

# CROSSING THE BORDERS:

**Trans-Border Resource Conflicts between the  
Democratic Republic of Congo, and its neighbors  
Angola and Uganda**

Georges Bokonde and Claude Kabemba



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## Acronyms and abbreviations

<b>ADPA</b>	African Diamond Producers Association
<b>AfDB</b>	African Development Bank
<b>AFIEGO</b>	Africa Institute for Energy Governance
<b>AGK</b>	Anglo Gold Kilo
<b>BP</b>	British Petroleum Company
<b>CNOOC</b>	China National Offshore Oil Corporation
<b>COHYDRO</b>	Congolese of hydrocarbons
<b>COMESA</b>	Common Market for Eastern and Southern Africa/ Common Market, East and Southern Africa
<b>DGDA</b>	Directorate General of customs and Excise
<b>DGM</b>	Directorate-General for Migration
<b>DRC</b>	Democratic Republic of Congo
<b>EEZ</b>	Exclusive Exploration Zone
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>ENI</b>	Ente Nazionale Idrocarburi
<b>FLEC</b>	Front for the Liberation of Cabinda
<b>GGC</b>	Gulf of Guinea Commission
<b>ICGLR</b>	International Conference for the Great Lakes Region
<b>ICJ</b>	International Court of Justice
<b>M23</b>	23 Movement (M23 Rebel DRC)
<b>MONUC</b>	United Nations Organization Mission in the DRC

<b>MONUSCO</b>	The United Nations Organization Stabilization Mission in the DRC
<b>MW</b>	Megawatt
<b>NGO</b>	Non-Governmental Organization
<b>OAU</b>	Organization of African Unity
<b>OAU</b>	Organization of African Unity
<b>OCC:</b>	Congolese Office of Control
<b>OPEC</b>	The Petroleum Exporting Countries
<b>OSISA</b>	Open Society Initiative for Southern Africa
<b>PIP</b>	Public Investment Program
<b>PSA</b>	Production-Sharing Agreement
<b>SADC</b>	Southern African Development Community/ Community of Southern Africa
<b>SARW</b>	Southern Africa Resource Watch
<b>SOKIMO</b>	Company of Kilo Moto
<b>SONANGOL</b>	National company in charge of the operation and the production of oil and natural gas in Angola
<b>UN</b>	The United Nations
<b>UNCLOS</b>	The United Nations Convention on the Law of the Sea
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNITA</b>	National Union for the Total Independence of Angola
<b>UPDF:</b>	Uganda People's Defense Force
<b>UPN</b>	The fishermen Union of Nsianfumu
<b>ZIC</b>	Area of Common Interest

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**SARW**

## Executive summary

The Democratic Republic of Congo (DRC) shares borders with nine countries: Angola, Burundi, Central African Republic, Republic of Congo, Rwanda, southern Sudan, Uganda, Tanzania and Zambia. The DRC is known for its potential in natural resources. A significant number of these resources are lying near the neighboring countries. These resources are the cause of great tensions between the DRC and its neighbors, tensions that may turn into conflicts if they are not well managed. This study focuses, on the one hand, only on the relations between the DRC and Angola, and on the other hand, between the DRC and Uganda. The DRC shares common trans-border natural resources with each of these two countries.

Conflicts between States are the results of the colonial carving. Many of the conflicts between States in Africa were caused by claims of border limits because of the vagueness of borders due to colonization, the presence of a large ethnic group on both sides of the borders, as well as the presence of natural resources lying along these borders.

Tensions between the DRC and its two neighbors are due to the fact that sea and land borders were never clearly defined, sparking claims and challenges on all sides.

To resolve disputes between these States, several discussions on border and ownership of natural resources have already been undertaken between the countries of the Great Lakes region. The DRC has already signed, with each of these two neighbors, agreements of bilateral cooperation in 2007 for the exploration and exploitation of trans-border natural resources.

In regards to the DRC and Angola, it is primarily the Protocol on cooperation in the field of geology and mines (2007) and the Protocol on cooperation for research and production of hydrocarbons in the common

interest Maritime area (2007). The Agreement Protocol on cooperation in the field of geology and mines has as main objective to promote and revitalize cooperation in the mining sector, including the strengthening on cooperation in the diamond sector, and other mining products, in the field of geology, the protection of the environment, the value added to mining products, as well as in the area of building human and institutional capacity of the mining companies. While the second protocol agreement focuses on exploration and joint exploitation of oil in the area of common interest.

A so-called Ngurdoto peace agreement between the DRC and Uganda was signed on September 8, 2007 in Tanzania, by the heads of State of the DRC and the Republic of Uganda to strengthen stability, security and prosperity between the two countries. Both parties agreed in this agreement, *inter alia*, to jointly reconstruct the line of demarcation of the common border.

Unfortunately, these agreements have never been applied, due particularly to the absence of the political will of the leaders. Ongoing tensions between the DRC and its two neighbors, and if these conflicts or tensions are not quickly resolved, they can cause instability in a region already affected by conflicts. This is why SARW initiated this research, which was accompanied by workshops with members of parliament and civil society in three countries in order to offer solutions to these different problems raised.

Research has identified various conflict situations and noted two methods or two strategies to be taken into account for the challenges of the management of trans-border natural resources in the countries of the Great Lakes region. One is based on the assertion of the principle of the sovereignty of States over their natural resources, which has shown its limits, and the other, is based on the collegial management, collaborative on trans-border resources such as an integrative model.

Of this last method, two types of management are suited to rational management of natural resources in a peace climate. The first concerns the strengthening of cooperation and the second, shared management of resources. The various cooperation agreements mentioned above should be oriented in the shared or joint management of trans-border resources, as a result of profit-sharing and the strengthening of ties and economic interests between neighboring States.

## 1 Introduction

The management of mining and oil resources is problematic in many African countries. This management becomes more complex when the resources are located in border areas where each neighboring State claims ownership and seeks to control and operate them regardless of its neighbor. Border resources is a source of conflicts in three specific cases:

First, when the ownership of resources is not clearly defined; secondly, when there is an asymmetry of power characterized by the internal organization of the States and their military capability. The more organized and often the strongest militarily can undertake to exploit these resources even when they do not belong to him; and thirdly, through illegal exploitation when the borders are not controlled properly.

The claims of States on trans-border resources are numerous in the world. Africa knows several cases of border disputes. The case of Egypt and Ethiopia is the subject of an old dispute of sharing on trans-border resources. The conflict is around the water of the Nile and the tension was aggravated between the two countries when Ethiopia began to divert around 500 meters of the Nile water to build the gigantic hydroelectric dam of the “Renaissance”, with a capacity of 6,000 megawatts<sup>1</sup>. The origin of the conflict between Egypt and Ethiopia involves the water of the Nile, a natural resource of necessities. Attempts of resolutions with signed agreements show how States can go to war because of an unequal sharing of a natural resource.

Another conflict in Africa, involves Nigeria and Cameroon. The Bakassi crisis, lasting twenty-five years, has its roots in a fundamental way, in a poorly defined border after colonization. However, it is interesting to

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1 <http://www.agencececofin/electricite...e-nil>, consulted on September 16, 2015.

wonder if it would have led to the same degree of agitation without the oil discovery in the area. The answer is probably negative. Claims of Cameroon on a region administered by Nigeria are easily interpretable in the light of its oil potential becoming obvious in the 1960s, offering a great potential in 1980, then declined rapidly in 1994. Were it not for oil, Cameroon would have probably not attempted to recover legitimate possession of the peninsula, and Nigeria would not have reacted to these claims by occupying two-thirds of the land. The intra-state conflict, although was ultimately caused by the incorrect delimitation of the border, has been aggravated by the potential exploitation of natural gas and oil in the region. However, despite the military fighting and violations of human rights, diplomatic ties have never been frozen. The diplomacy of globalization has thus worked at two levels. At the political level, the international community, through the joint Commission, Cameroon-Nigeria, is committed, from the mid 1960s, to maintain an open communication and to find a solution to the conflict. At the economic level, none of the countries could access the oil resources due to the constant military stalemate, and the two countries have been eager to find a mutually beneficial agreement<sup>2</sup>. However, the International Court of Justice had ruled in favor of Cameroon on October 10, 2002.

There is also the conflict between Tanzania and Malawi regarding the oil from Lake Malawi. The Lake has always been managed as a property of Malawi, and has seen this property be annually disputed with Tanzania when research showed the presence of a large supply of oil. SADC has set up a commission headed by former President of Mozambique, Joachim Chisano, to try to solve the problem. This commission has not yet opined on the subject.

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2 RUBEN De KONONG and Jean MBANGA, Conflicts regarding natural resources in the Bakassi peninsula: from global to local, published in *Ecology & Politics*, Sciences Press, 2007, pages 93-103.

While we were bringing this report to a close, Russia came to claim more than a million km<sup>2</sup> in the Arctic. It formally submitted to the United Nations its claim saying that years of scientific research show its right on the vast natural resources located at the bottom of the Arctic ocean. It submits that in the light of scientific research, it should have sovereignty over 1.2 million additional square kilometers in the Arctic. This request includes the North Pole and will potentially give to Russia the access to hydrocarbon supplies with a total of 4.9 billion barrels, according to estimates by the Russian government.<sup>3</sup>

The cited cases of conflicts on trans-border resources correspond to a certain extent to the tensions that exist between the DRC and its neighbors, tensions dominated by the desire to control the exploitation of oil in the Atlantic Ocean, concerning Angola, to the West of the DRC and in the Graben, and concerning Uganda to the East.

