Governance of Oil Sector in the DR Congo on the Edge

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Summary

The UN member States and the African Union (AU) member States have to implement the 2030 Agenda and the AU 2063 Agenda to achieve sustainable and inclusive development. In line with the Addis Ababa Action Agenda (AAAA), securing sustainable financing is a prerequisite for investing in the 2030 Agenda and its associated Sustainable Development Goals (SDGs). In this context, a better taxation of natural resources is required to protect and broaden tax base. It contributes to improving Domestic Revenue Mobilization (DRM), which is critical for social protection financing and investing in public infrastructure. Therefore, it is a key factor for reducing poverty in conflict-affected developing countries and resources-rich countries, which experience difficulties in embarking in peace building process, such as the DR Congo.

The DR Congo is exposed to political, electoral, security, socioeconomic, and humanitarian crises. On the economic side, it remains a major rent-based economy in Africa. Besides mineral reserves, the country detains substantial hydrocarbons reserves. Yet, it is a small oil producer country with about 20,000-25,000 barrels per day in 2016. The paper examines challenges linked to improving the oil industry's governance in the DR Congo, a fragile State in turmoil.

First, on 1 August 2015, the country has implemented a hydrocarbons code in view of attracting Foreign Direct Investments (FDI) flows to further develop the extractive industries. However, the competitiveness of the said legislation is overshadowed by the business climate's deterioration and the difficult resumption of the international oil market following the Organization of Petroleum Exporting Countries (OPEC) output cut of 30 November 2016.

Second, President Kabila has only signed presidential ordinances awarding 4 oil blocks in the Rift Albertine Graben (Eastern DR Congo) since 18 June 2010. However, the activities of the oil companies operating these blocks are hampered by the armed groups' presence.

Third, the DR Congo's neighbouring countries, particularly Angola, Uganda, and Tanzania, are eager to develop their hydrocarbons sectors. However, political and security tensions are regularly observed between the DR Congo and some of neighbouring countries (Angola and Uganda) due to the oil border disputes. This has led to affect the development of the country's oil sector. Angola (an OPEC member State) and the DR Congo rely on the United Nations (UN) to settle the maritime border dispute over major Angolan oil concessions

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(blocks 14 and 15). Despite the recent oil discovery along the Congolese-Ugandan border, notably Lake Albert, Uganda and the DR Congo have not yet implemented the Ngurdoto agreement of September 2007, a bilateral oil agreement. Overall, the oil sector's development has also led to reshape the DR Congo's foreign policy vis-à-vis Angola and Uganda. The oil discovery in Uganda has increased tensions within the East African Community (EAC). Finally, a pipeline is under construction from Hoima (Uganda) to Tanga port (Tanzania), which will be critical for evacuated the oil production from the DR Congo in quest of sustainable peace and development.

Introduction

Ensuring energy security represents a major challenge to achieve in the Great Lakes region, following recent of oil discoveries. Given its vast reserves in hydrocarbons resources, the development of oil and gas exploration and exploitation in the DR Congo, particularly the rift Graben Albertine and the "“Bassin de la Cuvette Centrale", represents a major opportunity for reducing the country's dependency on oil imported products. It also constitute a major challenge for improving the country's public finance by broadening tax base allowing a better DRM.

The paper explores the management of hydrocarbons in the DR Congo, knowing that the methane gas' exploitation has not started. The purpose of the paper is to highlight main causes of a limited governance of the fossil energy sector in the DR Congo, a fragile State in crisis.

First, the paper reviews a new legal framework, which was set up in 2015, to FDI flows in the hydrocarbons sector. Nevertheless, it examines a constant drop in crude oil production given the impact of the oil cut and a deteriorated country's business climate.

Second, the paper points out that internal shocks, including security crises and a political instability have also participated in a quasi-paralysis of the hydrocarbons sector's development. Altogether, the insufficient governance of the hydrocarbons sector adds to the economic slowdown that the country has faced since 2015.

Third the paper argues that proven hydrocarbons reserves along some of the DR Congo's borders have contributed to exacerbating political and security tensions between the DRC and some neighboring countries, in particular Uganda and Angola. The geopolitics of oil in the Great Lakes region reveals that countries, such as Uganda, Tanzania, and Kenya, compete within the East African Community (EAC) to establish their leadership. In this context, the future oil exported from the DR Congo (Ituri province) will be critical for establishing such leadership within the EAC.

1. Governance of Oil and Gas Sector in the DR Congo: Review of a New Legal Framework

The hydrocarbons sector was regulated by the ordinance-law n° 81-013 of 2 April 1981 related to mining and hydrocarbons sectors. Thirty-four years later, the DR Congo implemented a modern legal and regulatory framework on hydrocarbons management[2]. A

[2]. The reform of the hydrocarbons legislation, which started in 2007, ended eight years later.

law n°15/012[3] on hydrocarbons and a regulation related to hydrocarbons entered into force on 1st August 2015 and 16 April 2016, respectively.

1.1. Main Features of the hydrocarbons Legislation

The Government reformed its hydrocarbons legal framework to promote the development of the upstream and downstream hydrocarbons activities. It intended to improve the competitiveness of the country's hydrocarbons sector by implementing a fiscal regime that could attract major investments in the oil and gas extractive industries. In addition, the Government expected to increase its tax revenues collected from the oil and gas activities. By doing so, it planned to improve the hydrocarbons sector's contribution in terms of Domestic Revenue Mobilization (DRM). The hydrocarbons legal framework introduced some innovations in view of improving transparency with regard to the allocation and management of oil and gas rights.

1.1.1. The State: Key Actor of the Hydrocarbons Sector Reform

The hydrocarbons legal framework covers oil, associated and non-associated natural gas, and non-conventional hydrocarbons. The State detains the hydrocarbon resources of the subsoil to the point of export. It plans to assess its hydrocarbons reserves by financing geological, geophysical, and geochemical research. Therefore, it intends to detain the scientific and technical data resulting from hydrocarbon activities. Also, the article 14 of the hydrocarbons law points out the creation of the Société Nationale des Hydrocarbures du Congo[4] (SONAHYDRO) in replacement the Congolaise des Hydrocarbures (COHYDRO) Sarl.

