



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

WWF DRC
ABCG Extractive Industries Group Meeting
11 October 2011





Outline

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

- Post-conflict
- Reform
- High poverty (DSCRIP)
- Corruption
- Abundance of minerals
- Abundance biodiversity
- International conservation engagements



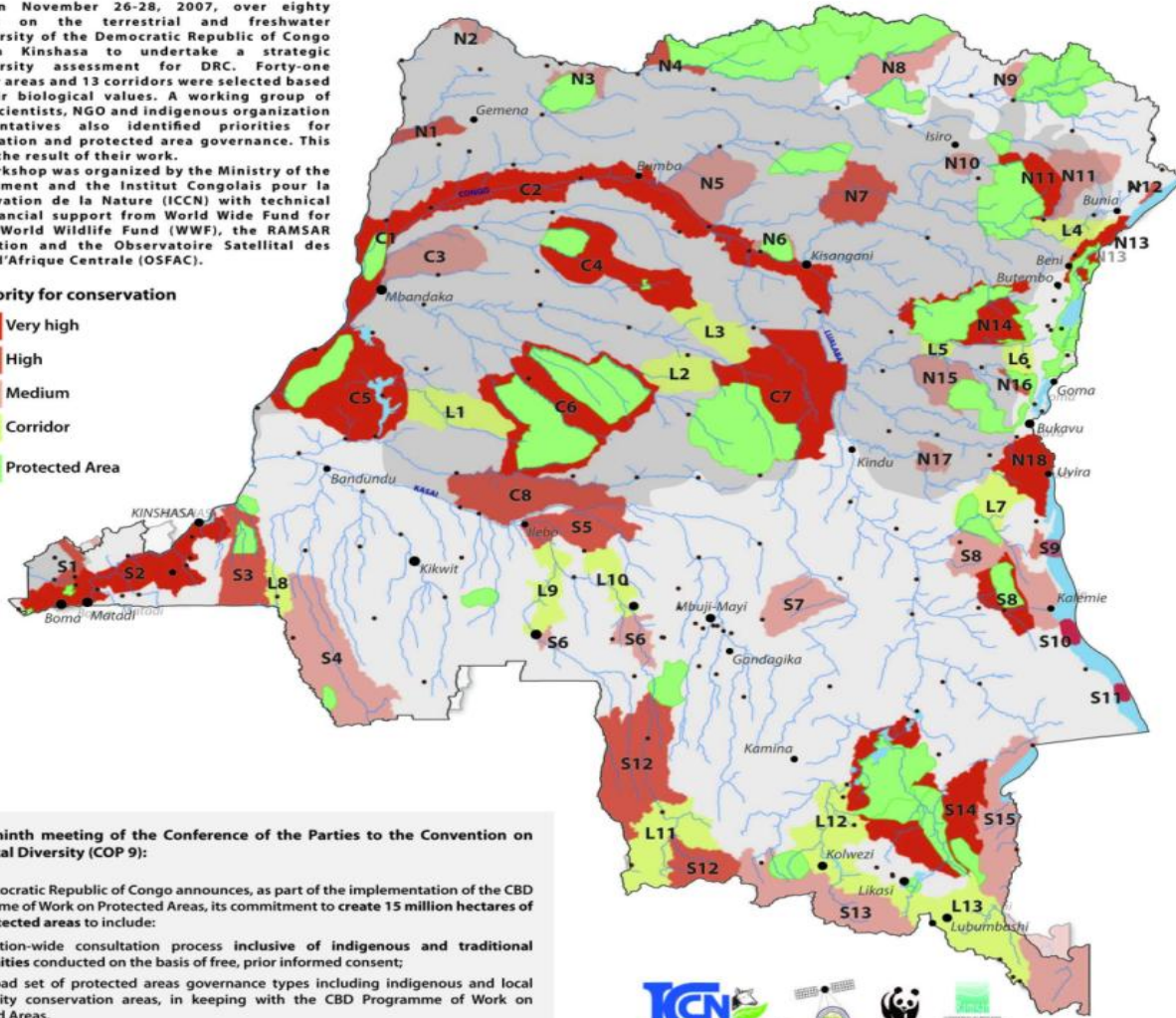


RESULTS OF THE NATIONAL STRATEGIC EVALUATION OF BIODIVERSITY IN THE DEMOCRATIC REPUBLIC OF CONGO

Between November 26-28, 2007, over eighty experts on the terrestrial and freshwater biodiversity of the Democratic Republic of Congo met in Kinshasa to undertake a strategic biodiversity assessment for DRC. Forty-one priority areas and 13 corridors were selected based on their biological values. A working group of social scientists, NGO and indigenous organization representatives also identified priorities for consultation and protected area governance. This map is the result of their work. The workshop was organized by the Ministry of the Environment and the Institut Congolais pour la Conservation de la Nature (ICCN) with technical and financial support from World Wide Fund for Nature/World Wildlife Fund (WWF), the RAMSAR Convention and the Observatoire Satellital des Forêts d'Afrique Centrale (OSFAC).

Priority for conservation

- Very high
- High
- Medium
- Corridor
- Protected Area



North:

- N1. Dongo-Mbanza
- N2. Nord de Bosobolo
- N3. Nord Businga
- N4. Reserve de la Bomu/DRC Bili-Uélé
- N5. Basoko-Aketi
- N6. Yangambi
- N7. Banalia entre Lindi et Aruwimi
- N8. Ango (Bas Uélé)
- N9. Dungu-Watsa Garamba
- N10. Abiangama
- N11. Mambasa-Wamba-Watsa
- N12. Flanc du Lac Albert
- N13. PN des Virungas et extension Mt. Hoyo