With regard to border disputes related to natural resources in the region of the Great Lakes, primarily between the DRC and its neighbors, it should be noted that the DRC is sharing a long border with nine countries. It has been the subject of several conflicts and tensions with some of its neighbors. The causes of conflicts are related to the border limits for the control and exploitation of trans-border natural resources. The borders with all these countries have abundant mineral resources (solid and liquid). Some are already in operation and others in exploration, or not yet. This work is limited to the issue of management of natural resources between the DRC and Angola on the one hand, and between the DRC and Uganda on the other hand. The borders of the DRC with its two neighbors are filled with abundant trans-border resources. The exploration, exploitation and trade of these resources are now the basis of tensions between those States.

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3 <http://www.ami-oimc.org/news/la-russie-revendique-plus-d'un-million-de-km2-dans-larc>, consulted on August 8, 2015.

Uganda and the DRC have already submitted their dispute before the International Court of Justice (ICJ) in a document of violation of territorial integrity of the DRC by Uganda<sup>4</sup>, but have not yet done so in relation to the border conflict opposing them to the east of the DRC on borders and oil resources sharing that are present there. Similarly, the DRC and Angola have submitted their dispute in connection with the oil-rich continental shelf before the bodies of the United Nations.

It is in the framework to search solutions, in order to avoid these tensions leading to violent conflicts, that SARW undertook this work. The frenzy in the exploitation of border resources without a prior consultation with its neighbors in the Great Lakes region is at the origin of the conflicts and tensions manipulation. When the management of border resources is not settled by negotiations, they eventually create tensions that can lead to armed conflict.

In the search for solutions, this report raises a series of basic questions to understand the nature of the problem that exists between the DRC and its two neighbors around resources that lie along their common borders. First, what is the problem between the DRC and Uganda on the one hand, and between the DRC and Angola on the other? Secondly, are the tensions simply related to trans-border resources or they are also connected with safety, history, and cultural anthropology between countries? Thirdly, who benefit from these conflicts in the border areas and what risks run the three peoples, as well as the regional and international peace due to these conflicts? Fourth, what have been proposed as solutions and what progress has been achieved?

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4 Judgment of December 19, 2005 in the case "Armed activities on the territory of Congo", Judgment *Democratic Republic of the Congo v. Uganda*.



This study comes at a time where the DRC, with the support of the international community, is finding sustainable solutions to armed conflicts with its neighbors, Rwanda and Uganda, which have started since 1996. These armed conflicts were supported by the access and sale of minerals of the DRC by all armies and militias that have operated in the DRC. Given this history of war related to minerals, it is possible that if the minerals at the border are not managed in a rational manner, so as to take into account the interests of each country, the region of the Great Lakes may be diving or remaining in an eternal situation of conflict and destabilization.

The importance of this report is to alert and prevent potential conflicts related to the management of border resources. It is meant to be preventive, the conviction is that the consensual management resources is the most realistic solution.

## **Methodology**

Three approaches have been used in the preparation of this report:

First, the document review; during this phase, it was a matter to bring together and to make a critical reading of literature that exists in this subject. Several works, texts of laws, memoranda of agreements, jurisprudence and international conventions were consulted in order to enrich the data collected on the field by the consultants.

Secondly, four consultants conducted field missions, in the three countries. Field research has been dominated by interviews with different actors — governments, civil society, peoples border and parliamentarians of three countries.

Thirdly, two workshops were organized, one in Kinshasa and another in Kampala. These workshops put together different actors, the civil society, university professors as parliamentarians to engage in discussions

in order to understand the motives of the non-application of the various protocols signed between the States. Participants identified several political and economic challenges, which obstruct the implementation of various agreements signed.

Furthermore, the research was having difficulties in its implementation, in this case:

- The dimensions of the borders, long, covering multiple locations or territories on either side of each country;
- The refusal of some government authorities to carry out interviews with researchers;
- The secrecy of State for concurrent information;
- The refusal of the Angolan authorities to grant authorizations to enter Angola from participants of the DRC and Uganda.

## 2 DRC, Angola and Uganda Natural Resource Potential

This section looks at the natural resources of each State, and identifies the trans-border resources, which are sources of conflict. These resources include mainly oil and minerals. However, the report refers to fishing activities that are at the root of some incidents between States.

### 2.1. Natural resources of the DRC

The DRC is the second largest country in Africa after Algeria, with over 70 million people. The DRC is sharing borders with the enclave of Cabinda (Angola) and the Republic of Congo to the west, the Central African Republic and southern Sudan to the north, Uganda, Rwanda, Burundi and Tanzania to the east, Zambia and Angola to the south.

The DRC has an abundant concentration of 30% of the world's deposits of cobalt and 10% of the world's deposits of copper. It has other minerals, including coltan, cassiterite, uranium, diamond, manganese, gold, gaz, oil, etc.<sup>5</sup>

During flourishing economic activities, the Congo was ranked first producer and exporter of industrial diamond, world's leading producer of cobalt, sixth largest producer of copper, seventh world producer of tin, eighth world producer of zinc, ninth producer of manganese, and twelfth producer of cadmium.<sup>6</sup>

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5 MANFRED, S., The factors in sustainable development in DRC, recent developments of political, economic, religious, cultural and civil society life, Berlin-Kinshasa, CEPAS Editions and Spektrum, p. 691.

6 KANKWENDA MBAYA, J., Political economy predation in Congo Kinshasa, from the origins to our times 1885 – 2003 Montreal Editions of ICREDES, 2005, p. 100-101.

In 2014, the DRC produced about 1,029,800 tons of copper and 66,915 tons of cobalt in the Katanga<sup>7</sup> province, becoming the largest producer of copper in Africa and the first world producer of cobalt. Since 2009, the DRC has started to develop its gold industry with the beginning of the production of one of the projects of Banro Corporation in south Kivu, followed by the Kibali Gold project in the eastern province. Randgold Resources, a South African company, operates in open-pit gold mining in Watsha, in partnership with the SOKIMO and the AGK, and just built one of the largest African gold mines, and has increased by 26% its gold production in 2014 to approximately 18 tons of gold in Doko.<sup>8</sup>

Referring to data from SNL Metal and Mining for the fiscal year 2014, the Chamber of Mines of the DRC gave estimates of reserves of some minerals such as shown in the table below:<sup>9</sup>

Copper	105,319,158 tons
Cobalt	372,100 tons
Gold	45,340,444 ounce (oz)
Tin	140,000 tons
Diamond	18,635,000 carats
Phosphate	58,500,000 tons
Zinc	4,947,000 tons

*Source: SNL Metal and Mining, 2014*

Apart from the quantifiable numbers, we also have in the DRC the second tropical forest in the world after the Amazon. The biodiversity found in this rainforest, and its contribution to the stabilization of the global

7 FEC 2014 Annual report, Chamber of Mines, 2015, p.8

8 Randgold Resources, T4 Report, February 2015.

9 Chamber of Mines Annual report (FEC) for the year 2014, p.16.

climate, are invaluable for the planet.<sup>10</sup> The DRC forests cover approximately 145 million hectares. According to the plan of the World Bank, 54 percent of these forests were intended for industrial exploitation pursuant to the implementation of the new forestry legislation.<sup>11</sup>

In terms of agriculture, livestock and fisheries, opportunities are also tremendous. According to the Ministry of Agriculture, the DRC “has more than 80 million hectares of arable land, of which less than 10% are currently being exploited. The tropical forests, which occupy 135 million hectares, or 52% of the territory, constitute an important reserve of biodiversity and suitable land. The fishing potential in the Congolese areas of the Atlantic Ocean, from the Congo River and all of the lakes are estimated at 707,000 tons of fish per year.<sup>12</sup>

In this section relating to natural resources of the DRC, it is important to highlight the potential that the country abounds in terms of energy resources. Its rich hydrography gives “a hydropower potential estimated at 106,000 MW, or 37 percent of the total potential of the African continent and almost 6 percent of the global potential. The Inga site alone accounts for 44 percent of this potential.

On the other hand, the DRC has a considerable potential in hydrocarbon resources in its three sedimentary basins found respectively at the mouth of the Congo River on the Atlantic coast (border with Angola), in the central basin and West Africa area of the Great Rift (border with Uganda). Some hydrocarbon experts from the Congolese Ministry say that the central

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10 MANFRED, S., *Ibid*, p. 691.

11 KIBANDA MATUNGILA, “Strategic resources as basis for economic balkanization of wars of the DRC”, in KANKWENDA MBAYA, J. and MUKOKA NSENDA F. (Dir), *opinion cited*, p. 133-168.

12 Ministry of Agriculture, Fisheries and Livestock, *Comment of agricultural policy*, April 2009, p. 12.

basin would be the largest oil reserve, known around the world but not yet explored.<sup>13</sup> Since 1973, oil production remains constant at 25,000 barrels per day. Tax services of the State recorded 465,655,806 USD in 2011, which is about 10 percent contribution of revenues in the State budget, taking into account the national budget for 2011<sup>14</sup>, which was around 4 USD billion. According to the Ministry of hydrocarbons, the DRC should maintain its current production growth in the coming years.