1.1.2. Introduction of the Selection of Oil and Gas Companies through a Tender Process and Transparency Process

The council of ministers organizes and monitors the tender process related to exploration and production rights of the upstream oil and gas companies. It determines the pre-qualification requirements, including technical and financial criteria. Overall, the tender process constitutes a significant innovation by introducing further transparency. Under the previous legislation, oil blocks were granted on gré-à-gré scheme resulting from an opaque decision-making process. In addition, the hydrocarbons rights come into force following a presidential ordinance. The new legal framework introduces the publication of the oil and gas rights in a register of the ministry of hydrocarbons.

1.1.3. Review of Type of Contract and Duration: From Production Sharing Agreement (PSA) to Service Contract

As defined by the articles 40 to 47, the new hydrocarbons law mainly relies on the PSA, which covers exploration and exploitation rights related to the upstream activities. A PSA is usually set up between the State or SONAHYDRO and a consortium of companies. Each PSA must be made public through the publication in the official journal as well as the hydrocarbons ministry's website within 60 days. In addition, the articles 48, 49, and 139 point out the implementation of a new type of contract known as the service contract. Furthermore, the hydrocarbons law highlights the duration of the prospection, the exploration, and the exploitation phases as mentioned the articles 2, 50, and 59 (table 1).

Table 1. Duration of Hydrocarbons Rights in the DR Congo

[3]. Journal Officiel de la RD Congo, (2015), La loi n° 15/012 portant régime général des hydrocarbures.
[4]. SONAHYDRO became operational in August 2017.

Duration	Prospection Phase		Exploration Phase		Exploitation Phase	
	Initial Duration	Renewed Duration Once	Initial Duration	Renewed Duration Twice	Initial Duration	Renewed Duration Once
Blocks located in west coast, rift Graben, and Tanganyika	1 year	6 months	3 years	3 years	20 years	10 years
Blocks located in the "Bassin de la Cuvette Centrale"	1 year	6 months	4 years	4 years	20 years	10 years

Source: The author on the basis of Journal Officiel de la RD Congo, (2015), La loi n° 15/012 portant régime général des hydrocarbures.

1.1.4. A New Fiscal Regime

The hydrocarbons legal framework defines a new tax regime applicable to the upstream oil companies operating in the DR Congo. The article 124 determines a taxation of the said companies, divided in four tax zones (A, B, C and D), which depends on the country's geological and environmental characteristics. Concerning article 125, the above-mentioned companies must comply with a tax scheme, including the tax system on PSA. Moreover, they must comply with 16 taxes, duties, taxes and royalties. Referring to article 126, various bonuses are premiums (non-refundable) paid to the State. The article 128 indicates that royalty rates vary according to the tax area.

1.1.5. Other Innovations of the Hydrocarbons Legal Framework

The hydrocarbons framework also focuses on the local content, the creation of a sovereign-wealth fund, and the socio-environmental issue.

- A Local Content Policy: The new legal framework proposes an inclusive development of the hydrocarbons sector by involving the local communities. It calls for implementing a local content policy to develop the Congolese private sector pertaining to the hydrocarbons industry. The local content policy should help to address local communities' discontentment as they do not directly benefit from hydrocarbons resources extracted from their territories.

- A Sovereign-Wealth Fund: As stressed the article 19 of the law, the creation of the fund for future generations aims at improving the country's oil management. Its funding will depend on taxes collected from oil companies. The council of ministers will issue a decree on the creation of a public institution in charge of managing the above-mentioned fund.

- The Socio-Environmental Aspects: The law indicates the importance of preserving the environment and cultural heritage. Moreover, the articles 77, 137, and 138 determine responsibilities of the upstream oil companies holding PSAs. First, these companies must implement social projects every year to compensate populations directly affected by the oil and gas activities. Second, they must comply with several obligations on an annual basis, including participation in the hydrocarbons data bank.

1.2. Addressing Limitations of the Hydrocarbons Legislation

The hydrocarbons sector's reform is one of the pillars of natural resources' governance. However, the hydrocarbons legal framework presents some shortcomings that could hinder the development of the Congolese oil and gas industry.

1.2.1. The Absence of a Regulatory Authority in charge of Hydrocarbons

The law does not provide provisions for implementing an independent regulatory authority in charge of the hydrocarbons sector. The existence of such institution is critical for guarantying transparency in hydrocarbons management.

1.2.2. Fiscal Regime under Scrutiny

The major criticism is related to the excessive taxation and an insufficient financial transparency. The fiscal package does not lead to a proper management of oil revenues. Moreover the hydrocarbons law does not provision to address the Illicit Financial Flows (IFFs), including tax avoidance. The oil and gas companies can exploit loopholes, which participate in eroding the country's tax base. Finally, the stability clause for oil upstream companies in the production phase is only applied to one company in the production phase (Perenco[5]).

1.2.3. Overlapping of Hydrocarbons, Land, Forestry, and Mining Rights

According to the article 24 of the hydrocarbons law, the upstream hydrocarbon rights are distinct from land, forestry and mining rights. In case of dispute resulting from an overlapped of the said rights, an ad hoc committee of experts will be set up. The council of ministers will provide its final arbitration on a basis of the experts' assessment. The resolution of the rights disputes could however be heavily politicized given a lack of an independent regulatory authority. In addition, the implementation of the council of ministers's arbitration could be challenged in Eastern DR Congo. The conflicts could persist between holders of various rights on the same surface, due to a lack of State authority.

