

The Forest Code of the Democratic Republic of Congo in the Mirror of Anthropological Criminology: A Right within the Right

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Abstract: *The protection of the environment in general and that of the forests in particular is one of the concerns of the States. The Democratic Republic of Congo (DRC) is one of these countries. To do so and accompanied by some international financial organizations, the Democratic Republic of Congo has implemented a binding code governing the forestry sector. 20 years after its promulgation, and designed to seek the well-being of its entire population, this work shows that multiple obstacles are blocking its expansion. With the objective of detecting the suffering and its explanatory factors resulting from the law protecting Congolese forests, we used the qualitative approach materialized during the production of field data by the documentary technique and the interview technique. The content analysis served us in the counting and the thematic analysis in the processing of the data from which we arrived at an understanding according to which real obstacles involve the state actors responsible for applying this code but also non-state actors such as customary chiefs, rural populations. Obstacles that concretely translate into different forms of psychic traumas that manifest themselves in the economic and environmental crimes that some of these actors have maintained, having woven complex networks that this field research carried out in the Haut-Katanga Province attempts to identify.*

Keywords: Forest Code, Code, Forests and Woods

1. Introduction

In this context of economic reforms, this forestry law of 2002 seeks the internal financial resources of the country and the protection of the environment in the spirit of sustainable development. By the forest code of the DRC in its article 7, the forests of its territory constitute the property of the State. According to this law, therefore, the exploitation of forests is subject to the possession of a cutting permit. This permit therefore gives the operator, according to his objectives, the advantage of marketing construction wood, lumber, wood transformed into embers used by households, etc.

Concretely, on the ground there is a duality between the law prohibiting the cutting and marketing of wood on the one hand, and the actual practices on the transfer, cutting and marketing of this type of wood by different actors. To try to understand the reading made by the state actors responsible for enforcing this forest code and the rural populations (their social representations of the said law), in the Province of Haut-Katanga, we have had recourse to the grid of anthropology of law according to Alliot, M. (2003). The field of psycho-criminology will allow us to explain the different forms of suffering felt by these rural populations from whom the forest code “snatches” part of their ancestral vital heritage, which has automatically become “State property”.

By directing research towards understanding the functioning of Congolese environmental administrative institutions with regard to forest law and the experience of the populations who shelter these forests, this research develops in the

sphere of the paradigm of the criminology of social reaction. It is therefore a microsociological research carried out in tree felling sites that we specify in the body of the text.

Indeed, Becker, H.S. (2002: 116) and Quivy, R. and Van Campenhoudt, L. (2006: 26) argue that in the social sciences it is best to begin research with a question. It is in this sense that we start with the question, how do social actors experience the Congolese forest code in Haut-Katanga? By researching the actors' views on the forest code, this comprehensive research mobilized the specific methodological device. Thus, the qualitative research sample was selected according to the criterion of diversification and saturation (Glaser, B. and Strauss, A., 1967). Field data comes from semi-directed narration, direct observation and semi-directive interview according to Schaut, C. (2014). Data dissected by thematic analysis according to Paillé, P. and Mucchielli, A., (2012) and whose interpretation is based on this reading grid, the prescriptions of the Congolese forest code and penal code. Finally, this research is based on constructivist epistemology according to Demazière, D. and Dubar, C. (1997).

Keyword constituency

The term Forest Code is understood in two aspects. First, the forest code is the set of provisions governing forest resources likely to increase their contribution to the economic, social and cultural development of present generations, while preserving forest ecosystems and forest biodiversity for the benefit of future generations. According to the second understanding, the Forest Code is the set of provisions governing the status, management, conservation, exploitation, monitoring and policing of forests and forest

lands (Law No. 011-2002 on the Forest Code of August 20, 2002 from the Democratic Republic of Congo).

1.1. Coded

The code is a set of laws, rules that govern the functioning of a specific social sector. It consists of the reasons for its creation (preamble or motivations), rights, prohibitions and sanctions related to the functioning of this sector.

1.2. Forests

Forests are land covered with a plant formation based on trees and shrubs capable of providing forest products, sheltering wildlife and having a direct or indirect effect on the soil, climate or water regime (DRC Forest Code 2002).

1.3. Woods

Wood (joinery, veneer, structural wood) is a compact and fibrous material, more or less hard, formed by the sap-carrying vessels, with walls rich in cellulose and lignin, and which constitutes the trunk, the roots and branches of woody plants. Jeuge-Maynard, I. (2010: 123, 260, 1059).

2. The reading grid of legal anthropology according to Michel Alliot (2003)

In a social context in which life is still organized according to customary practices and in which a "new" law is introduced, it is the theoretical approach of legal anthropology that seems relevant to us for understanding the phenomenon under study.

The reading grid of legal anthropology according to Alliot, M. (2003) gives us conceptual tools that warn us, among other things, that there is not one but multiple ways of thinking about the world and of thinking about oneself in the world. and that each of them corresponds to a way of thinking about the law. She also shows that the law is first of all what the actors do, and not only what is contained in texts and manuals (2003: 6). In relation to the transfer of rights, the author shows that the hope for development through import law (laws, codes) has given way to disenchantment and the search for endogenous development... because the effects of a rule do not depend on its formulation, but also on the objectives and methods of action of those who use it and the representations they associate with it (Alliot, M., 2003: 129). The right-law must therefore translate simultaneously into a way of being, a way of doing and a way of living.

3. Literature Paper

In 2008, Trefon, T. traces the observations raised by the World Bank, the European Union and the United States of America on the relative stability of the DRC on the management of exceptional natural resources (minerals, forests, etc.). He also points out that in terms of logging, Congolese state agents and loggers indulge in practices linked to corruption.