- N14. Grand Maïko
- N15. Extension PN de Kahuzi-Biega
- N16. Forêt de Bushema
- N17. Maniema
- N18. Itombwe

Central:

- C1. Ngiri - Triangle
- C2. Cours moyen du fleuve Congo et les îles
- C3. Ikelemba-Bosomba-Lulonga
- C4. Lomako-Wamba
- C5. Hinterland Tumba-Mai Ndombe
- C6. Salonga
- C7. Sankuru-Lomami-Lualaba
- C8. Lukenie-Kasai

South:

- S1. Forêt Maiombe
- S2. Mangrove et Bas Congo Rapides et Pool Malebo
- S3. Maimpili-Bombolumene
- S4. Kwango-Wamba
- S5. Moyen Kasai
- S6. Rapides de Tshikapa et de Kananga
- S7. Gefu
- S8. Lukuga-Tanganyika
- S9. Kabobo
- S10. Lac Tanganyika Centre
- S11. Lac Tanganyika Sud
- S12. Haut Kasai
- S13. Mustshatsha-Sakamia
- S14. Upemba-Kundelungu
- S15. Luapula-Mweru

Corridors:

- L1. Tumba-Salonga
- L2. Salonga-Sankuru
- L3. Lomako-Wamba-Sankuru
- L4. Mambasa-Virunga
- L5. Maïko-Kahuzi-Biega
- L6. Bushema-Maïko
- L7. Tanganyika-Itombwe
- L8. Popokabaka
- L9. Tshikapa-Ilebo
- L10. Kananga-Mweka
- L11. Dilolo-Sandoa
- L12. Bia Lualaba
- L13. Lufira

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

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

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



Key Environmental & Conservation Laws

National DRC Laws

➤ **Forest Code of 29 August 2002**

- Creation of “Forêts classées”
- Overall protection statute as public domain
- Management by the Minister of Environment (MECNT)
- Beyond forests

➤ **Nature Conservation Law of 22 August 1969 :**

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

National DRC Laws

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

“Toute activité susceptible de nuire à l’environnement est prohibée dans les aires protégées ainsi que dans les zones interdites.