1.2.4. Local Content Policy and Insecurity

In terms of local content policy, the Congolese hydrocarbons legislation is not enough innovative compared to the Nigerian National Petroleum Policy (NPP), approved by the Nigerian Federal Executive Council (FEC) on 19 July 2017. In view of restoring trust between local communities and the State, the Nigerian law aims at increasing ownership of hydrocarbons resources by local communities. Therefore, these communities can be involved in exploration, development and commercialization of hydrocarbons resources, notably through transparent process. Although the Congolese hydrocarbons legislation focuses on host communities, these communities complain about a lack of redistribution of revenues from oil exploration and exploitation.

1.2.5. Environmental Issue Requiring More Attention

The civil society was consulted during the law's preparation. Nevertheless, it expressed its concerns over a limited integration of the socio-environmental issue in the provisions of the new legislation. It worths noting that the environmental issue has a major impact on the hydrocarbons sector's development, notably in the eastern provinces.

Concerning the oil and gas governance, the Natural Resource Governance Institute (NRGI) questions the efficiency of the new legal framework. Referring to its 2017 Resource Governance Index (RGI), the DR Congo has ranked 84th out of 89 countries[6]. The NRGI criticizes a lack of transparency in the hydrocarbons' management. In practice, the new legal framework's competitiveness and the country's attractiveness will depend on the oil and gas companies' involvement in the prospection, the exploration, and the exploitation phases.

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5. See 2.2.1. Oil Slump affecting he DR Congo Oil Sector.

6. Natural Resource Governance Institute, (2017), 2017 Resource Governance Index, 12 July, pp. 1-24.

These companies' assessments will rely on the country-risk's evolution as the DR Congo faces a multidimensional crisis.

2. The Oil Sector Development in the DR Congo under Constraints

Referring to the ministry of Hydrocarbons, offshore and onshore oil reserves are estimated at 26.506.600 barrels and 20.000.000 barrels, respectively. Nevertheless, the DR Congo has remained a small oil producer country, member of African Petroleum Producers' Association (APPA). Despite a new legal framework of 2015, the hydrocarbons sector did not take off given external and internal shocks.

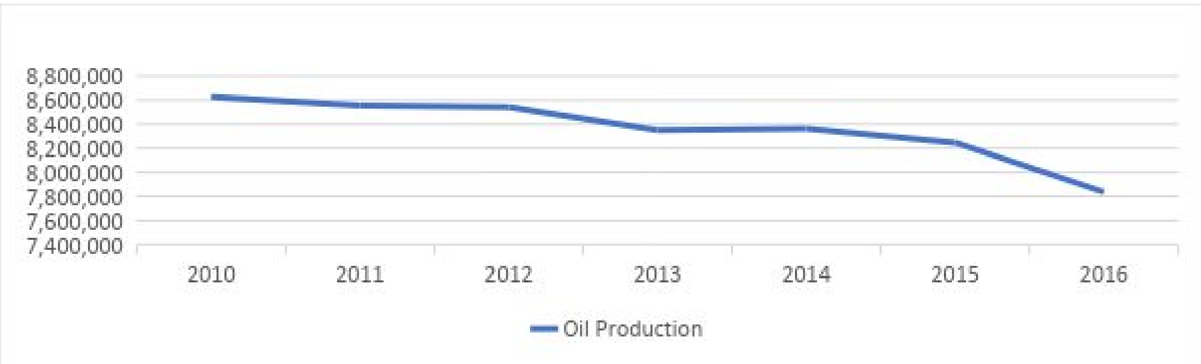
2.1. Recent Evolutions of Global Oil Markets and the Oil Sector in the DR Congo in Crisis

Regardless its vast potential in hydrocarbons wealth[7], the country's oil sector is confronted with the impact of the oil slump and domestic political developments. The country does not ensure its energy security.

2.1.1. Oil Slump affecting the DR Congo Oil Sector

In 1976, the DR Congo became an oil producer, when its offshore fields came on stream. The country's production has constantly declined in the past decades. According to the Central Bank of Congo, the country's production decreased from 23,966.7 barrels per day (bpd) to 21,769.4 bpd from 2010 to 2016 (figure 1).

Figure 1. Evolution of Crude Oil Production in the DR Congo from 2010 to 2016



Source: Banque Centrale du Congo (2017), Condense hebdomadaire d'informations statistiques, n° 22 au 02 juin.

A sharp decline in oil prices affected the OPEC countries and other oil producing countries, such as the DR Congo. Referring to the Extractive Industries Transparency Initiative (EITI), in 2014, tax revenues collected from the oil companies stood at USD 380,100,000 out of USD 1,141,000,000 of tax revenues from the extractive industries. The same year, they corresponded to 33.3% of public revenues of the 2014 State budget[8]. In 2016, the oil sector's contribution has continued to decline in the 2016 and 2017 State budget. Furthermore, the oil slump has led most companies, operating in the DR Congo, to postpone their investments.

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[7]. The country's hydrocarbons reserves are mainly located in the "Bassin de la Cuvette Centrale"and Lake Tanganyika.

[8]. Comité Exécutif de l'Industrie pour la Transparence dans les Industries Extractives, (2015), Rapport ITIE RDC, 31 décembre, pp. 1-194.

In response to a continued drop in oil prices, on 26 November 2016, the OPEC and the Non-OPEC countries reached an agreement to cut their oil production by almost 1,200,000 bpd. The oil output cut deal was implemented on 1 January 2017 until March 2018. Libya and Nigeria are exempted from the oil cut deal due to insecurity hampering their oil sector's development. The oil cut deal is likely to be renewed beyond March 2018 in order to continue increasing the oil prices.

2.1.2. Political Instability Threatening the DR Congo Oil Sector Development

Since 2015, the political turmoil has resulted from the postponement of the 2016 presidential elections. It has negatively impacted the business climate in the DR Congo. Referring to the 2017 World Bank Doing Business report, the country ranked 184 out 190 countries in 2016[9]. The 2017 United Nations Conference on Trade and Development (UNCTAD) on investment report points out that the DR Congo only attracted 2.04% of total FDI inflows to Africa in 2016. Also, Foreign Direct Investment (FDI) flows destined to the country dropped from USD 1,673,000,000 to USD 1,204,000,000 from 2015 to 2016 or a 28% decline[10]. They mainly targeted mining projects. Overall, the country-risk will keep rising as long as long as uncertainty remains as regards the elections' organization. The DR Congo is not longer an attractive hotspot for oil operators in the Great Lakes region.

