



# **IN THE SHADOW OF INDUSTRIES IN THE REPUBLIC OF CONGO**

ENVIRONMENT, AND ECONOMIC AND SOCIAL RIGHTS THREATENED  
IN VILLAGES NEAR OIL AND RECYCLING COMPANIES

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**Cover photo:** Metssa Congo, a factory recycling lead and aluminum, operates day and night in proximity of a school in the Vindoulou neighbourhood.

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# GLOSSARY

<b>ACHPR</b>	<b>AFRICAN CHARTER ON HUMAN AND PEOPLE' S RIGHTS</b>
<b>AJKV</b>	Association jeunesse pour la vie du Kouilou (Kouilou Community Youth Association)
<b>CJP</b>	Commission diocésaine pour la justice et la paix (Diocesan Commission for Justice and Peace)
<b>COST OIL</b>	Part of the entitlement of the operator of an oil field to receive revenue as compensation for the costs of production incurred, as specified in a production-sharing contract.
<b>DEPARTMENT</b>	The department is the administrative unit that governs part of the country. It is a group of districts and, in some cases, communes, from a single administrative and geographical unit.
<b>EIA</b>	Environmental Impact Assessment
<b>GDP</b>	Gross Domestic Product
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IHC</b>	Integrated Health Centre
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>IMF</b>	International Monetary Fund
<b>NGOS</b>	Non-governmental organizations
<b>PRODUCTION-SHARING CONTRACT</b>	Type of contract signed between a government and a resource extraction company (or group of companies). The contract specifies how much of the resource extracted from the country each will receive.
<b>RPDH</b>	Rencontre pour la paix et les droits de l'homme (Together for Peace and Human Rights)
<b>TERMINAL</b>	Oil terminals are industrial installations used for the storage of oil and petrochemical products, and for the transfer of these products to the final consumer or to intermediate storage sites.
<b>WHO</b>	World Health Organization

# 1. EXECUTIVE SUMMARY

**The children are breathing these fumes; it stings their eyes and throats. Sometimes we have to take them out of classes to allow them to breathe better and give them water to drink.**

**A teacher working in a school near the Metssa Congo factory, Vindoulou, 7 December 2022.**

Amnesty International carried out two research missions to the Republic of Congo (hereafter Congo) in July and December 2022, to investigate the extent to which environmental, economic, and social rights are affected in villages located near industrial activity in the Pointe-Noire and Kouilou areas, where most of the country's industries have been concentrated since independence. Indeed, communities living in what is considered as an economic jewel for the country have long complained about the impact of industrial activity on their right to a healthy environment and other human rights, affecting their livelihoods, as well as their dire living conditions, especially their lack of access to drinking water and health care.

Amnesty International focused its research on villages near facilities related to the oil industry and the recycling of non-ferrous and plastic materials. Oil is the main source of revenue for Congo, constituting 68% of the country's exports. The recycling industry has experienced sustained growth for several years in Africa, given the tightening of regulations in countries such as India and China.

This Amnesty International report sheds light on cases of oil spills and smoke emission linked to the activities of two oil companies and one recycling company, which reportedly affect the human rights of local communities. It highlights the failures of the Congolese authorities and businesses to meet some of their international and national obligations and responsibilities regarding environmental protection and other human rights.

## **Case of oil spills in the Loubi lagoon**

The country's only oil terminal is located in the fishing village of Djeno. TEPC, a subsidiary of the French oil company Total-Energies, was the main owner of the terminal from 1972 to December 2022; it is now owned by the state and operated by a consortium of companies including TEPC. Residents of Djeno have long complained about the alleged impact of oil on their economic, social, and environmental rights. Indeed, since the company began operating there, several spills of crude oil have occurred in the Loubi lagoon, near the terminal and the village.

According to residents, the spills have caused a shortage of fish in the lagoon. They also report suffering from health problems, particularly diarrhoea, when they eat fish from the lagoon. Yet they were met with silence and a lack of transparency concerning the nature and consequence of oil spills and the clean-up measures taken by the company to repair them. This led a local NGO to file a legal complaint in 2016. In 2019, the court ruled that the company was responsible for pollution and ordered it to pay damages and to resume the clean-up of the Loubi lagoon. Cleaning operations were done in 2020 but the people of Djeno, including some who participated in the clean-up, considered they were not sufficient, as traces of crude oil were still present. The company considers it has taken all the necessary steps to clean up the lagoon and

received an environmental compliance certificate from the authorities in May 2023. It put forward two tests done in 2021 concluding that the quality of the water is good overall. TEPC also considers it has set proper mechanisms to communicate with residents of Djeno about the activity of the company.

As it is the state's duty to ensure that companies operating within its territory uphold human rights standards, Amnesty International considers that the authorities failed, until the court case, to ensure that oil spills did not harm the human rights of local communities, and to ensure the company took adequate and effective reparation and mitigating measures. Regarding the claims by local communities that the 2020 cleaning operations were not satisfactory, the authorities should have made any report on the cleaning operations and the environmental and social audit done by TEPC public and ensured the completion of more regular scientific tests to assess the quality of the water, made them public, and, depending on the results, requested the appropriate remediation and reparation measures.

As an operator, and the former main owner of the Djeno oil terminal, TEPC was responsible for incidents of spills of oil in the Loubi lagoon. Regarding its due diligence responsibility, it should have proactively communicated publicly and to the communities about the nature and cause of each spill of oil, the potential impact on people's health and livelihoods, and the remedial and mitigating measures taken. The company should have abided by its human rights due diligence by initiating an independent throughout investigation on the potential environmental, economic and health rights impact of these incidents, then making its report public and, depending on its findings, taking appropriate reparation measures.

#### **Case of oil spills on soil and water sources of Banga Kayo village**

The company 'Wing Wah exploration & production pétrolière', a subsidiary of the Chinese group Southernpec, obtained the operating license in 2008 for the extraction of liquid or gaseous hydrocarbon near the village of Banga Kayo. Banga Kayo is approximately 30km from the city of Pointe-Noire in the Tchamba-Nzassi district, on the border with Angola. The residents accused the company of polluting the Loémé river and regularly spilling crude oil on the village's roads. Between 2020 and 2022, the operations of this company were twice suspended by the Ministry of Environment for breaches of environmental law, but each time, these measures were lifted without public explanation on potential measures taken by the company to repair environmental damages and mitigate the risk of further violations of the right to a healthy environment and other human rights, in breach of the right of information of the residents.

On 21 December 2022, the pipeline linking the Banga Kayo field to the Djeno oil terminal leaked. No accurate information has been released on the reasons for the leak or on the exact quantity of crude oil that spilled into the Loémé river. The company put in place facilities to dam and collect the oil. The Minister of Environment did demand an environmental audit, care for the local population and the rehabilitation of the site, but at the time of the publication of this report, no comprehensive and transparent information has been provided on the follow-up by the state on these requirements and the implementation of such measures by the company. This report shows that Wing Wah has on many occasions breached Congolese environmental law. It should also have done due diligence, in line with the UN Guiding Principles on Business and Human Rights, by identifying, assessing and communicating any potential adverse human rights impact of its activities. The company should have also reported formally on how they would address such impact.

#### **Case of factory smoke from aluminium and lead furnaces in Vindoulou**

Finally, in Vindoulou, a neighbourhood on the outskirts of the economic capital Pointe Noire, a group of residents has been complaining for years about the smoke coming out of the Metssa Congo factory, which they say affects their health. Metssa Congo, a subsidiary of the Indian group Metssa, operates a non-ferrous metal recycling plant, notably recycling lead-acid batteries to produce lead bars for export to several countries, including the United States. The factory is in the middle of a residential area, 50m from a school attended by 500 children according to the people in charge. The factory was briefly closed in 2020 following a decision of the Ministry of Environment requiring the company to comply with environmental standards. But the company was then allowed to resume its activities three months later, without public information on any measures taken by the company to conform with environmental regulations. In March 2023, following an initiative undertaken by a collective of residents, blood samples were taken from 18 people living near the factory, including nine children. The samples were collected by a laboratory in Pointe-Noire and then analysed by a laboratory in France. According to the results, all the people had levels of lead in their blood that were well above the norms tolerated by the body, according to many countries' health standards. The residents' collective then took the case to the court.

This research found that the authorities failed to do their duty by letting Metssa Congo operate in Vindoulou from 2013 (except for the three-month suspension in 2020), even while they knew that the company was not in compliance with Congolese law. Metssa Congo also failed to comply with Congolese law in the opening of operations. And, given the warnings from the authorities and the complaints by the residents of Vindoulou,

the company should have carried out several audits since 2013 in consultation with the residents to investigate the potential impact of its activities on the environment and local health, published their reports and, depending on their findings, considered repairing the damage, compensating victims and taking mitigating measures.

### **Lack of access to drinking water and healthcare in villages near industries**

In addition to concerns about the impact of companies' activities on environmental and other human rights, people from villages near industries put forward the responsibility of the state on issues around access to drinking water and health facilities.

Amnesty International focused its research into this issue on the villages of Bondi, Tchicanou and Kouakouala. Oil has been extracted from this area by successive companies for the last 20 years. Our report highlights the failures by the authorities to respect, protect, promote and fulfil the right to water and the right to health, in accordance with the International Covenant on Social, Economic and Cultural Rights and the African Charter on Human and Peoples' Rights, both ratified by Congo.

In these villages, Amnesty International found that access to drinking water remains difficult for residents, despite the investments announced by the state and successive companies.

The villages all benefited from the state's "Water for All" programme with the construction of boreholes powered by solar panels. However, at the time of Amnesty International's visit to the villages, the initiative's facilities were no longer functional. According to the residents, no maintenance service had been provided and the solar panels used to power the pump were missing. Faced with state inaction, residents rely on social projects run by the neighbouring company to provide them with drinking water. As part of the Hinda Integrated Project, ENI Congo has been involved in supplying water to these villages. In Tchicanou and Bondi, the company installed two deep boreholes of several dozen metres in 2017 for Tchicanou and 2018 for Bondi. But this system too has had several setbacks, with pumps breaking down regularly. To compensate for the failure and non-replacement of the pump, the company provided a generator to power a pump and supply the community with drinking water. At the time of Amnesty International's visit, the generator was being dropped off every two days in a village in the area, so that the pump could build up supplies of water. The company also organized water distribution by tanker.

Amnesty International also identified barriers to the residents' right to health, due to state inaction. The M'Bokou Integrated Health Centre covers the villages of Bondi and Tchicanou and several others in the surrounding area: one centre for over 7,000 people. The centre was rehabilitated by ENI Congo as part of the Hinda Integrated Project. Despite the company's investment, difficulties remain. The first is access: the rocky road is difficult to travel on, especially during the rainy season when it is in particularly poor condition. In addition, at the time of Amnesty International's visit, there were no doctors present at the M'Bokou health centre. There was one midwife, three community workers and four community liaison officers. There was no laboratory technician assigned to the health centre, and the laboratory, which had previously been renovated by the company, was unusable. Residents told Amnesty International that they have to travel to Pointe-Noire, 40km from the village, to see doctors when they are seriously ill, and pay for medicines that are not available locally, because of the lack of staff and medicines at the health centre.

The state needs to reinvest in projects to secure the rights of residents of this area to access to drinking water and healthcare, and not outsource its obligations to the companies that extract the oil. As stated in international human rights instruments, the state must use all resources available to protect economic and social rights.

### **Recommendations**

This report shows that in the shadow of industries in Congo that generate wealth for the country, villagers suffer environmental, economic and social rights violations. Among many recommendations to address this situation, Amnesty International calls on the state to ensure businesses act responsibly and comply with their environmental and human rights obligations; to carry out regular environmental impact assessments, in accordance with the 1991 law on the protection of the environment; to make public all environmental analysis carried out as part of public control missions by the services of the Departmental Directorate of the Environment and the Departmental Directorate of Hydrocarbons; and to ensure all companies fully repair environmental damage linked to their activities and compensate victims in line with the Congolese law.

More specifically regarding the case studies in this report, Amnesty International calls on the authorities to ensure more regular tests of the quality of the water in the Loubi lagoon to assess the quality of the water and to make them public, and to carry out a thorough audit on the potential human rights impact of all spills in the lagoon, make the results of this audit public, and if needed ensure proper remediation measures are taken in favour of local communities; ensure an environmental audit on the leak of the pipeline linking the



Banga Kayo field (exploited by Wing Wah) to the Djeno oil terminal, which appeared in December 2022, is done, make that public, and ensure proper repair of the damage; considering the ongoing concern expressed by the residents of the potential impact of the activities of Metssa Congo on their environment and health, urgently investigate this situation, make its report public and consider, depending on its conclusion, reparation measures for residents and the potential relocation of the factory in accordance with Congolese law.

Amnesty International also calls on TEPC, Metssa Congo and Wing Wah to respect Congolese environmental law and to follow the UN Guiding Principles on Business and Human Rights, including by implementing a proactive human rights due diligence process to identify, prevent, mitigate, and account for how to address the company's impact on the environment and other human rights.

Amnesty International also calls on the Congolese authorities to use all available resources to protect economic and social rights; to allocate the necessary funds to ensure the implementation of the national water policy intended to ensure the supply of water to the population and to combat water pollution; to allocate at least 15% of the government budget to public health, in accordance with the commitment made under the Abuja Declaration adopted by the African Union in 2001, and to implement the health budget as planned.

Specifically, regarding the situation of Bondi, Tchicanou, Kouakouala, Amnesty International calls on the authorities to repair and upgrade "Water for All" facilities, to ensure permanent and safe access to water, and to equip the M'Bokou health centre with the medical staff and medicines necessary to ensure the right to health of the local population.

### **Methodology**

Amnesty International delegates met with 85 inhabitants, including 35 women of seven villages in the departments of Kouilou and Pointe-Noire (two departments of the coastal area in Congo). Delegates also consulted local NGOs, doctors and experts working on the issue of industrialization, and with departmental environment and health directorates. In addition to field research, Amnesty International analysed legal documents governing oil extraction, industrial mining, and environmental regulation in Congo. Amnesty International first requested meetings in Congo with the several companies cited in the report but did not receive responses. Written requests for information with specific questions were also sent to these companies in February, March and November 2023. TotalEnergies EP Congo (hereafter TEPC), Metssa Congo, Maurel&Prom and ENI Congo responded to our questions. Finally, Amnesty International shared the preliminary findings of this report with the companies and relevant authorities for a 'right to reply' in January, February and March 2024. The concerned members of the government and Wing Wah did not respond.

# 2. METHODOLOGY

Amnesty International conducted research in the Republic of Congo (hereafter Congo) twice, from 7 to 15 July and from 6 to 14 December 2022, to investigate the situation of environmental, economic and social rights in villages near industrial sites in the departments of Pointe-Noire and Kouilou.

Considering the importance of the oil industry in the Congolese economy, Amnesty International focused its research on villages (Djeno, Banga Kayo, Bondi, Tchicanou, Kouakouala) where onshore oil wells are located, and which are close to the oil wells and the country's only oil terminal.

Amnesty International also visited Vindoulou, a neighbourhood on the outskirts of the economic capital Pointe-Noire, where a lead and aluminium recycling industry is operating near a residential area.

Amnesty International researchers met with 85 people, including 35 women, of seven villages in the departments of Pointe-Noire and Kouilou. Interviews were conducted in groups, and individually when conditions allowed. No translator was used as the interviewers and interviewees all spoke French. To protect their security, the identities of some interviewees will not be made public.

Researchers interviewed members of local NGOs, doctors and experts on the impact of industrial activities on human rights, as well as departmental environment directorates and the departmental health directorates, which are decentralised state bodies of the Ministry of Environment and the Ministry of Health. In December 2022, a request for a meeting was sent to the departmental hydrocarbon directorate, which did not respond. Meetings were also requested with representatives of Total Energies EP Congo (TEPC hereafter), ENI Congo and Wing Wah. None responded. The circumstances of the visit to Vindoulou in December 2022 did not allow Amnesty International delegates to request a meeting with representatives of Metssa Congo, but the organization sent to the company two letters requesting information and a letter presenting the main findings of the research and requesting comments (see below). In addition to field research, Amnesty International conducted desk research by analysing legal documents governing oil, industrial mining and environmental matters in Congo. The organization analysed exploration permits, exploitation permits and production-sharing contracts signed between the government of Congo and various multinational companies working in industries. Various publications of these companies and their policies on human rights and environmental protection were also analysed, when available.

Amnesty International also supported the collective of Vindoulou residents at the beginning of 2023 in their initiative to carry out health examinations to determine the possible harms of the fumes emitted by the recycling plant in their neighbourhood. Blood samples were taken from 18 volunteers, with the consent of the parents in the case of eight children aged between two and 17. The samples were collected by a laboratory in Pointe-Noire and then analysed by a laboratory in France.

In January and March 2023, the organization sent letters to the companies cited in this research (TEPC, ENI Congo, Wing Wah Maurel&Prom and Metssa Congo) asking them to share with Amnesty International environmental impact studies, audit reports, and measures taken to repair any possible environmental damage. Metssa Congo returned the letter without a reply, and the other companies did not respond. In November 2023, the organization sent other letters for information to Wing Wah, TotalEnergies, and Metssa Congo. This time, the latter two companies replied. In the first quarter of 2024, Amnesty International shared the preliminary findings of its research with the companies cited in the report, giving them the opportunity to respond. TEPC, ENI Congo, Metssa Congo and Maurel&Prom responded.

Finally, between January and March 2024, Amnesty International sent letters to the Minister of Environment, Sustainable Development and the Congo Basin, the Minister of Industrial Development and Promotion of the

Private Sector, the Minister of Health and the Minister of Energy and Hydraulics to request their comments on the preliminary findings of this research and some responses to questions raised. None of them responded.

# 3. CONTEXT

## 3.1 AN ECONOMY BASED ON INDUSTRY

The Congolese coastline, divided between the departments of Pointe-Noire and Kouilou, has been at the centre of the country's oil production since independence, and is home to Congo's second-largest city, Pointe Noire, an industrial hub as well as a port city from which companies ship out raw materials around the world.

Oil was first discovered in Pointe-Indienne (19km north of the town of Pointe-noire) in 1957 by the French company "Société des pétroles d'Afrique équatoriale", before the country gained independence from France in 1960. The Société des pétroles d'Afrique équatoriale's successor, Elf-Congo, later discovered additional oil fields off the coast of Pointe-Noire<sup>1</sup>.

Other oil companies, such as the Italian multinational, Azienda Generale Italiana Petroli, which later became ENI-Congo<sup>2</sup>, also set their sights on the riches of the Congolese subsoil. With proven reserves of 1.8 billion barrels of oil, the coastal region accounts for most of the country's oil production<sup>3</sup>. Over the years, Chinese, Dutch, and US-based companies also began operating in the area<sup>4</sup>.

By 2018, Congo became the third largest oil producer in sub-Saharan Africa, and a member of the Organization of Petroleum Exporting Countries (OPEC). The country's gas potential has also drawn the interest of investors. According to estimates by the Extractive Industries Transparency Initiative (EITI), in 2020 the Republic of Congo was estimated to have received XAF653 billion (US\$1bn) in oil revenues,<sup>5</sup> which constitutes 68% of the country's export revenues overall, showing the importance of oil for the country's economy.

In addition to the discovery of important oil deposits, the coastal region is also known for its mineral deposits of potash<sup>5</sup> and phosphate<sup>6</sup>, which are two mineral resources essential to agriculture and thus global food security (their importance lies in their role as fertilisers; they provide essential nutrients for plant growth). Phosphate reserves in the area are estimated at 1,033 million tonnes and are divided between the Sintoukola Potash site, Mengo, just outside of the city of Pointe-Noire and around the Hinda site in the department of Kouilou. About 2,000 direct jobs are estimated to have been created through these three projects.<sup>6</sup> According to long-term estimates, Congo could soon become the leading African producer of potash with an estimated production of 6% of global potash production.<sup>7</sup>

Furthermore, among other industrial sectors, Congo's coastal area is now home to industries recycling electronic waste from the Global North, following the growth of such industries on the continent. According

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<sup>1</sup> Ferdinand Malonga, and Samir Saul, « ELF-ERAP et le Congo : les vicissitudes d'un mariage de raison » (1968-1978), 2010, Histoire, économie & société, <https://doi.org/10.3917/hes.102.0109>, p.29, pp.109-125 (In French).

<sup>2</sup> Republic of Congo, Convention d'établissement 1968 entre la République du Congo et Agip S.P.A, 11 November 1968.

<sup>3</sup> Organization of the Petroleum Exporting Countries, Congo – Congo facts and figures, [OPEC : Congo](#), (accessed on 29 April 2024), (In French).

<sup>4</sup> Republic of Congo, Ministry of Hydrocarbons, General Directorate of Hydrocarbons, Tableau des titres miniers du secteur amont pétrolier amont, 2016, [Tableau des titres miniers du secteur amont pétrolier.pdf \(gouv.cg\)](#).

<sup>5</sup> Potash is mainly extracted from underground mines, salt deposits or the ocean, then processed to obtain the various forms of potassium salts used as fertiliser.

<sup>6</sup> Phosphate is a salt form of phosphoric acid and plays an essential role in many sectors, including agriculture, the chemical industry, food and health.

<sup>7</sup> Mining Weekly, "Kanga, Congo-Brazzaville govt formalise mining convention for potash project", 30 August 2023,

<https://www.miningweekly.com/article/kanga-congo-brazzaville-govt-formalise-mining-convention-for-potash-project-2023-08-30>, 30 August 2023.

to the NGO Basel Action Network,<sup>8</sup> countries of the Global North are exporting large quantities of electronic products with potentially toxic components to Southern countries. It specifies that in 2020, the 28 members of the European Union exported 339,446 tons of electronic waste to developing countries, with 64% of that amount destined for Africa.<sup>9</sup>



### THE HUMAN RIGHTS IMPACT OF FOSSIL FUEL

The climate emergency is a human rights crisis of unprecedented proportions. Climate change threatens the enjoyment of civil, political, economic, social, and cultural rights of present and future generations and, ultimately, the future of humanity. When climate change-related impacts hit a country or a community, the knock-on effects can seriously undermine the enjoyment of the right to a life lived in dignity, endanger a range of freedoms, and in many cases even put at risk the cultural survival of entire peoples. In order to protect human rights, states must urgently tackle the climate crisis, particularly by reducing emissions of greenhouse gases, which is the primary cause of climate change.<sup>10</sup>

Burning fossil fuels such as coal, oil and gas is the source of most emissions for almost all economic sectors, and accounts for more than 70% of global GHG emissions. Despite the urgency of the climate crisis and the commitments made by states under the Paris Agreement, carbon emissions from fossil fuel use continue to grow.<sup>11</sup> According to the United Nations Environment Programme, in 2021 governments were, in aggregate, planning to produce around 110% more fossil fuels in 2030 than would be consistent with limiting global warming to 1.5°C.<sup>12</sup> Recent assessments by the Intergovernmental Panel on Climate Change emphasize the imperative of keeping global warming below 1.5°C in order to safeguard humanity from the most catastrophic effects.

Rapidly phasing out fossil fuel production and use is therefore an urgent task if we are to reduce emissions to a level where we can mitigate the worst impacts of the climate crisis on human rights. Conversely, continuing to support the fossil fuel industry runs counter to states' obligation to protect people from the most harmful effects of climate change.

To compensate for the ecological debt and to ensure the rights of people in developing countries are not disproportionately affected, wealthier industrialised states should rapidly provide means and support, including financial resources and technology transfers, to developing countries, to avoid leapfrogging of fossil fuels and allow a speedy transition to human rights-consistent renewable energy which creates livelihood opportunities and facilitate access to affordable energy to all.

<sup>8</sup> Basel Network Action, *Holes in the Circular Economy: WEEE Leakage from Europe*, 2020, [https://wiki.ban.org/images/f/f4/Holes\\_in\\_the\\_Circular\\_Economy-\\_WEEE\\_Leakage\\_from\\_Europe.pdf](https://wiki.ban.org/images/f/f4/Holes_in_the_Circular_Economy-_WEEE_Leakage_from_Europe.pdf).

<sup>9</sup> Basel network action, *Holes in the Circular Economy: WEEE Leakage from Europe*, 2020, [https://wiki.ban.org/images/f/f4/Holes\\_in\\_the\\_Circular\\_Economy-\\_WEEE\\_Leakage\\_from\\_Europe.pdf](https://wiki.ban.org/images/f/f4/Holes_in_the_Circular_Economy-_WEEE_Leakage_from_Europe.pdf), p.10.

<sup>10</sup> Amnesty International, *Stop Burning our Rights! What governments and corporations must do to protect humanity from the climate crisis* (Index: POL30/3476/2021), 7 June 2021, <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>.

<sup>11</sup> International Energy Agency, *CO2 emission in 2022*, March 2023, <https://www.iea.org/reports/co2-emissions-in-2022>.

<sup>12</sup> Stockholm Environment Institute and others, *Production gap report: Governments' planned fossil fuel production remains dangerously out of sync with Paris Agreement limits*, October 2021, <https://productiongap.org/2021report/#R1>.

## 3.2 ECONOMIC AND SOCIAL CHALLENGES AND ISSUES OF GOVERNANCE

### 3.2.1 ECONOMIC AND SOCIAL CHALLENGES

The country's economy is highly linked to the oil industries. Indeed, Congo is heavily dependent on oil exports as its main source of revenue and is thus vulnerable to fluctuating oil prices. Therefore, the sharp drop in global oil prices in 2014 shook the country and has had a major ripple effect in the last ten years. A barrel, previously valued at US\$100, lost 50% of its value in the space of a few months.<sup>13</sup> This price drop could be explained by an increase in production, coinciding with a decrease in global demand, in a context of economic stagnancy.<sup>14</sup> According to the World Bank, in February 2023, the Congolese economy benefited from the rise in oil prices due to the war in Ukraine, but households were also adversely affected by the rise in food prices and fuel shortages.<sup>15</sup>

Moreover, Congo's external debt significantly increased in the same period. In a 2018 World Bank note analysing the sustainability of Congolese debt, the latter stated that "public investment and its inefficiency have led to a rapid increase in the external debt-to-GDP ratio from 20% at the end of 2010 to 80.5% at the end of 2017".<sup>16</sup> When a large proportion of government revenue is devoted to debt repayment, this can reduce the resources available for other public spending, such as investment in infrastructure, education, or health. It also affects the country's solvency and increases its vulnerability to external shocks. The country has taken several measures to deal with its debt overhang, including signing restructuring agreements with several of its creditors, including China and Libya.<sup>17</sup>

In this prolonged economic recession,<sup>18</sup> public sector employees, particularly in health and education, endured several months of unpaid wages in 2017, and the same was true for thousands of people dependent on retirement pensions.<sup>19</sup> This led to the signing of an agreement between the International Monetary Fund (IMF) and Congo for a loan of nearly US\$450 million in July 2019, and then a further US\$455 million in January 2022.<sup>20</sup> It was in that context that the COVID-19 pandemic broke out, affecting the country and worsening the economic crisis.<sup>21</sup>

With regard to economic, social, and cultural rights, and particularly the right to water, it should be noted that the country has water resources estimated at 1,588 billion m<sup>3</sup>/year, with a potential of 88,196 m<sup>3</sup> per year per capita, which places it among the countries with abundant water resources.<sup>22</sup> However, according to the World Bank, just 74% of the population has access to a safe water source and this figure is only 45%

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<sup>13</sup> John Baffes and others, *Down the Slide, December 2015, Down the Slide - Finance & Development December 2015 (imf.org)*.