Est nul tout droit accordé dans les limites des aires et zones visées à l’alinéa 1er” (Article 33)

- Prohibit activities that “harm” environment
 - Covers protected areas
 - No right to be given within these limits that harm environment
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Key Environmental & Conservation Laws

National DRC Laws

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

- “Polluter pays” principle (Art.12)
 - Required ESIA (Art. 21)
 - Required environmental “audits” (Art. 23)
 - Public involvement (Art. 24)
 - Fund for environmental interventions (Art. 25)
 - Obligate restoration (Art. 44)
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Key Environmental & Conservation Laws

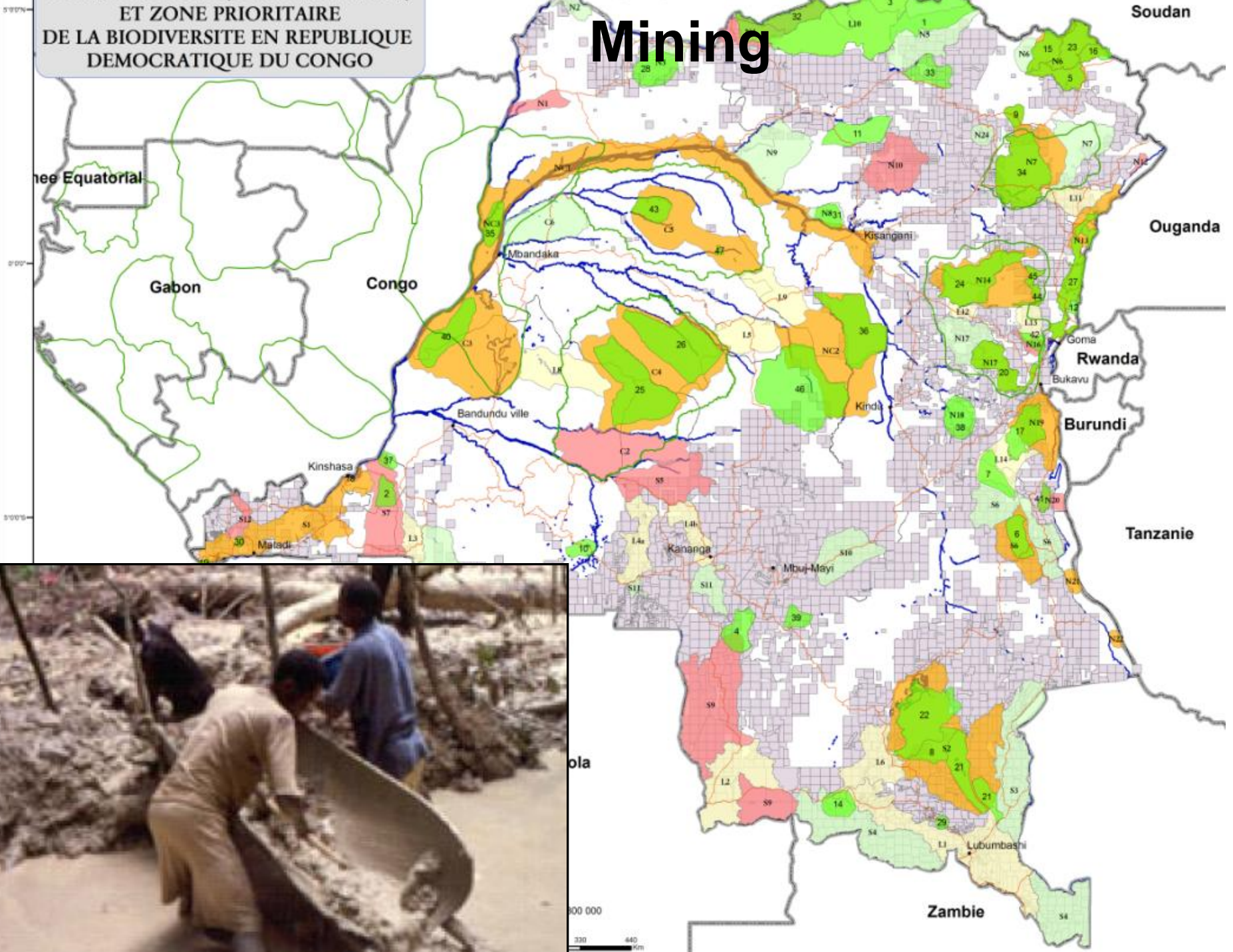
International Conventions (selected)