2.2. Overview of Oil Exploration and Production in the Western and Central DR Congo

In 2017, the country detains 55 oil blocs. Only two blocs are in a production phase. Perenco (a French company not listed on stocks exchange) operates these blocs, which are located in Kongo Central province, formerly known as Bas Congo province (table 2). The crude output is exported through Banana port (Kongo Central province) on the Atlantic coast. Therefore, the country heavily depends on oil import products.

Table 2. Overview of Oil Blocks in Production Phase in Kongo Central

Block *(Offshore & Onshore)*	**Oil Partnership**		**Operator by Oil Block**	**Location/ Province**	**Threat Assessment**
	National oil Company (% of share)	**Private Companies (% of share)**			
- **179 or East-Mibale block** - **180 or Laiwenda-Kinkasi block** - **191 or Muana-Banana block** (*Onshore*)	State **(15%)**	*Socorep* [(3)] Perenco **(85%)**	Perenco SA (French) (independent oil company	"Zone du Bassin Côtier"/ Kongo Central	Fair
- **191 or Muana-Banana block** (*Onshore*)	State **(15%)** SONAHYDRO **(12.4%)**	*Kinrex*[(7)] *Perenco* **(72.6%)**			

Note: **Key stock exchanges [(1)]:** Toronto Stock Exchange (TSX), Toronto Stock Exchange Venture (TSX-V), London Stock Exchange (LSE); New York Stock Exchange (NYSE), London Stock Exchange (LSE); Alternative Investment Market (AIM) of LSE.

[9]. World Bank, (2016), Doing Business report, 25 October, pp. 1-356.

[10]. UNCTAD, (2017), World Investment report, June, pp. 1-237.

Socorep(6) and Kinrex(7): Congolese branches of Perenco
Source: The author.

2.3. Oil Exploration in Eastern DR Congo facing Security and Environmental Concerns

On 18 June 2010, President Kabila only signed presidential ordinances awarding 4 oil blocks in the Rift Albertine Graben (Eastern DR Congo). New oil operators involved in the exploration phase entered the country's oil market. Since then, their activities have been hindered by the armed groups' presence in the eastern provinces associated with a major environmental concern.

2.3.1. Lake Albert: Insecurity affecting Oil Exploration

Following the withdrawal of Tullow Plc[11], the ministry of hydrocarbons reopened the upstream Congolese oil (blocks 1 and 2) to oil companies. On 5 May 2010, the ministry of hydrocarbons authorized the signing of a PSA between COHYDRO Sarl and a South African consortium (Caprikat Ltd and Foxwhelp Ltd). The PSA became effective after the presidential ordinance of June 2010 was issued. Oil of the DR Congo[12] is the operator of blocks 1 and 2 (table 3). On 7 August 2014, it indicated that probable reserves in the said blocks are estimated at about 3 billion barrels, following seismic work.

On December 4, 2007, COHYDO and Semliki Energy Sarl, a subsidiary of SacOil (68%) and DigOil (32%), signed a PSA on block 3. The latter entered into force following the presidential ordinance of 10 June 2010. Meanwhile, on 4 March 2010, Semliki Energy Sarl and Total E & P RDC entered into an agreement enabling Total SA subsidiary to become a majority shareholder of the PSA. Furthermore, Total E & P DRC became the block's operator (table 3).

As regards environmental aspects, block 3 includes 32% of its surface area in the protected areas of the Virunga National Park (VNP), a World Heritage Site of humanity by the United Nations Educational, Education, Science and Culture (UNESCO) since 1979. This briefly resulted in the mobilization of the UNESCO and the Non-Governmental Organizations (NGOs) against Total E & P DRC in Ituri. In May 2013, the company reaffirmed its commitment to preserving the environment. On 17 February 2016, it launched seismic activities in the northern part of the block, located outside of the protected area. Although Total E & P DRC completed the seismic program, it is confronted with insecurity, as it operates near the stronghold of Cobra Matata, the militia leader of the Front de la Résistance Patriotique en Ituri[13] (FRPI). Finally, it worth noting that a strategic synergy takes shape on both sides of Lake Albert, under Total's impulse[14].

Table 3. Overview of Oil Blocks in Exploration Phase in Ituri Province (Lake Albert)

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[11]. It worths noting that Tullow Oil Plc was the company to discover oil in Lake Albert in 2006. However, on 17 August 2007, through a ministerial decree n°012 / MIN-HYDRO / LMO / 2007, the ministry of hydrocarbons cancelled the license exploration of Tullow Oil Plc. It questioned the payment by Tullow Oil Plc of USD 500,000 signing bonus for blocks 1 and 2 instead of USD 1 million. Tullow Oil Plc launched legal proceedings following the unilateral withdrawal of block 1. Then, it abandoned its exploration activities on block 2.

[12]. Mr Gertler is also a key shareholder of the oil company. He belongs to President Kabila 's inner circle.

[13]. On 5 November 2014, Cobra Matata, FRPI warlord, surrendered to the Congolese authorities. However, FRPI militia remains active in Ituri.

[14]. Total has implemented the strategy initially developed by Tullow Oil Plc, which had oil assets on both sides of Lake Albert.