<sup>14</sup> John Baffes and others, *Down the Slide, December 2015, Down the Slide - Finance & Development December 2015 (imf.org)*.

<sup>15</sup> World Bank, "L'action climatique, clé de voûte de la prospérité économique en République du Congo", 2 February 2023, <https://www.banquemondiale.org/fr/country/congo/publication/climate-action-is-key-to-the-republic-of-congo-s-economic-prosperity#:~:text=L'impact%20de%20la%20guerre%20en%20Ukraine%20sur%20l'%C3%A9conomie%20congolaise&text=Les%20m%3%A9nages%20et%20les%20entreprises,et%20les%20p%C3%A9nuries%20de%20carburant> (In French).

<sup>16</sup> World Bank, *Situation économique de la République du Congo. Changer de cap et prendre son destin en main*, September 2018 Document, p. 14.

<sup>17</sup> Republic of Congo, Ministry of Economy and Finance, "Résumé de l'Accord de restructuration de la dette du Congo envers la Chine", May 2019, [https://www.finances.gouv.cg/fr/r%C3%A9sum%C3%A9-accord-chine\\_220518](https://www.finances.gouv.cg/fr/r%C3%A9sum%C3%A9-accord-chine_220518) (in French).

<sup>18</sup> World Bank, *Situation économique de la République du Congo. Changer de cap et prendre son destin en main*, September 2018, Document (In French).

<sup>19</sup> Amnesty International, *On the back of the crisis, violation of the right to health and repression of economic and social rights defenders in the Republic of Congo* (Index: AFR 22/3887/2021), 19 April 2021, *Congo: On the back of the crisis. Violations of the right to health and repression of economic and social rights defenders in the Republic of Congo - Amnesty International*, p.13.

<sup>20</sup> IMF, African Department, *La Facilité élargie de crédit du FMI avec le Congo*, October 2019, <https://www.imf.org/-/media/Files/Countries/ResRep/COG/201910-congo-presentation-ministere-des-affaires-etrangeres.ashx> (in French).

<sup>21</sup> Organisation internationale de la Francophonie, Congo – Impact économique du Covid19, Veille sur l'impact économique du Covid-19 dans les 54 Etats et gouvernements membres de l'OIF, <https://www.francophonie.org/congo-covid19#:~:text=Apr%C3%A8s%20deux%20ans%20de%20cons%C3%A9quences%20de,les%20perspectives%20des%20investissements%20totaux.&text=%20Les%20donn%C3%A9es%20de%202020%20et%20celles%20de%202021%20sont%20des%20pr%C3%A9visions> (accessed on 27 May 2024....) (in French).

<sup>22</sup> Omad Laupem Moatila and others, "Contrastes d'accès à l'eau potable à Nganga-Lingolo dans le district de Goma Tsé-Tsé, département du Pool (République du Congo)" June 2022, *Revue Espace, Territoires, Sociétés et Santé*, Volume 5, n°9, [MOATILY Onad Laupem.pdf \(retssa-ci.com\)](https://retssa-ci.com) (in French).

in rural areas.<sup>23</sup> Water shortages occur regularly in urban areas. For example, in 2022, in the capital Brazzaville, residents spent at least three months with discontinuous service.<sup>24</sup>

In addition, Congo's health sector budget has steadily decreased since 2015, apart from a one-year increase in 2020 to address the COVID-19 pandemic. After reaching a record high in 2014 (around €515 million), it began to decline steadily, reaching its lowest point in 2017 (around €200 million, a decrease of more than 60% compared with 2014), before stagnating in 2018 and 2019, then rising sharply in 2020 (to around €325 million) because of the COVID-19 pandemic, and declining again in 2021 (to around €290 million).<sup>25</sup> The budget has fluctuated between 5% and 14% of the state budget expenses.

The Congo's health system suffers from several dysfunctions that affect general hospitals, district hospitals and integrated health centres. The difficulties include lack of staff, poor infrastructure, lack of medicines and the cost of health care.<sup>26</sup> Between 2015 and 2021 health workers went on strike on several occasions in protest at the non-payment of their salaries and to demand regulations to ensure payments.<sup>27</sup>

Moreover, according to the World Bank, in 2021, just 49.5% of the Congolese population had access to electricity; in rural areas the rate dropped to 14.8%. Indeed, despite being an oil producer for over 40 years, half the population has no access to electricity. This is regularly denounced by local organizations and residents, as in 2022, when they led an "Electricity for All" campaign in several villages in the Kouilou département.<sup>28</sup>

### 3.2.2 GOVERNANCE ISSUES

Issues of poor governance and corruption in Congo, including in the oil sector, have often been denounced by international financial institutions. Such matters are under judicial investigations by national courts in various countries. Poor governance is seen as one of the causes of the economic crisis in the country<sup>29</sup> and raises the question of whether all immediate steps and available resources are really being allocated to protect economic and social rights, including 'minimum core obligations' as prescribed by international human rights standards and further explained in part three of this report.<sup>30</sup>

In 2017, the IMF made its financial support conditional on the country improving its governance, actively fighting corruption and being transparent in the management of public funds.<sup>31</sup> In June 2018, the Ministry of Finance, in consultation with IMF staff, published a report on governance and corruption in the Republic of Congo. The report acknowledges that "weaknesses in transparency and in expenditure control systems have contributed to the considerable increase in the debt stock from 20% of GDP (Gross Domestic Product) in 2010 to 119% of GDP in 2017".<sup>32</sup> The same report highlights the lack of transparency and corruption in public procurement and business management as a factor in poor governance. In 2019, IMF teams continued to identify bad governance as one of the causes of the economic crisis from 2014 onwards and made the fight against corruption a prerequisite for recovery.<sup>33</sup>

Despite these warnings from international financial institutions, Congo's national oil company has been singled out for actions that have contributed to the state losing large sums of money. In January 2020, an alleged hidden debt of US\$3.3 billion owed by Congo's National Oil Company to several banks and oil

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<sup>23</sup> World Bank, *La Banque mondiale en République du Congo-Vue d'ensemble*, October 2022, <https://www.banquemondiale.org/fr/country/congo/overview>. (Accessed on 29 April 2024).)

<sup>24</sup> Africa News, "Water crisis hits Republic of Congo", 3 June 2022, <https://www.africanews.com/2022/06/02/water-crisis-hits-republic-of-congo>.

<sup>25</sup> Analysis based on Finance Acts and Amending Finance Acts available on the website of the Ministry of Finance and Budget or on the websites of other ministries.

<sup>26</sup> Amnesty International, *On the back of the crisis, violation of the right to health and repression of economic and social rights defenders in the Republic of Congo* (Index: AFR 22/3887/2021), 19 April 2021, [Congo: On the back of the crisis. Violations of the right to health and repression of economic and social rights defenders in the Republic of Congo - Amnesty International](#), p. 23.

<sup>27</sup> Amnesty International, *Sur le dos de la crise. Violations du droit à la santé et répression des défenseurs des droits économiques et sociaux en République du Congo* (Index AFR 22/3887/2021), 19 April 2021, [Congo : Sur le dos de la crise. Violations du droit à la santé et répression des défenseurs des droits économiques et sociaux en République du Congo - Amnesty International](#), p. 27 (in French).

<sup>28</sup> RFI, "Le Congo a du pétrole, les Congolais veulent de la lumière", 19 octobre 2022, <https://www.rfi.fr/fr/podcasts/afrique-%C3%A9conomie/20221018-le-congo-a-du-p%C3%A9trole-les-congolais-veulent-de-la-lumi%C3%A8re> (in French).

<sup>29</sup> IMF, *Republic of Congo - Country Report n° 19/244*, July 2019.

<sup>30</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 3: The Nature of States Parties' Obligations (Article 2), 14 December 1990, UN Doc. E/1991/23, para-1.

<sup>31</sup> IMF, "IMF Staff Concludes Visit to the Republic of Congo", 20 December 2017, <https://www.imf.org/en/News/Articles/2017/12/20/pr17516-imf-staff-concludes-visit-to-the-republic-of-congo>.

<sup>32</sup> République du Congo, "Rapport sur la gouvernance et la corruption - République du Congo", June 2018, [République du Congo -- Rapport Diagnostic 2018 -.pdf \(gouv.cg\)](#).

<sup>33</sup> IMF, *Republic of Congo - Country Report 19/244*, July 2019.

companies including TotalEnergies, Chevron and ENI, was documented by the NGO Global Witness, increasing public debt from US\$9.5 billion to nearly US\$13 billion.<sup>34</sup>

Several tribunals have also taken an interest in the affairs of Congolese dignitaries. In 2017, in France, an investigation was opened against Wilfried Nguesso, nephew of the President, for 'laundering funds from the crime of embezzlement of public funds from the Socotram company'.<sup>35</sup> In September 2020, a mansion belonging to the family of the President of the Republic, bought for €5.2 million and renovated for €5.4 million, was seized by the French judiciary.<sup>36</sup> In 2020 in the United States, a complaint for alleged embezzlement was filed against Denis Christel Sassou Nguesso, son of the President and former SNPC Director (Société Nationale des Pétroles du Congo), the state company that manages oil and gas revenues.<sup>37</sup>

On 28 November 2022, on the occasion of the 64<sup>th</sup> anniversary of the proclamation of the independence of the Republic of Congo, the President Denis Sassou Nguesso declared that "the intensification of the fight against corruption, fraud and bribery through the consolidation of good governance within the state apparatus in general, and the judiciary in particular, remains one of the major levers of action to ensure partners."<sup>38</sup> Three years earlier, the country had passed Law 3-2019 of 7 February 2019 establishing the High Authority for the Fight against Corruption.<sup>39</sup>

### 3.3 CONGO'S STANCE ON ENVIRONMENTAL PROTECTION

Despite being dependent on fossil fuels, the Republic of Congo has for many years presented itself as a champion of the environment in Africa and in the world. At the 2019 UN climate conference in Madrid (COP25),<sup>40</sup> the President of Congo, Denis Sassou Nguesso, the chosen spokesperson for Central Africa, declared on the podium: "I remain more faithful than ever to my signature of the Paris Agreement, and I have decided to go even further in our concrete commitment against deforestation, going beyond enchanting speeches".<sup>41</sup> At COP27, he reaffirmed his commitment to climate justice and pleaded for more financial support from industrialized countries to the African continent.<sup>42</sup>

It should also be noted that Congo has been very involved in the establishment of the Blue Fund for the Congo Basin, an initiative bringing together several countries in the region, which should eventually enable these countries' economies to move from the exploitation of forests towards resources from water management, like fisheries or river transport. An international summit on this initiative was held in Oyo, Congo, in March 2017.<sup>43</sup> But the finances for the Blue Fund have not yet been secured.<sup>44</sup>

The country is also strongly involved in the Central African Forest Initiative, which was created in 2015 on the sidelines of the United Nations General Assembly. In this context, during a visit to France, President

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<sup>34</sup>Amnesty International, *On the back of the crisis, violation of the right to health and repression of economic and social rights defenders in the Republic of Congo* (Index: AFR 22/3887/2021), 19 April 2021, [Congo: On the back of the crisis. Violations of the right to health and repression of economic and social rights defenders in the Republic of Congo - Amnesty International](#).

<sup>35</sup> Le Monde, "Willy" Nguesso, Une histoire ordinaire de prédation congolaise et de voitures de luxe", 29 March 2017, [https://www.lemonde.fr/afrique/article/2017/03/29/willy-nguesso-une-histoire-ordinaire-de-predation-congolaise-et-de-voitures-de-luxe\\_5102518\\_3212.html](https://www.lemonde.fr/afrique/article/2017/03/29/willy-nguesso-une-histoire-ordinaire-de-predation-congolaise-et-de-voitures-de-luxe_5102518_3212.html) (in French).

<sup>36</sup> Le Figaro, "Biens mal acquis: un hôtel particulier d'un fils du président Sassou Nguesso saisi en France", 9 September 2022, <https://www.lefigaro.fr/flash-eco/biens-mal-acquis-un-hotel-particulier-d-un-fils-du-president-sassou-nguesso-saisi-en-france-20220909> (in French).

<sup>37</sup> Miami Herald, "Miami feds file lawsuit to seize Congo minister's \$3 million Biscayne Bay penthouse", 18 June 2020, <https://www.miamiherald.com/news/local/article243595392.html>.

<sup>38</sup> RFI, "Congo-Brazzaville: lele president exhorte à la lutte contre la corruption, l'opposition n'y croit pas", 29 November 2022, <https://www.rfi.fr/afrique/20221128-congo-brazzaville-le-pr%C3%A9sident-exhorte-%C3%A0-la-lutte-contre-la-corruption-l-opposition-n-y-croit-pas> (in French).

<sup>39</sup> Republic of Congo, Loi 3-2019 portant création de la Haute autorité de lutte contre la corruption, 7 February 2019, [LOI-NUM3-2019-DU-07-FEVRIER-2019.pdf \(halc.cg\)](#) (in French), page 243.

<sup>40</sup> The Conference of Parties (COP) refers to a series of annual international meetings that bring together the signatory countries of the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC is an international agreement aimed at combating climate change, mitigating its effects and facilitating adaptation to climate change.

<sup>41</sup> Republic of Congo, Ministry of Environment, "Environnement/COP25: Denis Sassou N'Gueesso en appelle aux actions concrètes contre la déforestation", 11 December 2019, [Environnement/COP25: Denis Sassou N' Gueesso en appelle aux actions concrètes contre la déforestation. - Ministère de l'Environnement, du Développement Durable et du Bassin du Congo \(gouv.cg\)](#) (in French).

<sup>42</sup> Agence d'Information d'Afrique Centrale Congo, "COP 27: déclaration du président Denis Sssou N'Gueesso", 8 November 2022, <https://www.adiac-congo.com/content/cop-27-declaration-du-president-denis-sassou-nguesso-142772> (in French).

<sup>43</sup> France 24, "Déforestation : douze pays africains s'engagent à remplacer l'or vert par l'or bleu", 10 mars 2017, <https://www.france24.com/fr/20170310-congo-lancement-fonds-bleu-ralentir-deforestation-environnement-cop-22> (in French).

<sup>44</sup> Desk Nature, "Sommet UE-Afrique : le Bassin du Congo n'a pas obtenu de "promesses concrètes" pour le Fonds Bleu", February 2022, <https://desknature.com/2022/02/19/sommet-ue-afrique-le-bassin-du-congo-na-pas-obtenu-de-promesses-concretes-pour-le-fonds> (in French).



Sassou Nguesso signed a Letter of Intent committing US\$65 million for the preservation of the rainforest in the Republic of Congo.<sup>45</sup>

During the One Forest summit organized in Libreville, Gabon, in March 2023, it was the turn of Arlette Soudan-Nonault, Congo's Minister of Environment, Sustainable Development of the Congo Basin to set the tone on climate and environmental issues. During the discussions, she praised the efforts made by her country, as well as those across the Congo Basin, and called for more support from "polluting" countries for the preservation of this ecosystem.<sup>46</sup> She also emphasized the fact that, it would be impossible for oil-producing countries to move towards sustainable exploitation of natural resources and the restoration of degraded lands<sup>47</sup> without support.

Despite these declarations affirming its commitments to the environment on international platforms, in 2019 the Government of the Republic of Congo had announced the discovery of oil resources in the Congo Basin that could allow the country to quadruple its production.<sup>48</sup> As several international NGOs have pointed out, exploiting these significant carbon sinks for oil would be disastrous for the environment, aggravating the climate crisis; not only would it increase the use of fossil fuels, it would also unlock and release into the atmosphere all the carbon stored in the peatland.<sup>49</sup>

The Congolese authorities have repeatedly stated that they lack the funding to make the transition to a fossil-fuel-free energy future, and that oil will therefore remain their main source of revenue.<sup>50</sup> It is important to emphasize that scientists have stated that in order to limit the global average temperature increase to 1.5° C (the limit beyond which there would be catastrophic effects for all life on earth), no new fossil fuel projects should be approved, even in developing countries.<sup>51</sup> States must therefore rapidly phase out and implement a just transition away from fossil fuel production and consumption as quickly as possible, based on their capacities and responsibility for emissions. Wealthy industrialized states must phase out fossil fuels by 2030, or as soon as possible after that. Other countries must phase out fossil fuels as quickly as possible and no later than 2050, in line with the latest Intergovernmental Panel on Climate Change scientific evidence. All states must take steps to ensure that affordable renewable energy generated in full compliance with human rights standards, is available and accessible to all.<sup>52</sup>

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<sup>45</sup> République du Congo, Lettre d'Intention portant sur l'établissement d'un partenariat de long terme visant la réalisation du plan d'investissement de la stratégie nationale REDD+ dans le cadre de l'initiative pour la forêt d'Afrique centrale (CAFI), 2 September 2019, [https://www.cafi.org/sites/default/files/2021-05/Letter%20of%20Intent%20-%20Republic%20of%20Congo%20-%20FR\\_0.pdf](https://www.cafi.org/sites/default/files/2021-05/Letter%20of%20Intent%20-%20Republic%20of%20Congo%20-%20FR_0.pdf) (in French).

<sup>46</sup> Republic of Congo, Ministry of Environment, Sustainable development and Congo Basin, " ' One Summit Forest 2023, L' intervention poignante du Ministre Arlette Soudan du Congo marque les esprits ' ", March 2023, <https://www.developpement-durable.gouv.cg/one-summit-forest-2023-lintervention-poignante-ministre-arlette-soudan-congo-marque-esprits/> (in French).

<sup>47</sup> Republic of Congo, Ministry of Environment, Sustainable development and Congo Basin, "Pour le développement durable, Arlette Soudan-Nonault exige d' améliorer la circularité des ressources exploitées", March 2023, <https://www.developpement-durable.gouv.cg/bassin-congo-developpement-durable-arlette-soudan-nonault-exige-dameliorer-circularite-ressources-exploitees/> (in French).

<sup>48</sup> Le Monde, "Découverte de pétrole Onshore au Congo", 12 August 2019, [https://www.lemonde.fr/afrique/article/2019/08/12/decouverte-de-petrole-onshore-au-congo\\_5498706\\_3212.html](https://www.lemonde.fr/afrique/article/2019/08/12/decouverte-de-petrole-onshore-au-congo_5498706_3212.html) (in French).

<sup>49</sup> Global Witness, "Un projet pétrolier en République du Congo obtenu par un magnat « présentant un risque de corruption » menace les tourbières forestières cruciales pour le climat", February 2020, <https://www.globalwitness.org/fr/congo-oil-project-obtained-by-corruption-risk-magnate-threatens-climate-critical-peatland-forest-fr/> (in French).

<sup>50</sup> RFI, "Arlette Soudan-Nonault, ministre de l'Environnement (Congo-B): « Pour aller vers une transition avec des énergies propres, il nous faut des financements », November 2022, Arlette Soudan-Nonault, ministre de l'Environnement (Congo-B): « Pour aller vers une transition avec des énergies propres, il nous faut des financements » - Le grand invité Afrique (rfi.fr) (in French).

<sup>51</sup> IEA, *Net Zero by 2050 – A Roadmap for the Global Energy Sector*, October 2021, <https://www.iea.org/reports/net-zero-by-2050>. <https://research.manchester.ac.uk/en/publications/phaseout-pathways-for-fossil-fuel-production-within-paris-compliance/>, May 2021 *une note séparée?*

<sup>52</sup> Amnesty International, *Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis* (Index: POL 30/3476/2021), 7 June 2021, <https://www.amnesty.org/en/documents/pol30/3476/2021/en/>.

# 4. THE STATE'S OBLIGATIONS AND COMPANIES' RESPONSIBILITIES TO PROTECT ECONOMIC, SOCIAL AND ENVIRONMENTAL RIGHTS

## 4.1 OBLIGATIONS OF THE STATE TO PROTECT ECONOMIC, SOCIAL, AND ENVIRONMENTAL RIGHTS

### 4.1.1 ECONOMIC AND SOCIAL RIGHTS

In 1983, Congo ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>53</sup> By ratifying this international instrument, Congo agreed to put in place domestic measures and legislation to

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<sup>53</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted on 16 December 1966, [International Covenant on Economic, Social and Cultural Rights | OHCHR](#).

respect, protect and fulfil the rights enshrined in the treaty. As such, the government must not only refrain from interfering with those rights within and outside their territory, but it must also promote those rights and ensure that others (non-state actors) do not interfere with them.<sup>54</sup> The lack of financial or human resources is not a justification for a government not to fulfil its obligations.<sup>55</sup>

Based on these international standards, Congolese authorities must respect, protect and fulfil the right to work (Article 6), the right to just conditions of work (Article 7), the right to join and form trade unions (Article 8), the right to social security (Article 9), the right to protection of the family (Article 10), the right to an adequate standard of living, including access to food, clothing and housing (Article 11), the right to health (Article 12), the right to education (Article 13) and the right to culture (Article 15). International human rights standards also oblige states to work towards universal access to water and sanitation for all, without discrimination. This right derives from the right to an adequate standard of living, enshrined in Article 11.1 of the Covenant. In July 2010, the United Nations General Assembly adopted a resolution recognising “the right to drinking water and sanitation as a human right, essential for the full enjoyment of life and all human rights”.<sup>56</sup> The right to a healthy environment is explained in more detail below.

In 1982, the Republic of Congo also ratified the African Charter on Human and Peoples’ Rights,<sup>57</sup> which also requires the authorities to protect economic and social rights, including the rights to health (Article 16) and education (Article 17).

## 4.1.2 THE RIGHT TO A HEALTHY ENVIRONMENT

The Congolese constitution recognises that all citizens have the right to a healthy, satisfactory and sustainable environment.<sup>58</sup> This right is also protected under Article 24 of the African Charter on Human and Peoples’ Rights.

The right to a clean, healthy and sustainable environment is now universally recognized, after the United Nations Human Rights Council and the United Nations General Assembly adopted resolutions to this effect in October 2021<sup>59</sup> and July 2022 respectively. The UN Special Rapporteur on human rights and the environment has clarified that there are both procedural and substantive elements to the right to a clean, healthy environment. “The procedural elements are access to information, public participation, and access to justice and effective remedies. The substantive elements include clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.”

As noted by the UN Special Rapporteur on human rights and the environment, a healthy sustainable environment is necessary for the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and sanitation. At the same time, the exercise of human rights, including the rights to information, participation, and remedy, is vital to the protection of the environment. Under international human rights law, states have obligations to protect the enjoyment of human rights from environmental harm caused by conduct or omissions within their territory or jurisdiction, whether committed by state or non-state actors, including businesses. States also have obligations to protect the environment that derive from the international environmental treaties that they have ratified. Congo has ratified<sup>60</sup> the 1992 United Nations Framework Convention on Climate Change and the 2015 Paris climate agreement. Under the Paris agreement, states committed to: “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”. However, more recent reports from the Intergovernmental Panel on Climate Change (IPCC) have showed that keeping the increase of global warming below 1.5°C is crucial to protect humanity from the most

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<sup>54</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of Business Activities, 10 August 2017, UN Doc. E/C.12/GC/24.

<sup>55</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States parties’ obligations (Article 2, para.1 of the International Covenant on Economic, Social and Cultural Rights), 14 December 1990, UN Doc. E/1991/23, paras.11-12.

<sup>56</sup> UN General Assembly (UNGA), Resolution adoptée par l’Assemblée générale le 28 juillet 2010,

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F64%2F292&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>57</sup> African Charter on Human and Peoples’ Rights (ACHPR), AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLES’ RIGHTS ([african-court.org](http://african-court.org)).

<sup>58</sup> Republic of Congo, Constitution de la République du Congo modified by the Constitutional Law 2-2022 of 7 January 2022, 25 October 2015, Constitution de la République du Congo - sgg-congo : Secrétariat Général du Congo, Article 41.

<sup>59</sup> UN Human Rights Council, Resolution: The Human Right to a Clean, Healthy and Sustainable Environment, 8 October 2021, UN Doc. A/HRC/RES/48/13.

<sup>60</sup> United Nations Framework Convention on Climate Change, 9 May 1992,

[https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en).

devastating impacts of climate crisis.<sup>61</sup> Under the Paris Agreement, all state parties are required to submit updated national reports (nationally determined contributions – NDCs) every five years, indicating the nationally determined target for emission reductions, and the actions each national government intends to take to meet that target, and to adapt to the impacts of climate change.

Congo has also ratified the Convention on Biological Diversity, which aims to strengthen efforts for the conservation of biological diversity. While the convention recognizes the right of states “to exploit their own resources in accordance with their environmental policies”, it also stresses the duty of states “to ensure that activities carried out within their jurisdiction or control do not cause damage to the environment in other states or in areas beyond national jurisdiction”.<sup>62</sup>

Congo also ratified<sup>63</sup> the Bamako Convention on the Ban of the Import into Africa of Hazardous Wastes and on the Control of Transboundary Movements in June 1997.<sup>64</sup> The Bamako Convention aims to protect human health and the environment by prohibiting the import of hazardous waste into Africa, regulating the transport of hazardous waste within Africa, and encouraging the reduction and disposal of hazardous waste on the continent.

At the national level, the Congo adopted a law on environmental protection in April 1991. The 1991 law aims to strengthen legislation on the operation of dangerous, unhealthy, or hostile facilities and on planning and development, and to protect and preserve wildlife, marine and river resources. It also includes a component to prevent and combat damage to the environment and to the health of people or their property. According to this law, companies guilty of soil or water pollution are required to repair the damage (Articles 31 and 38).

Finally, a decree governing environmental impact assessments was adopted in 2009. According to the decree, companies are obliged to carry out an environmental impact study conducted by an approved firm prior to opening. The assessment includes a consultation phase with residents. Without this assessment, it is not possible to obtain an authorisation to open. Offenders should be sanctioned by the closure of their structure and possibly the payment of fines.

### 4.1.3 STATE’S DUTY TO PROTECT AGAINST HUMAN RIGHTS ABUSES BY COMPANIES

Under international human rights law, all states have a duty to protect against human rights abuses by all actors, including companies.<sup>65</sup> States are required to take appropriate measures to prevent human rights abuses by private actors and to respond to these abuses when they occur by investigating the facts, holding perpetrators to account, and ensuring effective remedies for the harm caused.<sup>66</sup> The pivotal principle of this duty is that states must protect individuals and communities from the harmful activities of corporate actors through “effective policies, legislation, regulation and adjudication”.<sup>67</sup>

## 4.2 THE RESPONSIBILITY OF COMPANIES TO RESPECT HUMAN RIGHTS

All companies have a responsibility to respect all human rights wherever they operate, whichever sector they operate in, and regardless of their nationality or size. This responsibility is set out in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), an internationally endorsed standard of

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<sup>61</sup> IPCC, *Special Report on Global Warming of 1.5°C, Summary for Policymakers*, 2018, [ipcc.ch/sr15/chapter/spm/](https://www.ipcc.ch/sr15/chapter/spm/).