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

General Interpretation:
No mining concessions in protected areas

ET ZONE PRIORITAIRE
DE LA BIODIVERSITE EN REPUBLIQUE
DEMOCRATIQUE DU CONGO

Mining



Legal Framework for Mining Activities in DRC

FREESTATE 1885-1908

- 1885 State monopoly
- 1887 authorization req'd

BELGIAN COLONY 1908-1959

- 1928 Nat'l Committee Kivu
- 1937

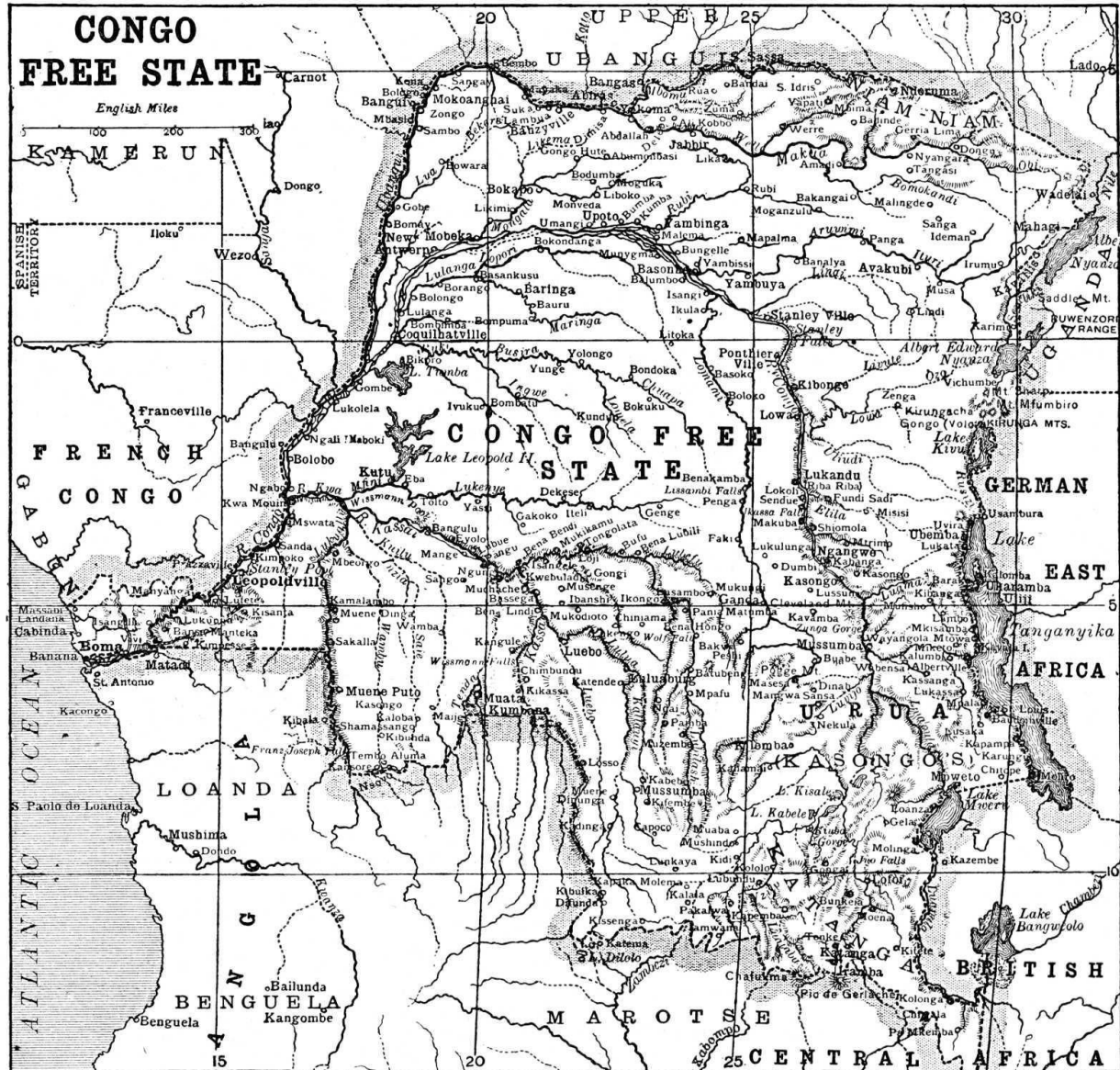
Mining permits, national scope

Land vs Mining rights

Address prior concessions

POST INDEPENDENCE

- 1967 1st mining legislation
- artisanal zones created

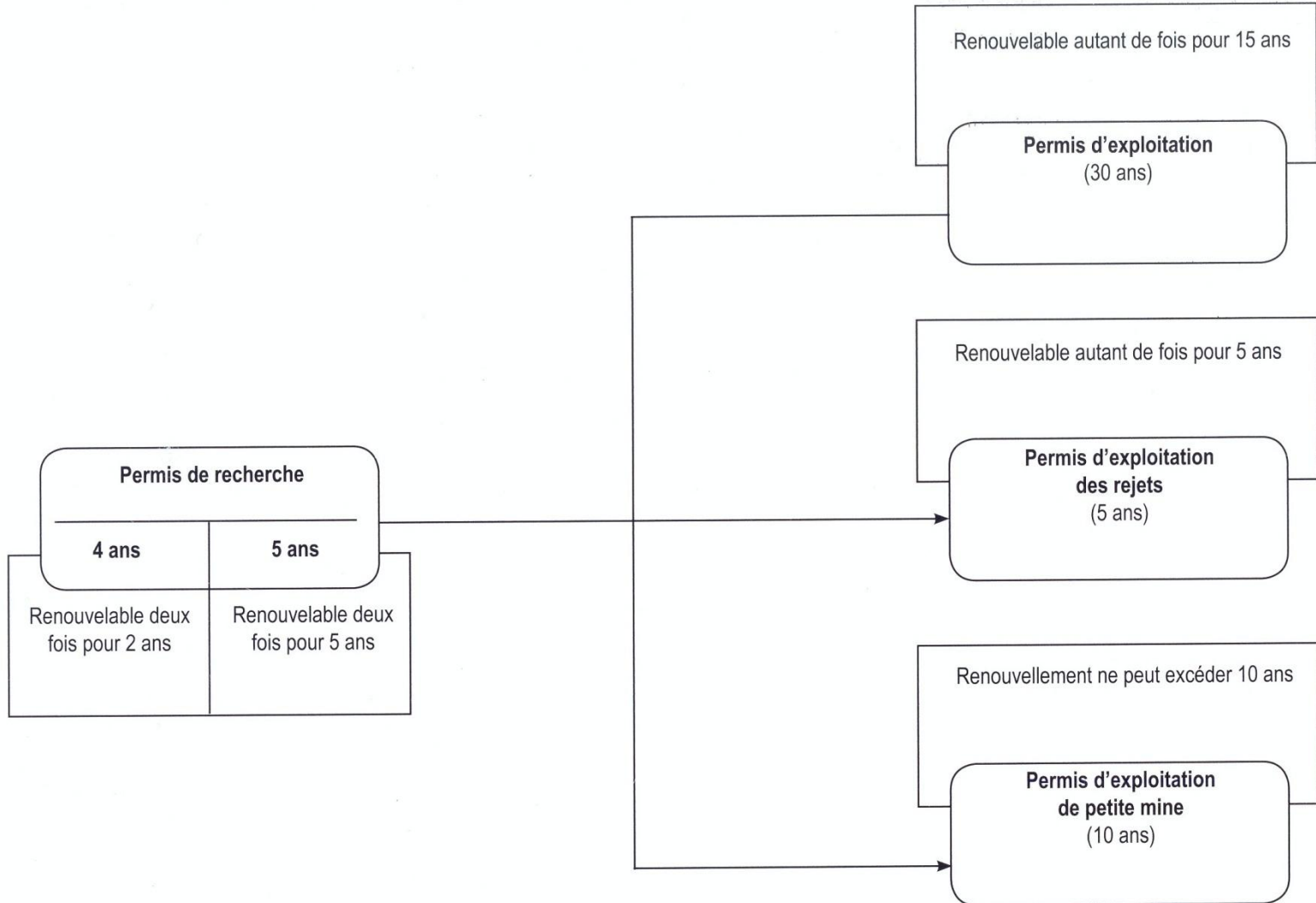




Legal Framework for Mining Activities in DRC

New Mining Code – 11 July 2002

- **344 articles et 17 headings**
 - **Role of the State:** regulation and promotion of the mining sector
 - **Steps :** Prospection -- **Research** → **Exploitation**
 - **Rights for Industrial Mining Exploitation:**
 - Research Permit (PR)
 - Exploitation Permit (P.E)
 - ' Discharge Permit (PER)
 - Small Mining Exploitation Permit (PEPM)
 - **Artisanal Mining Exploitation**
 - Artisanal Exploiter Card (Individual)
 - Artisanal Exploiter Cooperative
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Environmental Obligations

- **Prospector's Code of Environmental Conduct**
 - Commitment to minimize negative environmental impact