The DRC bodes good prospects in terms of oil production. Some hydrocarbons experts from the Congolese Ministry say that the central basin would be the largest oil reserve, known around the world but not yet explored. The most realistic projections attest that this growth in oil production comes mainly from the common interest zone (ZIC) shared by the DRC and Angola, on the continental shelf of the West Coast. Another part comes from the operating phase of the Albertine Graben in the eastern region, border with Uganda even before the exploration in the central basin.

The exploration of oil in Lake Albert, which is on the border with Uganda is at the beginning on the Congolese side. The area of the Albertine Graben is 17,090 km<sup>2</sup>. It lies between the district of Ituri in the eastern province and North Kivu province. It is segmented into 5 blocks of exploration, of which blocks I and II cover Lake Albert, the block III covers the Semliki Valley and blocks IV and V cover Lake Edward. The oil discoveries on the Ugandan side give hope that the blocks on the Congolese side of Lake Albert may contain oil. The appraisals are about “two billion barrels of oil with a production ceiling of more than 150,000 barrels per day.”<sup>15</sup> Exploration is delayed

13 Pilipili, Joseph, Interview, Kinshasa, 2014

14 ITIE/DRC Report, 2011.

15 Taymour Lay, Lake Albert oil, Revelations of contested Congolese contracts, PLATEFORM, May 2010, p.4.

due to multiple factors: “bad negotiation of oil blocks by the Congolese authorities, the terminations of contracts particularly the case of Tullow production-sharing agreement”<sup>16</sup>, and change ownership on the oil blocks. The Congolese government had terminated the agreement with Tulow who owned two blocks (blocks 1 and 2) along Lake Albert and attributed them to Caprikat and Foxwhelp, following an opaque process. The investigations revealed that both companies are registered in the British Virgin Islands and lacked the capacity to carry out the exploration work.

To the south of Lake Albert, there is block III, which was awarded to the French company TOTAL in 2012. This block is located between the territory of Irumu in the district of Ituri and the territory of Beni in North Kivu province. “It should be noted that blocks III, IV, and V have varied proportions”<sup>17</sup>, around the “Virunga National Park”<sup>18</sup>, which is classified among the sites of the common heritage of mankind. The block IV is not yet allocated. This bloc which is in the province of North Kivu has been located. Approximately 19 companies including the Italian company ENI, are vying to snatch the market exploration and/or exploitation of oil in block IV.<sup>19</sup> The block V was awarded to SOCO, a company under English law. It has an area of 7,180.3 km<sup>2</sup>, and it is the largest of the Albertine Graben. It is located between the territory of Lubero and Rutshuru.

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16 Two British companies, Tullow Oil and Heritage, signed an agreement with the DRC in 2006 regarding bloc 1 and 2 of the Albertine Graben on the Congolese side but the Congolese government terminated it in 2007 before reallocating it.

17 The bloc V which is 80% located in the National Park Virunga.

18 Since 2 years, WWF and Congolese civil society organizations are conducting an international campaign for the preservation of the National Park Virunga, UNESCO world heritage site, threatened by oil projects. For the Congolese civil society, exploitation of oil in this area will have negative impacts on all advantages of the ecosystem and riverside population.

19 Interview with an executive of the provincial division of North Kivu hydrocarbons; Goma in September 2013.

Map 1: The Albertine Graben Congolese oil blocks



Source: Ministry of Hydrocarbons



The blocks I and II are in Ituri; the block III<sup>20</sup> lies between the province of North Kivu and Ituri, while blocks IV and V are located entirely in the province of North Kivu. North Kivu could contain the most important part of these blocks, as the block V (7,100 km<sup>2</sup>) is larger than the blocks I and II together. It is important to note that due to the absence of reliable data on the potential of oil in the Albertine Graben on the Congolese side, it is difficult to give statistics on the oil reserves in the province of North Kivu.

However, according to a geologist of the provincial division of the mines in North Kivu, a study conducted in 1958 shows that the oil potential in the DRC Albertine Graben could be 85 per cent higher than the rich part of south Sudan commonly known as the “Benghazi”.<sup>21</sup>

## 2.2. Natural resources of Angola

The Republic of Angola is located on the west coast of South Africa with nearly 20 million people. Its Atlantic coast spans 1,650 km and its land borders on almost 5,000 km (with the DRC, Zambia and Namibia). The area of Angola is 1,246,700 km<sup>2</sup>, is the 23rd largest country in the world (41.5 times Belgium). Only 3.3 per cent of this area is arable land and 0.2 per cent permanent crop.

Angola is one of the wealthiest countries in Africa in terms of natural resources, oil and gas, mining (diamond, cobalt, iron, phosphate, copper, granite, marble and uranium). In addition to its oil and mineral resources, its geographical location and its topography offer a primary sector thriving for both the fishery and agriculture as well as the natural energy capacity (hydropower, photovoltaic, bioethanol, etc.).<sup>22</sup>

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20 This bloc has an area of 3,177 km<sup>2</sup>.

21 This nickname Benghazi is given to this area in reference to the strong oil production, like the area of Benghazi in Libya.

22 Belgian Foreign Trade Agency study, 2013, page 10.

Since the return of peace, the oil sector has been the main engine of the Angolan economy. Angola could have reserves on the coastal Atlantic side equivalent to 5 billion barrels<sup>23</sup> (for approximately twenty years of production) and there are other promising deposits in deep water at the mouth of the river Kwanza. Angola is the second producing country in Sub-Saharan Africa after Nigeria and is a member of OPEC. It is the second largest supplier of oil to China and the eighth to the United States. Considerable revenue from oil has been invested in infrastructure since the return to peace in 2002 and which is largely financed by the State budget in addition to various lines of credit, from China, Brazil, Portugal or Germany. Angola's oil reserves are estimated at 13.5 billion barrels of crude oil, mainly located off the coast of the enclave of Cabinda, an area under tension where separatist inclinations are reigning.<sup>24</sup> This potential is attractive to foreign investors.

Crude oil accounts for 40 per cent of the GDP, three quarters of government revenue and 95 per cent of exports.<sup>25</sup>

Angola has experienced a unique economic growth in Sub-Saharan Africa and today ranks as the 3rd largest economy after South Africa and Nigeria. The Angolan economy took heights with a growth rate of 6.2 per cent in 2013. The share of oil in the Angolan economy decreases but is still around 40 percent of the GDP, 64 per cent of tax revenues and 95 per cent of exports.<sup>26</sup> A decline in production of these last two years, was largely due, first, to technical problems and second, due to the limitations of OPEC. The economy is slowing down with the fall of the oil price. The project Liquefied Natural Gas of Soyo, in the north of the country (LNG) has been postponed

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23 Ibid, page 19.

24 Swiss Confederation, Angola: Economic report 2012, p. 11.

25 Ibid

26 Op cit, p. 3.

many times. The launch of projects of exploration of oil deposits in the basin of the Kwanza in the southwest of Luanda (offshore) will enhance growth prospects.

Angola also has natural gas reserves estimated at 300 billion cubic meters. Unit production of liquified natural gas of Soyo, at the mouth of the Congo River, came into service in late 2012, after various delays due to technical problems.<sup>27</sup> According to the Angolan authorities, from oil the country has started to produce since 2013 the liquified natural gas as part of the project ANGOLA - Liquified Natural Gas (Angola-LNG, located in the province of Zaire). The Angola-LNG is a partnership between Chevron (36.4%), SONANGOL (22.8%) and Exxon Mobil, Total and BP Exploration, with 13.6% each (MACAUHUB, 2013).

Apart from oil, the Angolan subsoil is full of marketable minerals. The Angolan mining sector could in the long term (15 to 20 years) reach the level of development of the oil sector. If the diamond sector (with its cyclical fluctuations) brings per year 1 billion USD of additional revenue into the State budget, the mining sector has a very interesting potential. According to specialists, the Angolan subsoil abounds a large part of marketable, from iron minerals (in Kassinga, the province of Huila) to gold, copper (Zaire), phosphates (Cabinda), barite, cobalt, granite, marble, etc., while a large part of the territory has not yet been fully explored using modern geological prospecting tools.

In July 2011, the National Assembly adopted a new mining code, which fixed an objective to create a modern normative system, easy to use and attractive for private investment. It is designed to regulate geological research, exploration, protection of the environment, the use and profits related to mineral resources.<sup>28</sup>

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27 Ibid, 2013, p.19.

28 Swiss Confederation Ibid p. 12.

Major Angolan diamond-mining areas are located in the northern part of the country, in north province of Lunda. In the centre of the country, the provinces of Bié and South Lunda are also well endowed.

Total reserves are estimated at 180 million carats. The national company Endiama inaugurated in late 2013 and early 2014 has four diamond mines. Meanwhile, the Angolan authorities would aim to reopen two alluvial mines that have been closed since 2008.<sup>29</sup>

According to the Minister of Geology and Mines, Angola at the present time only exploits three kimberlites out of more than a thousand layers of kimberlite, identified in the country.

The diamond industry suffers from acute tensions between diamond companies and immigrants from the Democratic Republic of Congo, Angolan or private operators. Human rights defence organizations deplore the violence perpetrated against them.