<sup>62</sup> Convention on Biological Diversity, 5 June 1992, [UNTC](https://www.cbd.int/convention/).

<sup>63</sup> Bamako Convention, 30 janvier 1991, [Treaty Text | InforMEA](https://www.unep.org/fr/press/2019/01/30/bamako-convention).

<sup>64</sup> Ecolex, Convention sur l'interdiction d'importer en Afrique des déchets dangereux et sur le contrôle des mouvements transfrontières, <https://www.ecolex.org/fr/details/bamako-convention-on-the-ban-of-the-import-into-africa-and-the-control-of-transboundary-movement-and-management-of-hazardous-wastes-within-africa-tre-001104/participants/> (accessed on 30 April 2024).

<sup>65</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/fr/doc/doc.aspx?lang=eng&docid=10248), Principle 1.

<sup>66</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/fr/doc/doc.aspx?lang=eng&docid=10248), Principle 1.

<sup>67</sup> Amnesty International, *Injustice incorporated: Corporate abuses and the human right to remedy* (Index: POL/30/001/2014), 7 March 2014, <https://www.amnesty.org/en/documents/pol30/001/2014/en/>.

expected conduct.<sup>68</sup> The responsibility of companies to respect human rights is independent of a state's own human rights responsibilities and exists over and above compliance with national laws and regulations protecting human rights.<sup>69</sup>

This responsibility requires companies to avoid causing or contributing to human rights abuses through their own business activities and to address impact with which they are involved, including by remediate any actual impact. Companies must assess and address risks and impacts related to all human rights as part of their human rights due diligence, including the right to a clean, healthy and sustainable environment.

A company "contributes to" an impact if "its activities, in combination with the activities of other entities, cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact".<sup>70</sup> The following factor may be taken into consideration: "the extent to which a company could or should have known about the adverse impact or potential for adverse impact, that is the degree of foreseeability".<sup>71</sup>

To fulfil its corporate responsibility, a company must take proactive and ongoing steps to identify and respond to its potential or actual human rights impact. Primarily, businesses must implement a due diligence process to identify, prevent, mitigate, and account for how they address their human rights impact that the company may cause or contribute to through its own activities, or which may be directly linked to its operations, products, or services by its business relationships.<sup>72</sup> The human rights responsibilities of companies, including financial institutions, extend to identifying, preventing, mitigating and accounting for human rights harms resulting from their contribution to climate change.<sup>73</sup>

There could be cases in which a company identifies through due diligence that it may cause or contribute to human rights abuse. In those cases, the business enterprise must cease or prevent the impact, and where applicable, use its leverage to mitigate any remaining impact.<sup>74</sup> Further, the UN Guiding Principles indicate that companies should remedy any human rights abuse to which they have caused or contributed.<sup>75</sup> Remedy should include guarantees of non-repetition as well as satisfaction,<sup>76</sup> compensation and other measures of reparation as appropriate.<sup>77</sup> The actual reparation that should be provided in each case will depend on the nature of the right violated, the harm suffered and the wishes of those affected. The touchstone of reparation, however, is that it must seek to remove the consequences of the violation and, as far as possible, restore those affected to the situation they would have been in, had the violation not occurred.

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<sup>68</sup> This responsibility was expressly recognised by the UN Human Rights Council on 16 June 2011, when it endorsed the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), and on 25 May 2011 when the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the OECD unanimously endorsed a revised version of the OECD Guidelines for Multinational Enterprises. See Human Rights Council, Human Rights and Transnational Corporations and other Business Enterprises, Resolution 17/4, UN Doc A/HRC/RES/17/4, 6 July 2011, [daccess-ods.un.org/tmp/638279.91485957.html](https://daccess-ods.un.org/tmp/638279.91485957.html); OECD Guidelines for Multinational Enterprises, 2011, OECD Publishing, [oecd.org/corporate/mne/](https://www.oecd.org/corporate/mne/).

<sup>69</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/documents/E/huridocda/huridoca13_en.pdf), Principle 11 including Commentary.

<sup>70</sup> OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, [OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf](https://www.oecd.org/dai/rrp/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf), Question 29.

<sup>71</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/documents/E/huridocda/huridoca13_en.pdf), Principle 17; OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, [OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf](https://www.oecd.org/dai/rrp/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf), Question 29.

<sup>72</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/documents/E/huridocda/huridoca13_en.pdf), Principle 17

<sup>73</sup> See for example, OHCHR, *Human Rights, Climate Change and Business. Key messages*, [KMBusiness \(ohchr.org\)ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf](https://www.ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf).

<sup>74</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/documents/E/huridocda/huridoca13_en.pdf), Principle 17.

<sup>75</sup> UN OHCHR, Guiding Principles on Business and Human Rights-Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, [GuidingPrinciplesBusinessHR\\_EN.pdf \(ohchr.org\)](https://www.ohchr.org/documents/E/huridocda/huridoca13_en.pdf), Principle 15(c).

<sup>76</sup> Satisfaction covers a broad range of measure which will be applicable as appropriate to the circumstances and includes: measures aimed at the cessation of the violations; verification of the facts and full and public disclosure of the truth, a public apology, including acknowledgment of the facts and acceptance of responsibility; and judicial and administrative sanctions against those responsible for the violations. See 2 Principle 22, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

<sup>77</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Doc. A/RES/60/147), 21 March 2006.

# 5. THE ISSUE OF WATER, SOIL AND AIR POLLUTION IN THE COASTAL AREA

Alerted by local communities to potential environmental damage linked to the activities of industries near villages in departments of Pointe-Noire and Kouilou, Amnesty International conducted research on three cases to determine the state and companies' responsibilities regarding the respect of the right to a healthy environment and other human rights, in accordance with international and Congolese law.

## 5.1 LACK OF INFORMATION ON ENVIRONMENTAL IMPACT ASSESSMENTS

The Republic of Congo has adopted legislation on environmental protection. According to the 1962 law on Regulating Dangerous, Unhealthy, and Inconvenient Establishments, the opening of “manufactures, workshops, factories, warehouses, worksites and other establishments that present a danger or inconvenience to the safety, health or convenience of the surrounding area, or to public health, agriculture or fisheries” is subject to an investigation by the authorities. Under Articles 6, 7 and 8 of the 1962 Act, the opening of so-called class 1 and 2 establishments was subject to a “commodo/incommodo” investigation within a radius of 5km by an investigating commissioner. The commissioner should then submit conclusions to the company, which would draw up a memorandum in response. The investigating commissioner’s recommendation should then be transferred to the Ministry of the Mines, which should issue a decision in the form of a decree. In 1986, Decree 86/775 of 7 June 1986 made environmental impact assessments compulsory in Congo to be carried out by an approved agency. Article 1 stipulates that “any project to develop, build, equip or set up an industrial, agricultural or commercial unit on national territory must be preceded by an impact study on the environment”. The Law 003/91 of 23 April 1991 on the Protection of the Environment replaced the previous law from 1962 and strengthened the obligations of companies about the protection of the environment. This law requires that an environmental impact assessment (EIA) takes place before any development, work, installation, or industrial unit project is carried out.<sup>78</sup> Decree 2009-415 of application of this law was adopted in 2009, specifying obligations with regard to environmental impact assessments (EIAs). These two texts go into more detail on the various stages that companies are expected

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<sup>78</sup> Republic of Congo, Ministry of Environment, Décret 2009-415 portant création, attributions et organisation du comité de cadrage macroéconomique et budgétaire, 20 November 2009, <https://www.sgg.cg/JO/2009/congo-jo-2009-48.pdf> (in French), p.3.

to go through as part of environmental impact assessments, as well as state control in the event of non-compliance.

According to the Decree 2009-415, the EIAs aim “1/ for the proponent to plan, design and implement a project that minimizes adverse environmental effects and maximizes the benefits of cost and efficiency; 2/ for the authority to take an authorisation decision knowingly; 3/ for the public to better understand the development project or programme and its impacts on the environment and the populations concerned. And the EIAs include the environmental, social and sanitary impact (Article 3), including “effects on the living environment of the citizen, on hygiene and public health and on the convenience of the neighbourhood, the consequences of noise, vibrations, odours, gaseous fumes, light emissions and other nuisances” (Article 10).

According to the Decree 2009-415, the scoping process starts with a mandatory public consultation organised by the industrial project promoter representatives after which they should prepare a draft of the terms of reference for the EIA. The Minister of Environment has 10 days to respond to this request and a further five days if the industry representative reminds the Minister of the request after the first 10 days.<sup>79</sup> According to the decree, the purpose of scoping is to identify the environmental elements that may be affected by the project and that raise public, professional or legal concerns. It also aims to define the means by which the public will be informed and involved. Public consultation as part of an environmental assessment or review is essential to ensure informed, transparent and legitimate decision-making and to promote trust and cooperation between stakeholders.

Before an EIA can begin, an industrial project promoter must first apply to the Directorate-General for the Environment (Environmental Department) to authorise the study. This application shall include proof of accreditation of the selected consultancy firm,<sup>80</sup> the terms of reference of the study and a copy of the contract between the promoter and the consultant.<sup>81</sup> Once the environmental and social study has been completed, the industrial project promoter submits a written request to the Minister of Environment to validate the study. The validation process takes place in two phases: the public hearing or consultation, and the technical analysis.<sup>82</sup>

The public hearing results in a memorandum that is an integral part of the study validation. The memorandum is a record of the comments of the people living near the project on the EIA. Then, the Minister of Environment forms a Technical Validation Committee<sup>83</sup> upon receipt of the EIA. The technical validation committee meets 15 days after receipt of the notice of the public hearing to assess whether the existing guidelines and benchmarks have been applied correctly and whether the proposed measures to prevent and mitigate impacts are sufficient and appropriate.

The Decree 2009-415 also provides for an environmental follow-up assessment and quarterly reports. Indeed, according to Article 44, “Environmental and social monitoring aims to: verifying the effectiveness of the implementation of the measures of the Environmental and Social Management Plan. It results in the establishment of a quarterly report on the results environmental and social monitoring”. Article 45 specifies that “Monitoring the applicability of the measures recommended in the environmental management plan is the responsibility of the Environment Administration”.

Though EIAs are compulsory to get a certification permit to operate, Amnesty International found in one case studied in this report that a recycling factory had operated for 10 years before there is any evidence that it carried out the initial EIA (see part 4.4).

But while EIAs cover critical elements, such as the identification of possible environmental consequences of business activities, and remedial procedures, access to the initial EIA and follow-up assessments (especially those done before the Decree 2009-415) remains a key problem for people<sup>84</sup> affected by oil extraction areas, as highlighted to Amnesty International.

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<sup>79</sup> Republic of Congo, Ministry of Environment, Décret 2009-415 portant création, attributions et organisation du comité de cadrage macroéconomique et budgétaire, 20 November 2009, <https://www.sgg.cg/JO/2009/congo-jo-2009-48.pdf> (in French).

<sup>80</sup> Le Décret 835 / MIME / DGE (September 1999), <https://www.sgg.cg/textes-officiels/Congo-Arrete-1999-835-agrement-realisation-etudes-impact.pdf>.

<sup>81</sup> Republic of Congo, Ministry of Environment, Décret 2009-415 portant création, attributions et organisation du comité de cadrage macroéconomique et budgétaire, 20 November 2009, <https://www.sgg.cg/JO/2009/congo-jo-2009-48.pdf> (in French), Article 20.

<sup>82</sup> Republic of Congo, Ministry of Environment, Décret 2009-415 portant création, attributions et organisation du comité de cadrage macroéconomique et budgétaire, 20 November 2009, <https://www.sgg.cg/JO/2009/congo-jo-2009-48.pdf>, Article 25.

<sup>83</sup> Lememorandum 001647 / MDDEFE / CAB-DGE (May 2010) disestablishes the organisation and the functioning of the technical Committee for the validation of EIESes.

<sup>84</sup> Interview in person, July and December 2022, Pointe-Noire and Kouilou Departments- Republic of Congo.

One person from Banga Kayo interviewed explained to Amnesty International that “there was an environmental investigation before the company was established here; the state participated but we have never seen this investigation”.<sup>85</sup> Another resident from the village of Banga Kayo said: “an environmental impact assessment was conducted. We residents and village chiefs participated, but no report was ever shared with us afterwards”.<sup>86</sup>

People interviewed<sup>87</sup> noted that when the authorities do follow-up environmental assessments, in general following an incident brought to the attention of the state by the communities, local environmental services conduct inspections in the production sites and sometimes consult people, but the communities never receive feedback from the administration on the results of the enquiry.<sup>88</sup> According to a village chief met by Amnesty International, speaking about an accident on a platform in his area: “the environmental people have already passed by, but no information is given, they spoke with the company officials and left”.<sup>89</sup>

According to officials from the Pointe-Noire Departmental Directorate of the Environment met by Amnesty International, companies that started their activities before the Decree 2009-415 have all updated their practices, and their services now strictly follow the procedure for environmental monitoring regarding initial EIA and follow-up assessments.<sup>90</sup> According to the Directorate, environmental impact assessments are available at management level and can be obtained by anyone who wishes to see them. However, it does not see the need to share a copy of these documents with all the communities concerned.<sup>91</sup> It was also mentioned during the interview that the cost of printing a copy of the report is at the expense of the person making the enquiry.

Amnesty International has had several exchanges with non-governmental organizations that have been working on the issue of extractive industries in the coastal area for many years. They are unanimous in pointing out the opaque nature of these environmental impact assessments, as well as the environmental studies commissioned by the companies, the results of which are not made public.<sup>92</sup>

Despite several requests, Amnesty International was unable to obtain the initial environmental impact assessment reports from TEPC, Metssa Congo and Wing Wah. In their responses, TEPC and Metssa Congo referred the organization to the government. Wing Wah did not respond to any of our requests.<sup>93</sup> ENI Congo shared the content index of the environmental impact study carried out in 2004 by Zetah Maurel & Prom Congo, the first operator of its industrial site, and an extract of the one carried out in the same area in 2019 on their behalf.<sup>94</sup> The company also shared a summary of the concerns raised by communities during the public hearings that includes the impact of the activities on biodiversity, the potential pollution and also the need for compensation for plantation owners who will be affected by the project.<sup>95</sup>

In addition to the initial environmental impact assessments, Amnesty International also requested access to the various follow-up environmental impact assessments or environmental audits carried out by these companies during their operations. TEPC and Metssa Congo again both referred Amnesty International to the national authorities to get such documents. ENI Congo shared with Amnesty International tests on groundwater and wastewater carried out at Mboundi in August and September 2023.<sup>96</sup>

The failure to make these impact assessments public contravenes the requirements of the Extractive Industry Transparency Initiative, which requires states and companies to disclose information on environmental impacts and monitoring.<sup>97</sup> It also goes against international and regional obligations. The International Covenant on Civil and Political Rights, which Congo ratified in 1983, and the African Charter on

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<sup>85</sup> Interview in person with a resident of Kayo, July 2022, Kayo-Republic of Congo.

<sup>86</sup> Interview in person with a resident of Kayo, July 2022, Kayo-Republic of Congo.

<sup>87</sup> Interview in person and via online messaging with 16 individuals, July, November and December 2022.

<sup>88</sup> Interview in person with 16 individuals, July and December 2022, Pointe-Noire-Republic of Congo.

<sup>89</sup> Interview in person with a village chief, December 2022, Republic of Congo.

<sup>90</sup> Interview in person with Pointe-Noire Departmental Directorate of the Environment, December 2022, Pointe-Noire-Republic of Congo.

<sup>91</sup> Interview in person with Pointe-Noire Departmental Directorate of the Environment, 9 December 2022, Pointe-Noire-Republic of Congo.

<sup>92</sup> Interview in person with eight people, July and December 2022, Pointe-Noire and Djeno-Republic of Congo.

<sup>93</sup> Letters from Metssa Congo and TEPC received in November and December 2023, on file with Amnesty International, and discussion by videoconference with TEPC in January 2024.

<sup>94</sup> Head of Sustainable Development Strategic Frameworks and Stakeholders ENI, email to Amnesty International, 23 January 2024, on file with Amnesty International.

<sup>95</sup> Head of Sustainable Development Strategic Frameworks and Stakeholders ENI, email to Amnesty International, March 2024, on file with Amnesty International.

<sup>96</sup> Head of Sustainable Development Strategic Frameworks and Stakeholders ENI, email to Amnesty International, 23 January 2024, on file with Amnesty International.

<sup>97</sup> Extractive Industries Transparency Initiative (EITI), Environmental Reporting, [Environmental reporting | EITI](#).



Human and Peoples' Rights (ACHPR)<sup>98</sup> protect the right to information. In its Resolution<sup>99</sup> on the Adoption of the Declaration of Principles on Freedom of Expression in Africa in 2002, the African Commission on Human and Peoples' Rights stipulated that everyone has the right to access information held by public or private bodies that is necessary for the exercise or protection of any right.

Similarly, the UN Committee on Economic, Social and Cultural Rights has emphasized that “the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations”.<sup>100</sup> The right to seek, receive and impart information also includes information on environmental matters.<sup>101</sup> It is also recognized in international environmental law, including under the 1992 Rio Declaration on Environment, the UNFCCC and the Convention on Biological Diversity.<sup>102</sup> The African Convention on the Conservation of Nature and Natural Resources,<sup>103</sup> which Congo ratified in 2014, also guarantees access to environmental information. The 2030 Agenda for Sustainable Development also calls on states to ensure public access to information and protecting fundamental freedoms in accordance with national legislation and international agreements (Goal 16).<sup>104</sup>

## 5.2 ASSESSING OIL AND RECYCLING COMPANIES' RESPECT FOR HUMAN RIGHTS STANDARDS

### 5.2.1 CASES OF OIL SPILLS IN LOUBI LAGOON

#### BACKGROUND OF CONCESSIONS AND COMPANIES OPERATING THE OIL IN DJENO TERMINAL

Djeno is a village in the department of Kouilou, 30km from the city of Pointe-Noire bordered by the Loubi lagoon. In 1970, a mining concession called the “Emerald Concession” was granted by decree to the oil company Elf Congo, a subsidiary of the French firm Elf (which was acquired by the French oil company Total in 1999), for a period of 50 years. In 1972, Elf Congo and AGIP S.A. (a brand of the ENI group, which was founded in 1953)<sup>105</sup> applied for a licence to build an oil terminal in Djeno, which was granted by decree of the Ministry of Environment and the Ministry of Hydrocarbons. 95% of the oil produced in Congo transits through the oil terminal of Djeno, or about 257,000<sup>106</sup> barrels per day in 2015. The terminal is therefore used to receive, process and store crude oil before it is sent to refineries by tanker or pipeline. It was jointly owned until the end of the 50-year contract in 2020<sup>107</sup> by TEPC - (63%) and ENI Congo (37%), respectively subsidiaries of TotalEnergies<sup>108</sup> and ENI.

TotalEnergies is a French multinational energy company and was originally known as Compagnie française des pétroles (CFP), founded in 1924 following the merger of several French oil companies. Its main activities were the exploration, production and refining of petroleum products. Over the years, the company expanded its activities worldwide and became one of the major players in the oil and gas industry. In the mid-20<sup>th</sup> century, the company continued to grow through acquisitions and partnerships. In 1954, the company took the Total brand and after the integration of Fina in 1999, Total acquired in 2000 the French oil company Elf

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<sup>98</sup>African Charter on Human and Peoples' Rights, *African (Banjul) Charter on Human and Peoples' Rights* ([african-court.org](http://african-court.org)), Article 9.

<sup>99</sup> African Commission on Human and Peoples' Rights, CADHP/Res.62(XXXII)02, 22 October 2002, <https://achpr.au.int/fr/adopted-resolutions/62-resolution-sur-ladoption-de-la-declaration-de-principes-sur-la-liberte>.

<sup>100</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12 of the ICESCR), 11 August 2000, E/C.12/2000/4, para. 54. <http://www.unhcr.org/refworld/docid/4538838d0.html>.

<sup>101</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligation relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 24 January 2018, UN Doc. A/HRC/37/59, para. 17.

<sup>102</sup> Rio Declaration on Environment and Development <https://www.un.org/french/events/rio92/rio-fp.htm> Principle 10.

<sup>103</sup> African Union, African Convention on the Conservation of Nature and Natural Resources, 11 July 2003, Article 16.

<sup>104</sup> UN Information for Integrated Decision-Making and Participation, Goal 16, <https://sdgs.un.org/topics/information-integrated-decision-making-and-participation>.

<sup>105</sup> Republic of Congo, Ministry of Communication and Media, “Compte rendu du Conseil des Ministres du mercredi 30 novembre 2022”, 30 November 2022, <https://www.sgg.cg/ccm/compte-rendu-cmd-2022-11-30.pdf>.

<sup>106</sup> Trading economics, Production brut de pétrole par pays-Liste des pays-Afrique, 2022, <https://fr.tradingeconomics.com/country-list/crude-oil-production?continent=africa> (accessed on 30 April 2024).

<sup>107</sup> Totalenergies Congo, Terminal de Djeno : Des activités multiples pour une énergie meilleure, <https://corporate.totalenergies.cg/terminal-de-djeno-des-activites-multiples-pour-une-energie-meilleure> (accessed on 30 April 2024).

<sup>108</sup> After Total's takeover of Petrofina of Belgium in 1999, it became known as Total Fina. After it acquired Elf Aquitaine in 2000, it first named TotalFinaElf before the name reverted to Total in 2003. The group became TotalEnergies in 2021.

Aquitaine, creating the new Group TotalFinaElf and changed again its name in 2021 in TotalEnergies.<sup>109</sup> TotalEnergies is considered as one of the major oil companies in the world. In Congo, it operates several offshore fields (Moho Nord, Moho-Bilondo, Nkossa, Nsoko II, Yanga and Sendji) and the Djéno oil terminal.<sup>110</sup> It employs 600 persons at the Djéno terminal.<sup>111</sup>

ENI is an Italian multinational energy company active in the exploration, production, transportation, processing and marketing of oil and natural gas. Founded in 1953, ENI is one of the largest energy companies in the world and is present in over 60 countries.<sup>112</sup> ENI was created by the Italian government to develop and manage the country's energy resources, particularly in the hydrocarbon sector. One of ENI's first acquisitions was Agip, an Italian oil and gas company. In 1953, Agip was already active in the exploration and production of hydrocarbons in Italy and played a key role in ENI's early development. In 1969, ENI acquired Snia-BPD, an Italian company specialising in chemicals and synthetic fibres. In the 2000s, ENI acquired the British oil company Lasmo and the Belgian natural gas distribution company Distrigas, and Burren Energy, a British oil company active in the exploration and production of hydrocarbons in Africa and Asia.<sup>113</sup> This acquisition strengthened ENI's presence on the African continent. These acquisitions helped ENI grow and diversify into an integrated energy company, strengthening its activities in exploring, producing, refining and marketing hydrocarbons and other related energy businesses. ENI has been present in the Congo since 1968, the company operates onshore and offshore deposits.

The "Emerald Concession" expired on 18 November 2020 and a Memorandum of Understanding was signed between the Republic of Congo, the Société Nationale des Pétroles du Congo (National Oil Company of Congo), TEPC, ENI Congo S.A. and Perenco Congo S.A. (a subsidiary of the French-British company Perenco) for the continuation of the terminal's activities.<sup>114</sup> On 30 December 2022, the terminal became the property of the state.<sup>115</sup> TEPC and ENI Congo have become its operators. This means also that operating companies now have to pay a rent to the state of US\$1.5 million per month.<sup>116</sup> The government also has a say in the terminal's activities, notably through a management committee.

## OIL SPILLS INCIDENTS AND ALLEGED IMPACTS

Djéno is a fishing village whose residents fish in both the sea and the Loubi lagoon, which lies upstream from the Djéno oil terminal. A man met by Amnesty International researchers in Djéno explained the economic and cultural importance of the lagoon: "the Lagoon is an important source of water for us. I was born in 1966 and have lived in this area since I was born, before the arrival of the terminal in 1972".<sup>117</sup> He added: "It is a village of fishermen and farmers. Tilapia, carp, crab and mullet are fished here".

Villagers from Djéno long complained about several incidents of spills of oil in the Loubi lagoon coming from the Djéno terminal and their environmental, economic and social impact. The last significant spills reported by local communities and NGOs took place in 2003 and 2011.

The issue of oil spills from the Djéno terminal in the Loubi lagoon and the local mangrove is long-standing; it was mentioned in the 1980s by the Office<sup>118</sup> of Overseas Scientific and Technical Research, a French public research institute involved in scientific and technical research through agreements signed between France and certain countries. According to one of its reports, there are many sources of oil pollution in the Congo. There are two main components: the offshore component and the onshore component, which is made up of landfill sites at the refinery and the Djéno terminal.<sup>119</sup>

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<sup>109</sup> Benoît Doessant, "Nouvelles des archives. Les archives historiques du groupe Total : aux sources de l'histoire pétrolière", 2009, *Entreprises et histoire*, Volume . 55, Issue. 2, pp. 146-148 ; Ferdinand Malonga and Samir Saul, "ELF-ERAP et le Congo : les vicissitudes d'un mariage de raison (1968-1978)", 2010, *Histoire, économie & société*, Vol . 29, Issue 2, pp. 109-125 (in French).

<sup>110</sup> TotalEnergies in the Republic of the Congo | TotalEnergies.com.

<sup>111</sup> Director General of TEPC, letter to Amnesty International, 1 December 2023, on file with Amnesty International.

<sup>112</sup> ENI, Le groupe ENI, <https://fr.eni.com/particuliers/a-propos-eni/groupe-eni>.

<sup>113</sup> Challenges, "Eni rachète Burren Energy pour 2,4 milliards d'euros", 30 November 2007, [https://www.challenges.fr/entreprise/eni-rachete-burren-energy-pour-2-4-milliards-d-euros\\_379842](https://www.challenges.fr/entreprise/eni-rachete-burren-energy-pour-2-4-milliards-d-euros_379842).

<sup>114</sup> Le Figaro, "Congo: Total garde la gestion du terminal pétrolier pour 20 ans", 3 November 2011, <https://www.lefigaro.fr/flash-eco/congo-total-garde-la-gestion-d-un-terminal-petrolier-pour-20-ans-20201103> (in French).

<sup>115</sup> Republic of Congo, Ministry of Hydrocarbons, Décret 2022-1945 portant classement du terminal pétrolier de Djéno dans le domaine public de l'État, 30 December 2022, <https://www.sgg.cg/JO/2023/congo-jo-2023-03.pdf> (in French), page 3.

<sup>116</sup> Africa Intelligence, "Terminal de Djéno : les tergiversations de TotalEnergies, ENI et Perenco agacent Brazzaville", 30 March 2023, [https://www.africaintelligence.fr/afrique-centrale/2023/03/30/terminal-de-djeno--les-tergiversations-de-totalenergies-eni-et-perenco-agacent-brazzaville\\_109928682-bre](https://www.africaintelligence.fr/afrique-centrale/2023/03/30/terminal-de-djeno--les-tergiversations-de-totalenergies-eni-et-perenco-agacent-brazzaville_109928682-bre) (in French).