 - General, difficult to monitor/control
 - **Plan d'Atténuation et de Réhabilitation (PAR)**
 - Must be approved before Research activities
 - **Environmental Impact Assessment (EIE)**
 - Initial state & foreseen impacts
 - Before exploitation
 - **Environmental Management Plan for Project (PGEP):**
 - Implementation measures to address environmental & social damages
 - Before exploitation
 - **Artisanal exploitant Code of Conduct**
 - Operational rules – basic: cooperate with local authorities, no permanent structures, report accidents, no use explosives...
 - Little to no environmental obligations
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Other Environmental Protection Mechanisms

- **Registration & Environmental Reports of Mining Activities :**
 - Required daily documentation of mining activities & regular reporting
 - **Environmental Protection Financial Obligations**
 - Suretés financières : Financial collateral for execution of environmental obligations
 - Provisions financières : Guarantee of rehabilitation of mining site (0.5% of total investment)
 - **Prohibited Areas:** (zones interdites)
 - The DRC President can prohibit mining activity in certain zones for environmental protection
 - **Environmental Adjustment Plan**
 - Prior concessions (before 2002) must have Environmental Adjustment Plan (like PAR)
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Mining Code Conservation Areas

4 categories (Article 2 règlement minier 2003):

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

- **Head of State** – President of the Republic
 - **Ministry of Mines** : Implementation of mining policy
 - Allocate/revoke mining rights, authorize exports, institute artisanal zones, submit deposits for tender, authorize transformations, establish forbidden areas, etc
 - **Cadastre Minier (CAMI)** : Procedure for granting mining titles
 - **Mining Environmental Protection Division**: responsible for environmental protection compliance
 - **Permanent Evaluation Committee** - Responsible for review of PAR, EIE et PGEP
 - **SAESSCAM** – public service for technical assistance and supervision of small-scale and artisanal mining
 - **Technical unit for planning of mining (CTCPM)** responsible for the design and development of policy in the mining sector.
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Key Contradictions

Between Mining Code & Environmental Laws

According to the Mining Code:

- Possible concessions within “zones of restriction” (defined as national parks) with *prior authorization* of a “competent authority” (Article 6 règlement minier)
- Allow *overlap* of concessions with “reserve zones” (Article 5)