Onshore Block	Oil Partnership		Operator by Oil Block	Location/ Province	Threat Assessment
	National Company (% of share)	**Private Companies (% of share)**			
Block 1	SONAHYDRO **(15%)**	Caprikat Ltd & Foxwhelp Ltd **(85%)**	Oil of the DR Congo (2)	Ituri	Insecurity
Block 2	SONAHYDRO **(15%)**	Caprikat Ltd & Foxwhelp Ltd **(85%)**	Oil of the DR Congo	Ituri	Insecurity
Block 3	SONAHYDRO **(16%)**	Semliki Energy Sarl (1) **(18%)**	Total E & P RDC (3)	Ituri	Insecurity
		Total E & P RDC **(66%)**			

Note : (1) : Semliki Energy Sarl is a subsidiary of SacOil (South African company), which purchased Divine Group Inspiration (South African Company) renamed DigOil.
(2): Oil of the DR Congo is a subsidiary of Fleurette Properties Ltd. Mr Gertler is a main shareholder of the company.
(3): Total SA is a French oil company, which is also listed on the New York Stock Exchange [NYSE: TOT].
Source : The author.

2.3.2. Lake Edouard: Insecurity and Environmental ending Oil Exploration (SOCO Case)

On 6 December 2007, SOCO E & P RDC, a subsidiary of SOCO International Plc (a British company) concluded a PSA with the State on block 5. The PSA entered into force after the presidential order of June 2010. SOCO E & P RDC planned to exploit 10% of block 5. However, 52% of the block was located in the VNP). The UNESCO and the NGOs, including the World Widlife Fund (WWF), voiced their concerns on the oil exploitation in the protected areas of the VNP. Given the intense lobbying, the Government adopted a series of measures to reconcile approaches. Its purpose was to authorize the oil exploitation while guaranteeing the environment's preservation. This led SOCO E & P RDC to suspend its exploration activities from 2011 to 2012. Meanwhile, the Government conducted an environmental assessment on blocks 3 and 5[15]. Moreover, SOCO was confronted with insecurity in North Kivu, which affected both its operations and human resources[16]. Overall, the company worked under non-optimal conditions while facing a major environmental concern. It tacitly withdrew from block 5 in 2015. Nevertheless, SONAHYDRO allegedly signed an agreement with a subsidiary of Oil Quest International in 2017. This has relaunched speculation about the oil exploration in the VNP (table 4).

Table 4. Overview of Oil Blocks in Exploration Phase in North Kivu (Lake Edward)

Onshore Block	Oil Partnership		Operator by Oil Block	Location/ Province	Threat Assessment
	National Company (% of share)	**Private Companies (% of share)**			

[15]. On 10 September 2014, the ministry of hydrocarbons and the the existence of talks with the UNESCO on block 5.

[16]. On 14 February 2011, SOCO International Plc confirmed that one of its security agents, a South African citizen, had been kidnapped by the Forces Démocratiques de Libération du Rwanda (FDLR) Soki released one day later.

Block 4	In search for investors
Block 5	SOCO withdrawal (1)

Note : (1) : Following SOCO withdrawl, there is an alleged agreement between SONAHYDRO and the subsidiary of Oil Quest International in 2017.
Source : The author

3. Oil and Gas Development in the DR Congo: Impact on Foreign and Security Policies with Neighbouring Countries

The DR Congo is confronted with main challenges, in particular security risks as the hydrocarbons sector's development takes place in areas along its frontiers with the following neighbouring countries: Uganda, Angola, and Rwanda. These challenges could lead to redefine foreign and defence policies with the above-mentioned countries, which have competing interests in oil and gas exploration and exploitation to ensure their energy security.

3.1. The DR Congo and Uganda: A First Forgotten Oil Border Dispute related to Lake Albert

The development of the Congolese oil sector is closely associated with the development of the oil sector in East Africa. The oil discovery in and around Lake Albert led to increase tensions between the DR Congo and Uganda.

3.1.1. The DR Congo and Uganda: An Oil Cooperation in Jeopardy

On 2 August 2007, a cross-border incident linked to oil-related interests occurred around Lake Albert in Ituri province, formerly known as Ituri district in Province Orientale. The event caused a deterioration of relations between the DR Congo and Uganda, in spite the bilateral agreement of cooperation for exploration and exploitation of hydrocarbons of 1990.

Nevertheless, a sizeable discovery of oil deposits in the Albert Graben has entailed serious security and diplomatic frictions between the above-mentioned countries. In view of diffusing these tensions, Uganda and the DR Congo concluded the Ngurdoto agreement on 8 September 2007. The deal focused on four critical issues, including the creation of a joint boundary commission and a joint oil exploration[17]. Since then, no progress has been recorded concerning the joint oil exploration. As a matter of fact, Uganda requested to the DR Congo to ratify the agreement of 1990 before applying the Ngurdoto agreement. Confronted to an impasse concerning the joint oil exploration, Uganda has remained in search for its own energy security.

3.*1.2. Lake Albert: Uganda leading Oil Exploration*

In Ituri province, the presence of armed groups, such as the FRPI, keeps delaying oil exploration. Amid the tense political turmoil, the perspective of investments in the oil blocks related to the Congolese side of Lake Albert have been put on hold until a progressive improvement of the security and political environments.

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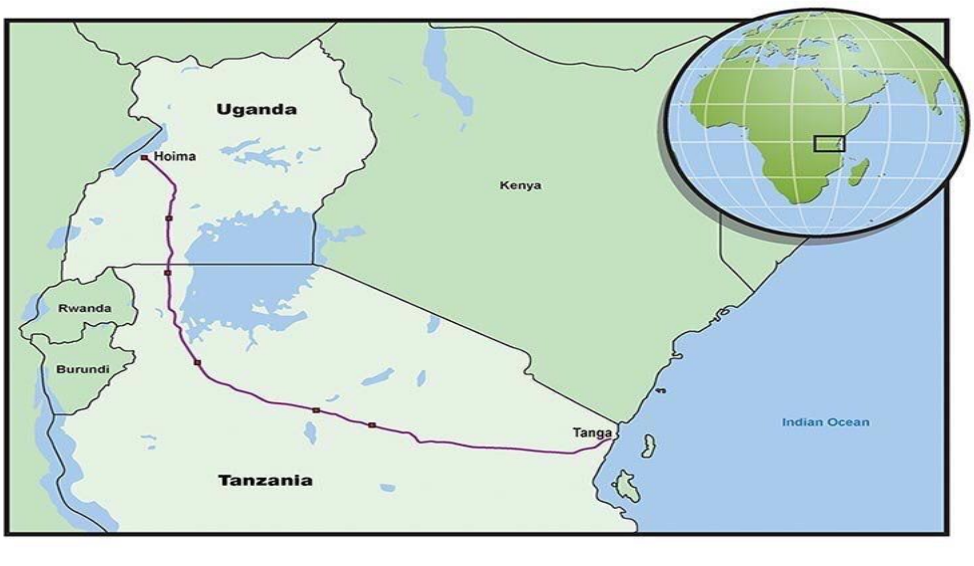
[17]. Back then, the joint exploration was in principle facilitated by two oil companies (Oil Heritage and Tullow Oil Plc) operating on both sides of Lake Albert. On Congolese side of the lake, Total operates the blocks initially detained by Oil Heritage and Tullow Oil Plc.