<sup>117</sup> Interview in person with a member of AJVK, December 2022, Djéno- Republic of Congo.

<sup>118</sup> The ORSTOM Centre is the former name of the Institut de recherche pour le développement (IRD).

<sup>119</sup> J.P Makaya, LG Yoba, "Pollution marine par les hydrocarbures à Pointe Noire", December 1987, Centre ORSTOM de Pointe Noire, <https://core.ac.uk/download/pdf/39869591.pdf> (in French).

In another study in 1990,<sup>120</sup> the Centre's scientists pointed to "the dumps of the refinery and the Djeno terminal, and the oil from the drainage of the power stations of the industries of Pointe-Noire which are in most cases poured into the sewers which carry them to the rivers and then to the sea". They add that fishing and human health could be affected in the long term.

In 2005, a Food and Agriculture Organization study on the state of the world's forest resources, which focused on mangroves, also noted that mangroves in the Loubi area had been severely degraded by several factors, including oil pollution.<sup>121</sup> It should also be noted that the area has been a protected site under the Ramsar Convention on the Protection of Wetlands<sup>122</sup> since December 2007.<sup>123</sup>

The oil spills in the lagoon linked to the company's activity are not denied by TEPC. In its letter of response to Amnesty International's request for information, the Director-General of the company acknowledged that over more than 50 years of the terminal's operations, "a few operational or weather-related incidents resulting in accidental oil spills have unfortunately occurred".<sup>124</sup> According to the company's records,<sup>125</sup> there have been three incidents reported since 1972. The initial incident happened in 1990, involving a breach in pipe 16, resulting in a spillage of 15m<sup>3</sup>. The second incident occurred in 2003, where 10m<sup>3</sup> of crude oil overflowed from the mechanical power station. Lastly, in 2011, there was an overflow in the settling basins, leading to a spillage of 3m<sup>3</sup>.

People from Djeno interviewed by Amnesty International see a direct impact of oil spills on their daily lives. They consider that the spills polluted the lagoon, preventing them from using water from it, and affecting their right to a healthy environment. They also report a scarcity of fish and their poor quality affecting their economic and health rights. A fisherman met by Amnesty International in Djeno stated that "the number and size of the fish has decreased. Before, in one day of fishing, I could earn up to XAF50,000 (US\$82) per day. Now it is around XAF10,000 (US\$16), sometimes less, and the fish tastes of oil." A woman met in Djeno added "I would buy the Loubi lagoon fish from the fishermen and sell it in the village. I have been in the village for 30 years. Not only did the number of fish decrease, but customers also began to complain of diarrhoea, as well as the taste of the fish". She had to find a new source of income to support her family. Another person added that "when we eat the fish or crab caught in the lagoon, we get diarrhoea and smell the crude oil". Another concluded "We have no choice but to continue fishing to live". Indeed, residents report suffering from health problems, particularly diarrhoea, after eating fish from the lagoon.

According to TEPC officials during a videoconference with Amnesty International, residents' claims about the impact of spills of oil on the quantity and taste of fish caught in the Loubi lagoon are questionable. They said the company carried out an action plan on biodiversity since 2015 and claimed to have analysed the water and the fish, and that the concentrations of oil found in the flesh were below the standards in force. Amnesty International was not able to get these analyses. They also pointed out that industrial fishing near the coast could be a cause of the scarcity of fish.<sup>126</sup> The company also put forward various other factors to be considered, including the decline of mangrove forests due to market gardening, household waste disposal, and sediment accumulation in the lagoon bed. Additionally, officials noted the presence of numerous industrial activities occurring near and along the periphery of the lagoon.<sup>127</sup> Amnesty International researchers could not find peer-reviewed study or other data on the impact of these spills on the fish. But if several factors can affect the fauna of a lagoon, there are scientific evidence regarding the impact of oil spills on fish stocks and quality.<sup>128</sup>

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<sup>120</sup> J.P Makaya, "Evaluation de la pollution des plages de Pointe-Noire par les Hydrocarbures", July 1990, Centre ORSTOM, [https://horizon.documentation.ird.fr/exl-doc/pleins\\_textes/pleins\\_textes\\_6/b\\_fdi\\_45-46/010009749.pdf](https://horizon.documentation.ird.fr/exl-doc/pleins_textes/pleins_textes_6/b_fdi_45-46/010009749.pdf), p.60 (in French).

<sup>121</sup> FAO, Forestry Department, *Mangroves of Africa 1980-2005*, 2007, <https://www.fao.org/3/ai445b/ai445b.pdf>, p. 22.

<sup>122</sup> The Ramsar is an international convention that aims to protect wetlands of international importance. It was adopted in 1971 by the United Nations Educational, Scientific and Cultural Organization (UNESCO). Wetlands designated as "Ramsar sites" are protected because of their importance for biodiversity, ecosystem services, culture, education and research, [https://ramsar.org/sites/default/files/documents/library/current\\_convention\\_text\\_f.pdf](https://ramsar.org/sites/default/files/documents/library/current_convention_text_f.pdf).

<sup>123</sup> Congo ratified the Ramsar Convention in October 1998 Loi 28-96 of 25 June 1996 authorizing accession to the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, <https://faolex.fao.org/docs/pdf/con204337.pdf>.

<sup>124</sup> Director-General of TotalEnergies EP Congo, letter to Amnesty International, 1<sup>st</sup> December 2023, on file with Amnesty International.

<sup>125</sup> TEPC, letter to Amnesty International, March 2024, on file with Amnesty International.

<sup>126</sup> Meeting with TEPC by videoconference on 22 January 2024.

<sup>127</sup> TEPC, letter to Amnesty International, March 2024, on file with Amnesty International.

<sup>128</sup> Jeffrey Short, "Long-Term Effects of Crude Oil on Developing Fish: Lessons from the Exxon Valdez Oil Spill", 21 June 2010, *Energy Sources: Vol 25, Issue 6, Long-Term Effects of Crude Oil on Developing Fish: Lessons from the Exxon Valdez Oil Spill* : *Energy Sources: Vol 25, No 6* ([andfonline.com](http://andfonline.com)); ITOPF, *Effects of oil spills on fish production in the Niger Delta* | PLOS ONE TIP\_11\_Effects\_of\_Oil\_Pollution\_on\_Fisheries\_and\_Mariculture.pdf ([itopf.org](http://itopf.org)).

According to people from Djeno and several NGOs met by Amnesty International, residents have complained several times to the authorities and terminal officials about spills of oil in the Loubi lagoon and their impact on their local environment.<sup>129</sup>

This was notably the case in 2011, when communities and local NGOs protested after several incidents of oil spills affecting the Loubi lagoon. In a joint public statement, two local NGOs, Rencontre pour la Paix et les Droits de l'Homme (RPDH) and Commission Diocésaine pour la justice et la paix (CJP)<sup>130</sup> denounced two oil spills that took place in August at the terminal<sup>131</sup> when a loading buoy spilled crude oil.

TEPC also recognised they were seized several times on issues linked to spills of oil and their impact: the first time in 2010 including by a private individual in 2010 denouncing spills of oil in the lagoon and three other times in the framework of its complaint mechanism established since 2012: in 2015, a complaint was registered for poor growth of food crops; in 2017, a complaint was filed by fishermen of Djeno denouncing spills of oil in the lagoon and their impact;<sup>132</sup> in 2022, a complaint has been recorded linked to the destruction of food crops. TEPC officials stated that all complaints were closed with some compensation by means of an agreement reached amicably. According to the company, compensation measures are subject to a confidentiality clause.<sup>133</sup>

According to residents of Djeno, TEPC undertook clean-up operations in 2004 and 2011, without any specific communication on the cause and potential impact of the spills on environment and human rights of local communities, nor on the outcome of the clean-up. The company refutes this claim saying it has set up a Djeno coordination group (GCD) as early as 2005 aiming at reducing the impact of the terminal's activities on the environment and maintaining a dialogue with the community through the committee of elders and the administrative authorities.<sup>134</sup> They also put in place a community liaison officer in regular contact with communities in the vicinity to convey to them any useful information and to receive all their grievances.<sup>135</sup>

## THE COURT CASE AND FOLLOW-UP

Frustrated by the repeated spills and considering the clean-up operations were not sufficient, a local NGO decided to take the case to court.<sup>136</sup> On 26 October 2016, the Association Jeunesse pour la Vie du Kouilou (AJVK) filed a complaint against TEPC (the major owner of the Djeno terminal at that time) to demand the restoration and cleaning of the lagoon. In its complaint, the association focused on the spill of crude oil on 29 October 2011 in the Loubi lagoon and accused the company of not having completed clean-up operations.

During the proceedings, TEPC requested of the Court a 'refusal to receive', claiming AJVK did not have the quality and capacity to act. But the court dismissed this request in January 2018. The company claiming that it had totally de-polluted the Lagoon also requested that the judiciary order an on-site transport to confirm its allegations, which the court accepted in June 2018, and which was implemented a month later.

In its decision of 27 March 2019,<sup>137</sup> the Tribunal de Grande Instance of Pointe-Noire said that, according to the on-site transport report, "the lagoon was polluted in 2003". It further noted that the cleaning operation of this pollution was not successful and that another incident of pollution had taken place in 2011. It then noted that the oil spilled in 2003 into the lagoon, turned into paraffine (petroleum waxes derived from crude oil, considered a pollutant) which explains the presence of hydrocarbon residues on the surface of the ground. The Tribunal also stated that TEPC acknowledged that it had set up a project with the state to rehabilitate the lagoon but that this project had not been added by the company to the court file. The Tribunal said that this project "would not have been set up if the company does not recognize that hydrocarbons in the Loubi lagoon harm human biological resources and health, hinder human activities such as fishing and alter water quality". The Tribunal also noted that the company has not fulfilled its

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<sup>129</sup> Interview in person with four representatives of Djeno village, December 2022, Djeno -Republic of Congo.

<sup>130</sup> RPDH, "Déversement de brut dans la localité de Ndjéno : Nécessité pour l'État et les compagnies opératrices de garantir un environnement sain et protégé aux communautés riveraines", 31 August 2011, <https://rpdh-cg.org/news/2011/08/31/deversement-de-brut-dans-la-localite-de-ndjeno-necessite-pour-letat-et-les/> (in French).

<sup>131</sup> Reuters, "Total says crude exports from Congo Republic Djeno terminal unaffected", 17 July 2017, <https://www.reuters.com/article/us-total-congorepublic-djeno-idUSKBN1A2106>.

<sup>132</sup> Annex to the letter of response from the Director General of TotalEnergie EP Congo to Amnesty International's request for information, 1<sup>st</sup> December 2023.

<sup>133</sup> TEPC, letter to Amnesty International, March 2024, on file with Amnesty International.

<sup>134</sup> TEPC, letter to Amnesty International, March 2024, on file with Amnesty International.

<sup>135</sup> Meeting with TEPC by videoconference on 22 January 2024; Interview in person with seven people, July and December 2022, Republic of Congo.

<sup>136</sup> Association jeunesse pour la vie au Kouilou v Société Total EP Congo, 27 March 2019, on file with Amnesty International and interview in person in Pointe-noire,

<sup>137</sup> Court of First Instance of Pointe Noire, 27 March 2019 Civil Court hearing 27 March 2019 register n °035.

undertaking to submit to the court tests it apparently carried out on the water of the lagoon and on the flesh of the fish.

According to the Tribunal, the hydrocarbons spilled in the lagoon, and these are at the origin of its pollution, qualifying as waste. Article 49 of the 1991 environment law provides that “Any person who produces or holds waste under conditions likely to cause adverse effects on soil, flora and fauna, to degrade sites and landscapes, to pollute waters, and in general to harm human health and the environment, is required to ensure their disposal”. The Tribunal added that in this case, the disposal of waste must include operations that eliminate all the paraffins that are in the lagoon to allow the use of water by the local population, as well as the resumption of fishing. The Tribunal mentioned in that regard the suspension of fishing in the lagoon in 2017. According to people of Djeno interviewed by Amnesty International, this suspension refers to the deployment by local authorities of gendarmes around the lagoon to prevent people from fishing. The residents said that the measure was lifted a few months later.

The Tribunal concluded that “the pollution of the Loubi lagoon is the fact of the company” and that “the clean-up operations have not resulted in the total depollution of the lagoon”.<sup>138</sup> The court ordered “the resumption of operations of the lagoon at the expense of the company” and “the rehabilitation of marine and coastal ecosystems due to the pollution of the lagoon”. TEPC was also ordered by the Tribunal de Grande Instance of Pointe-Noire to pay the sum of XAF50 million (US\$82041) for moral damages, and XAF150 million (USD\$246,125) for environmental damages, to AJVK.<sup>139</sup> The Tribunal also ruled that its decision should be implemented immediately.

The company appealed this ruling on 29 March 2019. On 28 February 2020, the Court of Appeal of Pointe Noire temporarily suspended enforcement of the initial judgement.<sup>140</sup> The Court considered that “Nowhere in their reasoning did the first judges demonstrate or justify in an indisputable manner the urgent nature or the perilous nature of the situation to order the resumption of work to clean up the lagoon, work which had already been resumed”. AJVK’s president passed away in 2021, and no one has taken over the case at this stage.

While the case was still ongoing before the Tribunal, an Inter-ministerial Technical Commission (ITC) headed by the Ministry of Hydrocarbons and composed of several other ministries and structures (including Environment, Health and Population, Fisheries and Livestock, Port Authority of Pointe-Noire, TEPC) was set up in order to manage the depollution work on the Loubi lagoon. In 2020, the oil company conducted the cleaning operation. According to TEPC,<sup>141</sup> the company had carried out preliminary mapping using a drone, covering an area of 126.9 hectares, which is larger than the outline of the Loubi lagoon. This was followed by a set of specifications approved by the ITC,<sup>142</sup> and a call for tenders that led to the selection of two service providers to undertake the clean-up operations, supervised by the company. Residents explained to Amnesty International that local staff was recruited to participate in the clean-up operation. The lagoon was first drained, before the workers proceeded to collect the oil using shovels. The waste was then taken away by lorry to treatment sites. According to TEPC, the local community were given a “full debriefing on the situation.”<sup>143</sup>

On resident’s allegations that the clean-up operation was still not sufficient, the company states<sup>144</sup> that “contradictory tests were carried out in 2021 by two different laboratories. An independent laboratory was chosen by TEPC, and another laboratory was chosen by the Republic of Congo. One laboratory concluded that the results of these tests were of “good quality” according to the classification proposed by the water quality assessment system version 2 SEQV2 (system for assessing the quality of watercourses, making it possible to evaluate their physico-chemical and chemical quality). The other laboratory concluded that the results were “globally compliant” in relation to the thresholds dictated by the 2014 French decree on the conditions for accepting waste at facilities classified for environmental protection. These results were presented to and validated by the ITC, which deemed that “the lagoon is no longer polluted and that the

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<sup>138</sup> Court of First Instance of Pointe Noire, 27 March 2019 Civil Court hearing 27 March 2019 register 035.

<sup>139</sup> Court of First Instance of Pointe Noire, 27 March 2019 Civil Court hearing 27 March 2019 register 035.

<sup>140</sup> Court Appeal of Pointe Noire, Civil judgment, 28 February 2020.

<sup>141</sup> Annex to the letter of response from the Director General of TotalEnergie EP Congo to Amnesty International's request for information, 1<sup>st</sup> December 2023.

<sup>142</sup> Commission set up in 2018 with representatives from several ministries (Hydrocarbons, Environment, Health and Population, Construction and Housing), the Mayor of Goyo, the Port of Pointe-Noire, TotalEnergies and chaired by the Director of the Anti-Pollution Unit of the Ministry of Hydrocarbons.

<sup>143</sup> Annex to the letter of response from the Director General of TotalEnergie EP Congo to Amnesty International's request for information, 1<sup>st</sup> December 2023

<sup>144</sup> Annex to the letter of response from the Director General of TotalEnergie EP Congo to Amnesty International's request for information, 1<sup>st</sup> December 2023

water is of “good quality” based on expert reports and counter-expertise.<sup>145</sup> The company added that the report of a mission led by the administration in November 2021 called for environmental monitoring over a 10-year period, to 5-year intervals, and that this follow-up will be done by sampling only on certain points identified in the lagoon. This means the next water analysis campaign is therefore scheduled for November 2026.

The company did not share any report on the clean-up operations with Amnesty International, nor any report on the scientist tests on the water referring the organization to the Ministry of Hydrocarbons for further information. However, TEPC provided Amnesty International with the environmental compliance certificate<sup>146</sup> issued by the Ministry of Environment in May 2023 and the ISO 14001 certification<sup>147</sup> attesting to the implementation of an environmental management system.<sup>148</sup> Amnesty International could not find out whether specific clean-up targets had been set, or what the criteria were for establishing that the clean-up was satisfactory.<sup>149</sup>

Despite responses by TEPC on the cleaning operation, residents continue to claim the operation was not satisfactory.<sup>150</sup> They still consider the pollution of the lagoon prevents them from using the lagoon water and violates their right to a healthy environment.

## RESPONSIBILITIES

### The state

Before the case was brought before the courts in 2016, the state authorities were long aware of the complaints by the Djeno residents regarding the oil spills in the lagoon and the potential human rights impact on communities. According to the residents of Djeno whom Amnesty International met, the state, through its services, had been informed of the environmental situation and health concerns, but they had no feedback from the state subsequently.

According to Article 28 of the 1991 Congolese law on the protection of environment “Spills, discharges, direct deposits or indirect of any solid, gaseous and liquid substance liable to degrade the quality of waters under Congolese jurisdiction are banned”.<sup>151</sup> Moreover, in line with national and international obligations, state must ensure that business activities do not harm human rights. Thus, informed by Djeno residents of the spills, it was expected that the state would investigate the cause, responsibilities and consequences.

Given that the Environmental Impact Assessment and the follow-up assessments are difficult to access, Amnesty International does not know if the state authorities requested the company to assess the human rights impact of the incident and repair the damage, in line with their obligation to ensure that companies’ activities respect human rights. But until the court case, the authorities failed both to ensure spills of oil did not harm the human rights of local communities, and to ensure that the company took adequate and effective preventive and reparation measures.

A visible reaction by the state started while the court case was ongoing. In 2017 gendarmes were deployed around the lagoon to prevent people from fishing; a suspension which was lifted after a few months, according to locals. In 2018, the Inter-ministerial Technical Committee (ITC) was set up to oversee the clean-up operation of the lagoon. And the same ITC validated the environmental and social audit carried out by TEPC, leading the authorities to grant the company an environmental compliance certificate in May 2023.

Amnesty International delegates met authorities of Pointe-Noire Departmental Directorate of the Environment,<sup>152</sup> and they said they attended the lagoon clean-up operations by TEPC in November 2020, and assessed that they were conducted in accordance with the procedure. However, they were unable to tell Amnesty International on which scientific basis they made this assessment. Moreover, they acknowledged that crude oil remained in certain areas covered with long grass. They had reportedly asked the company to resume cleaning in these areas. However, at the time of publication of this report, Amnesty International had been unable to obtain an official document confirming this request.

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<sup>145</sup> Annex to the letter of response from the Director General of TotalEnergie EP Congo to Amnesty International's request for information, 1<sup>st</sup> December 2023

<sup>146</sup> TEPC, Certificate of Conformity 0979/MEDDBC/CAB/DGE/DPPN, 23 May 2023, on file with Amnesty International.

<sup>147</sup> Bureau Veritas, Environmental Management System (ISO 14001) Certification 2015 from 27 March 2021 ingexpiring26 MarchMarch 2024.

<sup>148</sup> TotalEnergies, email to Amnesty International, 3 December 2023, on file with Amnesty International.

<sup>149</sup> Interview in person with five people, in Djeno and Pointe-noire, December 2022, Djeno and Pointe-Noire -Republic of Congo.

<sup>150</sup> Interview in person with five people, December 2022, Republic of Congo.

<sup>151</sup> Republic of Congo, Loi 003-91 portant sur la protection de l’ environnement, 23 April 1991, [Loi 003-91 sur la protection de l'environnement \(liziba.cg\)](#), Article 28.

<sup>152</sup> Interview in person with Pointe-Noire Departmental Director of the Environment, 8 December 2022, Pointe-Noire – Republic of Congo.

Amnesty International also met with officials from the Department of Health in Pointe-Noire. They also claimed that the 2020 clean-up of the lagoon was done adequately, but again did not provide any scientific basis for this assessment. They claimed that the Ngoyo health district, which covers Djeno village, had not recorded any pollution-related illnesses in the area. However, they added that they had not conducted any community health surveys, for instance on cases of diarrhoea. Amnesty International delegates requested data on recorded pathologies from the Ngoyo health centre by email but has still received no response at the time of writing.<sup>153</sup>

Considering the presence of crude oil in the lagoon after the cleaning operation, as acknowledged by the authorities of Pointe-Noire Departmental Directorate of the Environment, and claims by the residents that this operation was not satisfactory, the authorities should make the environmental and social audit done by TEPC public, ensure more regular scientific tests to assess the quality of the water are made and make these public, and, depending on the outcomes, request that the company undertake cleaning operations. As part of its EIA follow-up assessment, the authorities should also investigate the potential environmental, health and economic rights impact of past spills of oil in the lagoon for local communities, make those reports public and, depending on the findings, ensure the necessary measures are taken to repair the damage caused.

Amnesty International sent several questions to the government regarding this case via both letters and emails in February and March 2024. However, no response was received.

### The company

As operator, and former owner of the Djeno oil terminal, TEPC also has a responsibility to prevent oil spills, clean up oil pollution and address any impact on human health and livelihoods.

The French multinational's own human rights policy accepts this responsibility to avoid causing or contributing to human rights abuses, as outlined in the UN Guiding Principles.<sup>154</sup> In the same document, the company specifies its commitment to “respect the human rights of local communities that are potentially affected by our operations, in particular in relation to land and property rights, the right to health and an adequate standard of living, and by providing access to remedy for unavoidable adverse impacts related to our operations”.

Regarding TEPC's responsibility to prevent oil spills, the company informed Amnesty International in its response to the organization's letter for information that TEPC has taken several mitigation measures between 1972 and 2017 including the installation and reinforcement of a drainage system known as “oil traps” to recover hydrocarbons, the recalibration of the water discharge channel, the creation of pits and dykes with additional oil traps and the construction of six observation basins at the tank outlets. The company also stated that it created a network of 18 piezometers, wells to take samples for groundwater quality monitoring. This network encircles the facilities to measure the impact.

Yet, in the case of the Djeno terminal, TEPC breached several times Article 28 of the 1991 Congolese law on the protection of environment which bans “spills, discharges, direct deposits or indirect of any solid, gaseous and liquid substance liable to degrade the quality of waters”.

Furthermore, as far as Amnesty International is aware, TEPC has never publicly communicated on spills of crude oil resulting from its activities in the Djeno terminal. The TotalEnergies group, in its publications on human rights, the environment and transparency, does not share specific information on spills.<sup>155</sup> The company website contains raw data on spills that have taken place at all its facilities around the world, but the data is not disaggregated, so it is not possible to determine on which site precisely the accidents occurred, or the quantity of the oil product spilled.<sup>156</sup>

Responding to a question from Amnesty International on whether TEPC makes information public on incidents of spills, the nature of the accidents, the amount of oil spilled into the lagoon and the potential consequences for the population, the company first said they are “not aware of a legal obligation in the Republic of Congo to render public such information” but that they “inform concerned administrations”. This is an utterly inadequate response. The company may not have a legal obligation to make this information public, but it should not hide behind this excuse. Under international human rights standards, it does have a

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<sup>153</sup> Interview in person with two people at Pointe-Noire, 13 December 2022, Pointe-Noire -Republic of Congo.

<sup>154</sup> TotalEnergies, *Human Rights Guide*, December 2015, [human\\_rights\\_internal\\_guide\\_va.pdf](https://totalenergies.com/sites/g/files/nytnzq121/files/atoms/files/droits-de-l-homme-document-information-actualise.pdf) (totalenergies.com).

<sup>155</sup> TotalEnergies, *Droits de l'Homme Document d'information actualisé*, April 2018, <https://totalenergies.com/sites/g/files/nytnzq121/files/atoms/files/droits-de-l-homme-document-information-actualise.pdf> (in French), p.15.

<sup>156</sup> TotalEnergies, Indicateurs environnementaux, <https://totalenergies.com/fr/developpement-durable/rapports-et-indicateurs/indicateurs/indicateurs-environnementaux>; (Last accessed on 27 May 2024) (in French).

responsibility to do so. In March 2024, the company shared with Amnesty International information about three accidental spills in 1990, 2003 and 2011, adding that the Djeno Contact Group's mechanisms allowed the local population to be informed, without specifying if the information included the potential impact on the human rights of the communities concerned.

Following spills of oil incidents and complaints by local communities, TEPC claims to have taken effective remediation measures. But, as far as Amnesty International is aware, the company has never published information on how the potential impact on the environmental, economic and health rights of the local communities was addressed.

The company engaged in cleaning operations of the lagoon in 2004 and 2011, but there is no public information on the results of these operations. Moreover, according to the court judgement, and as confirmed by residents interviewed by Amnesty International, the company took samples and carried out tests in 2010 to analyse the quality of the water in the lagoon.<sup>157</sup> But the results of the tests were not made public, nor were they shared with local communities.

After TEPC was sentenced by the Tribunal de Grande Instance of Pointe Noire and ordered to resume clean-up operations and to restore the ecosystem destroyed by the pollution, the company engaged in clean-up operations and carried out an environmental and social audit of its activities, including tests on the quality of the water.<sup>158</sup> TEPC also responded to complaints filed by residents through its internal complaint mechanism. But, once again, there is no public information to analyse the results of these actions.

Finally, in view of the spills of oil, and past and ongoing complaints by residents on their potential human rights impact, TEPC should have abided by its human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights, by initiating an independent investigation on the potential environmental, economic and health rights impact of these incidents, then making its report public and (depending on its findings) taking appropriate reparation measures.

## 5.2.2 CASE OF OIL SPILLS ON SOIL AND WATER IN BANGA KAYO

### BACKGROUND AND HISTORY OF CONCESSIONS AND COMPANY INVOLVED

The Banga Kayo concession is located approximately 30km from the city of Pointe-Noire in the Tchiamba Nzassi district, on the border with Angola. Wing Wah Exploration and Production (Wing Wah) is a private company that was granted the "Kayo" licence<sup>159</sup> to explore for liquid or gaseous hydrocarbons in April 2006.<sup>160</sup> Wing Wah is a subsidiary of the Chinese group Southern Petrochemical (Southernpec).<sup>161</sup> On 23 August 2016, the company obtained the operating license for the extraction of liquid or gaseous hydrocarbon, called the "Banga Kayo" permit.<sup>162</sup> According to figures available at the time of writing, Wing Wah produced 2,719,578 barrels of oil in 2020, or 2.43% of Congo's total production.<sup>163</sup>

According to residents of Banga Kayo interviewed by Amnesty International delegates, in 2013, when Wing Wah was seeking the extraction licence, there were discussions between the company, states representatives and residents on the possible environmental impact of future extraction activities, and promises concerning local employment. Amnesty International could not find more information on the framework under which these discussions took place. To date, residents have never received any report of this assessment.<sup>164</sup> Letters sent by Amnesty International in January 2023 and December 2023 to the company, requesting a copy of the environmental impact assessment, remain unanswered.