According to the Nature Conservation Law 1969

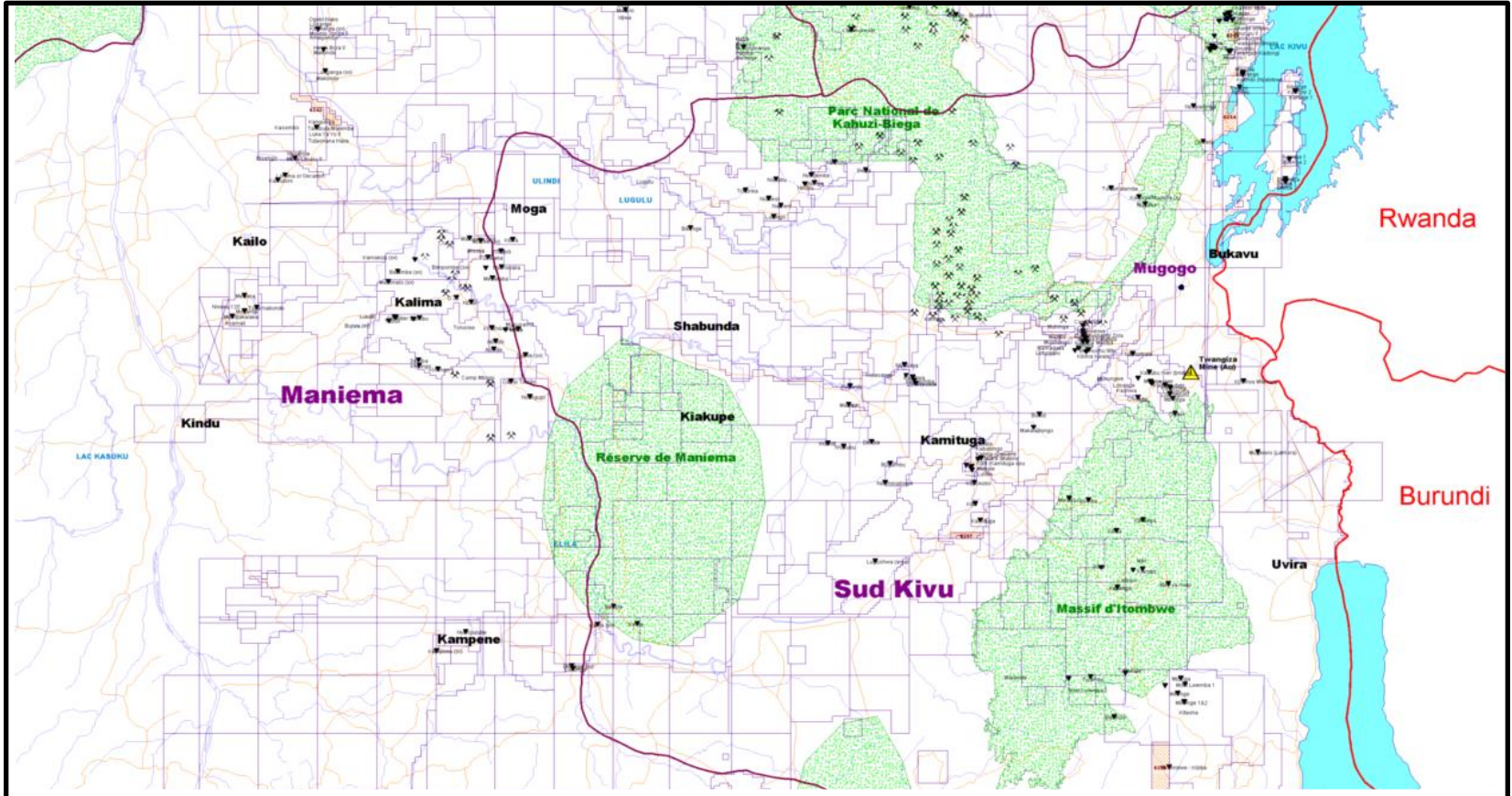
- No incompatible activity with nature conservation in national parks (Art. 3)

