. The number of controls prescribed per year should be realised. They should aim at checking conformity of companies with requirements and legislation.

Congolese legislation on investment should not be scattered through many texts. Should be equipped with guidelines to conduct EIS. These EIS are necessary to prevent mining exploitation from dangerous consequences.

#### Parliament:

Congolese Parliamentarians should be more sensitised to environmental issues through training and seminars.

#### Mining companies:

Should comply with legislation of host countries. Environmental damage is often caused by companies, which do not respect requirements established by host countries. Should keep up communication with local communities during all stages of exploitation. During each step of the process, companies have the responsibility to pay attention to the interests of the communities surrounding sites. Dialogue between companies and communities should exist.

Should adhere to or respect best or good environmental principles set up by international organisations such as the World Bank through IFC. Foreign companies,

mainly those from China do not integrate environmental concerns in their activities. Consideration of environmental practices would benefit the environment. Should integrate environmental concerns in their activities.

Surrounding communities:

Populations should be associated with all stages of exploitation.

International organisations (Word Bank, UNEP, OCDE):

Should provide technical assistance to Congo in order to enhance protection of the environment. This assistance is necessary, as the country does not always have the expertise required to undertake the essential, vital, and indispensable reforms.



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