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<sup>157</sup> Interview in person with five people, December 2022, Republic of Congo.

<sup>158</sup> Annex to the letter of response from the Director General of TotalEnergie EP Congo to Amnesty International's request for information, 1 December 2023.

<sup>159</sup> Kayo is the name of the licence which covers several villages including Banga Kayo.

<sup>160</sup> Republic of Congo, Décret n° 2006-173, 14 April 2006 (in French).

<sup>161</sup> According to Southernpec website: "Southernpec Corporation, a restructuring enterprise subordinated to Sinopec, was established in 2002 and headquartered in Guangzhou Tianhe CBD. Southernpec Corporation operates mainly in five business arms: Oil and Gas Development, Energy Trading, Storage and Logistics, Supporting Finance, and Business Investment. The development in oil and gas field is placed as the key strategy by the Second-Decennium-Plan of Southernpec, and is also the important step to integrate our industry chains from upstream to downstream. Since recent years we have enhanced the progress of Kayo Oil-Gas Field Project in Congo and the progress of Alay Oil-Gas Field Project in Kyrgyzstan, these projects optimize our industrial structure and form our fundamental competitive strength at global level." <http://www.southernpec.com/EN/CoreBusiness/develop.html>.

<sup>162</sup> Republic of Congo, Décret 2016-140, 23 August 2016 (in French).

<sup>163</sup> EITI Congo, *Rapport 2020*, June 2022, [Republic of the Congo 2020 EITI Report.pdf](#) (in French).

<sup>164</sup> Interview in person with four residents of Banga Kayo, 13 July 2022, Banga Kayo- Republic of Congo.



The establishment and activities of this company have been marked by several accidents and complaints from residents, who point the finger of blame not only at the company, but also at the public authorities.<sup>165</sup>

## OIL SPILLS, IMPACT, AND RESPONSES FROM AUTHORITIES

A resident of Banga Kayo met by Amnesty International stated that: “From the beginning of the oil exploitation, we denounced the proximity of the oil wells to the water sources, and this is partly why we had started to raise pollution concerns.”<sup>166</sup> Indeed, local populations were concerned about possible accidents that could lead to the degradation of water sources used by residents, such as the Loémé river.

According to interviews collected, relations between the company and the local people have always been difficult.

In January 2020, following claims of non-compliance with health and safety measures for employees, the Minister of Hydrocarbons inspected the Wing Wah extraction site and instructed Wing Wah to remedy the situation. In April 2020, at least 106 workers, mostly from the surrounding area, were reportedly made redundant. These dismissals led to protests by workers who claim they were dismissed without notice.<sup>167</sup> In June 2020, the company’s workers also denounced their cramped living conditions. They filmed and broadcast videos showing unhygienic housing.<sup>168</sup> Following the broadcast of these videos,<sup>169</sup> an inspection team from the Departmental Directorate of Hydrocarbons was sent to the site on 24 June 2020 and, in a letter<sup>170</sup> to the company’s directors, denounced a state of “deplorable insalubrity that does not respect any hygiene or safety measures”. The Directorate gave the company two weeks “to take the necessary measures to remedy the damage”.

From 2021, the residents and workers also began to denounce the pollution of their environment caused by the company’s activities. In several videos posted on social media by residents, they showed how what they describe as waste from drilling muds was stored in the open air, and then how this spread when it rained into the water sources of the village where people wash themselves and grow manioc. They also accused company trucks of regularly dumping drilling muds as they pass through the villages.<sup>171</sup> A report by French media outlet TV5 Monde broadcast in November 2021 also showed traces of oil leaked in the village, possibly from trucks. According to people interviewed from Banga Kayo, the spills into the water sources had also resulted in the faster rotting of cassava, forcing people to harvest the tubers before they were ripe and therefore producing much smaller ones, resulting in a loss of economic income.<sup>172</sup>

On 26 October 2021, the Ministry of Environment accused the company of not respecting environmental law<sup>173</sup> and informed the company by a letter that its facilities would be closed until further notice. The authorities blamed the company “for poor waste management, non-compliance with the environmental management plan, negligence in the management of staff health and safety and the absence of a chemical management plan or programme”.

As reported by media outlets, Wing Wah’s representatives were then received by the Minister of Hydrocarbons on 30 October 2021. The company’s officials acknowledged that “in the course of our work there have been small environmental problems that are true”, and an undisclosed roadmap including several recommendations was agreed upon by the Minister and the company. According to fragments of information available in the media, it was agreed that the company would carry out an environmental audit, and that measures would be taken for the treatment of drilling muds.<sup>174</sup>

Wing Wah was then able to resume its activities at an undisclosed date, even though no document was published on the lifting of the closure order against the company by the Ministry of Environment. Yet in

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<sup>165</sup> Interview in person with residents from Kayo, July 2022, Kayo-Republic of Congo.

<sup>166</sup> Interview in person with a representative of Kayo, 13 July 2022, Kayo-Republic of Congo.

<sup>167</sup> Interview in person with four people, 13 July 2022, Republic of Congo and demonstration by the “collectif des travailleurs de Wing Wah” (Wing Wah workers’ collective), <https://www.facebook.com/CongoMorning/videos/pcb.1104604240007757/408210963792159>.

<sup>168</sup> Congo Morning, Facebook post : “Conditions de quarantaine des travailleurs de la société chinoise de pétrole Wing Wah Petrochemical Joint Stock”, 20 June 2020, [https://www.facebook.com/watch/?extid=CL-UNK-UNK-UNK-AN\\_GKOT-GK1C&mibextid=OVEsak&v=3362091660481663](https://www.facebook.com/watch/?extid=CL-UNK-UNK-UNK-AN_GKOT-GK1C&mibextid=OVEsak&v=3362091660481663) (in French).

<sup>169</sup> Congo Morning, Facebook post : “Conditions de quarantaine des travailleurs de la société chinoise de pétrole Wing Wah Petrochemical Joint Stock”, 20 June 2020, [https://www.facebook.com/watch/?extid=CL-UNK-UNK-UNK-AN\\_GKOT-GK1C&mibextid=OVEsak&v=3362091660481663](https://www.facebook.com/watch/?extid=CL-UNK-UNK-UNK-AN_GKOT-GK1C&mibextid=OVEsak&v=3362091660481663) (in French).

<sup>170</sup> Letter of the General Directorate of Hydrocarbons, 20-0556/MHC/DGH-dexp, 24 June 2020, on file with Amnesty International

<sup>171</sup> Congo Morning, Facebook post: “Congo Morning”, 22 September 2021, <https://www.facebook.com/CongoMorning/videos/pcb.1264493734018806/871657330148458> (in French).

<sup>172</sup> Interview in person with four people, 13 July 2022, Republic of Congo.

<sup>173</sup> Letter of the Ministry of environment, 1322/MEDDBC-CAB.21, 26 October 2021 on file with Amnesty International

<sup>174</sup> Focus media 242, “Wing Wah Congo sommée d’arrêter l’exploitation pétrolière à Banga Cayo”, 30 October 2021 <https://www.youtube.com/watch?v=XIXCKjA9ArA> (in French).

January 2022, during a visit to Pointe-Noire, the Minister of Hydrocarbons visited Wing Wah's facilities, suggesting that the order had been lifted.<sup>175</sup>

In July 2022, the company's operations were suspended again by an order<sup>176</sup> of the Ministry of Environment, accusing the company of not having implemented the recommendations resulting from the October 2021 consultations on environmental matters. It should be noted here that the recommendations were not made public, but it is assumed that they relate to the complaints made in the letter of 26 October 2021.<sup>177</sup>

Amnesty International has spoken to villagers who report that a wastewater treatment system was established by the company in 2022, temporarily putting a stop to water pollution. They added that tests were conducted several times, but they have never seen the results.<sup>178</sup>

On 10 November 2022, the President of the Republic Denis Sassou Nguesso visited<sup>179</sup> the facilities of Wing Wah, showing that it had resumed production after the suspension in July 2022. This visit was part of a tour he was taking in the Pointe-Noire area. As before, no information was released on the reasons for the lifting of the sanctions, or whether the Wing Wah facilities were upgraded to comply with environmental standards.<sup>180</sup>

On 21 December 2022, one month after the visit of the President of the Republic to the Wing Wah industrial base (which was not officially related to pollution issues), the pipeline linking the Banga Kayo field to the Djeno oil terminal leaked. This was confirmed by the Minister of Environment on television.<sup>181</sup> No information has been released on the reasons for the leak or on the exact quantity of crude oil that spilled into the Loémé river, though the Minister for the Environment's YouTube page mentions that around 10,000 litres of oil were spilled.<sup>182</sup> In the images broadcast by the television channels, a screenshot of which is shown below, the crude oil can be seen flowing into the river and clinging to the mud on its banks.

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<sup>175</sup> Republic of Congo, Ministry of Hydrocarbons, Youtube post : "Condensé séjour de travail du Ministre à Pointe-Noire du 13 au 23 Janvier 2022", <https://youtu.be/noYONgVmkA?t=811>.

<sup>176</sup> Republic of Congo, Ministry of Environment, Sustainable development and Congo Basin, Arrêté 5500 portant fermeture temporaire des installations classées de la société Wing Wah Exploration et production pétrolière SAU, dans le district de Tchiamba -Nzassi, Département de Pointe-Noire, 7 July 2022, <https://www.sgg.cg/JO/2022/congo-jo-2022-29.pdf> (in French), p. 26.

<sup>177</sup> The Ministry's decision explicitly refers to the letter of formal notice and closure dated 26 October 2021.

<sup>178</sup> Interview in person with five people, between June and July 2022, Republic of Congo.

<sup>179</sup> Presidency of the Republic of Congo, Facebook post : "Visite du site de la société pétrolière WING WAH par le président de la République, Denis Sassou-N'Guesso", 10 November 2022, <https://www.facebook.com/watch/?v=1306427320184050> (in French).

<sup>180</sup> Presidency of the Republic of Congo, Facebook post : "Visite du site de la société pétrolière WING WAH par le président de la République, Denis Sassou-N'Guesso", 10 November 2022, <https://www.facebook.com/watch/?v=1306427320184050> (in French).

<sup>181</sup> Republic of Congo, Ministry of Environment, Sustainable Development and Congo Basin, Youtube post: "La Ministre Soudan-Nonault reçoit le PDG de WING WAH", 30 December 2022, [https://www.youtube.com/watch?v=VH7z7O\\_6FrU](https://www.youtube.com/watch?v=VH7z7O_6FrU) (in French).

<sup>182</sup> Republic of Congo, Ministry of Environment, Sustainable Development and Congo Basin, Youtube post: "La Ministre Soudan-Nonault reçoit le PDG de WING WAH", 30 December 2022, [https://www.youtube.com/watch?v=VH7z7O\\_6FrU](https://www.youtube.com/watch?v=VH7z7O_6FrU) (in French).



 ↑ Screenshot of a video of a report on the oil spill in December 2022 ©Focus media 242

This new incident led to visits to the site from the Minister of Environment and the Minister of Hydrocarbons. According to a video published on her Facebook account, the Minister of the Environment issued new warnings to the company on camera.<sup>183</sup> On the banks of the polluted river, she declared: “The fact that you are already failing to apply the texts and recommendations means that there is already a problem upstream. My decision will be very severe, and if you do not comply with the standards, I will not hesitate to close your facilities.”<sup>184</sup>

On the video, one can see that facilities have been set up by the company to dam the oil slick in the river in order to clean it up.

On 30 December 2022, the Director of the company was received by the Minister of Environment; the latter demanded an environmental audit, care for the local population and the rehabilitation of the affected sites on camera.<sup>185</sup> These comments did not specify any human rights obligations with which the company activities should comply. To date, no information has been provided on the implementation of such measures by the company. The company is still operational at the date of publication of the report.

## RESPONSIBILITIES

### The state

According to Article 28 of the 1991 Congolese law on the protection of environment, “Spills, discharges, direct deposits or indirect of any solid, gaseous and liquid substance liable to degrade the quality of waters under Congolese jurisdiction are banned”. Moreover, under national and international obligations, states must ensure that business activities do not harm human rights, including the right to a healthy environment.

Between 2020 and 2022, in response to issues raised by local communities, the authorities have met their obligations by twice suspending the activities of the company for breaches of environmental law, including for its poor treatment of drilling muds. But each time these measures were lifted without public explanation on what measures were taken by the company to comply with environmental standards and mitigate the risk of violations of the right to a healthy environment and other human rights. This fails to respect the residents’

<sup>183</sup> Republic of Congo, Ministry of Environment, Sustainable Development and Congo Basin, Facebook post : “Pollution des écosystèmes naturels à Tchamba Nzassi”, 24 décembre 2022, <https://www.facebook.com/watch/?v=1230999237627564> (in French).

<sup>184</sup> Republic of Congo, Ministry of Environment, Sustainable Development and Congo Basin, Facebook post : “Pollution des écosystèmes naturels à Tchamba Nzassi”, 24 décembre 2022, <https://www.facebook.com/watch/?v=1230999237627564> (in French).

<sup>185</sup> Republic of Congo, Ministry of Environment, Sustainable Development and Congo Basin, Youtube post: “La Ministre Soudan-Nonault reçoit le PDG de WING WAH”, 30 December 2022, [https://www.youtube.com/watch?v=VH7z7O\\_6FrU](https://www.youtube.com/watch?v=VH7z7O_6FrU) (in French).

right to information. For example, if it was agreed that the company would carry out an environmental audit, there has been no public information on whether this audit was completed.

Regarding the leak of the pipeline in December 2022, and in the absence of response to its letters for information sent to the authorities, Amnesty International has not been able to confirm what measures were taken by the authorities to ensure the company responds swiftly to their requests for an environmental audit, the rehabilitation of the affected sites and reparations for the local population.

And as far as Amnesty International is aware, the authorities did not investigate the potential environmental and human rights impact of the oil spill in the Loéme river and other water sources, in breach of their duty to conduct a follow-up assessment of environmental impact.

Amnesty International sent several questions to the government regarding this case via both letters and emails in February and March 2024. However, no response was received.

### The company

As the operator of the Kayo oil fields, Wing Wah is responsible for preventing oil spills, cleaning up oil pollution, and addressing any potential impact on human health and livelihoods. In accordance with international human rights standards, Wing Wah is expected to have conducted and continue to carry out a human rights due diligence process to identify and address the likely impact of its operations.<sup>186</sup>

Amnesty International was not able to find detailed public documents on the due diligence policy of Wing Wah and its Chinese parent company, Southernpec. The organization asked the company to send it these documents, but the company did not respond to the letter requesting information. Nevertheless, on Southernpec's website, the company explains that it "always puts the responsibility for health, safety and environmental protection in the first place, and cares for the health and safety of the employees, the communities and all the personnel related to our operations". It adds that the company "conducts environmental protection at all costs unconditionally" and that "since its establishment, it has never suffered from any major accident or occupational safety accident without any bad records of environmental pollution or destruction of social ecology".<sup>187</sup>

Yet, the company had on several occasions breached Article 28 of the 1991 Congolese law on the protection of environment which bans "spills, discharges, direct deposits or indirect of any solid, gaseous and liquid substance liable to degrade the quality of waters".

Interviews from Banga Kayo residents, official statements and video evidence<sup>188</sup> suggest that Wing Wah trucks have been dumping drilling muds as they pass through the villages, and that drilling mud has been improperly stored, causing it to leak into the village and water sources where villagers wash themselves and around which they grow manioc. Despite being warned and then suspended by the authorities, the company has never communicated on any follow-up given to the authorities' order to carry out an environmental audit or on any measures taken to repair the damage caused by its activities and to prevent further potential damage to the environment and human rights.

The December 2022 leak of the oil pipeline may have resulted from a failure to implement recommendations stemming from previous incidents, according to the environment minister,<sup>189</sup> due to multiple deficiencies. If the company set up facilities to dam the oil slick in the river in order to clean it up, the company never publicly communicated on the cause and consequence of this incident, including potential impact on the human rights of local populations and on the effectiveness of the cleaning operation. Moreover, there is no public information on any audit performed by the company on this incident, as was requested by the authorities.

Wing Wah should have abided by its human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights, by identifying and assessing any potential adverse human rights impact of its activities.<sup>190</sup> The company should have also reported formally on how they would address this.<sup>191</sup> In that regard, the UN Guiding Principles require communication "providing a measure of transparency and accountability to individuals or groups who may be impacted".<sup>192</sup> According to the UN Guiding Principles on

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<sup>186</sup> UN Guiding Principles on Business and Human Rights.

<sup>187</sup> HSE Management System, <http://www.southernpec.com/EN/Responsibility/SafetyHealthEnvironment.html>.

<sup>188</sup> TV5 Monde, "Congo : une usine de la société pétrolière Wing Wah mise en cause", 2 November 2021, <https://www.facebook.com/watch/?v=4317310741720046> (in French).

<sup>189</sup> Republic of Congo, Ministry of Environment, Sustainable Development and Congo Basin, Facebook post : "Pollution des écosystèmes naturels à Tchamba Nzassi", 24 décembre 2022, <https://www.facebook.com/watch/?v=1230999237627564> (in French).

<sup>190</sup> UN Guiding Principles on Business and Human Rights, Principle 18.

<sup>191</sup> UN Guiding Principles on Business and Human Rights, Principle 21.

<sup>192</sup> UN Guiding Principles on Business and Human Rights, Principle 21.

Business and Human Rights, companies must comply with national laws and take steps to ensure that their activities do not violate human rights. If their actions result in human rights abuses, they must also provide remedies.<sup>193</sup>

Amnesty International sent letters for information and letters to share the preliminary findings of this research to Wing Wah in Congo and Southernpec in China but no answers were received.

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<sup>193</sup> UN Guiding Principles on Business and Human Rights, Principles 17 to 21.

## 5.2.3 CASE OF SMOKE FROM ALUMINIUM AND LEAD FURNACES IN VINDOULOU

### BACKGROUND AND COMPANY INVOLVED



 Satellite imagery from 9 February 2022 showing the Metssa Congo recycling facility in Pointe-Noire, Congo, surrounded by a residential area, Congo. Black smoke is visible, rising from the facility. ©Maxar Technologies.

The district of Vindoulou is located 10km northeast of central Pointe-Noire and 5km southwest of the Mengo toll, on National Road 1 which connects the economic heart of the country to the capital Brazzaville. It borders the P4 industrial zone,<sup>194</sup> which includes the drilling and the Magminerals Potasses Congo (MPC) potash plant.<sup>195</sup> According to the 2016 master plan for the city of Pointe-Noire, Vindoulou is one of the urban areas to be densified. According to the local authorities, by 2035 these areas will have a population of 879,637. The government intends to accommodate this growth with additional investments in terms of infrastructure, including the development of a special economic zone and a university centre.<sup>196</sup>

Metssa Congo SARL (hereafter Metssa Congo), a subsidiary of the Indian Metssa Group (based in India and Dubai), is operating in the Vindoulou district.<sup>197</sup> Metssa Congo is a factory that produces and recycles non-ferrous metals and plastics from various types of products, including lead batteries and used tyres. The company has also subsidiaries in Cameroon and Nigeria and sells aluminium and lead bars from its recycling activities in India and the United States.<sup>198</sup> According to Metssa Congo, the company acquired “land title 351” in late 2012 and began operating in 2013.<sup>199</sup>

Amnesty International delegates who visited the Metssa site found that the factory is located in a densely populated area and less than 50m from a school which opened in 2015 with all the necessary authorisations,<sup>200</sup> and has about 500 students aged six to 15 years old.

<sup>194</sup> Republic of Congo, Ministry of Construction, Urban Planning and Housing, *Schéma directeur d'urbanisme de la ville de Pointe Noire*, November 2016, <https://www.construction.gouv.cg/documents/schemaPNR.pdf> (in French), pp. 54 and 69.

<sup>195</sup> Republic of Congo, Ministry of Construction, Urban Planning and Housing, *Schéma directeur d'urbanisme de la ville de Pointe Noire*, November 2016, <https://www.construction.gouv.cg/documents/schemaPNR.pdf> (in French), pp. 73-77

<sup>196</sup> Republic of Congo, Ministry of Construction, Urban Planning and Housing, *Schéma directeur d'urbanisme de la ville de Pointe Noire*, November 2016, <https://www.construction.gouv.cg/documents/schemaPNR.pdf> (in French).

<sup>197</sup> Metssa Group, About us, <https://metssa.net/about-us/> (Last accessed on 27 May 2024).

<sup>198</sup> Metssa Congo SARL, <https://metssa.net/about-us/>.

<sup>199</sup> Metssa Congo, Letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>200</sup> Interview in person in Vindoulou, 7 December 2022, Vindoulou-Republic of Congo.



 ↑ *Fumes from the factory in December 2022 ©Amnesty International*

### **ISSUES AROUND POTENTIAL TOXICITY OF SMOKE AND THE LEGALITY OF THE COMPANY'S OPERATIONS**

Several residents of Vindoulou reached out to the local authorities in 2018 to complain about the operation of the Metssa Congo factory in their neighbourhood because of the thick black fumes with a strong unpleasant odour emanating from the factory, the stinging of their eyes and throats, and the factory's constant noise.<sup>201</sup> They denounced the violations of their rights to a healthy environment and to health, and complained the company was operating in violation of the environmental laws of Congo.

When they visited the surrounding of the industrial site, Amnesty International delegates could see smoke and dust emanating from the factory and smelled the foul smell of the smoke. The smoke was emanating from the chimney but also from the building.

One resident who has been in the neighbourhood for seven years told Amnesty International: "When we arrived, the factory was not producing much. After two years, the activity intensified, there was oil everywhere and a toxic smoke that invaded the whole neighbourhood and the school".<sup>202</sup>

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<sup>201</sup> Interview in person with a local resident, 7 December 2022, Vindoulou – Republic of Congo.

<sup>202</sup> Interview in person with a local resident 7 december 2022, Vindoulou – Republic of Congo.

In response to various complaints from residents of Vindoulou, the Executive Bureau of the Departmental and Municipal Council of Pointe-Noire conducted an on-site mission in 2018. This mission, according to its report, assessed the impact of the pollution as causing harm to the neighbourhood and risks to the health of the population. It recommended that “the company repair the damage and harm caused by its pollution”, and that they “show the legal authorisation for the factory opening and results of the environmental and social impact assessments as soon as possible”. The mission also recommended “the construction of a drainage pit for wastewater and the installation of a modern chimney”.<sup>203</sup>

As the situation did not change, a residents’ collective sent several letters to the Sub-prefect of Loango, the President of the Kouilou Departmental Council, the Department of Health, and the prefect of Kouilou in September 2019.<sup>204</sup> In their letters, they stated that the company’s main activity, which takes place day and night, is a clear nuisance on a daily basis for the people living nearby, who suffer what can be described as ‘abnormal neighbourhood disturbances’ and/or a flagrant violation of environmental regulations. They also demanded that Metssa Congo stop or relocate its operations. The Vindoulou residents’ collective also sent a letter to the Kouilou Departmental Directorate of the Environment on 25 November 2019, asking to see the factory’s environmental impact assessment. According to the committee president, the purpose of this request was to check whether the company was complying with the law.<sup>205</sup>

The prefect of Kouilou decided to undertake a field visit in August 2020 to assess the impact of the factory on the lives of the community. The prefect asked for a visit to be set up involving several local services, including the environment and health departments. As a result of this visit, the prefect decided to suspend Metssa Congo’s activities and granted the company a period of three months to comply with Congolese legislation.<sup>206</sup> A member of the Vindoulou residents’ collective explained to Amnesty International that “no administrative act was issued to us, but after the prefect’s visit, the factory immediately stopped operating. They did not work from 7 August 2020 to 11 November 2020. During this time, they changed the chimney. It was higher than the previous one and they put sheets up to block the smoke”. This was confirmed by various residents of Vindoulou<sup>207</sup> who also expressed the overwhelming relief they felt when the operations ceased.

On 11 November 2020, the company resumed its activities after the three-month suspension ordered by the prefect of Kouilou. This was authorised by a decision by the Ministry of Environment,<sup>208</sup> in a letter, the ministry authorised the company to resume its activities while reminding it that it should complete the steps to bring the site in line with environmental standards. According to the letter, the company had agreed to pay penalties which presumably led to the lifting of the ban. An assessment would then be made by the ministry’s services to grant a compliance certificate<sup>209</sup> and authorisation to pursue activities. In short, the ministry recognised that the company did not have a certificate of environmental compliance, but nevertheless authorised it to resume its operations, pending compliance with the standards within a period of three months. At the end of these three months, the company continued its activities, but no public information was given on whether the company complied with the state’s requirements.

## POTENTIAL TOXICITY OF THE SMOKE

The residents met by Amnesty International in December 2022 were still deeply worried about the potential impact of the company activities on their health. Seven women, all of whom have young children, presented the results of health examinations and prescriptions. These documents showed that their children or themselves were treated for headaches, stomach aches and nausea. One of those said: “we get headaches,

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<sup>203</sup> Executive Office of the Departmental and Municipal Council of Pointe-Noire, *Rapport d’activités, Quatrième session ordinaire dite administrative du 25 septembre au 04 octobre 2018, du 18 avril au 24 août 2018*, obtained from the collective of residents of Vindoulou, 25 July 2022 during a meeting in Pointe-Noire (in French).

<sup>204</sup> Letters from 28 September 2019 and addressed to these different authorities obtained from the collective of residents of Vindoulou, 25 July 2022 during a meeting in Pointe-Noire.

<sup>205</sup> Interview in person with the president of the committee, July and December 2022, Republic of Congo.

<sup>206</sup> Vox Congo, Youtube post: “Visit of Metssa-Congo foundry by the prefect of Kouilou”, August 2020, <https://www.youtube.com/watch?v=xcsyalPhuAM> (last visit January 2023).

<sup>207</sup> Interview in person with 14 people, 7, 12, 13 December 2022, Republic of Congo.

<sup>208</sup> Ministère du tourisme et de l’environnement, lettre 194/MTE-CAB.20 du 6 novembre 2020, on file with Amnesty International.

<sup>209</sup> Environmental compliance certificate: an act issued by the environmental authorities attesting to the environmental compliance of a project or study.




stomach aches... Children regularly vomit and cough a lot, especially when there is a lot of smoke”.<sup>210</sup> Several other residents met by Amnesty International also reported experiencing similar symptoms.

Amnesty International also spoke to both a current and former employee of the company. The latter described his working conditions and confirmed that he had similar symptoms to those described by the residents. He complained of vomiting, headaches and stomach aches. He has worked on the aluminium furnace and the battery furnace. In these high-temperature furnaces, the materials are poured out, melted down and released in the form of lead or aluminium bars. According to his testimony, the workers, mostly day labourers, are directly exposed to the dust from the furnaces, without any protective equipment.