Also, it should be noted that the Angolan hydroelectric potential is immense. The actual capacity represents less than 5% of potentiality. The Kwanza River has, alone, more than 8,000 MW production capacity. Major projects are in execution phase in this sector and affect several hydroelectric plants, including the modernization and equipment of the hydroelectric dam of Kapanda, in the province of Malanje, with a capacity of 520 Megawatts (MW), of the hydroelectric dam Cambambe 1 and 2, in north Kwanza, with a capacity of 180 MW and the one in Chicapa, in south Lunda, with 16 MW. Several new projects (3 dams, mini-hydropower, substations HV and MV, block-valve stations, etc.) are under study or in phase of realization.

29 Belgian Foreign Trade Agency study, 2013, p. 46.

### **2.3. Natural resources of Uganda**

Uganda has an area of 241,038 km.<sup>2</sup> The lakes cover 15% of the territory and half of Lake Victoria is located in Uganda. Drained by the Nile River system, the country includes Lake Kyoga and Lake George, which feed into Lake Edward, which in turn feeds the Lake Albert.

Uganda is a landlocked country in East Africa, without any frontage on the ocean. It has a population estimated at about 31 million people. The country is bounded on the east by Kenya, to the north by Sudan, on the west by the Democratic Republic of Congo and to the south by Rwanda and Tanzania.

Unlike the DRC and Angola, who hold a mining and oil sector in operation, Uganda does not have a well-known industrial or oil exploitation, even less of mining one. It does have a potential mining sector, apart from some craft activities along its land border.

Uganda has recently discovered oil in commercial quantities. The oil exploration began with Shell, which explored the Ugandan side of Lake Albert in 1938 and the Congolese portion between 1952 and 1954. Exploration was revived towards the end of 1980, but it was disrupted by political instability and economic uncertainties as well as the difficulty and the cost of extraction of oil in a landlocked country. The French company TOTAL's exploration activities began in Uganda in 2012 at the east of Lake Albert, in the northwest of the country.

Three companies hold oil blocks: English Tullow, China National Offshore Oil Corporation (Chinese, CNOOC) and the French TOTAL. In February 2012, TOTAL announced the acquisition of a third interest in four licences held by a subsidiary of Tullow Oil in Uganda. Uganda has also natural gas in the Lake Albert area, border of the DRC.

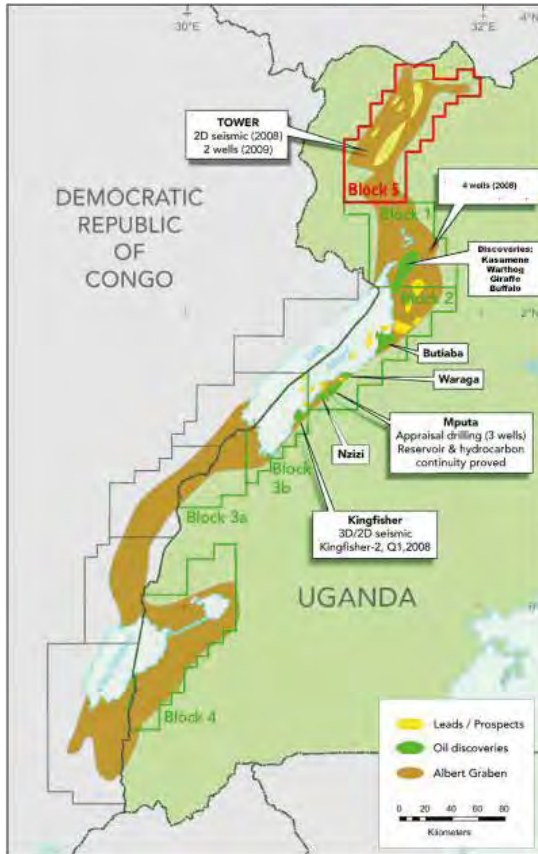
In an interview with Xinhua in November 2014, Professor Christophe Sebudandi, Burundi expert in geophysics and governance who coordinated a team of regional research on the State of play of hydrocarbons in the Albertine Rift Valley, notes that “Uganda is the most advanced country in terms of the hydrocarbon exploration in the Albertine Rift Valle. It has already explored 40 per cent of the potentially oil zone.”<sup>30</sup>

Uganda is new to oil, and it has not yet developed capabilities for efficient management of oil. Perhaps that explains the multiple negotiations into production-sharing agreements with companies, Heritage Oil and Tullow Oil that the government has entered. These negotiations lasted more than 10 years. The government has already granted five of its nine exploration blocks. TOTAL got the operation of block 1, the most promising account of estimated reserves but also the most sensitive because it is partially located in the natural park of Murchison. The Chinese company CNOOC will operate block 3, south-east of Lake Albert. Tullow maintains block 2, which is located between block 1 and block 3.

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30 [www.pole-institute.org/news/ougand](http://www.pole-institute.org/news/ougand), consulted on February 17, 2015.

Map 2: Ugandan oil blocks



Source: energy-pedia

The next steps include the definition by the Ugandan authorities of the terms of construction of the pipeline to drain the oil and refinery. The African Development Bank funded the study for the pipeline, while the Norwegians brought their support to the study on the refinery. The country plans to be self-sufficient in energy for 20 years and plans to export its surplus through a pipeline.

Ugandan oil is difficult to access, transport and treat. It will require significant investments estimated at 10 billion USD to develop its oil fields and many years in production. To date, production has not yet begun, it has been delayed by disputes between the government and the oil companies, controversies on the terms and conditions of production-sharing agreements between them, and disputes over taxation. “It is not intended that production on a commercial scale starts before 2016, and delays to start the exploitation of the deposits could still push these deadlines. “The complete production is not possible before the 2020s at least.”<sup>31</sup>

From 2011, the energy and oil sectors which both play a crucial role in the perspective of development of Uganda, remain the main sources of productive activities. With a national hydropower that is currently around 200 to 250 megawatts (MW) and a demand for electricity amounting to 440 MW at peak hours, energy problems are one of the biggest obstacles to a sustainable economic development of Uganda.<sup>32</sup>

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31 Shepherd, Ben, Oil in Uganda, International Lessons for Success, February 2013.

32 OECD, Economic perspectives in Africa 2012, p. 5.



### 3 Trans-frontier Natural resources and Conflicts between the States

This section analyzes the tensions, with potential for violent conflict, that exist between the DRC and its two neighbors, Angola and Uganda around resources along their common borders.

#### 3.1. Conflicts between Angola and the DRC

The border between the DRC and Angola is 2,524 km.<sup>33</sup> It is the longest border the DRC shares with its nine neighbors. This border is both maritime and terrestrial, and contains abundant strategic resources such as oil, diamonds and fish. There are tensions on the maritime boundary and land borders.

Map 3: Maritime border DRC-Angola



33 LUBIKU R., The international borders of the Democratic Republic of Congo: Appraisal of the Sites and Geostrategic issues, OSISA, Kinshasa 2012, p. 25.

The conflict between the two countries arise at four levels: First, the determination of maritime borders, and the sharing of the continental shelf. Second, the operation of the block 15 by Angola and joint exploitation of the area of common interest. Third, mapping of land borders and influx of Congolese in the diamond mining areas in the north of Angola. Fourth, fishing on the Atlantic coast.

### *a) Resources' conflicts along the maritime border*

The first source of tension is that the maritime borders between the DRC and Angola were not well defined by the former colonial authorities – Portugal and Belgium.

Angola and the DRC are fighting over a space in the Atlantic Ocean that contains oil. The oil production from Angola in the contentious blocks has increased since 2000 and the country would produce about 220,000 barrels per day in the block 14, 640,000 barrels per day in the block 15, located inside the ZEE, claimed by the DRC.

In 1975, Angola has undertaken an intense oil exploration, which resulted in significant production in the lower basin of Congo. The DRC had to settle for a triangle landlocked that does not respond to the prescription of the Montego Bay Convention of December 10, 1982.<sup>34</sup> The Montego Bay Convention, which relates to the law of the sea, is made up of all the rules relating to the use of maritime spaces, by the subjects of international law at the forefront, of which are the States. The law of the sea sets so legally, on the one hand, the maritime spaces (internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf, high seas,

34 BOKONDU G., Legal concerns on trans-border natural resources exploitation in DRC, thesis supported for the purpose to obtain DES rights, Kinshasa 2014

special agreements of international straits and archipelagic states), on the other hand, the rights and duties of States in these spaces, including navigation and exploitation of economic resources, as well as those of the protection of the marine environment. Following the questioning by countries in developing some of the rules laid down in the texts adopted in Geneva, the third conference on the law of the sea was convened by the United Nations. It sits from 1973 to 1982 and ended on December 10, 1982, by the signature in Montego Bay (Jamaica) of the United Nations Convention on the law of the sea (UNCLOS). Its entry into force does intervene only in November 1994, after an amendment in depth of the provisions by industrialized countries under the agreement of July 29, 1994.<sup>35</sup>

Already in 1974, Congolese parliament, inspired by the 1958 Geneva conventions, had voted the law No. 74-009 of July 10, 1974 on the delimitation of the territorial sea by fixing its outer limit to 12 nautical miles (22,224 Km) measured from the base line.<sup>36</sup> Unfortunately, this law limited itself to fixing the guidelines governing the delimitation of the maritime borders of the DRC. It is in 2009 that a new law, Act No. 9/002 concerning delimitation of the maritime spaces will be promulgated by the President of the Republic. May 11, 2009, the DRC filed a motion on the delimitation of its maritime borders to the United Nations, informing the Commission on the limits of the continental shelf that the area of the continental shelf of the Congolese coast is subject to a de facto occupation by Angola.