Meanwhile, the oil discovery mainly in Lake Albert led Uganda to implement a national oil and gas policy, which was approved by the Government on 31 January 2008. Also, Uganda has developed a regulatory and institutional framework to support the hydrocarbons sector's development. It is expected to start its oil production in 2020. It intends to set up its leadership as a top oil producer country in the Great Lakes region, particularly the East African Community (EAC). Uganda will set up infrastructures, comprising a refinery and a pipeline. It plans to build a refinery in Hoima district to reduce its dependency on oil imported products. Although a tender procedure was launched, the awarding Chinese consortium pull out of the refinery's project in June 2017. Moreover, on 21 May 2017, Tanzania and Uganda signed a bilateral agreement to build the East African Crude Oil Pipeline (EACOP) from Hoima (Uganda) to Tanga, a port city of Indian Ocean (Tanzania)[18]. This option was preferred to the Hoima-Lamu (Kenya) pipeline given high potential security risks due to terrorist attacks. The EACOP of 1.443 km is a three-year project, estimated at USD 3.900,000,000[19]. Total E & P is has decided to participate in funding the EACOP infrastructure.

With a capacity of 200.000 bdp, the Hoima-Tanga pipeline will definitely increase crude oil export from Uganda and the region. The DR Congo is a semi-landlocked country. It does not have a capacity to secure investments for constructing a pipeline and export future crude oil extracted from the Congolese side of Lake Albert will be exported through the EACOP (see figure 2).

<u>Figure 2. The East African Crude Oil Pipeline (EACOP) from Hoima (Uganda) to Tanga</u>



<u>(Tanzania)</u>

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[18]. Communiqué between the President of the United Republic of Tanzania and the president of the Republic of Uganda on bilateral talks between the two countries on the East African Crude Oil Pipeline (EACOP) project, (2017), the State House Dear Es Salaam, Tanzania, 21 May.

[19]. Patey, (2017), A Belated Boom: Uganda, Kenya, South Sudan, and prospects and risks for oil in East Africa, The Oxford Institute for Energy Studies, May, OIES Paper, May, pp. 1-19.

Source: Roker, (2017), Gulf to deliver FEED services for the East African crude oil pipeline.20 April.

In August 2016, discussions on this matter have already started in Dar es Salaam (Tanzania). The same month, President Museveni invited President Kabila to join the EACOP. Also he called for relaunching a joint oil exploration during a bilateral summit in Mpondwe post in Kasese (Uganda). A complete pacification of Ituri will however allow Ithe DR Congo to fully participate in the Hoima-tanga pipeline.

3.2. The DR Congo and Angola: A Second Forgotten Oil Maritime Border Dispute

Since 2007, Angola has become an OPEC member State. The same year, an oil maritime border dispute reemerged between the DR Congo and Angola. A decade later, the dispute has not yet been resolved. It has been overshadowed by a major security crisis in Kasaï region.

3.2.1. Rising Diplomatic and Security Tensions amid Oil Maritime Borders Dispute

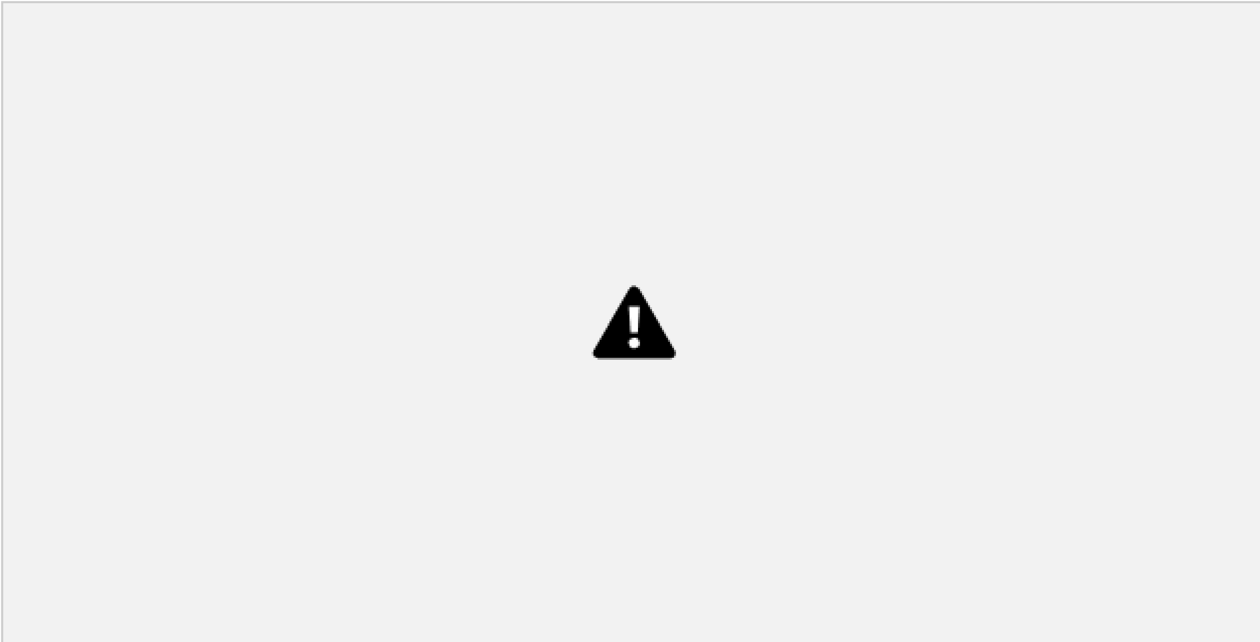
The longstanding boundaries disputes are related to treaties signed on 26 February 1884 and 25 May 1891[20] respectively. Following the access to the independence these countries started negotiating their borders disputes in 2003[21]. A year later, they created a Common Interest Zone (CIZ), which was approved by Angola in September 2004. Four years later, rising political tensions linked to the delimitation of maritime borders prompted the DR Congo to negotiate with Angola a new economic partnership promoting a joint exploitation of mineral and oil resources. On 30 July 2007, the DR Congo and Angola negotiated a demarcation of the common oil area or a CIZ to explore and produce hydrocarbon. The CIZ is located in the deep waters along the Atlantic coast.