He also described company practices of reserving the most smoke-producing activities for the late hours of the night when everyone else is asleep: “I worked for the company for one year. I left because I had chest pains, I had a lot of trouble breathing”<sup>211</sup> said this former factory employee, recruited through an employment agency. The other one, still employed in the factory added “I have been sick for three weeks, I cannot work. I have stomach problems. I have not felt well for about a year and one day I coughed up blood”.<sup>212</sup> He added “we have been instructed by a manager to light the largest smoke-producing oven only after 10pm and to turn it off at 6am.” Several residents confirmed the increase in smoke at night. Amnesty International received<sup>213</sup> videos filmed by residents between July and December 2022 showing that the factory was operating at around 10pm with a very high level of smoke production. According to various witnesses, this practice was common and aimed to hide the quantity of smoke produced by the company from residents.<sup>214</sup>

On this specific point, in its response to Amnesty International’s letter for information, the company stated that “it is common practice for companies to operate both day and night shifts to enhance productivity. However, it’s important to clarify that this practice was historically applied to our aluminium production, not lead. Specifically, the nighttime activity involves a simple ‘melting’ process that does not produce fumes. To emphasize, this melting activity has never resulted in emissions or fumes during its execution”.<sup>215</sup> Despite its assertions, Amnesty International has received on multiple occasions from the residents’ collective of Vindoulou nocturnal videos showing smoke emissions from the factory (see the caption below).



 ↑ *Fumes from the Metssa Congo factory, 22 November 2023 at IAM © Private*

In its reply, the company also denied any toxic nature of its emissions or fumes. “It’s crucial to note that all emissions from our furnaces, regardless of the shift, undergo meticulous treatment through advanced control equipment before being released into the environment.”<sup>216</sup> The company added that the fumes come from its aluminium furnace, which is unrelated to lead production. According to Metssa Congo, these

<sup>210</sup> Interview in person, Vindoulou, 7 December 2022, Republic of Congo.

<sup>211</sup> Interview in person with a former worker of Metssa Congo, 10 December 2022, Republic of Congo.

<sup>212</sup> Interview in person with an employee of Metssa Congo, 10 December 2022, Republic of Congo.

<sup>213</sup> Video received by phone between July and December 2022.

<sup>214</sup> Interview in person with 12 people, 7 December 2022, Republic of Congo.

<sup>215</sup> Metssa Congo, Letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>216</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

emissions are completely non-toxic and all the emissions from their furnaces undergo thorough treatment by “cutting-edge control equipment” before being released into the environment. Concerning lead, Metssa Congo specified that “our lead furnaces, on the other hand, are equipped with industry-standard Pulse Jet Bag Houses, comprising of 180 bags, a settling chamber, spark arrester, cyclones, a 40 hp motor ID fan, and a 30-meter-high stack. These sophisticated systems effectively collect, neutralize, and filter emissions before their release, guaranteeing no adverse environmental impact and prioritizing safety. This approach safeguards the integrity of our local environment and aligns with global environmental standards.”<sup>217</sup>

It is important to note that the company did not specify in its reply if this equipment has been present since the start of its operations or if it was installed later on, potentially to respond to calls by the authorities to respect environmental standards. Moreover, despite the company’s claims, residents of Vindoulou have never received any environmental assessments or medical reports from the state or the company attesting to the absence of risk from the company’s activities to their health, or on the measures that the company may have taken to mitigate the risks.

Indeed, despite several requests for one, residents have never had access to an initial environmental impact assessment, even though an EIA is compulsory for a company of that kind to start operations. This casts doubt as to its existence. During the three-month suspension of the activities of the company, the residents saw that the factory’s chimney was replaced by a higher one and that sheets were erected to block the smoke, but they were not informed if these changes were made to mitigate risks to their health.

Moreover, during the suspension, the Health Directorate was sent to carry out a health survey of the residents of Vindoulou to determine the potential impact of the company’s activities. The company paid<sup>218</sup> for the examinations, and a dozen residents were selected by the residents themselves to undergo blood tests and chest X-rays in October 2020. According to interviews collected by Amnesty International, the health report was written and filed at the prefectural level.<sup>219</sup> The residents’ collective sent a letter to the authorities asking for a copy of the report on 18 January 2021, but at the date of publication of this report, they had still not received it and it has not been made public. One person interviewed said: “We were examined following our complaint. The doctor who did the investigation took samples, but the results are still not available”.<sup>220</sup> Amnesty International was not able to meet with the prefecture during its mission, as the meeting request went unanswered.

In its reply to Amnesty International,<sup>221</sup> the company said it possessed “medical testing for factory workers” and “medical testing for community” [sic]. It added that, at the request of the authorities when they suspended the company’s activities, an environmental and social audit was performed by “a reputable third-party organization”, which included “an examination of the health of local residents”. However, Metssa Congo wrote that it was “not authorized by the government to publicize the findings”. But it specified that “the audit unequivocally affirmed that there are no long-term risks to those residing in close proximity to our plant”. The company added that “despite not being permitted to share this information publicly, we have verbally communicated these results to the concerned individuals who approached us”.

Residents of Vindoulou interviewed by Amnesty International said the company’s managers have minimal contact with them.<sup>222</sup> According to information gathered, the company have paid for the medical expenses of at least one resident. They also paid for the replacement of a roof for one resident. The latter had a cracked roof, which she attributed to dust from the chimney, which accumulated on her roof and eroded it. In its response to Amnesty International’s letter for information, Metssa Congo said: “Given that our industrial and environmental permits were granted with the approval of the government, we did not deem it necessary to hold public meetings to disclose our business practices, as they had already been approved by official bodies.”<sup>223</sup>

Because of the factory’s recycling of lead batteries, residents of Vindoulou continue to fear lead exposure and consequent damage to their health. In March 2023, at the initiative of the residents’ collective and with the consent of the persons involved, blood samples (venous sampling) were taken by a local laboratory from

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<sup>217</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>218</sup> Interview in person with 14 people, 7, 12, 13 December 2022, Republic of Congo.

<sup>219</sup> Interview in person with 14 people, on 7, 12, 13 December 2022, Republic of Congo.

<sup>220</sup> Interview in person with 14 people, 7, 12, 13 December 2022, Republic of Congo.

<sup>221</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>222</sup> Interview in person with 12 people, 7 December 2022, Republic of Congo.

<sup>223</sup> Metssa Congo, Letter to Amnesty International, 17 November 2023, on file with Amnesty International.

18 people living near the factory: nine adults (five men and four women) and nine children (one boy and eight girls). The samples were analysed in France by the laboratory CERBA. The samples were taken on 4 March 2023 and the analysis was done on 10 March 2023 for a first group, and on 14 March with results sent on 23 March for a second group.

The maximum value recorded in the adult group was 704 micrograms per litre with a minimum of 263 micrograms per litre, whilst in the children's group the highest value noted was 551 micrograms per litre and the lowest 397 micrograms per litre. The laboratory indicates a measurement interval of approximately 10%. Lead warning levels can vary depending on the applicable legislation. In the United States of America, the Centre for Disease Control and Prevention has set a reference value of 3.5 micrograms per decilitre (35 micrograms per litre) for children and 5 micrograms per decilitre (50 micrograms per litre) for adults to indicate when a health alert should be triggered.<sup>224</sup> It should be noted that according to the Centres for Disease Control "no safe level of lead in children has been identified. Even low levels of lead in the blood can negatively impact a child's health and should be viewed as a concern".<sup>225</sup> According to French National Institute for Health and Medical Research, "lead is toxic for children, pregnant women and adults, even at low concentrations."<sup>226</sup>

To emphasize, according to the World Health Organization, there is no safe level of lead in the blood. Even blood concentrations as low as 35 micrograms per litre are sometimes associated with a drop in a child's intelligence, behavioural problems and learning difficulties.<sup>227</sup>

The results of the blood lead tests conducted on a sample of Vindoulou's residents in the vicinity of the plant, revealed levels vastly surpassing the thresholds established in the above-mentioned countries. Amnesty International is unaware of any other lead battery recycling factories in the area.

Amnesty International submitted the blood test results to scientists at the Environmental Law Alliance Worldwide (ELAW),<sup>228</sup> an environmental organization that helps communities protect the environment and public health through the law. According to ELAW, "the geometric mean of the Congolese individuals is more than 40 times the geometric mean for French children, and more than 20 times the geometric mean<sup>229</sup> for French adults". They added that "A cohort of lead-exposed adult patients from an e-waste-polluted area in China had a median blood lead level (BLL) of 87 µg/L and a 75<sup>th</sup> percentile BLL of 122 µg/L. The median in the Congolese group, 391 µg/L, is about 4.5 times as high as this lead-contaminated Chinese population".<sup>230</sup> According to this analysis, people whose results are reported here have blood lead levels that are extremely high compared to elsewhere. This level of exposure is far above any possible "background" levels and indicates direct exposure to one or more sources of lead. In most cases, these blood lead levels are much higher than is generally considered acceptable, even in occupations that work directly with lead.<sup>231</sup>

On lead impact on health, the same ELAW specialist warned "lead exposure can have a wide range of impacts, some very severe, on many different health outcomes in both adults and children. In general (non-occupational) settings, children are exposed to more lead than adults, and they absorb that lead into the body at a much higher rate. Because children are growing and developing quickly, they are extremely vulnerable to lead's impacts on their neurological, reproductive, and other sensitive systems. Adults suffer many of the same impacts, but typically at higher levels of lead exposure".<sup>232</sup>

## ASSESSING THE LEGAL FRAMEWORK OF THE COMPANY'S OPERATIONS

In addition to their claims about the impact of the company's activities on their health, residents of Vindoulou consider Metssa Congo operated in violation of Congolese law.

In line with their previous request, the residents' collective hired a lawyer in early March 2023 to ask the Departmental Directorate of the Environment to see the initial environmental impact assessment report

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<sup>224</sup> Center for Disease Control and Prevention, [Lead, Elevated Blood Levels 2016 Case Definition, Lead, Elevated Blood Levels 2016 Case Definition | CDC](#) (last accessed on 27 May 2024).

<sup>225</sup> Center for Disease Control and Prevention, Testing children for lead poisoning, [Testing Children for Lead Poisoning | Lead | CDC](#) (last accessed on 27 May 2024).

<sup>226</sup> Inserm, Saturnisme-Intoxication au plomb, 11 July 2017, <https://www.inserm.fr/dossier/saturnisme/> (in French) (last accessed on 27 May 2024).

<sup>227</sup> World Health Organization, [Recyclage des batteries au plomb usagées : considérations sanitaires](#), 2017, 9789242512854-fre.pdf (who.int) (in French), (last consulted on 27 May 2024)

<sup>228</sup> Environmental Law Alliance Worldwide, <https://www.elaw.org/>.

<sup>229</sup> Elaw response to Amnesty International, 7 December 2023.

<sup>231</sup> Elaw response to Amnesty International, 7 December 2023.

<sup>232</sup> Elaw response to Amnesty International, 7 December 2023.

(which the company should have had to be able to operate), if there is one.<sup>233</sup> On 27 March 2023, the collective was authorised to see an environmental audit report dated from December 2022, which is not the prerequisite environmental impact study required by law, mandatory for the opening of any industrial activity. People living in the vicinity of the factory also confirmed to Amnesty International that they had never been consulted for the audit in question.<sup>234</sup>

In the list of documents, the company declared it possessed in its reply to Amnesty International, there is no mention of any initial environmental impact assessment. But the company said it possesses an environmental conformity certificate, environmental social audit reports, and industrial authorisation permits. The company provided no dates or references for these documents and reiterated regarding the environmental social audit report that “this document is for government and company use only”.<sup>235</sup>

Replying to the question of whether Metssa Congo had all the necessary authorizations to start operating, the company said that, as soon as it acquired the land for the premises, it “submitted applications for industrial and environmental permits to the Ministry of Mines and the Ministry of Environment.”<sup>236</sup> But Metssa Congo claimed that “due to procedural delays within the relevant departments, the issuance and authorization of the permits were postponed, resulting in a 2014 date on the documents when they were officially signed and approved”. They added that “During the period from 2012 to 2014, while our application was in progress, the ministry allowed us to begin our operations, a decision that enabled the creation of employment opportunities and the fostering of economic growth in the local community in Congo, benefiting both the region and our company”.

The collective of residents of Vindoulou filed a complaint in June 2023<sup>237</sup> before the Tribunal de Grande Instance of Pointe-Noire requesting the suspension of the activities of Metssa Congo due to their impact on community health and the violation by the company of environmental laws. The residents also called for the relocation of the company, and reparations for people affected by company’s activities. In its August 2023 decision,<sup>238</sup> the court listed all the documents the company had presented to the judges to show it had all the authorization necessary to operate. But there is no mention of an initial environmental impact assessment. The court refers to: an industrial establishment permit delivered by the Directorate General of Industry in 2018,<sup>239</sup> a licence to carry out the industrial activity delivered by the Ministry of Economy and Industry in January 2019,<sup>240</sup> a licence to carry out the industrial activity delivered by the Ministry of Industrial Development in November 2021<sup>241</sup> and an environmental compliance certificate delivered on February 2023 based on the environmental audit report of 2022.<sup>242</sup>

Thus, the company did not present any document showing authorization to operate prior to 2018 (five years after it started operating) nor any environmental assessment prior to 2022 (10 years after it started operating). But the court found that the company had the administrative authorizations to operate and declared that it had no material jurisdiction to rule on the merits of the case, as it could only hear civil matters and not administrative matters.<sup>243</sup> Therefore, the collective of residents filed a complaint in November 2023 before the administrative court of Pointe Noire.<sup>244</sup> In April 2024, the Pointe-Noire administrative court, ruling in summary<sup>245</sup> judgment, ordered the temporary suspension of Metssa Congo's activities pending a decision on the merits. The ruling cited the health impact of the company's activities on residents as the basis for its decision.<sup>246</sup> Metssa Congo has appealed against the decision, but the appeal does not have suspensive effect.

In their complaints before Congolese courts, the collective of residents of Vindoulou is also raising another issue relating to the legality of the company’s activities, as it considers Metssa Congo is operating in a

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<sup>233</sup> Copies of the summons to the Departmental Health Directorate and the Departmental Environment Directorate given to Amnesty International by the Collective.

<sup>234</sup> Interview by voice call, March 2023.

<sup>235</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>236</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>237</sup> Application of *référé d’heure en heure* for the suspension of Metssa’s activities, 13 June 2023.

<sup>238</sup> Court of Pointe Noire, *The consorts Ndembi Cyrille Traore v. the company Metssa Congo SARLU*, Order of the Court, 16 August 2023.

<sup>239</sup> Ministry of Industry, Installation authorization 2018-12/215/MEIPP/CAB, on file with Amnesty International.

<sup>240</sup> Ministry of industry, Authorization to implement industrial activity, 2018-12/092/MEIPP/CAB, 21 January 2019, on file with Amnesty International.

<sup>241</sup> Ministry of industry, Authorization to implement industrial activity, 2018-12/092/MEIPP/CAB, 29 November 2021, on file with Amnesty International.

<sup>242</sup> Ministry of environment, Environmental Compliance Certificate, 0130/MEDDBC/CAB/DGE/DPPN, 1 February 2023, on file with Amnesty International.

<sup>243</sup> Court of Pointe Noire, *The consorts Ndembi Cyrille Traore v. the company Metssa Congo SARLU*, Order of the Court, 16 August 2023.

<sup>244</sup> Application for relocation of a factory and payment of damages for harm suffered, 14 November 2023.

<sup>245</sup> To rule in summary judgement means to take a judicial decision provisionally and quickly, often in response to an emergency situation or an imperative need to protect the rights of a party before a final judgement is handed down on the merits of the dispute.

<sup>246</sup> Pointe Noire Administrative Court, Court Order, 3 avril 2024.

residential area. When questioned on this issue, the company answered: “Metssa Congo was established in 2012, a time when the areas including and surrounding our plant were officially designated as an industrial zone, a fact well-documented by the government. It’s only in recent years that this area underwent a transformation, obtaining residential authorization, and subsequently welcoming a growing number of residents”.<sup>247</sup> The company added that Metssa Congo established its plant in 2012 well before many of the individual’s residence [sic] were built behind the factory between 2018-2019”.

According to the 2016 urban master plan<sup>248</sup> for the city of Pointe-Noire, looking ahead to 2035, adopted by decree in 2018,<sup>249</sup> the authorities consider the Vindoulou area to be an "urban zone to be developed". Amnesty International was unable to find any documents attesting to the status of this area prior to 2016 or proof of a change in status.

The Vindoulou residents met all claimed to have legal documents for their residence in the area,<sup>250</sup> but according to the urban planning code, if the area had been considered an industrial zone, they would not have been able to obtain a permit unless there were exceptional circumstances (Article 3 of the 2019 town planning code).<sup>251</sup> Amnesty International asked the Congolese authorities to confirm the present status of the Vindoulou area and to provide the legal basis for the cohabitation in this area between the factory and residents.

The authorities did not answer Amnesty International on this specific point.

## RESPONSIBILITIES

### The state

The state failed in its obligation to ensure that Metssa Congo – whose activities could have negative effects on the environment and human rights – meet its legal obligations to start operations.

The 1991 environmental law<sup>252</sup> provides that any economic development project in Congo must include an environmental impact assessment. Order 1450 of 18 November 1999, relating to the application of certain measures on classified installations of Law 003/91 on the protection of the environment, also specifies in its Article 5 that polluting plants of first class<sup>253</sup> cannot be opened without an authorisation from the Ministry of Environment. Moreover, according to the Decree 415-2009 on EIA,<sup>254</sup> an environmental compliance certificate is only granted after the completion of an EIA, not an environmental audit. Indeed Article 50 of the decree states that the environmental and social audit only concerns companies whose activities pre-date the publication of the decree in 2009.<sup>255</sup>

However, neither the authorities nor the company were able to demonstrate that the initial environmental impact assessment was completed. Metssa Congo even explained that it started its activities while the applications before the Ministry of Mines and the Ministry of Environment were still ongoing.<sup>256</sup> Metssa Congo stated that the authority granted the licence to operate in 2014<sup>257</sup> and since then the company has operated without interruption (with the exception of the three-month suspension in 2020), even though in all likelihood, they had not carried out any environmental impact study. Indeed, in 2018, the Executive Bureau of the Departmental and Municipal Council of Pointe-Noire Executive Bureau of the Departmental and Municipal Council of Pointe-Noire asked the company to “repair the damage and harm caused by its pollution”, and to “share the legal authorisation for the factory opening and the results of social and environmental impact assessments as soon as possible”. In August 2020, the Prefect of Kouilou<sup>258</sup> granted

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<sup>247</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>248</sup> Republic of Congo, Ministry of Construction, Urban Planning and Housing, *Schéma directeur d’urbanisme de la ville de Pointe Noire*, November 2016, <https://www.construction.gouv.cg/documents/schemaPNR.pdf> (in French).

<sup>249</sup> Republic of Congo, Ministry of Land Affairs and the Public Domain, Décret 2018-228 portant approbation du schéma directeur d’urbanisme de la ville de Pointe-Noire, 13 June 2018, <https://www.sgg.cg/JO/2018/congo-jo-2018-26.pdf> (in French).

<sup>250</sup> Interview in person in Vindoulou, 7 december 2022, Vindoulou – Republic of Congo.

<sup>251</sup> Republic of Congo, Loi 6-2019 portant code de ’urbanisme et de la construction, 5 March 2019 (in French).

<sup>252</sup> Republic of Congo, Loi 003/91 sur la protection de l’Environnement, 23 April 1991, Article 2.

<sup>253</sup> Nomenclature enacted by decree 62/375, <https://www.sgg.cg/JO/1962/congo-jo-1962-26.pdf>, and Arrêté 3196 du 14 juillet 2008 portant nomenclature des installations classées de la loi 003-91 du 23 avril 1991 sur la protection de l’environnement (in French).

<sup>254</sup> <https://www.sgg.cg/JO/2009/congo-jo-2009-48.pdf>.

<sup>255</sup> Discussion by electronic messaging March 2023.

<sup>256</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>257</sup> Metssa Congo, letter to Amnesty International, 17 November 2023, on file with Amnesty International.

<sup>258</sup> Vox Congo, Youtube post: “Visite de la fonderie de Metssa Congo par le Préfet du Kouilou”, August 2020, <https://www.youtube.com/watch?v=xcsyalPhuAM> (last visit January 2023) (in French).

the company a period of “three months to comply” with Congolese legislation.<sup>259</sup> The company obtained a site licence from the General Directorate of Industry only in 2018<sup>260</sup> and a licence to operate in the same year.<sup>261</sup> And it was only in February 2023, after 10 years of operations, that the company obtained an environmental compliance certificate<sup>262</sup> based on an environmental audit report (not an EIA) dating from 2022, which excluded consultations with local communities. For ten years, Metssa Congo likely will have operated without an environmental certificate of compliance, in breach of the law. As a reminder, according to Decree 2009-415 of 20 November 2009, an environmental compliance certificate is “a document issued by the minister responsible for the environment attesting to the environmental feasibility of a project subject to an environmental impact study or notice”. In February and March 2024, Amnesty International sent letters to the authorities requesting them to comment on the issue of the legality of the procedure that led Metssa Congo starting its operation. No answer was received. Moreover, in light of the Pointe-Noire Urban Master Plan of November 2016, the decision of the authorities to transform the area around the Metssa Congo plant into a residential area, and the risks linked to the activities of the company, the authorities should have clarified under Congolese law if the land acquired by the company can still be considered as an industrial zone.

Finally, in line with national and international obligations, the state must ensure that business activities do not harm human rights, including the right to a healthy environment. And according to Article 21 of the 1991 law on the protection of environment: “It is prohibited in any dwelling or in any artisanal, agricultural, commercial or other establishment emitting pollutants of any kind, including fumes, dust, mist, toxic gases or corrosive substances that may be harmful to health and the environment”.

Alerted by residents of Vindoulou, the Executive Bureau of the Departmental and Municipal Council of Pointe-Noire conducted a mission in 2018 and its report recommended that “the company repair the damage and harm caused by its pollution”. But the authorities never publicly informed the communities of the potential consequences of said pollution on residents’ health, nor on any measures taken by the company to respond to their recommendations to “repair the damage and harm caused by its pollution”.

In August 2020, the prefect of Kouilou decided to suspend the activity of the company for three months to comply with Congolese legislation.<sup>181</sup> During this time, the company replaced its chimney. On 11 November the Ministry of Environment<sup>186</sup> authorised the company to resume its activities, while reminding it that it must complete the steps to bring the site in line with environmental standards. In view of this requirement, the authorities should not have allowed the company to resume its activities and should instead have communicated to the residents of Vindoulou the steps needed to be completed and the potential harm the activities of the company might be having on their environment and human rights.

The authorities also failed to share with the communities the findings of a health survey carried out in September 2020 by a team from the Hygiene Service of the Kouilou Departmental Health Directorate, to determine the potential impact of the company’s activities.

Amnesty International sent letters in February and March 2024 to the Ministry of Health requesting its comments on the potential human rights impact of the company’s activities and state’s responsibility in that regard. No response has been received.

Considering the ongoing concern expressed by the residents about the impact of the activities of the company on their environment and health, and the results of the study that show high rates of lead in the blood of the residents tested, the authorities should have investigated this situation, make its report public and depending on findings, considered relocating the factory to ensure human rights of individuals are protected, and provide reparations for residents, in accordance with Congolese law.

### **The company**

Regardless of the state’s failures, Metssa Congo has its own responsibility to respect human rights, which derive from both national and international norms. Yet Amnesty International found no evidence that the company had at any point conducted a human rights due diligence process to identify and address the likely impact of its operations.

According to this research, Metssa Congo likely failed to comply with Congolese law, including the 1991 environment law, in order to be able to operate. While it was supposed to carry out an initial environmental impact assessment and set up an environmental management plan, it apparently did not.

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<sup>259</sup> Vox Congo, Youtube post: “Visite de la fonderie de Metssa Congo par le Préfet du Kouilou”, August 2020, <https://www.youtube.com/watch?v=xcsyalPhuAM> (last visit January 2023) (in French).

<sup>260</sup> Ministry of industry, Installation authorization 2018-12/215/MEIPP/CAB, on file with Amnesty International.

<sup>261</sup> Ministry of industry, Authorization to undertake industrial activities, 2018-12/092/MEIPP/CAB, on file with Amnesty International.

<sup>262</sup> Ministry of environment, Environmental compliance certificate 0130/MEDDBC/CAB/DGE/DPPN, on file with Amnesty International.

Considering the nature of its operations, Metssa Congo risks harming the health of people living close to the plant. Metssa Congo is recycling lead batteries which could cause the emission of lead particles into the air. Blood tests conducted on the residents indicated very high levels of lead in their blood. Given the nature of its activities, warnings from the authorities and complaints from the residents of Vindoulou, the company should have carried out audits from 2013 onwards to investigate the impact of its activities on environmental and health rights, published their reports and, depending on their findings, considered repairing the damage, compensating victims and taking mitigating measures.

The company apparently only undertook an environmental audit in 2022. According to residents of Vindoulou met by Amnesty International, they were not involved with this audit, even though consultation is required by law. Moreover, the company refuses to share the report of this audit, as well as the reports of medical testing for factory workers and for the community, saying these are for government and company use only.

Finally, the company says its furnaces are equipped to ensure the non-toxicity of the smoke emanating from the plant, but Metssa Congo did not say when this specific equipment was put in place.

# 6. POOR ACCESS TO SAFE DRINKING WATER AND HEALTH FACILITIES IN VILLAGES OF COASTAL AREA

In addition to the concerns about the impact of companies' activities on environmental and other human rights, people from villages near industries in the coastal area put forward the responsibility of the state on issues around access to drinking water and health facilities. Amnesty International analysed the commitments and policies of the state in that regard as well as the social funds provided by companies and examined the state responsibility for lack of access to drinking water and health in the villages of Bondi, Tchicanou and Kouakouala, located near an oil concession.

## 6.1 STATE'S COMMITMENTS AND POLICIES

### 6.1.1 COMMITMENTS AND POLICIES ON ACCESS TO DRINKING WATER

On 10 April 2003, Congo adopted a Water Code,<sup>263</sup> which resulted in the implementation of a national water policy intended to ensure the supply of water to the population and to combat water pollution. The state is therefore responsible for supplying and protecting the water. The country also adopted Law 38-2008 establishing a National Agency for Rural Hydraulics.<sup>264</sup> This agency's mandate is to contribute to the development of hydraulic works in rural areas, and to organise the operation, maintenance, and upkeep of rural hydraulic infrastructure.<sup>265</sup> In the same year, a 'water sector development fund' was created. The

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<sup>263</sup> Republic of Congo, Loi 13-2003 portant Code de l'eau, 10 April 2003, <https://www.sgg.cg/codes/congo-code-2003-eau.pdf> (in French).

<sup>264</sup> Republic of Congo, Loi 38-2008 portant création de 'agence nationale de 'hydraulique rurale, 31 décembre 2008, <https://www.finances.gouv.cg/sites/default/files/documents/L%20n%C2%AF38-2008%20du%2031%20dC%CC%A7cembre%202008.PDF> (in French).