Angola has never appreciated this delimitation. It has accused the DRC of making unilateral decisions. Through a letter dated July 31, 2009, it rejects the Congolese unilateral delimitation of the maritime areas, including the continental shelf. It maintains, that the Republic of Angola

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35 BOKONDU G., Ibid, 104..

36 LUBIKU R., op cit, p.52.

remains strongly committed to the provisions of the Convention on the law of the sea of February 10, 1982, Article 83, paragraph 1, which advocates that the delimitation of the continental shelf between States with adjacent sides, facing each other, is carried out by agreement under international law as it is referred to in Article 38 of the Statute of the International Court of Justice of the Hague (ICJ) in order to achieve a fair and peaceful solution.<sup>37</sup>

Although the interim Gulf of Guinea Commission (IGGC) recognizes to the DRC the exclusive exploitation of an area of 68,400 km<sup>2</sup>, the DRC has not put it into exploitation. However, the provisions of **Article 77, paragraph 2 and 3 of the 1982 MONTEGO Bay Convention**, stipulates: *“the rights referred to in paragraph 1, are exclusive in the sense that if the coastal State, does not explore the continental shelf or does not exploit natural resources, no one may undertake these activities without their express consent.”* The rights of the coastal State over the continental shelf are independent of the occupation effective. The dispute for continental shelf between the two countries was brought before the United Nations in May 2009, in the form of a provisional request by the DRC government. The final request has still not been made, and in January 2011,<sup>38</sup> a team of experts of the DRC presented a new schedule extending to 2014, to complete this request. Therefore, the dispute does not seem to take the route of a quick resolution.

The Montego Bay Convention agrees to all coastal States a width of 200 nautical miles and the general understanding would like to make it for all

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37 The document filed by the Congolese government titled: “Preliminary information to the commission on the continental shelf boundaries, compliant with Article 76, paragraph 8 of the United Nations convention related to the law of the sea of February 10, 1982, said Montego Bay Convention” and another document titled “Law related to the delimitation of maritime spaces of the Democratic Republic of Congo, related to the extended project of continental shelf beyond 200 nautical miles and this, paragraph 76 of the Montego Bay Convention.” Oeildafrique.com with the authorization of the newspaper “Les Afriques”, <http://oeildafrique.com-dossier-denquete-petrole-le-contentieux-congolo-angolais>, consulted on August 31, 2015 at 17 hours.

38 ...

the neighboring States of the sea especially when their coasts are adjacent. Essential to know, equity and the relevant circumstances (geographic, historical or economic) must be met for delimiting maritime boundaries to the satisfaction of two neighboring countries. If the delimitation made by the DRC is approved by the United Nations, it will result in the abandonment by Angola of a part of the continental shelf it occupies and operates only for the benefit of the DRC. Another consequence could be to organize a joint exploitation of resources in this area.

Pursuant to the Montego Bay Convention, Angola and the DRC have already started the procedure for recognition of the extensions of the continental shelf beyond 200 nautical miles by each submitting a preliminary motion to the United Nations at the Commission on the limits of the continental shelf.

The delimitation of the maritime areas of the DRC with its neighbor, Angola should be done either by mutual agreement or subsequently by an international arbitration. In these maritime areas or in this continental shelf, there are economic interests (fish and the subsoil resources: minerals and hydrocarbons, evaluated by the American company Trinity Oil and Gas, in Houston, hundreds of billions of U.S. dollars) and security interests for each State.

### ***b) Exploitation of block 15 and the area of common interest***

Angola and the DRC signed in 2007 a memorandum of understanding on the exploration and joint exploitation of hydrocarbons in the area of common interest. But the DRC accuses Angola of exploiting oil in the block 15 which is outside of the area of common interest. In connection with the area of common interest, it does not concern the area of continental shelf disputed by the two countries. The area of common interest is 375 km

long and its width is 10 km. It is located at sea, between the CABINDA and SOYO, two Angolan provinces, separated by the Congolese province of Bas-Congo (Central Kongo).

Map 4: DRC-Angola border



When the DRC discovered that Angola explores and exploits in the block 15, it denounced it. The two countries met and the discussions led to the above-mentioned agreement.

During the presentation of the draft Law to the Congolese Senate in October 2010 for the ratification of the agreement on exploration and exploitation of hydrocarbons in a maritime area of common interest

between the two countries, Professor Lunda Bululu, Congolese Senator raised the following three fundamental questions:

Firstly, it was noted that the agreement was signed in haste. Indeed, Professor Lunda Bululu argued that the option agreed upon by the two governments to have a provisional agreement prior to the delimitation did not respect Article 83 of the Montego Bay Convention, because neighboring countries cannot use one or several agreements pending the delimitation only if in accordance with paragraph 2 of this article, they do not reach an agreement within a reasonable time. However, there has never been an outset of negotiations to determine the continental shelf, nor during the colonial period, or since independence. Furthermore, as illustrated by the articles 1 and 10 of the 2007 agreement, the growing number of areas of common interest and the lack of provisions that will put an end to the existence of the area by the delimitation of the continental shelf.<sup>39</sup> The Professor concludes this first point noting that the Congolese government did not care to know the exact location of the area of common interest, nor the size of it.

Secondly, Professor Lunda Bululu notes that the agreement suggests that the Congolese government is seeking to cover encroachments of the neighboring country on the Congolese continental shelf.<sup>40</sup>

Thirdly, he says that the government sought a blank check for the creation of other areas of common interest. He finished his opinion stating that the Congolese government wanted to conclude an international commitment which it ignores the content; it does not know the location of the future area, the extent thereof, the hydrocarbon reserves and the

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39 Opinion of Professor Lundu Bululu at the Senate, on October 1st, 2007, p. 2-3.

40 Ibid, p. 3

hydrocarbons already extracted in this area.<sup>41</sup> Despite the criticisms, the Congolese Senate approved the agreement.

The area of common interest infringes the interests of the DRC, because it is the extension of the southern boundary of the current maritime space. It deprives the DRC to have access to the high seas and its economic resources. It also reduces the maritime space of the DRC by 40 km in length to 5 km. Moreover, the limits set by the DRC in its Act of 2007, are regarded as unilateral by Angola, so without agreement from Angola pursuant to Article 283 of the Montego Bay Convention. These limits have also intersected the maritime spaces of the Congo Brazzaville and Gabon.<sup>42</sup>

In relation to the block 15, with the Kizomba project (A and B), its production is expected to reach 100,000 barrels per day. Angola relies on the Kizomba project to increase its daily production to 2 million. Block 15 reserves are estimated at 4 billion barrels divided between the giants EXXON, BP, ENI and STATOIL. This block is the core of the Angolan oil production, pumping 30% of the total production of the country. There is also the block 31, operated by BRITISH PETROLEUM.

The reasons of the conflict are to be found in the exploitation of oil offshore in the Atlantic Ocean. On the area of the coastal basin, offshore resources give rise, for several years, to disagreements with Angola, which operates intensively oil resources in this area.

41 Ibid, p. 5

42 Pilibili Joseph, Congolese oil expert, Interview, Kinshasa 2015.



Map 5: Oil field onshore and offshore of Perenco/DRC



*This map shows the approximation of oil blocks between the DRC and Angola, the approximation, which should allow close collaboration, especially in what concerns work, requiring approval from each another.*

Article 1 of the agreement provides the possibility for the signatory parties to expand this area for other surfaces along the maritime border, for the extension of the joint operation. In the same period was signed the memorandum of Cooperation in the field of Geology and Mines, which provides for the possibility of joint diamond mining in the Kwango River. These agreements and other memorandums show with clarity the attempts of revival of relations between the two countries.

Disputes between the two raised above States can actually find solutions when the political will of governments is engaged and that the political and economic interests of each are protected. Of these different agreements, the most important are the cooperation memorandum in the field of Geology and Mines and the Memorandum of cooperation for research and the production of hydrocarbons in a maritime area of common interest, both signed in 2007.

### ***c) Fishing on the Atlantic coast***

The DRC and Angola share the Atlantic coast, which is rich in fishery resources, but no arrangements or agreements exist between the two countries in this field.

From time to time, incidents occur between the Congolese fishermen and the Angolan army. For example, there were three cases of seizure or arrest of fishing vessels of the Congolese fishing company BOSA by the Angolan army, in 2013, 2014 and 2015. These three cases of litigation were all settled by negotiations between the authorities of both States. Furthermore, surveys show that the inhabitants of Nsianfumu in the DRC reported having had problems with the Angolan fishing boats that destroyed their fishing nets. It is also important to note that in most cases, the Congolese fishermen fish in the waters on the Angolan coast, which is the basis for their arrest. Often these problems are resolved through dialogue and negotiations between Congolese and Angolan.

In the case of the fishermen of Nsianfumu, Angola pays for the destroyed nets and the fry for the reproduction of fish. The conflict resolution in this case shows that there is a possibility for the DRC and Angola to resolve other disputes by negotiations. However, in the particular case of fishing, there is a need to create a framework for cooperation in this sector in order to prevent such incident from happening.