According to the Law on the Principles of Environmental Protection

- Prohibition of activities harmful to the environment in protected areas (Art. 33)
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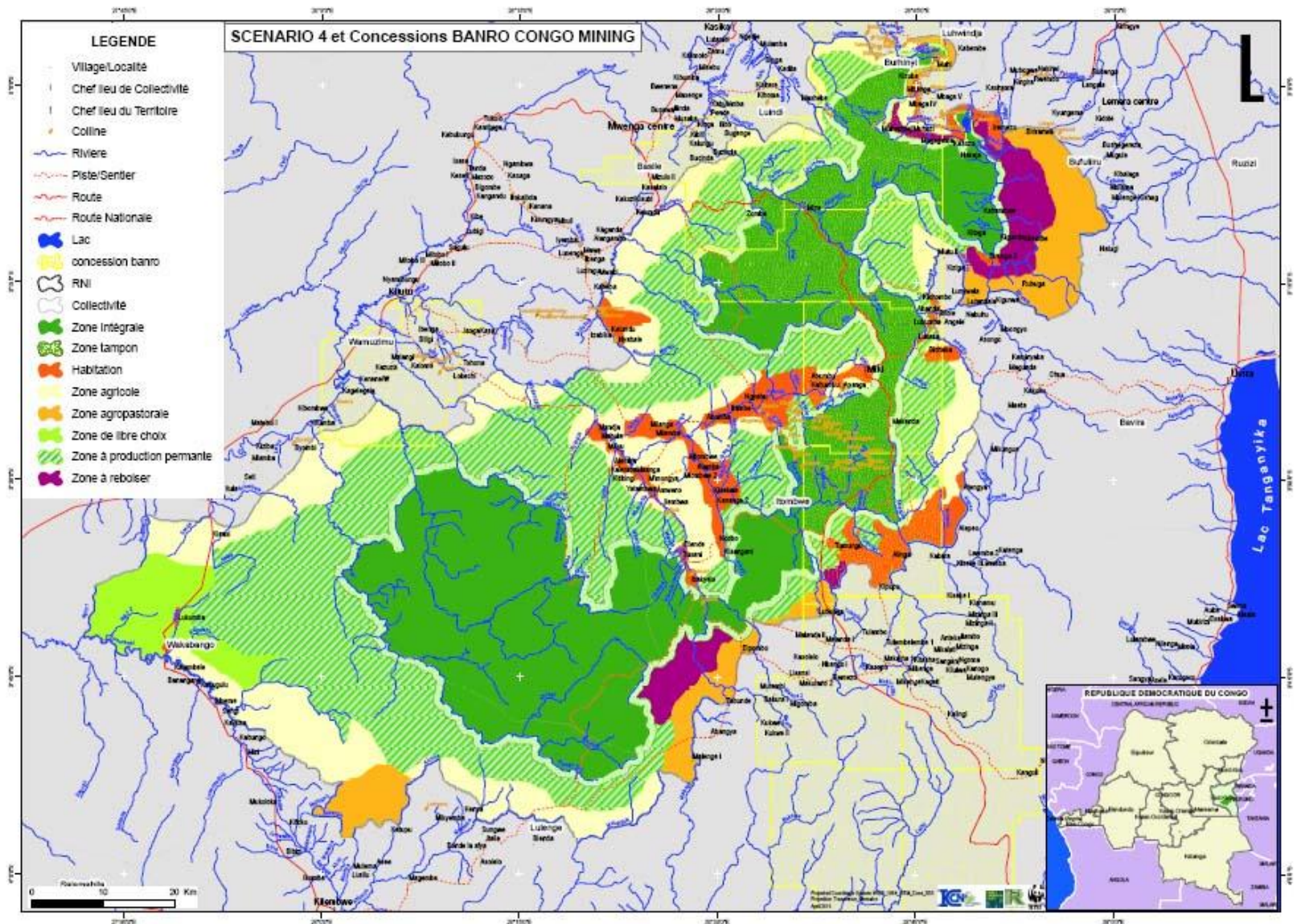
Resulting Situation with Protected Areas

Mining concessions within Protected Areas – industrial & artisanal activity



- Lack of overall landuse/Master plan
- Problems with protected area delimitation
- Weak capacity of ICCN, MECNT & overall government enforcement

Itombwe Reserve & BANRO gold mining





Critical Gaps / Needs

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

- Improved legal foundation to support conservation, but many aspects still unclear
 - Contradictions among laws
 - Unclear, sometimes overlapping, responsibilities
 - Problems with definitions
 - Environmental obligations still too general
 - Huge difficulty with monitoring
 - Enforcement and implementation are critical
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