<sup>265</sup> Republic of Congo, Loi 38-2008 portant création de 'agence nationale de 'hydraulique rurale, 31 décembre 2008, <https://www.finances.gouv.cg/sites/default/files/documents/L%20n%C2%AF38-2008%20du%2031%20dC%CC%A7cembre%202008.PDF> (in French).



purpose of this was to finance infrastructure responsible for safe drinking water access in the Republic of Congo.<sup>266</sup> Under Law 10-2003 of 6 February 2003, local authorities should oversee rural hydraulics.<sup>267</sup>

The Republic of Congo also ratified the International Covenant on Economic, Social and Cultural Rights in 1986; according to this, states have an obligation to respect, protect, promote and fulfil the right to water. General Comment 15 of the Committee on Economic, Social and Cultural Rights<sup>268</sup> said that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”. The Committee also states that “the water supply for each person must be sufficient and continuous for personal and domestic uses”. Thus “the water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health”. And finally, “Water and water facilities and services have to be accessible to everyone without discrimination”.

However, access to safe drinking water in rural areas is a major challenge in the Republic of Congo. According to the World Bank, only 74% of the population has access to a safe source of water, and this figure is only 45% in rural areas.<sup>269</sup> Several initiatives have taken place in rural areas to improve people’s access to water. In 2013, the “Water for All” programme was launched. According to the President of the Republic, the goal was to drill 4,000 water boreholes in 2,000 villages.<sup>270</sup> The operation was financed from the state budget and entrusted to the Brazilian company Asperbras. But it soon proved dysfunctional due to lack of monitoring and ongoing repair. Several NGOs supported by the European Union also acted alongside the departmental council of Kouilou as part of a project called “Maza na Bouala” meaning “water in the village”.<sup>271</sup> The project, which aimed to promote access to affordable water and to set up a policy for monitoring and maintaining infrastructure, set up the “Water for All” facilities in the villages within the scope of Amnesty International research. It ended in 2017.

As early as 2014, at the start of the project, the organization IDO, following a study in the Kouilou region, found that 111 pumps installed as part of the “Water for All” projects were faulty, that is 44% of the installations in the Kouilou department. In the report of the general assembly of the IDO in 2019, it stated that it was difficult to measure the impact of the “Water for All” projects in Kouilou. It also noted that the lack of a maintenance policy made it difficult for the project to succeed.<sup>272</sup>



<sup>266</sup> Republic of Congo, Décret 2008-559 portant approbation des statuts du fonds de développement du secteur de l'eau, 28 novembre 2008, [http://www.orse.cg/doc\\_uploees/FICHIERS\\_3\\_20.pdf](http://www.orse.cg/doc_uploees/FICHIERS_3_20.pdf) (in French).

<sup>267</sup> Republic of Congo, Loi 10 - 2003 portant transfert de compétences aux collectivités locales, 6 February 2003, <https://www.sgg.cg/textes-officiels/Congo-Loi-2003-10-transfert-competences-collectivites-locales.pdf> (in French).

<sup>268</sup> OHCHR, General Comment 15: The Right to Water (Arts. 11 and 12 of the Covenant), <https://www.refworld.org/pdfid/4538838d11.pdf>.

<sup>269</sup> Banque mondiale, La Banque mondiale en République du Congo - Vue d'ensemble, octobre 2022, <https://www.banque mondiale.org/fr/country/congo/overview>, (consulté le 29 avril 2024). (in French) (Last accessed on 27 May 2024).

<sup>270</sup> RFI, “Congo-Brazzaville: le projet «Eau pour tous» lancé pour améliorer l'accès à la ressource”, 5 August 2013, <https://www.rfi.fr/fr/afrique/20130805-congo-brazzaville-le-projet-eau-tous-lance-ameliorer-acces-eau-le-pays> (in French).

<sup>271</sup> Médecins d'Afrique, Congo, des nouvelles du projet Maza ma bouala, 18 December 2016, <http://www.medecins-afrique.org/afficheIntervention.php?numIntervention=219> (in French).

<sup>272</sup> IDO, 2018 Annual General Meeting, 24 May 2019, [https://www.ido-org.org/files/ugd/a97a4e\\_c13cf4ecaf034c8097da0209aa929233.pdf](https://www.ido-org.org/files/ugd/a97a4e_c13cf4ecaf034c8097da0209aa929233.pdf) (in French), p.7.

## 6.1.2 COMMITMENTS, POLICIES AND SHORTCOMINGS WITH REGARD TO HEALTH

Regarding health policy in the Republic of Congo, Article 36 of the 2015 Constitution states that “the state is responsible for public health”. The Republic of Congo has also ratified several international instruments protecting economic and social rights, including the International Covenant on Economic, Social and Cultural Rights (1983) and the African Charter on Human and Peoples’ Rights (1982). Under these instruments, state parties are committed to respecting, protecting, and fulfilling many rights, including the right to health.

The Republic of Congo has set itself ambitious health goals. Law 014-92 of 29 April 1992<sup>273</sup> establishes the National Health Development Plan which is the strategic framework for the implementation of the National Health Policy in the country. The objectives were to improve the health of the population by strengthening the district health system, to develop national health insurance with a view to providing the population with quality primary health care (with their own financial participation), and to strengthen national capacity to manage the health system.<sup>274</sup> Within the 2012-2016 national development plan,<sup>275</sup> the state identified health as a priority. The same applies to the development plans 2022-2026 adopted by the country.<sup>276</sup>

Despite these different plans, protection of the right to health in Congo remains of great concern. Amnesty International’s 2021 research on the right to health in Congo demonstrated shortcomings in the implementation by state of its international and regional obligations in that regard.<sup>277</sup> For instance, the country suffers from a shortage of adequately trained health workers. The government had to resort to external support to cover the shortcomings in human resources.<sup>278</sup> Congo has around 0.12 doctors per 1,000 inhabitants, far from the WHO standard of 2.3 doctors per 1,000 inhabitants.<sup>279</sup> This research also highlighted the lack of staff, and the mismanagement of financial resources allocated to the health sector. According to the National Development Policy Document 2022-2026, the budget allocated to health increased from 5% in 2015 to 8.8% of the state budget in 2019 and 12.9% in 2020. It should be noted that the national budget also increased from XAF1,602 billion<sup>280</sup> in 2018 to XAF2,175 billion in 2020.<sup>281</sup> In 2021, the budget was estimated at XAF1,671 billion and in 2022 at XAF 1,935 billion<sup>282</sup>. The health budget in 2022 was estimated at XAF167 billion, slightly less than 10% of the national budget.<sup>283</sup>

<sup>273</sup> Republic of Congo, Loi 014-92 portant institution du plan national de développement sanitaire, 29 April 1992, [https://liziba.cg/wp-content/uploads/2020/11/Loi-n%C2%B0-014\\_92\\_1992\\_Paramedicale-Pharmaceutique-et-Sante\\_Plan-National.pdf](https://liziba.cg/wp-content/uploads/2020/11/Loi-n%C2%B0-014_92_1992_Paramedicale-Pharmaceutique-et-Sante_Plan-National.pdf) (in French).

<sup>274</sup> Republic of Congo, Ministry of Health and Population, *Programme biennale de développement sanitaire 2015-2016*, September 2014, [https://extranet.who.int/countryplanningcycles/sites/default/files/planning\\_cycle\\_repository/congo/programme\\_biennal\\_2015\\_2016\\_final\\_03\\_sept14\\_pro.pdf](https://extranet.who.int/countryplanningcycles/sites/default/files/planning_cycle_repository/congo/programme_biennal_2015_2016_final_03_sept14_pro.pdf) (in French).

<sup>275</sup> Republic of Congo, Ministry of Economy, Land use planning and Integration, *Plan national de développement – Document de stratégie pour la croissance, l’emploi et la réduction de la pauvreté (DSCERP 2012-2016)*, <https://www.clientearth.fr/media/35ulm23e/2016-01-01-plan-national-de-developpement-pnd-2012-2016-livre-1-strategie-croissance-emploi-et-reduction-de-la-pauvrete-republique-du-congo-ext-fr.pdf> (in French).

<sup>276</sup> Republic of Congo, *Plan national de développement 2022-2026 – Une économie forte, diversifiée et résiliente pour une croissance inclusive et un développement durable et irréversible*, <https://gouvernement.cg/wp-content/uploads/2022/07/CSD-PND-2022-2026.pdf> (in French).

<sup>277</sup> Amnesty International, *On the back of the crisis, violation of the right to health and repression of economic and social rights defenders in the Republic of Congo* (index AFR 22/3887/2021), April 2021, <https://www.amnesty.org/fr/wp-content/uploads/sites/8/2022/05/AFR2238872021FRENCH.pdf>.

<sup>278</sup> Adiac Congo, “Coopération : une brigade de médecins cubains offre ses soins aux Congolais”, 5 October 2013, <http://adiac.netisse.eu/content/cooperation-une-brigade-de-medecins-cubains-offre-ses-soins-aux-congolais> (in French).

<sup>279</sup> World Bank, Physicians, Physicians per 1,000 people – Republic of Congo, <https://donnees.banquemondiale.org/indicateur/SH.MED.PHYS.ZS?locations=CG> (last accessed on 27 May 2024); Atlas Sociologique Mondiale, Classement des États du monde par nombre de médecins pour 1.000 habitants, 2020. <https://atlasocio.com/classements/sante/professionnels/classement-etats-par-nombre-de-medecins-pour-1000-habitants-monde.php#:~:text=pour%201%20000%20habitants.sant%C3%A9%20d'une%20population%20donn%C3%A9e> (in French) (Last accessed on 27 May 2024).

<sup>280</sup> Republic of Congo, Loi 1-2018 portant loi de finances pour l’année 2018, 29 January 2018, <https://www.finances.gouv.cg/fr/loi-de-finances-2018> (in French).

<sup>281</sup> Republic of Congo, Loi 42-2019 portant loi de finances pour l’année 2020, 30 December 2019, <https://www.finances.gouv.cg/sites/default/files/documents/Loi%20n%C2%B042-2019%20du%2030%20d%C3%A9cembre%202019%20portant%20loi%20de%20finances%20pour%20l%27ann%C3%A9e%202020.pdf> (in French).

<sup>282</sup> Republic of Congo, *Projet de Loi de finances 2022*, 19 July 2022, <https://www.finances.gouv.cg/fr/articles/pr%C3%A9sentation-du-projet-de-loi-de-finances-rectificative-2022-aux-deux-chambres-du-parlement> (In French).

<sup>283</sup> Republic of Congo, *Projet de Loi de finances 2022*, 19 July 2022, <https://www.finances.gouv.cg/fr/articles/pr%C3%A9sentation-du-projet-de-loi-de-finances-rectificative-2022-aux-deux-chambres-du-parlement> (In French).

This is still far from the objectives of the Abuja Declaration, whereby heads of state of African Union countries pledged in April 2001 to set a target of allocating at least 15% of their annual budget to improve the health sector in their respective countries.<sup>284</sup> Congo's National Plan for Development also recognized that budget management needs to be improved to promote an improvement in the level of health.<sup>285</sup> Finally, the cost of healthcare remains an obstacle to the improvement of the access to health,<sup>286</sup> even though the country introduced a universal health insurance fund in 2015.<sup>287</sup>

## 6.2 SOCIAL FUNDS PROVIDED BY COMPANIES OPERATING NEAR VILLAGES

### 6.2.1 AN OVERVIEW OF EXISTING SOCIAL FUND STANDARDS

Oil exploitation companies sign production-sharing contracts with the Congolese state that define the terms of production sharing and establish the rules of cooperation between the company or group receiving the licence and the host state. These production-sharing contracts also exist in other extractive industries such as forestry or mining. Within these contracts, there can sometimes be a clause fixing an amount or a project called a "social fund", which is a compulsory contribution required from the operating company or group. These contributions are not provided for by the Hydrocarbon Code of 1994 or that of 2016. It seems they are negotiated on a case-by-case basis when contracts are signed. In addition to these contractual clauses included in some contracts, companies also make voluntary contributions to projects that they determine and implement as part of their corporate social responsibility.<sup>288</sup>

For example, concerning the production-sharing contract entered into by ZETAH M&P Congo and the state in Kouilou, in March 2006, an amendment was signed which stipulates in its Article 3 that when production reaches 100m barrels, the holder of the Mboundi concession would have to fund social projects to the value of US\$150,000.<sup>289</sup> In the case of Wing Wah, which was granted a research permit on April 2006 in the aforementioned village of Banga Kayo, the second largest on-shore oil production site, there is mention of a mandatory payment of US\$160,000 per year to be allocated to a 'social fund'.<sup>290</sup> In some contracts, these social projects are considered as cost oil,<sup>291</sup> as in the case of the Kayo Production-Sharing Contract,<sup>292</sup> and others are not, as in the case of the Offshore Marine Production-Sharing Contract.<sup>293</sup>

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<sup>284</sup> African Union, Abuja Declaration on HIV/AIDS, Tuberculosis and other related infectious diseases, 24-27 April 2001, [https://au.int/sites/default/files/documents/30894-doc-appel\\_dabuja.pdf](https://au.int/sites/default/files/documents/30894-doc-appel_dabuja.pdf), p. 2.

<sup>285</sup> Republic of Congo, *Plan national de développement 2022-2026 - Une économie forte, diversifiée et résiliente pour une croissance inclusive et un développement durable irréversible*, <https://gouvernement.cg/wp-content/uploads/2022/07/CSD-PND-2022-2026.pdf> (in French), p. 44.

<sup>286</sup> Republic of Congo, Politique nationale de santé 2018-2030, *POLITIQUE NATIONALE DE SANTE 2018-2030 (PNS 2018-2030) - MINISTERE DE LA SANTE ET DE LA POPULATION (gouv.cg)* (in French), p.18.

<sup>287</sup> Republic of Congo, Loi 12-2015 portant création de la caisse d'assurance maladie, 31 August 2015, *Loi 12 - 2015 du 31 août 2015 portant création de la Caisse d'assurance maladie | Ministère de la Fonction Publique, du Travail et de la Sécurité Sociale (gouv.cg)* (in French).

<sup>288</sup> Publiez ce que vous payez, *Publication des contrats pétroliers en République du Congo : analyse pour une mise en œuvre ambitieuse des Exigences ITIE*, October 2020, [https://rpdh-cg.org/wp-content/uploads/2020/12/pcqvp\\_congo\\_publication\\_des\\_contrats\\_petroliers\\_en\\_republique\\_du\\_congo\\_-\\_v2.pdf](https://rpdh-cg.org/wp-content/uploads/2020/12/pcqvp_congo_publication_des_contrats_petroliers_en_republique_du_congo_-_v2.pdf) (in French), p. 25.

<sup>289</sup> Republic of Congo, Loi 08-2006 portant approbation de l'avenant n°2 au contrat de partage de production du permis Kouilou, 30 March 2006, <https://www.finances.gouv.cg/sites/default/files/documents/L%20n%C2%AF8-2006%20du%2030%20mars%202006.pdf>, p.3.

<sup>290</sup> Republic of Congo, Loi portant approbation de l'avenant 1 au contrat de partage de production Kayo, signé le 25 juin 2007 entre la République du Congo, la Société nationale des pétroles du Congo et la société Wing Wah Petrochemical Joint Stock Company Limited, 7 February 2018, Official Journal of the Republic of Congo, <https://www.sgg.jo/2018/congo-jo-2018-09.pdf> (in French), p.237. The Amendment 1 to the contract recalls that Wing Wah was awarded the permit to explore for liquid or gaseous hydrocarbons known as "Kayo" by the Decree 2006-173 of 14 April 2006.

<sup>291</sup> Oil cost: all tax-deductible expenses incurred and paid, as well as provisions made by the contractor to carry out oil operations. provisions set aside by the contractor to carry out petroleum operations.

<sup>292</sup> Republic of Congo, Loi 7 - 2008 portant approbation du contrat de partage de production du permis de recherche Kayo, 7 April 2008 <https://economie.gouv.cg/sites/default/files/Documentation/Lois/2008/L%20n%C2%AF7-2008%20du%207%20avril%202008.pdf> (in French).

<sup>293</sup> Republic of Congo, Loi 51-2019 portant approbation du contrat de partage de production Marine XXVIII signé le 23 juin 2019 entre la République du Congo, la société nationale des pétroles du Congo, la société Perenco Congo s.a, la société Africa Oil & Gas Corporation et la société Petro Congo s.a, 31 December 2019, <https://economie.gouv.cg/sites/default/files/Loi%20n%C2%B0%2051-2019%20du%2031%20de%CC%81cembre%202019.pdf> (in French).

When there is no clause in the contracts for the payment of a social fund, they may be mentioned in special agreements. This is the case for the Djambala II, Foukanda II, Mwafi II and Kitina II concessions, or for Loango II and Zatchi II operated by TotalEnergies EP Congo, ENI Congo, SNPC and Africa Oil & Gas Corporation.<sup>294</sup> It should be noted that the contracts contain little information on the management or use of these funds, with the exception of the specific agreements mentioned above: a sum of US\$14,500,000 was allocated for the extension of the Pierre Savorgnan Brazza Mausoleum in Brazzaville, the Museum of Pointe-Noire and the restoration of the former Governor's House in Makoua.<sup>295</sup>

## 6.2.2 LACK OF TRANSPARENCY IN THE MANAGEMENT OF SOCIAL FUNDS

According to the Extractive Industry Transparency Initiative's 2020 report on Congo,<sup>296</sup> the total amount of mandatory payments amounted to XAF1,162 trillion (US\$1,920,304) in mandatory social payments.<sup>297</sup> In 2019, it amounted to XAF971 million (US\$1,604,661).<sup>298</sup> In 2018, the sum of compulsory payments amounted to XAF41 million (US\$ 67,756),<sup>299</sup> in 2017 to XAF billion (US\$6,610,344)<sup>300</sup> and in 2016 to XAF830 million (US\$ 1,371,646).<sup>301</sup>

According to leaders of non-governmental organizations,<sup>302</sup> there is no transparency about how these compulsory payments are negotiated and determined by companies and the state. Moreover, as the Congolese coalition Publish What You Pay noted in its October 2020 report, "the transparency of information must allow us to assess to what extent the funds spent really benefit the populations potentially impacted by oil operations, and Congolese citizens in general. The methods of defining the projects supported are therefore particularly important. However, the information made public on this point remains limited".<sup>303</sup>

According to the same leaders, it is incomprehensible that villages from which oil is extracted cannot have electricity, water, or a health centre, while social funds are used to renovate museums commemorating colonial rulers. It is for this reason that the NGO Justice and Peace Commission launched the project "Electricity for All" to demand electricity for rural areas, and the villages from which oil is extracted in particular.<sup>304</sup>

This point was also raised by the decision of the Board of the Extractive Industries Transparency Initiative in 2020. The board said that the country will need to "make further efforts to ensure transparency in licensing, management of extractive revenues and social spending". It added that "[i]n accordance with Requirement 7.1, the Republic of Congo must ensure that government and company disclosures are understandable, actively promoted, and accessible to the public, and that they contribute to public debate. The Republic of Congo should ensure that information is widely available and disseminated, and that outreach activities - organised by government, civil society or companies - are carried out to raise awareness of and facilitate dialogue on extractive resource governance, building on EITI disclosures throughout the country in a socially inclusive manner".<sup>305</sup>

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<sup>294</sup> Republic of Congo, AOGC Special Agreement on Bonuses and Social Projects associated with Djambala II, Foukanda II, Mwafi II and Kitina II Operating Permits in Loi 29-2014 portant approbation du contrat de partage de production Foukondo II signé le 30 janvier 2014 entre la République du Congo, la société nationale des pétroles du Congo et les sociétés ENI Congo S.A et Africa Oil&Gas Corporation S.A, <https://www.finances.gouv.cg/sites/default/files/documents/L%20n%C2%AF29-2014%20du%2013%20juin%202014.pdf> (in French), p. 100 ; Republic of Congo, Loi 27 - 2074 portant approbation du contrat de partage de production Zatchi signé le 30 janvier 2014 entre la République du Congo, la société nationale des pétroles du Congo et les sociétés ENI Congo S.A et Total E&P Congo, 13 June 2014 (in French).

<sup>295</sup> Republic of Congo, Loi 27 - 2074 portant approbation du contrat de partage de production Zatchi signé le 30 janvier 2014 entre la République du Congo, la société nationale des pétroles du Congo et les sociétés ENI Congo S.A et Total E&P Congo, 13 June 2014 (in French), <https://www.finances.gouv.cg/sites/default/files/documents/L%20n%C2%AF27-2014%20du%2013%20juin%202014.pdf>, p.89.

<sup>296</sup> The Extractive Industries Transparency Initiative (EITI) is a global standard for the good governance of oil, gas, and mineral resources.

<sup>297</sup> EITI Congo, *Report 2020*, June 2022, [Rapport ITIE Congo 2020 \(juin 2022\) \(1\).pdf](https://www.eiti.org/fr/rapport-2020) (in French), p.257..

<sup>298</sup> EITI Congo, *2019 Report*, p. 244.

<sup>299</sup> EITI Congo, *Rapport 2018*, [https://fichiers.itie.cg/Rapport%20final%20ITIE%20Congo%202018%20sign%C3%A9%20\(4\).pdf](https://fichiers.itie.cg/Rapport%20final%20ITIE%20Congo%202018%20sign%C3%A9%20(4).pdf) (in French), p. 257.

<sup>300</sup> EITI Congo, *Rapport 2017*, 12 December 2019, [https://fichiers.itie.cg/02-Rapport%20final%20ITIE%20Congo%202017%20\(1\).pdf](https://fichiers.itie.cg/02-Rapport%20final%20ITIE%20Congo%202017%20(1).pdf) (in French), p. 242.

<sup>301</sup> EITI Congo, *Rapport 2016*, [https://fichiers.itie.cg/Rapport%20ITIE%20Congo%202016%20\(1\).pdf](https://fichiers.itie.cg/Rapport%20ITIE%20Congo%202016%20(1).pdf) (in French).

<sup>302</sup> Interview in person at pointe-Noire and Brazzaville by phone with 4 people July and December 2022.

<sup>303</sup> Publiez ce que vous payez, October 2020 <https://rpdh-cg.org/news/2020/12/16/publication-des-contrats-petroliers-en-republique-du-congo-analyse-pour-une-mise-en/>

<sup>304</sup> RFI, "Congo-B : des villageois dans le noir malgré la présence du pétrole et du courant", 2 October 2022,

<https://www.rfi.fr/fr/afrique/20221002-congo-b-des-villageois-dans-le-noir-malgr%C3%A9-la-pr%C3%A9sence-du-p%C3%A9trole-et-du-courant> (in French).

<sup>305</sup> EITI, Board decision, 2020-68/BC-295, 11 September 2020, <https://eiti.org/fr/board-decision/2020-68>.

In addition to mandatory social payments, companies also report voluntary social payments to the Extractive Industries Transparency Initiative. In 2016, companies reported having spent XAF1.6 billion on voluntary social payments (US\$2.5 million), in 2017, XAF1.87 billion (US\$ 2.9 million), in 2018, XAF6.142 billion (US\$9.8 million), in 2019, XAF1,749 billion (US\$ 2.7 million), and in 2020, XAF1.162 billion (US\$1.8 million).<sup>306</sup>

The communities of the three villages (Tchicanou, Kouakouala and Bondi) met by Amnesty International did affirm that, when the companies started their activities in their villages, they held talks with company executives in the presence of state representatives and that a list of ‘grievances’ and needs was signed.<sup>307</sup> But these lists were not part of a formal process of consultation and has no legal standing; they do not appear in the Hydrocarbons Code or in the Production-Sharing Contracts. It is simply a list of issues that the community puts to the companies, and that the latter agree to address.<sup>308</sup>

According to an expert on these issues interviewed<sup>309</sup> by Amnesty International, there is no requirement under national law for companies to ensure that social projects are geographically linked to their area of exploitation. There is certainly no notion of supporting communities that are affected adversely by the oil production.

But faced with state failures to provide for their needs, the residents did turn to businesses expecting the companies operating oil wells in their area to provide them with access to water and electricity, and to invest in education and health at least. Some companies funded projects to respond to their needs, but others did not. This explains the resentment some residents have towards the companies. According to them, the commitments made at the time of establishing operations have simply not been kept. Several residents met by Amnesty International explained that they were claiming these rights from the companies in the first place because commitments had been made at the time of their establishment. But it is actually the state that bears the responsibility to uphold the human rights of the residents.

## **6.3 STATE RESPONSIBILITY FOR LACK OF ACCESS TO HEALTH FACILITIES AND SAFE DRINKING WATER IN THE VILLAGES OF BONDI, TCHICANOU AND KOUAKOUALA**

### **6.3.1 BONDI, TCHICANOU AND KOUAKOUALA, THREE VILLAGES NEAR AN OIL CONCESSION**

The villages of Bondi, Tchicanou, and Kouakouala are in the Kouilou department, about 40km from the city of Pointe-Noire. In 1996, the government issued a call for tenders for the so-called “Kouilou” exploration licence, which was won by the “ZETAH” group. The ZETAH group is made up of Heritage Oil & Gas Limited (an American firm), Tacoma Limited, a subsidiary of Burren energy (a British firm) and Zetah Oil Company Limited<sup>310</sup> (founded by a Beninese businessman). The same year, a production-sharing contract was signed between the company and the state<sup>311</sup> for the Kouakouala research permit. The company was also granted an operating licence. The latter had previously been granted to the company Elf. The latter, considering the oil level to be relatively low, had decided to withdraw.<sup>312</sup> The operating permits issued by these Kouilou research permits were first granted in 2002 concerning the “Mboundi” permit.<sup>313</sup>

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<sup>306</sup> EITI reports 2016;2017;2018;2019 and 2020.

<sup>307</sup> Interview in person with 28 people, July and December 2022, Republic of Congo.

<sup>308</sup> Interview via email, October 2022.

<sup>309</sup> Interview via email, October 2022.

<sup>310</sup> Republic of Congo, Décret097/68, 4 April 1997 (in French).

<sup>311</sup> Republic of Congo, [Contrat de partage de production portant sur le permis de Kouilou entre la République du Congo et le Groupe, 13 December 1996, ZETAH.pdf \(gouv.cg\)](#) (in French).

<sup>312</sup> By Decree, Republic of Congo, Décret 97-67, 4 April 1997 (in French).

<sup>313</sup> Republic of Congo, Décret 2002-248portant attribution à la société Zetah, Maurel & Prom Congo d'un permis d'exploitation dit Mboundi, 15 July 2002 (in French).

There have been several changes to the contractor for the research licence and the production-sharing contract. A first amendment was signed in November 2005, giving 64% of the shares to the French company Maurel&Prom after several sales.<sup>314</sup> A third amendment was signed, allowing the Congolese National Oil Company to acquire an 8.9% stake in the Mboundi exploration licence.<sup>315</sup> On 28 May 2007, Maurel & Prom sold ENI Congo S.A., its interest in the Mboundi and Kouakouala concessions and part of its interest in the Kouilou exploration licence (reduced from 65% to 15%) for an amount of US\$1,434 billion.<sup>316</sup> Amendment 5 was signed on 22 October 2012, in which ENI Congo became the main contractor for the Loufika Tioni, Zingali<sup>317</sup> and M'Boundi<sup>318</sup> permits.