### ***d) Resource conflict along land borders***

Regarding land borders, the northwest boarder, Congolese province of the Kongo central, Angolan province of Cabinda, takes origin on the Atlantic coast from the benchmark D, which is also a Congo-Angola boundary line at 400 m from the low water mark of the Atlantic Ocean. Then it takes the south-north direction over a length of 230 km to the triple border point I, DRC-Angola-Congo/Brazzaville to peak Kiama in the Mayumbe forest.<sup>43</sup> This border is a source of tensions. Between 2006 and 2007, there have been tensions between the two States on Kahemba border. The Kahemba case started since the 1950s and was the subject of exchanges between the two former colonial authorities, Belgium and Portugal, at the level of their local administrators, however they were unable to find a definitive solution.

What problem is it? The population of the region essentially lives from food-gathering, hunting and fishing, is semi-nomadic. It moves easily from one point to another. It is in this movement that a part of the Congolese population grouped into two villages, ended up beyond the 7th parallel South, i.e. in Angolan territory. The problem remained unsolved until the respective independence in 1960 for the DRC and in 1975 for Angola.<sup>44</sup> In scientific and technical terms, the 1922-1924 map drawn by the so-called mission Colonel Weber with scale of 1/200,000 reduced to scale 1/400,000 titled "Delimitation Angola-Congo 1922-24", is eloquent on this subject. It clearly shows how this part of the joint DRC-Angola border was scientifically and technically delimited, and demarcated. But there is a problem with border posts, some of which have been destroyed.

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43 LUBIKU R., op cit p. 47

44 LUBIKU R., op cit

What needs to be done is to rebuild without delay and in accordance with internationally recognized standards, the four boundary markers 20, 21, 22 and 23 established since 1891, almost a century ago. Among these markers, two, 20 and 22 were destroyed.<sup>45</sup>

The borders between the two countries contain other imperfections that create tensions. There is the problem of the delimitation of the Kwango River. The dropping point of the Kwango River travelling up to the south has never been fixed. The second flaw comes from the first conventional delimitation, which was silent on the entire east of part of Kwango, which is situated between Kwango River and the 24th meridian east of Greenwich. To meet this requirement, a treaty was signed between the independent State of Congo and Portugal, on May 25, 1881. This Treaty was completed by an arrangement of January 14, 1914.

In 2008, experts from the DRC, Angola, Belgium and Portugal gathered in Brussels (Belgium) to examine the accusations in connection with border limits. After reviewing the file, the experts concluded that the Angolans were home in Shayimbuanda and they recommended the reconstruction of four markers to avoid other quarrels. Unfortunately, until 2014, the problem of the missing markers and those in poor condition remains unresolved.

The DRC and Angola each have significant deposits of diamond, in provinces along the common border such as Bandundu and Occidental Kasai for the DRC, and the province of north and south Lunda for Angola.

Map 6: Land border DRC - ANGOLA



During the years of war in Angola, in the 80s and 90s, an intense artisanal activity in diamond took place in the province of Lunda Norte, in which thousands of Congolese participated in this region controlled by UNITA.

The two countries do not have in reality a dispute over the control of diamonds that are a common resource along the common border. The conflict comes from a massive presence of illegal Congolese in Angolan diamond-mining areas. These Congolese are often expelled from Angola, in a manner that violates human rights. Most often the Congolese authorities reply in similar manner by expelling Angolans in an irregular situation in the DRC.

There is a memorandum cooperation between the two countries in the mining sector, signed on July 30, 2007. In the preamble of this Memorandum, the two countries note that they share a long common border and have similar geological conditions especially at the level of the border corridor, which contains diamond deposits. They propose the need to encourage cooperation leading to the establishment of partnerships between the public and private institutions on the one hand, and among enterprises related to geological and mining activities, on the other hand, in accordance with the legislation in force in the respective countries.

Article 1 of the Memorandum stipulates: “this memorandum of Cooperation Agreement has as its main objective to promote and revitalize cooperation in the mining sector, including the strengthening of cooperation in the diamond sector, and other mining products, geology and the protection of the environment, of the value added to the mineral products as well as in the area of human and institutional capacity-building, and mining companies.”

It appears from the analysis of this article that the diamond sector is the main written sector of cooperation between Angola and the DRC in the mining sector. The parties intend to strengthen their cooperation in this sector by highlighting their long common border.

Item (A) of Article 2 of this Memorandum enumerates the list of actions on cooperation or the scope in the field of diamond as follows:

- Realization of joint actions defending the common interests concerning the Kimberley Process and the Association of African Countries Producers of Diamond (ADPA);
- Harmonization of fiscal legislation in trade, strengthening of internal control mechanisms of each country and fight against the illicit trade of diamonds;

- Mutual technical assistance in the development of technical and economic studies and evaluation of common investment projects;
- Organization of technical visits in mining enterprises and reciprocal exchanges of information;
- Exchange of geological data between the two countries on the border corridor, which contains significant diamond resources.
- Exchange of information on regulation of diamond cutting facilities;
- Carrying out other actions of common interest whenever circumstances so require.

The analysis of the various points shows that the two parties had only intentions without any concrete plan for action to exploit diamond deposit along their common border.

### **3.2. Tensions between the DRC and Uganda**

Tensions between the DRC and Uganda lie around the natural resources of Lake Albert and Lake Edward. Conflicts between the DRC and Uganda are linked to the question of the determination of land and maritime borders on the sharing of trans-border natural resources as well as the smuggling of Congolese minerals, particularly gold, to Uganda. Despite the diplomatic and military tensions, the two countries have dense trade relations along the common border.

The international borderline of the DRC and Uganda goes through Lake Albert, which is a natural border. Lake Albert has a length of 160 km and about 32 km in width. It is the 7th largest lake in Africa. The lake is shared by both countries (Uganda 54% and DRC 46%).<sup>46</sup> It contains very

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46 Johannes Herderschee, Daniel Mukoko Samba and Moïse TshimengaTshibangu, *Resilience of an African Giant, Volume II : Sector Studies*, Médiaspaul, Kinshasa 2012, p. 14.

important mineral aquifers and oil resources. The DRC and Uganda share as well oil, water and fish from Lake Edward (71% DRC and 29% Uganda).<sup>47</sup> These resources are a source of tension between the two countries.

Map 7: DRC-Uganda border



*a) Conflicts related to land and lake borders*

The joint DRC-Uganda international border is 817 km long. It is composed of several sections of land and river borders. The land borders are of two kinds, namely, the northern land border, long of 230 Km and east land borders whose land border is the source of Lamyra, source of Lubila, and the land border source of Ishasha, the Sabino mountain summit.

47 Johannes Herderschee, Daniel Mukoko Samba and Moïse TshimengaTshibangu, *Ibid*, p. 13.



There are multiple sources of conflict on different borders between the two countries. First of all, on the mainland,<sup>48</sup> to the northwest of the Mahagi territory in the town of Rodo, grouping Pono, in community War Palara, Ugandans have changed the border. There are Ugandan populations living there since 2004. They have built residential houses. Ugandans have destroyed the boundary demarcations. They have instead drawn a road that they consider as a border. They have also built a market in Congolese territory, which they consider Ugandan territory.<sup>49</sup>

Secondly, the Ugandan army besieged the Congolese town of Assina in 2013. Ugandans justified this Act in these terms:

“Following the displacement of the customs barrier of Assina of 400 meters by the Congolese authorities, bringing it closer to the Ugandan border to combat fraud, mainly for trans-border trade of gold, the Ugandan authorities had given an ultimatum to the Congolese authorities to relocate this border to its initial position”.<sup>50</sup>

Thirdly, Lakes Albert and Edward are the main borders separating the two countries and which are often the subject of dispute. The length of the lake border on Lake Albert is 142 km, and is constituted by the median line that divides equally the waters of Lake Albert. This border has moved over time because of the important mass of sediment carried by the Semliki River from its source to Lake Albert.

48 This quote is issued from interviews and document reviews that we had with the coordinator of the topography team in charge of monitoring the violations around the border Uganda-Congo in the Mahagi territory in October 2013.

49 SARW researcher, Interview with local population, Ituri 2014.

50 <http://www.digitalcongo.net/article/94183> consulted on October 10, 2013

The Semliki shifted east to west on the Congolese side by approximately 6 km. This movement has naturally led to the shift of the original boundary between the DRC and Uganda on the southern shore of Lake Albert. In the meantime, the accumulation of this mass of sediments in Lake Albert has caused the birth of Rukwanzi peninsula, which, at the time of the sharing of the waters of the lake between the two colonial authorities did not exist.

Fourthly, the Ugandan security services have twice moved the bed of the Lubiriha River, which is a natural border between the DRC and Uganda in the area, to increase their border of at least 150 meters in width. According to expert geologists, this is a slow conquest by Uganda to win more deposits in oil because this area is an integral part of the block IV of the Albertine Graben.<sup>51</sup>

### ***b) Oil related conflict and control of the Rukwanzi Island***

The other bone of contention is oil in Lake Albert. Probable reserves of Lake Albert are estimated between 5 and 10 billion barrels.<sup>52</sup> Uganda could hold data on the potential of the oilfield on the Rukwanzi Island. The Canadian Heritage Oil group is interested in this field and would have obtained the exploration title on the Ugandan side.