After the Parliament's approval, President Kabila promulgated the law on the said bilateral agreement in late October 2007. Nonetheless, the DR Congo reviewed its maritime borders with Angola denying the valid of treaty signed 1884 .It expected to become a major oil producer in the Atlantic offshore side. The country's oil production could rise by about 350,000 up to 400,000 bdp, which would definitely increase its tax base. Therefore, on 6 May 2009, the Parliament passed a law on delimitation maritime frontiers of the country. The said law was then promulgated by President Kabila. In this context, on 11 May 2009, the DR Congo submitted a request to the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 to extend its continental shelf beyond 200 nautical miles (figure 3).

Figure 3. Official Request by the DR Congo to Extend Maritime Border in Gulf of Guinea

[20]. Treaty for the delimitation of each respective spheres of sovereignty and influence in the Lunda Region signed between a representative of King of Portugal and the Algarves and a representative of King Leopold, Sovereign King of the Independent State of Congo.

[21]. Moudachirou, (2015), Memorandum of Understanding between Angola and DRC as Provisional Arrangement for their Maritime Boundaries Delimitation's Dispute-Reality or Myth?, Global Journal of Politics and Law Research Vol.3, No.4, pp.96-103, August.



Source: RDC, (2009), Information préliminaire à la Commission des Limites du Plateau Continental conformément a l'article 76, paragraph 8 de la convention des Nations-Unies sur le Droit de la Mer, 1982, concernant la region du Golfe de Guinée, Kinshasa, 7 May.

In response, Angola rejected the unilateral and unbending Congolese decision. It called for a strict enforcement of the treaty signed between Portugal and Belgium in 1884[22]. As per consequence, growing political tensions between the DR Congo and Angola were observed. This led to massive expulsions of Congolese and Angolan nationals from their respective countries, which temporarily stopped on 13 October 2009. Also, Angolan army invaded Bas Congo province in October 2009. In one hand, Angola put a heavy pressure on the DR Congo. On the other hand, it had to negotiate with the DR Congo for implementing the first Liquified Natural Gas (LNG) plant liaising Cabinda (Angola) to Soyo (Angola) through Kongo Central province.

Since 2007, no progress on the CIZ[23] has been registered, except the purchase by the Sociedade Nacional de Combustíveis de Angola (SONANGOL) of an offshore oil block detained by Nessergy Ltd[24] in 2008. The oil block was located in the deep waters of the Gulf of Guinea. However, Angola retained this block has as part of the CIZ. After negotiations, Nessergy Ltd[25] received USD 150,000,000 on 23 January 2014. In return, Angola expected that the DR Congo would reimburse SONANGOL with the future revenues generated by the CIZ. This option is no longer viable as the DR Congo keeps advocating for an extension of its maritime borders maritime borders. Overall, the longstanding maritime borders disputes has remained an unsolved issue.

[22]. Moudachirou, (2015), Memorandum of Understanding between Angola and DRC as Provisional Arrangement for their Maritime Boundaries Delimitation's Dispute-Reality or Myth?, Global Journal of Politics and Law Research Vol.3, No.4, pp.96-103, August.

[23]. It was supposed to be managed by new organ, as suggested by Mr. Da Graca Vrissimo e Costa, Angolan Minister in charge of hydrocarbons on 24 July 2008 during his visit to Kinshasa.

[24]. On 7 October 2006, Nessergy Ltd (a British oil company) signed a CPP, which entered into effect following the presidential ordinance of 12 March 2008. See Ordonnance n°08/22 portant approbation du contrat de partage de production conclu en la République Démocratique du Congo et 'Association Nessergy Ltd – la Congolaise des Hydrocarbures sur l'offshore profond (Couloir Maritime) de la République Démocratique du Congo.

[25]. Mr Gertler is a key shareholder of the oil company. He is affiliated to President Kabila 's inner circle. It is worth noting that Nessergy Ltd only paid USD 500,000 in signing bonus for the block.

3.2.3. The DR Congo and Angola: Migration Crisis Overshadowing Oil Maritime Border Dispute

As of August 2016, a major security crisis has erupted in Kasaï region[26]. Insecurity is caused by militia, notably Kamuina Nsapu, and the Forces Armées de la République Démocratique du Congo (FARDC). On 22 June 2017, more than 1.3 million people have become Internally Displaced Persons (IDPs) in Kasaï region referring to the UN Office for the Coordination of Humanitarian Affairs (OCHA)[27]. On 27 July 2017, the United Nations High Commissioner for Refugees (UNHCR) estimates that 32,000 migrants[28] fled violence from Kasaï region to Lunda Norte (Angola). Also, Kasaï region has faced a major humanitarian crisis. According to the World Food Programme (WFP), 5.9 million persons have been exposed to food insecurity since June 2016[29]. Consequently, Angola is extremely concerned by the security developments in Kasaï region and the illegal immigration crisis, which negatively impacted its security and economy. Kasaï region in crisis has eclipsed the longstanding and unresolved boundaries dispute between the DR Congo and Angola. It will be interesting to monitor the forgotten border dispute under Angola's new president Lourenco as former president Dos Santos step down in August 2017, after 37 years.