According to residents of the three villages (Bondi, Tchicanou, Kouakouala), who met with Amnesty International in July and December 2022, the discovery of oil was accompanied by hopes that their lives would improve, considering the state failures to protect their basic economic and social rights. They added that the arrival of the companies had already made it possible to make some tracks accessible by road, although the situation was not ideal.

When they met with ZETAH group officials at the start of the operations, their requests were for access to water, improvements to school and sanitation infrastructure, and jobs with the oil companies for local people. In 2006, Maurel & Prom, the majority shareholder in the Mboundi concession, rehabilitated the M'Bokou primary school, built a library and started to dig wells in different villages in its area of intervention.<sup>319</sup> In 2007, the company partnered with the non-governmental organization "Comminges sans frontières"<sup>320</sup> to dig wells in the villages of Tchicanou, Bondi and Kouakouala.



 ↑ *Drilling of wells in Kouakouala on the left and Tchicanou on the right in 2007 © Comminges sans frontières website*

ENI Congo, which in 2007 became the majority owner of the various licences around the three villages, set up the Hinda Integrated Project, the first phase of which was launched in 2010 and the second in 2017. Hinda is the main town in the Hinda district and is located 15km from Tchicanou. According to the company's website,<sup>321</sup> the project aims to improve access to health, water, and education. The company also highlights the creation of a training centre for farmers.<sup>322</sup> As part of this project, ENI Congo also rehabilitated

<sup>314</sup> Republic of Congo, oi07-2006, 30 March 2006 <https://www.sgg.cg/textes-officiels/lois/2006/congo-loi-2006-07.pdf> (in French).

<sup>315</sup> Republic of Congo, Loi 09-2006, 30 March 2006, <https://www.sgg.cg/textes-officiels/lois/2006/congo-loi-2006-09.pdf> (in French).

<sup>316</sup> Maurel&Prom, *Annual report 2007*, April 2008, <https://www.maureletprom.fr/en/investisseurs/rapports-annuels>, p.6.

<sup>317</sup> Republic of Congo, Decree 2010-333 du 14 juin 2010

<sup>318</sup> Republic of Congo, Loi 35-2013 portant approbation de l'avenant 5 du 22 octobre 2012 au contrat de partage de production Kouilou, 30 December 2013 (in French).

<sup>319</sup> Maurel&Prom, *Annual report 2006*, 30 May 2007, <https://www.maureletprom.fr/en/investisseurs/rapports-annuels> (in French), p.79.

<sup>320</sup> Comminges sans frontières, *Comminges Sans Frontières* ([comminges-sans-frontieres.com](http://comminges-sans-frontieres.com)).

<sup>321</sup> ENI, letter to Amnesty International, January 2024, on file with Amnesty International.

<sup>322</sup> ENI Congo, The Integrated Hinda Project, *Hinda Project: for the development of rural centres in Congo | Eni* (Last accessed on 27 May 2024).

or dug several wells in the area to facilitate access to water. Several health centres have also been rehabilitated thanks to ENI's "Salissa Mwana" project.<sup>323</sup> According to figures provided by the Extractive Industry Transparency Initiative report, ENI Congo spent XAF832 million (US\$1.3 million) on the Hinda Integrated Project in 2016 and just over XAF200 million (US\$320,000) in 2018.

Despite these significant figures, access to health and water for the residents of villages near ENI Congo's exploitation areas remains precarious due to state shortcomings in the protection of economic and social rights.

### 6.3.2 ISSUES OF ACCESSIBILITY AND AVAILABILITY OF HEALTH FACILITIES

The M'Bokou Integrated Health Centre covers the villages of Bondi and Tchicanou and several others in the surrounding area, that is, one centre for 7,000 people. The centre was rehabilitated by Maurel & Prom and then by ENI Congo as part of the Hinda Integrated Project.

Despite the company's investment in the M'Bokou Integrated Health Centre, problems of accessibility and availability remain, which can be attributed to the state. First, authorities that have not built a passable road, the rocky road is difficult to travel on, especially during the rainy season when it is in poor condition. Villagers usually prefer to walk through the forest to get to the health centre. When people are sick and unable to move, they call ENI Congo for an ambulance<sup>324</sup>.

A resident met by Amnesty International testifies about the difficulties to access the health centre: "We walk for an hour to get to the Integrated Health Centre and if we are sick, it is much longer. Sometimes we carry the sick on our backs. If a woman is pregnant, she sometimes gives birth in the village and then we take them to the IHC in a wheelbarrow".<sup>325</sup>

Furthermore, while the state has a responsibility to manage this health centre by providing the necessary health personnel, supplying the necessary medical staff, and working to maintain its services, many problems in this regard have been identified by the residents and noted by Amnesty International, who visited the site.



<sup>323</sup> Progetto Salissa Mwana - ENI Foundation, Youtube post: "Salissa Mwana", 30 November 2015, <https://www.youtube.com/watch?v=CTitRIYr9y8>.

<sup>324</sup> Interview in person with 18 people, December 2022, Republic of Congo.

<sup>325</sup> Interview in person with 18 people, December 2022, Republic of Congo.



At the time of Amnesty International's visit, there were no doctors present at the M'Bokou health centre. There was one midwife, three community workers and four community liaison officers. There was no laboratory technician assigned to the health centre, and the laboratory, which had previously been renovated by the company, was not functional.<sup>326</sup>

Residents told Amnesty International that they had to travel to Pointe-Noire, 40km from the village, to see doctors when they are seriously ill and pay for medicines that are not available locally, because of the lack of staff and medicine at the health centre.

One woman we met explained to Amnesty International: "When we are sick, we go to the M'Bokou health centre for treatment. There are no doctors there, only assistants". Another woman agreed, adding that "the pharmacy at the integrated health centre is not stocked. Many products are unavailable, you have to go to Pointe-Noire to buy the medicines".<sup>327</sup>

The National Health Policy for the period 2018-2030 adopted by the government recognises the difficulties faced by the Congolese health system in terms of human resources and supplies.<sup>328</sup>

Amnesty International sent a 'right to reply' to the authorities in February and March 2024, sharing its concerns regarding the problems of accessibility and management of the IHC, and asking for their action plan to protect the right to health of the surrounding villages. No response was received.

### 6.3.3 ISSUES OF ACCESSIBILITY TO SAFE WATER

In addition to healthcare, access to drinking water remains difficult for these villages due to the absence of state support, despite investments by companies.

The villagers used to get water from different sources. But since the arrival of the oil companies and a gravel factory, the water appears to have dried up and become unsafe to drink.<sup>329</sup> According to residents met by Amnesty International, as early as 2003, the first spills of crude oil and drilling mud into water sources occurred, prompting the companies at the time to organise water distribution via tanks delivered from trucks. Several other alleged accidental spills occurred between 2003 and 2007,<sup>330</sup> thus prior to ENI Congo's exploitation of the site.

Amnesty International has not been able to obtain specific information on these oil spills. In its 2006 annual report, the company Maurel & Prom acknowledges that it paid XAF90,000 (US\$144) in compensation for an accident.<sup>331</sup> The company did not provide further details regarding this incident. In 2006 and 2007 several press articles<sup>332</sup> documented the protests of local communities against practices they consider polluting. The Pointe-Noire-based non-governmental organizations "Rencontre pour la paix et les Droits de l'homme" and the "Commission pour la Justice et la Paix" produced a report for the country's 5<sup>th</sup> Universal Periodic Review in May 2009. They expressed their concerns about the spillage of crude oil into the Samba river in Tchicanou in 2004 and Makoyo in 2006. These rivers also irrigate the village of Bondi. They also noted the communities' fears about the poor management of oil waste that was said to be seeping into the ground.<sup>333</sup>

Village residents interviewed by Amnesty International said that as early as 2006, company officials held meetings with them to advise against drinking water from the river. They did not obtain a formal document on this recommendation or a concrete explanation. The residents also said that, despite this advice from the

<sup>326</sup> Visit to M'Bokou Health Center in December, 2022.

<sup>327</sup> Interview in person with 18 people, December 2022, Republic of Congo.

<sup>328</sup> Republic of Congo, Politique Nationale de santé 2018-2030, <https://sante.gouv.cg/wp-content/uploads/2021/09/POLITIQUE-NATIONALE-DE-SANTE-2018-2030-PNS-2018-2030.pdf> (in French).

<sup>329</sup> Interview in person with 25 people, July and December 2022, Republic of Congo.

<sup>330</sup> Interview in person with 25 people, July and December 2022, Republic of Congo.

<sup>331</sup> Maurel & Prom, *Annual Report 2006*, 30 May 2007, <https://www.maureletprom.fr/en/investisseurs/rapports-annuels>, p. 80.

<sup>332</sup> Congo page, "Kouilou: la torchère brûle entre Zetah et les populations", 5 January 2007, <http://www.congopage.com/Kouilou-la-torchere-brule-entre> (in French).

<sup>333</sup> RPDH, "Exploitation du pétrole et les droits humains au Congo Brazzaville. Rapport déposé dans le cadre de la 58<sup>ième</sup> session de l'examen périodique universel, 4 January 2009, <https://rpdh-cg.org/news/2009/01/04/exploitation-du-petrole-et-les-droits-humains-au-congo-brazzaville-rapport-depose/> (in French).



company and their fears of illness, they were forced to continue using water from the river, due to the inadequate water supply from the hand pump installed at different periods by state and companies.<sup>334</sup>

Amnesty International sent a letter to Maurel & Prom in March 2024 inquiring about incidents of spills of oil during its operation of the site. The company replied<sup>335</sup> that it had always acted with a good awareness of environmental issues and had set up a health and safety environment department from the outset to meet the standards. It added that as part of the sale of its interest in the operating permits, a large part of the company's files was transferred to the buyer. As a consequence, the company is not able to tell precisely how many incidents may have occurred nor their extents. According to the company, its teams had all the necessary equipment to respond effectively to any pollution. It also said that it had taken initiatives to "impose techniques and working methods that would help prevent erosion and rehabilitate the soil". Finally, it states that, given the small amount of compensation paid in 2006, these were probably "extremely minor events" showing that the "company was careful about these issues".

In its response to Amnesty International, ENI Congo stated that "ENI Congo has never received any official complaint from the local population about the pollution of spring waters due to its activities and given that they are a long way from the exploitation fields. The above-mentioned springs are not part of ENI Congo's environmental monitoring plan".<sup>336</sup> In order to manage complaints, the company has added that "ENI Congo has established a local community interface: a community liaison officer for addressing all complaints, stationed at the Mboundi site, with their telephone number distributed among local communities and local authorities to ensure good relations".<sup>337</sup>

The villages within the scope of this report all benefited from the state "Water for All" programme. However, at the time of Amnesty International's visit to the villages, the initiative's facilities were no longer functional. According to the residents of Tchicanou,<sup>338</sup> the maintenance service had not been provided and the solar panels used to power the pump had been stolen. A village chief confirmed to Amnesty International delegates that his village "benefited from the "Water for All" initiative eight years ago".<sup>339</sup>

In the absence of state support, ENI Congo (via the Hinda Integrated Project) installed two deep boreholes of several dozen metres in 2017 for Tchicanou and 2018 for Bondi.<sup>340</sup> But this system too has had several setbacks, with pumps breaking down regularly. The last breakdown in Bondi was in August 2022. According to ENI Congo, the Bondi well was repaired in January 2024 and is currently operational.<sup>341</sup>

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<sup>334</sup> RFI, "Congo-Brazzaville: le projet «Eau pour tous» lancé pour améliorer l'accès à la ressource", 5 August 2013, <https://www.rfi.fr/fr/afrique/20130805-congo-brazzaville-le-projet-eau-tous-lance-ameliorer-acces-eau-le-pays> (in French).

<sup>335</sup> Maurel&Prom, letter to Amnesty International, 18 March 2024, in file with Amnesty International.

<sup>336</sup> ENI, responses to the letter from Amnesty International's West Africa Regional Office, January 2024, on file with Amnesty International.

<sup>337</sup> ENI's responses to the letter from Amnesty International's West Africa Regional Office, March 2024

<sup>338</sup> Interview in person with 25 people, July and December 2022, Republic of Congo.

<sup>339</sup> Interview in person, December 2022, Republic of Congo.

<sup>340</sup> Interview in person with 25 people, July and December 2022, Republic of Congo.

<sup>341</sup> ENI's responses to the letter from Amnesty International's West Africa Regional Office dated January 2024.



 ↑ Bondi Water Tower ©Amnesty International

It should also be noted that none of the houses in the village are connected to the water pump, so the residents have to carry jerry cans to the borehole, which is close to the village chief's house. Some elderly people told Amnesty International delegates that they lived more than a kilometre away from the water point, so this was a real difficulty for them.<sup>342</sup>

At the time of Amnesty International's visit, to compensate for the failure and non-replacement of their pump, the company provided a generator to power a pump and supply the inhabitants with drinking water. Every two days the generator was being dropped off in a village in the area, so that it could be used to build up stocks of water. The company was also organising water distributions by tanker, as Maurel & Prom did back in 2006. Deliveries came twice a week for each village. The residents would have to take their jerry cans out to fill up from the tanker.

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<sup>342</sup> Interview in person with 18 people, July and December 2022, Republic of Congo.



 ↑ *Arrival of the water distribution truck in Bondi, December 2022 ©Amnesty International*

Notwithstanding the good faith of the companies carrying out these projects, the question of the disempowerment of the state remains today. It is the role of the state, through its obligations, to provide drinking water to the population and to ensure the maintenance of water infrastructure in the event of failure. In this area, public services seem to have been completely outsourced to the companies that extract the oil.

# 7. CONCLUSION AND RECOMMENDATIONS

Environmental and economic and social rights are at risk in the villages in the industrial departments of Pointe-noire and Kouilou that generate the economic wealth of the country.

Under international human rights law, all states have a duty to protect against human rights abuses by all actors, including companies. Additionally, all companies have a responsibility to respect all human rights, including the right to a healthy environment, wherever they operate, whichever sector they operate in, and regardless of their nationality or size. This responsibility is laid out in the UN Guiding Principles on Business and Human Rights.

However, the report shows that some oil companies have been responsible for multiple accidental spills of crude oil into water sources – such as the Loémé river or the Loubi lagoon, which are used by residents of nearby villages to drink, wash, fish or grow cassava. In the cases studied, these oil companies failed to develop a culture of public communication about the causes, the nature and consequences of its spills on the environment and the rights of local communities as well as about the eventual remediation and reparation measures taken. Under pressure from affected local communities to react to this, the state did then denounce the violation of environmental law and did suspend the activities of one company in one case and prosecute the company in another one. But the authorities are rarely proactive in assessing the potential human rights impact of companies' activities and, when such incidents occur, they also fail to identify the potential human rights impact effectively and to ensure that companies fully repair the damage caused, compensate those affected, and take effective measures to prevent further incidents. The absence of public communication by the state on issues related to business activities and human rights is also problematic. This report also shows that the Congolese state has allowed a non-ferrous metal recycling plant, the smoke from which is potentially toxic for local residents, to operate for more than 10 years, even though the company likely did not have the necessary authorization to operate, due to the lack of an environmental impact assessment prior to its set-up. This shows a failure by the state, despite having robust laws, to fully implement measures aimed at ensuring a healthy environment for the population.

Moreover, the report demonstrates that despite development plans, the authorities are failing to meet their obligations to protect the right to health and the right to access to drinking water for people living around oil concessions in the coastal area.

In terms of health, the M'Bokou Integrated Health Centre is supposed to cover the needs of around 7,000 residents of the villages of Bondi, Tchicanou and several others, but there are problems of resource availability and accessibility of the centre. Indeed, at the time of Amnesty International's visit, there were no doctors or laboratory staff. The pharmacy is empty, and people have to travel the 40km to Pointe-Noire to get medicine. Access to the health centre is also difficult in the rainy season, as the road is deteriorating, and people must get to it through the forest. The only ambulance is provided by the oil company.

Regarding access to drinking water, the authorities drilled boreholes as part of their "Water for All" project in villages where oil spills had prevented residents from using local water sources. But in the absence of

maintenance and responsiveness from the state, residents turned to the company to ensure they can access drinkable water.

The state must act urgently to improve the environmental, economic and social conditions of the residents of villages located near industrial activity. It must also take into account the right of its population to a healthy, safe and sustainable environment. This consideration is even more essential as Congo plans to diversify its industrial activities and is discovering new oil exploitation potential in the north of the country. Indeed, it should be recalled that the burning of coal, oil and natural gas is responsible for more than 70% of global emissions. Global fossil fuel production must fall by around 6% per year until 2030 in order to limit the rise in average global temperature to 1.5°C. Fossil fuels remain the main driver of the climate crisis, the effects of which are already having devastating effects on people's rights to health, water, housing, and work. Thus, Congo must consider rapidly phasing out fossil fuel production and use if we are to mitigate the worst impacts of the climate crisis on human rights.

Therefore, Amnesty International is making the following recommendations:

## **TO THE AUTHORITIES**

### **ON FOSSIL FUELS**

- Adopt and implement a just transition plan to phase out the production of oil and gas in a manner compatible with the human rights of the population of Congo, including workers and communities relying on fossil fuels extraction. Targets should be set for reducing production by 2030 and the full phase-out should be completed no later than 2050, in line with the Intergovernmental Panel on Climate Change evidence;
- Shift towards renewable energy in Congo, produced consistently with human rights for all, and take steps to ensure that affordable renewable energy is generated in full compliance with human rights standards and is available and accessible to all.

### **ON THE DUTY TO PROTECT AGAINST HUMAN RIGHTS ABUSES BY COMPANIES**

- Ensure the implementation of the 1991 law on the protection of the environment;
- Adopt a Vigilance law to prevent serious harm to human rights and the environment by establishing a duty of vigilance with regard to parent companies, with an extended scope that also includes the activities of their subsidiaries, subcontractors and suppliers;
- Ensure that companies without an environmental impact assessment (according to Law 003/91) cannot operate;
- Make all environmental impact assessments carried out in the context of the set-up of industrial activities in the country accessible to the public;
- Ensure businesses act responsibly and comply with their environmental and other human rights obligations;
- Conduct regular impact assessment in accordance with Law 003/91 and Decree 415-2009;
- Make public all environmental analysis carried out in the context of monitoring missions by the services of the Departmental Directorate of the Environment and the Departmental Directorate of Hydrocarbons;
- Make public all environmental analysis the authorities carried out regarding the spills of crude oil in the Loubi lagoon;
- Make public the different violations of environmental law that led the Ministry of Environment to temporarily suspend the activities of the company Wing Wah in October 2021 and in July 2022, and the action taken by the company which led to the lifting of the sanctions;
- Make public the report of the team of the Hygiene Service of the Kouilou Departmental Health Directorate, which did a health survey of the residents of Vindoulou in September 2020, to determine the impact of the Metssa company's activities;
- Ensure that all companies repair environmental damage linked to their activities, and that they compensate victims in conformity with Law 003/91 and the hydrocarbons code;

- Consider claims by the local communities of Djeno about the environmental and other human rights impact of TEPC activities, ensure that more regular scientific tests to assess the quality of the water of the Loubi lagoon take place, that the reports are made public, and, depending on their conclusions, require the company to undertake cleaning operations;
- Investigate the potential environmental, health and economic rights impact of past oil spills in the Loubi lagoon for local communities, make the report public and, depending on its findings, take the necessary measures to ensure damage caused to local communities are repaired;
- Ensure an environmental audit of the December 2022 leak of the pipeline linking the Banga Kayo field to the Djeno oil terminal is done as soon as possible, and include an assessment of the human rights impact of the incident on local communities, make public its findings, and ensure proper repair of the damage and mitigating measures to prevent reoccurrence;
- Immediately investigate the impact of Metssa Congo's activities on the full spectrum of rights of the surrounding population, including the right to a clean, healthy and sustainable environment; Make the investigation report public and, depending on its conclusions, order the closure and/or relocation of the company to an industrial zone, and, if relevant, specify measures to ensure compliance with the company's human rights responsibilities when operating in an industrial zone, and take measures to ensure that the company provides effective remedy to people harmed by their operations. This should involve assessing their needs and ensuring provision of remedial measures. These might include monetary compensation, or access to medical treatment or other initiatives.

### **ON THE RIGHT TO ACCESS TO DRINKING WATER AND HEALTH FACILITIES**

- Use all available resources to protect economic and social rights, in line with the International Covenant on Economic and Social Rights and the African Charter on Human and Peoples' Rights;
- Ensure good governance, and fight against corruption which has an impact on the enjoyment of economic and social rights, in accordance with the African Union Convention on Combating Corruption;
- Be transparent about the amount and use of mandatory company contributions for "social funds";
- Fully implement, with the necessary means, the national policy on access to water;
- Engage with international partners and international financial institutions for projects supporting the right to access to drinking water;
- Repair and upgrade "Water for All" facilities to ensure permanent and safe access to water;
- Allocate at least 15% of the government budget to health, in accordance with the commitment made under the Abuja Declaration adopted by the African Union in 2001; implement the budget as planned;
- Improve the availability of the health care system, including making the following available to patients:
  - Facilities, supplies and services, as well as functioning public health and healthcare programmes. These programmes must enjoy the basic determinants of health, such as safe and clean water and adequate sanitation facilities,
  - Qualified medical and professional staff receiving a decent salary compared to the national average and essential medicines, as defined by the WHO.
- Equip the M'Bokou health centre with the medical staff and medicines necessary to ensure the right to health of the population;
- Make the declaration under Article 34.6 of the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights to allow NGOs and individuals to directly seize the court to claim their rights;
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

## TO COMPANIES

- Follow the UN Guiding Principles on Business and Human Rights, including by putting in place an ongoing and proactive human rights due diligence process to identify, prevent, mitigate, and account for how to address the company's impact on environment and human rights;
- Make all environmental impact studies carried out in the context of the set-up of industrial activities in the country accessible to the public;
- Make information public regarding all accidents linked to industrial activities that may affect environmental and human rights;
- Make public all environmental tests carried out in the framework of public control missions by the Quality, Health, Safety and Environment departments;
- Repair all environmental damage linked to industrial activities, and compensate victims in accordance with the 1991 law on the protection of the environment;
- Provide details of all compulsory and voluntary contributions to 'social projects';
- Continue to support social projects for communities living near industrial activity, including facilitating access to drinking water and the right to health.

### TO TOTAL-ENERGIES EP CONGO

- Initiate an independent investigation on the potential environmental, economic and health rights impact of past oil spills, make the report public and depending on its findings, take the appropriate reparation measures;
- In line with corporate social responsibility (CSR) policies and international norms relating to human rights due diligence, do more regular scientific analysis of the state of pollution of the Loubi Lagoon, publish their results, and if necessary, resume de-pollution measures and adequately repair harm and human rights violations;
- Publish the last environmental and social audit performed, the reports of the scientific tests carried out in 2011 and 2021 to analyse the state of pollution of the Loubi lagoon, the 2015 report on the biodiversity of the Loubi lagoon and the report of the 2020 cleaning operations of the Loubi lagoon;
- Prevent and mitigate the risk of oil spills in the Loubi lagoon linked to its activities at the Djeno terminal;
- Ensure regular communication and transparent information with local communities on the company's activities, their potential impact on human rights, and the measures put in place to mitigate risks;
- In line with its CSR policies and international norms relating to human rights due diligence, publicly communicate on every oil spill in the Loubi lagoon, and the cause, quantity and potential human rights impact;
- Repair all crude oil spills and their potential human rights impact in accordance with Congolese law and the UN Guiding Principles on Business and Human Rights.

### TO WING WAH

- Make public all measures taken to conform to environmental law in response to temporary suspensions decided in October 2021 and July 2022 decided by the Ministry of Environment;
- If not yet done, ensure an environmental audit, as requested by the Ministry of Environment, on the December 2022 leak of the pipeline linking the Banga Kayo field to the Djeno oil terminal is done as soon as possible, including an assessment of the human rights impact of the incident on local communities, publish its findings, and ensure proper repair of the damage. The audit should study all potential human rights impact of the leak;
- In line with CSR policies and international norms relating to human rights due diligence, publicly communicate on every oil spill, its cause, quantity and potential human rights impact;
- Repair all spills of crude oil incidents and their potential human rights impact in accordance with Congolese law and UN Guiding Principles on Business and Human Rights;

- Ensure regular communication and transparent information with local communities on the company's activities, the potential impact on human rights, and the measures put in place to mitigate these risks.

### **TO METSSA CONGO**

- Publish all documents of authorisation to operate delivered by the authorities prior to and after the start of company operations;
- Publish the environmental audit performed in 2022 and the reports of the medical testing for factory workers and the medical testing for community the company claims to possess;
- Initiate another environmental and social audit which includes a thorough consultation with local communities, taking into account their views and concerns and make the report public;
- Do medical testing for the community, publish the findings, and depending on their findings, take appropriate reparation, remediation and mitigating measures to ensure the respect of human rights of the residents of Vindoulou;
- Consider the potential risks of the company's activities on health of local people, consider the relocation of the factory to a place with no population in the vicinity.

## **TO INTERNATIONAL PARTNERS**

- Ensure that the companies from their own country, and their subsidiaries, comply with UN Guiding Principles on Business and Human Rights, including by putting in place an ongoing and proactive human rights due diligence process to identify, prevent, mitigate, and account for how to address the company's impact on the environment and human rights;
- Finance projects to support the rights to access drinking water and the right to health in Congo.

### **TO WEALTHIER COUNTRIES**

- Significantly increase financial resources and technology transfers to the Congo to shift dependence away from fossil fuels and instead facilitate a speedy transition to human rights-consistent renewable energy that creates livelihood opportunities, supports communities and facilitates access to affordable energy to all.





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# IN THE SHADOW OF INDUSTRIES IN THE REPUBLIC OF CONGO

## ENVIRONMENT, AND ECONOMIC AND SOCIAL RIGHTS THREATENED IN VILLAGES NEAR OIL AND RECYCLING COMPANIES

Amnesty International investigated the extent to which environmental, economic and social rights are affected in villages located near industrial activity in Pointe Noire and Kouilou areas which are considered as the economic jewel of the Republic of Congo.

The report sheds light on cases of oil spills in Loubi lagoon and Loeme river and smoke emission in Vindoulou linked to the activities of two oil companies and one recycling company, which reportedly affect the human rights of local communities.

It highlights the failures of the Congolese authorities and businesses to meet some of their international and national obligations and responsibilities with regard to environmental protection and other human rights. It puts forward the need for better public communication on initial and follow-up environmental impact assessments as well as on incidents that may impact on life of communities. It also shows the need for effective implementation of mitigating, remediation, and reparation measures in case of adverse impact of business' activities on human rights of individuals.

Moreover, analysing the situation in the villages of Bondi, Tchicanou, Kouakouala, the report demonstrates that despite development policies and commitments, the authorities are failing to meet their obligations to protect the right to health and the right to access to drinking water for people living around oil concessions in the coastal area.