51 Discussion with Congolese Geologist, Goma, 2013

52 Mosau Mbombo, Guélord, Congolese law on hydrocarbons of international lakes, Volume II, European Universities Editions, Germany 2012, p. 121.

The DRC does not agree with Uganda's position that Rukwanzi Island belongs to Uganda, and similarly, Uganda reject Congolese position that this island belongs to the DRC. There had already been clashes between the armies of the two countries on access to the island.

This is the case of the events of August 4, 2007 when Congolese gunmen attacked a barge carrying a delegation from the Canadian Heritage Oil Company to the island.<sup>53</sup> The attack cost the life of a British geologist. The mission of Heritage Oil in Rukwanzi was a seismic study. The Ugandan government accused Congolese soldiers of being the perpetrators of this attack. The Ugandan army killed a soldier and wounded another in reprisals.<sup>54</sup> Ugandan Defense Minister Crispus Kiyonga indicated that the Ugandan army was considering redeployment in the DRC to secure its western border. Two weeks later, there were other clashes between the Ugandan and Congolese armies, which caused the death of 3 people.<sup>55</sup> Lambert Mende, Congolese Minister of Hydrocarbons maintained that the escalation of violence was linked to the oil.<sup>56</sup>

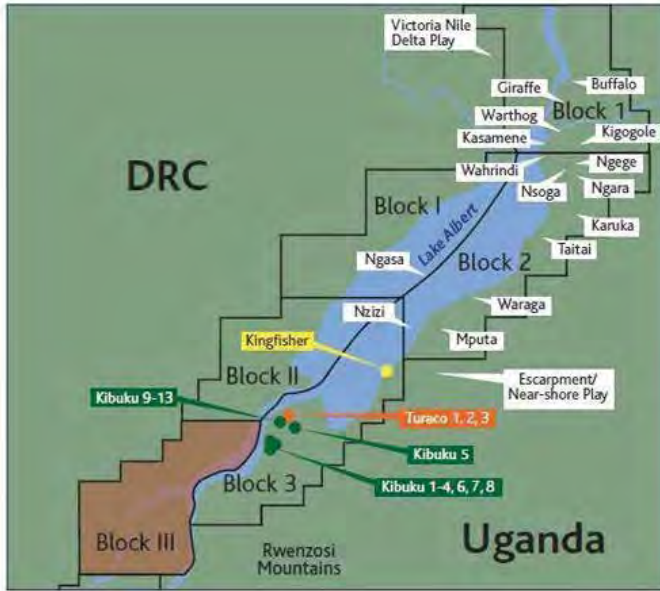
53 Our translation from English to French of the original extract texts available at <http://nebuchadnezzarwoollyd.blogspot.com/2007/08/will-rukwanzi-lead-to-oil-war-between.html> article « Will Rukwanzi lead to oil war between Congo and Uganda, visité le 20.09.2013

54 Ibid

55 Ibid d

56 Article from the Economist, posted on August 23, 2007, available at <http://www.economist.com/node/9687573>.

Map 8: Allocation of oil blocks DRC-Uganda



*The map above shows how the oil blocks are spread on both sides of the border.*

Rukwanzi Island is only about 3 km<sup>2</sup> and has an estimated population of 5,000 inhabitants, fishermen and the majority of Congolese origin. The interest aroused by this island would be due to important and rich deposits of oil.

For the DRC, due to the majority of occupants of the peninsula being of Congolese origin, Rukwanzi could only be Congolese. This thesis is supported by the community Chief of south Bahema, who states that this island has always been an integral part of its jurisdiction since the colonial demarcation of 1885.<sup>57</sup>

57 LUBIKU R., op cit p. 63

During a workshop held in Kampala by Africa Institute for Energy Governance (AFIEGO) in September 2008, Major Paddy Ankunda, Ugandan army spokesman, stated that Rukwanzi Island was 3 km in Ugandan territory.<sup>58</sup> However, the coordinator of the Congolese topographers in charge of the monitoring violations of the border contradicts this Ugandan position. According to him, following a mission carried in Lake Albert in 2009 in an underwater car of the Indian contingent of The United Nations Organization Stabilization Mission in the DRC (MONUSCO), he was able to realize that the steel bar in reinforced concrete, being the demarcation No. 05 which is the border between the DRC and Uganda is behind the Rukwanzi Island to Ugandan territory. According to him, the island of Rukwanzi is entirely located in Congolese territory.

*c) Conflict related to gold exploitation and trade.*

The long land border between the two countries is porous, not only because there is a lack of control of the area, but also and especially because of the presence of transnational people, like the Alur and Kakwa. As a consequence, fraudulent trans-border business operations are intense along the DRC and Uganda border.

There are three illegal acts in almost all cases of gold trade in the DRC:

- Individuals and Congolese companies that operate with no appropriate license or to trade or export gold;
- Individuals and businesses that do not properly report their gold exports;
- Government officials responsible for border control, and internal security services, including the Directorate General of customs

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58 Report of the Ugandan newspaper The Monitor available at <http://www.kakwa.org/history.pdf> consulted on September 9, 2013.

and Excise (DGDA), the Congolese Office of Control (OCC) and the Immigration General Directorate (DGM), turn a blind eye to smugglers in exchange for heavy bribes.

Border agents are the actors that promote the illegal trade of gold because they provide little control effort.

Those who doubt the guilt of agents working at the border and security officers must ask themselves why there has not been important cases of gold smuggling discovered. The problem is that large quantities of gold go through regular trans-border smuggling or using connections to well-known airlines. The research confirms instances where gold was smuggled through the borders of Aru/Arua and Mahagi in the eastern province, in Kasese in North Kivu, and as well as Goma-Giseny, Bukavu-Cyangugu and Uvira-Bujumbura; in addition to direct flights from Bunia to Entebbe.<sup>59</sup> The Congolese State loses revenues due to lack of control of its borders. An executive working for a customs agency anonymously told the SARW team the following: “Gold in Ituri which is officially released represents less than 10% of the quantity actually exported. Uganda is the crossing point of Congolese gold which arrives in pockets, bags, hands and other small parcels...”<sup>60</sup>

On June 23, 1999, the DRC filed at the registry of ICJ a claim instituting proceedings against the Republic of Uganda concerning a dispute relating to “acts of armed aggression perpetrated by Uganda on the territory of the DRC in blatant violation of the Charter of the United Nations and

59 SARW, Congolese gold network, the people, the companies and the countries making profits from illegal trade of Congolese gold, Johannesburg, May 2014, p. 36.

60 Interview with a customs agency executive, anonymously, in Bunia on August 2013.

the Charter of the Organization of African Unity”.<sup>61</sup> The DRC had argued before the Court that, “following the invasion of its territory by Uganda in August 1998, Ugandan troops illegally occupying Congolese soil, acting with Congolese rebel groups supported by Uganda, systematically engaged in looting and exploitation of its goods and its natural resources. According to the DRC, after the looting of its natural resources, the Ugandan soldiers and the rebel groups that they supported went to another phase of looting of the country’s wealth, by directly exploiting its natural resources for their own benefit. The DRC had accused the Ugandan army of having completely taken control of all of the economic and commercial system in occupied areas, almost all of the market of consumer goods was in the hands Ugandan businessmen. The DRC also argued that the Uganda People’s Defence Force (UPDF) engaged in hunting and looting of protected species.”<sup>62</sup>

In its judgment of December 19, 2005, the ICJ stated *in particular that*: “the Republic of Uganda, by engaging in military activities against the DRC on its territory, by occupying Ituri and by actively supporting irregular forces having operated on Congolese territory militarily, logistically, economically and financially,” “violated the principle of non-use of force in international relations and the principle of non-intervention”;<sup>63</sup> Continuing its motivation, the ICJ noted that “by acts of looting and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the DRC, and its breach of its obligations, as an occupying power in Ituri district, to prevent acts of looting and exploitation of Congolese natural resources the Republic of Uganda has violated the obligations devolving upon, by virtue of international law, towards the Democratic Republic of Congo.”<sup>64</sup>

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61 Judgment of the ICJ, Case of armed activities on the DRC territory, The Hague, December 2005, p. 10.

62 Ibid

63 Op cit, p 101.

64 Op cit, p 102.

Unanimously, the ICJ concluded that the Republic of Uganda has an obligation towards the DRC to redress the harm and had also unanimously decided that, in the event that the Parties could not reach an agreement on this subject, the question of redressing due to the DRC shall be settled by the Court, and reserves for this purpose the subsequent procedure.<sup>65</sup>

Finally, the Court had also declared that the DRC violated the obligations, under the Vienna convention on diplomatic relations of 1961, against the Republic of Uganda, in connection with the disappearance of certain property of the Chancery and the DRC was required to repair this Ugandan prejudice.

In May 2010, a government delegation from the DRC made a trip to Kampala to obtain redress of the consequences of the invasion from the east by the Ugandan army.<sup>66</sup> According to estimates, the DRC claimed to Uganda US\$10 billion for damages.<sup>67</sup>

This case inspires two main lessons:

First, despite the military weakness of the DRC against Uganda, public international law is a remedy in restoring the rights of the weaker party.