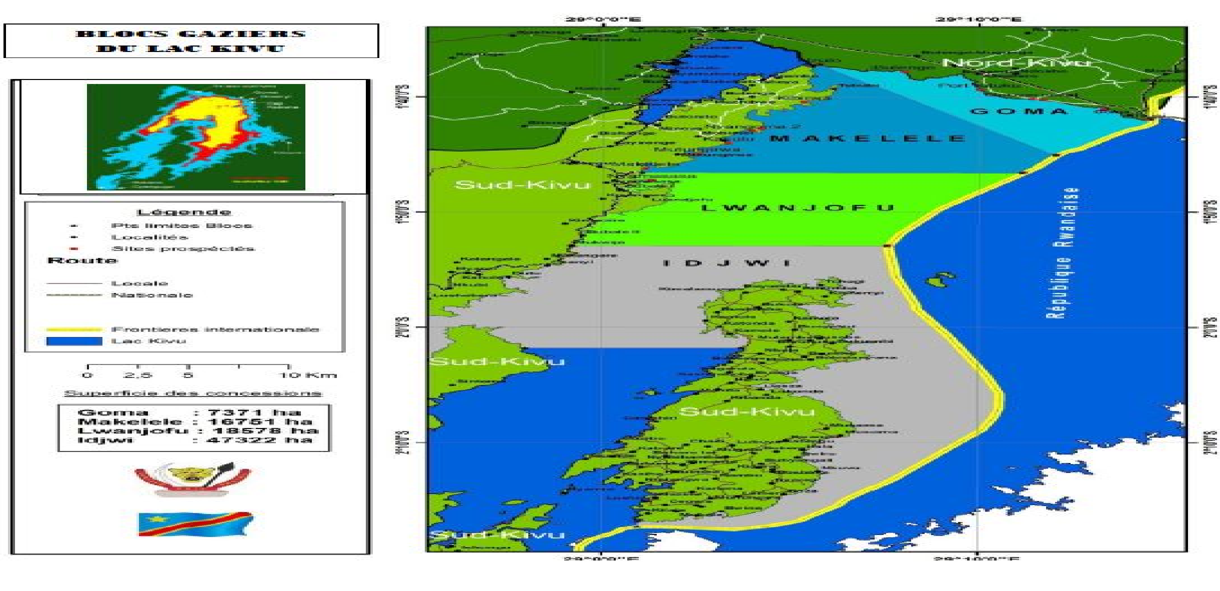
3.3. The DR Congo and Rwanda: Lake Kivu and a Potential Oil and Gas Border Dispute

Following the genocide of 1994 in Rwanda, security tensions have regularly emerged between Rwanda and the DR Congo, mainly the eastern provinces (North Kivu and South Kivu). On the economic side, the exploitation of hydrocarbons reserves of Lake Kivu is a critical topic between these countries.

3.3.1. Rwanda Exploiting Methane Gas of Lake Kivu

In May 2016, the first methane gas plant became operational in Rwanda. The gas is extracted from Lake Kivu. Nevertheless, the DR Congo lags behind as its tender procedure for exploring and exploiting methane gas is not yet achieved. On 10 March 2017, the DR Congo and Rwanda signed a two year project of EUR 8 million to jointly explore and exploit methane gas. The project is backed by the Netherlands. In addition to methane gas reserves, the recent oil discovery in Lake Kivu is likely to exacerbate pre-existing tensions (figure 4). It could lead to redefinition the borders between the said countries, which is an extremely sensitive issue.

Figure 4. Methane Gas and Oil Discoveries in Lake Kivu



Source: Ministry of Hydrocarbons, (2016).

3.3.2. Rwanda and Lake Kivu: Developing Legal Framework for Exploring and Exploiting Oil

So far, Rwanda has never disputed the border in Lake Kivu. However, this might change following the recent oil discovery in the lake. On 4 July 2017, the 29th African Union (AU) summit decided that Rwanda will lead the Union in 2018. In 2017, as Head of State, President Kagame, was reelected on 4 August 2017, could potentially intervene in the DR Congo's political crisis. Rwanda's leadership role could potentially impact the management of oil and gas in Lake Kivu.

Conclusion

Most African countries based their energy strategies on developing fossil fuel energy, which . represents a major challenge, notably in Central Africa. Since 2007, boundary disputes between the DR Congo and neighbouring countries (Angola and Uganda) have emerged posing serious political and security threats to the DR Congo facing macroeconomic imbalances since 2015. Given the geopolitics of Hydrocarbons in the Great Lakes region, Uganda and Rwanda rapidly take the lead in terms of oil and methane gas respectively. Regardless the DR Congo's geological prospects, the hydrocarbons sector's attractiveness is hampered by major obstacles, including the political and security crises.

Nevertheless, the 2030 Agenda for sustainable development and its sustainable development goal 7 on energy in line with the 2015 Paris Agreement recommended the development of sustainable energy and energy efficiency. They urged for promoting renewable energy. As a result, the transition towards a de-carbonization process has started. It requires the use of minerals, including Rare Earth Elements (REEs) and metals, such as cobalt, copper, and lithium. The DR Congo also detains vast reserves of these minerals and metals. Thanks to China's investments in the copper-cobalt belt of ex-Katanga, it contributes to developing climate-friendly technologies, notably the electric vehicles. By doing so, it participates in a low-carbon economy. However, the DR Congo struggles to ensure a sound management of its mining resources. Moreover, its mining legal framework has been under review since 2012.

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