Secondly, considering that the proceedings before the ICJ are long enough and that the application is similarly long, the DRC must consolidate the two elements of power –the construction of a

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65 Ibid

66 <http://www.onewovision.com/actu-rdc/Contentieux-de-guerre-la-RDC-peine-A-recouvrer-10-milliards-usd-auprA-s-de-l-Ouganda,i-20130627-1648-228>

67 <http://reliefweb.int/report/democratic-republic-congo/rdc-ouganda-la-facture-de-la-guerre-en-discussion-%C3%A0-kampala>



deterrent military force and a strong, active and particularly unifying diplomacy.

Uganda had in fact used its occupation of the DRC Ituri district from 1999 to 2003 to exploit the Congolese gold that helped stabilize its macro-economic balance and was a source of enrichment for the political and military elite involved in the armed conflict in the DRC. To get there, Uganda introduced a total abstraction of traceability and due diligence. “The government of Uganda does not require certificates of origin. It merely collects a duty of 0.5% on gold exports and a fee of \$ 1,200 per year for a license. In theory, the metal imported from abroad should be declared when entering the country. But, not in Uganda, which makes it so easy for Congo gold to enter Uganda illicitly with nobody making an effort to go through customs.”<sup>68</sup> Gold from Ituri was exported illegally and legally via the following DRC towns and borders: Ariwara, JJugu, Mahagi et Butembo.

Despite the withdrawal of its troops from Ituri in 2003, Uganda continues to be the hub for the illicit export of the big quantity of gold produced in the Ituri district. The group of experts from the United Nations have in their 2013 report stated that 98% of Congolese gold was illegally exported via neighboring countries with Uganda being the lead transit country. Experts estimate the gold exported clandestinely from Congo in 2013 to amounts ranging between 383 and 409 million USD.<sup>69</sup>

Recent research shows that the illicit gold trade from Ituri to Uganda has not changed and is always part of the business routine in Ituri. For

68 See <http://jacqver.pagesperso-orange.fr/texte/trafficclorentrecongoetouganda.htm> consulted on septembre 19, 2013.

69 <http://www.mediacongo.net/show.asp?doc=50695E.U9UP-FlsmMc> consulted on February 2, 2014

example, in the city of Mahagi, a former officer of the Directorate General of Customs and Excise office told us that “most private cars travelling to Uganda through the border between Ituri and Uganda carry undeclared gold. The Congolese authorities are aware but cannot act because of corruption and influence peddling.” Another added that “Uganda has in place a policy that facilitates the illegal entry of Congolese natural resources within its territory. Even if the Congolese government had to deploy efforts to limit the smuggling, those efforts are doomed to failure because Uganda does not play fair.”<sup>70</sup> A Congolese woman who is a shopkeeper in Butembo in North Kivu gives the context of illicit export of gold to Uganda:

*“what is important for us is to get gold from various quarries of Ituri. With the support of our foreign dealers, we pre-finance artisanal diggers who are obliged to sell their production to us. The gold goes through a rudimentary purification with sulfuric acid in Butembo. Some sell their gold to the contoires in Butembo; others take the gold to Uganda. I pay no taxes to export my gold to Uganda. We run much risks of seizure when we are still on Congolese soil. Once on Ugandan territory, we are reassured because the Ugandan government makes no difficulty for us. Me, I sell my gold to counters kept by Indo-Pakistanis in the city of Kampala. They don’t ask any official document from the Congolese authorities while they know well that I am of Congolese nationality.”<sup>71</sup>*

This situation clearly demonstrates:

- The disturbing magnitude of losses recorded by the Congolese government in terms of fees and taxes;
- The negative contribution in general regarding the operating and

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70 Interview with a former agent from the Directorate General of Customs and Excise in Mahagi in August 2013.

71 Interview with a gold shopkeeper woman in Butembo on August 2013.

marketing of natural resources and gold in particular;

- The need for the DRC government to recover some authority over all its territory and control of trans-border smuggling.

#### *d) Ngurdoto agreement*

To resolve the various conflicts identified, a peace agreement was signed between the DRC and Uganda on September 8, 2007 in Ngurdoto, Tanzania, by the two heads of State in an effort to strengthen stability, security and prosperity between the two countries.

In accordance with Article 3 of the Ngurdoto agreement, the parties have agreed to work together to reconstruct, if necessary, the demarcation line of the joint international border such as defined in the Convention of February 3, 1915 and its annexes, between the Kingdom of Belgium and the United Kingdom in eastern Africa respecting the inviolability of borders according to the Charter of the OAU and the constitutive Act of the African Union. To perform this task, the parties agreed to put in place, within a period of one month from the date of the signing of the agreement, a joint team of experts responsible for finding modalities to accomplish this task. In order of priorities, the joint team shall deal with the Rukwanzi issue and locations in Uriwo, Anzida/Panzuru, Agiero, Pagira, Pamithu for the territory of Mahagi and the border gate for the Aru territory.

The parties agreed that the Rukwanzi Island and the localities of Mahagi, Uriwo, Anzida/Panzuru, Agiero, Pagira, Pamithu, and Vura border gate must be demilitarized immediately and simultaneously. Unfortunately, according to official sources on the Congolese side, the joint committee envisaged in the Ngurdoto agreement has not yet produced conclusion on the belonging of the peninsula of Rukwanzi. Among the clauses of this agreement, it is expected the installation of a joint Congolese-Ugandan administration on the peninsula of Rukwanzi, and the implementation of a joint technical

commission of experts responsible for finding appropriate solutions to all Congolese-Ugandan border disputes of any kind whatsoever.<sup>72</sup> The joint team of experts suggested by the Agreement in charge of the implementation is at work. It is looking for finances to cover its activities.

There exists also between the two countries another cooperation Agreement for the hydrocarbon exploration and exploitation of the common fields signed June 23, 1990 as well as its addendum of January 25, 2008.

The Ngurdoto agreement has not yet started to bear fruit. The two countries are reluctant to implement this 2007 agreement. For the DRC the involvement of Uganda in support of the rebels is one of the reasons for the suspension of dialogue.

This lack of confidence between the two countries threatens peace and security in the region.

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72 Lubiku R, Op cit, p 63

## 4 Conclusion and Recommendations

The DRC has held a number of discussions with its two neighbors—Angola and Uganda—with key agreements signed at the level of governments. But all these agreements have not produced peace and stability between states for lack of effective implementation.

In the case of Angola, if certain details on joint exploitation of oil from the common interest area have already been put on the negotiating table, the joint operation of diamond is still at the level of the exchange of data between the two states. In the case of Uganda, the judicial solution including that of the International Court of Justice in the case of aggression and acts of looting of the natural resources of the DRC by Uganda could be also considered as one of the solutions to conflicts between States, but the execution of judicial decisions is not automatic and depends in large part on the willingness of the same States, unless there is international pressure.

The other aspect of the problem is to find adequate and acceptable mechanisms for the collegial management of these border resources. The importance of this project beyond the management of trans-boundary resources is also to reconcile Congolese people and those of neighboring countries. Hence, the needs to create opportunities of reconciliation that will allow States and their people to discuss and find solutions to the problems and conflicts which oppose them. It is here that the ICGLR must play the primary role of approximation of the States in order to amicably resolve the various conflicts. The ICGLR should encourage the States to respect agreements and promote democratic values.

The consecutive diplomatic and military crisis linked to trans-border resources should be resolved by official setting official bilateral border agreements. The various problems raised above, *inter alia*, the issue of border,

the property of trans-border resources, ownership of Rukwanzi Island, compensation of the DRC by Uganda and the distribution of revenues from the exploitation of oil in Congolese territory by Angola shall be resolved by the will of States to strengthen the bilateral cooperation, which can be pooled and create partnerships to jointly develop all trans-border resources they share and thus to harmonize their respective political and economic.

Foregoing, following recommendations have been made to the States:

- Examine ways and means to fulfil in good faith the agreements signed between States, including the 2007 Ngurdoto agreement between the DRC and Uganda, and the Luanda agreements of 2007 between the DRC and Angola, especially in their exploration and joint exploitation of trans-border resources. The joint operation will be a factor of appeasement of the tension generated by the desire to control oil and mineral rich areas by States in the Great Lakes region. It is thus important to assess individual agreements.
- Launch a program of demarcation of borders with the support of the African Union border program before any new award of oil concessions in the disputed areas. All the international legal instruments to which the States of the Great Lakes are part of guarantee the principles of the inviolability of borders, and the duty to respect the sovereignty of neighboring States. For the purposes of an embodiment of these principles, a common duty weighs on the DRC, Angola and Uganda to settle unambiguously their borders.
- To deal with issues of trans-border natural resources, seamlessly to the people and civil society.
- Work urgently on a plan for the harmonization of mining policies between Angola and the DRC in the context of the SADC.

- The harmonization of regulations on fisheries between the DRC and its two neighbors is necessary to avoid conflicts in this area.
- It is important to harmonize the rules on trans-border trade to meet mining fraud, particularly the case of the illegal export of gold from the DRC to Uganda, and artisanal mining of diamonds in Angola by the Congolese.
- To have the parliaments always involved in trans-border negotiations relating to the management of natural resources and they must ensure the implementation of ratified agreements. The use of parliamentary diplomacy in the resolution of conflicts between States is necessary. Thus, the elected representatives of the people must meet regularly to address issues affecting their States, especially those relating to natural resources along the borders in order to formulate constructive recommendations to their respective governments.
- The three governments must respect the human rights and to prevent repression outside international standards.





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