The October 2012 Global Witness Report deals with the industrial exploitation of Congolese forests. This shows that the said forests are the subject of exploitation qualified as plundering by the fact that most of the forestry companies work without an exploitation permit. He explains these phenomena by the fact that it is in a context of a DRC qualified as a fragile state and in which the laws are ineffective where this illegal exploitation of forests takes place.

NgoyIlungaNimuk (2012) studied the sale of timber in Kisangani (a city located in the North-East of the DRC). Its results show the species of trees threatened with extinction and prohibited from exploitation but found on the local market.

Lescuyer, G. (2014) conducts a historical study on the evolution of forest exploitation in the DRC and recalls the expectations of the Congolese Forest Code in relation to the well-being of the population. His study also shows that logging is regularly cited as a root cause of deforestation and forest degradation. It also shows that informal artisanal logging, which supplies the domestic market for sawn timber, must also be taken into account in forestry policy, which moreover is ignored by loggers.

The 2015 Global Witness Report on the DRC shows that multinationals are illegally logging timber for export. But this exploitation causes violations of the human rights of workers (poverty wages, non-respect of working conditions, etc.).

Finally, Baudet, M.-B. and Michel, S. (2015), through surveys carried out in more than ten countries between 2014 and 2015, give various accounts which testify to a new form of delinquency in full expansion now invested by mafia networks: criminality environmental (eco-crimes). And to affirm that this "ransacking of nature turns out to be a real cash machine which today ranks fourth in the world for illicit activities after narcotics, counterfeiting and human trafficking...".

In short, from this sample of literature we draw the elements that show that forests attract not only formal loggers but also clandestine loggers, both industrial and artisanal, who are fed by networks of actors who do not take conservation into account. of nature.

As there are persistent references to local populations on their support in logging, our study, which aims to be criminological and therefore interdisciplinary, aims to address aspects related to law (forest law and its effectiveness), to economy (whether or not there is a financial shortfall for the Congolese state), the environment (the way trees are felled) and psycho-anthropology (the study of "local" man (with its standards) and its reactions or perceptions in relation to state law - the forest law). In the methods used, we successively present the procedures, the participants and the measures.

4. Procedures

To obtain the elements of this research, two types of data were used: book data (essentially written data) and empirical data (oral data).

For book data, in particular official documents relating to the forest code and forest management in the Province of Haut-Katanga, the services of the Urban Coordination for the Environment and Sustainable Development, the National Forest Fund, the Control and Marketing of the Woods which are data providers. As for the empirical data, they come from the participants who are the state agents, the rural populations of the villages Lupembashi, Kipokolo, (located on the national road n°1 connecting the cities of Lubumbashi to that of Likasi) and Kifumashi, Mututa, Kakana and Katumba (National Road N° 5 linking Lubumbashi to Kasenga).

4.1. Investigated

The sample on which the collection of field data took place based on the criteria of diversification and saturation (Glaser, B. and Strauss, A., 1967) and therefore on the relevance of the participants and not on their representativeness or numerical equality. As also points out, Charlier J.-E. and Van Campenhoudt, L. (2014: 94, 97), in order for research results to be more meaningful, relevant and effective from the point of view of sociological understanding, the researcher must construct a sample of possible diverse people”.

Therefore, in addition to the agents of the services cited in the sites for collecting book data, the diversification of participants has widened to include loggers, traditional chiefs and their customary notables, state public security elements (not provided for in the formal texts but operational in the areas where the timber is cut and sold) and certain villagers... Briefly, in the manner of Olivier De Sardan, J.-P. (2008). We think that these interlocutors are to be considered as holders of interesting knowledge about their group, their profession, their society....

4.2. Measures

Field data was collected through direct observation, semi-directed narration and semi-structured interview. Non-participatory direct observation concerned all participants and practices and in the manner of Schaut, C. (2014: 91). It has also helped us, as eye and ear “witnesses”, to identify the discrepancies between what people say and what they do in logging. However, like Charlier, J.-E. and Moens, F. (2014: 76) emphasize on the triangulation of data collection techniques, we also used two other techniques. Indeed, from resource persons and exploratory visits, we were informed and noticed that some traditional leaders were involved in the allocation of forests to operators. For this, we have contacted certain customary chiefs. But, given that these leaders are expressed more in the form of those who tell a story or a narrative and inspiring us from Schaut, C. (2014: 90,91) on the humility that must characterize the researcher during the acquisition data, we listened to them and therefore by semi-directed narration. Semi-structured oral

interviews were mainly used for the other categories of participants.

Finally, the data from the field were subject to thematic analysis according to the model proposed by Paillé, P. and Mucchielli, A. (2012:232, 270). So, from empirical discourses we have identified themes, according to their similarity or dissimilarity in order to analyze them. This examination consists of their analysis, that is to say, to make them speak and interpret them by referring to the anthropology of law and that of psychocriminology. Interpretation Essentially centered on the reconstruction of the senses or constructivism (analytical posture) according to Demazière, D. and Dubar, C. (1997).

5. Presentations Field data, analyzes and discussions of the results

The results focus on the actors, the meaning that the interviewees give to the phenomenon of taxpayer appropriation, the social representations that the actors have and the motivations underlying its production. Most of the participants asked us not to mention them by name in this research. Reason why we resorted to pseudonyms.

5.1. Normative framework governing forestry law in the DRC

The device of the forest code of the DRC to which this work resorts concerns the legal and regulatory bases, the management services, the parafiscal obligations of the operators and the system of sanctions.

5.1.1 Legal and regulatory bases

Forest Law No. 011/2002 of August 29, 2002, known as the Forest Code, is therefore promulgated and its concretization is materialized by Ministerial Order No. 0011 of April 12, 2007 regulating the authorization of industrial cutting of timber and authorizations for the purchase, sale and export of timber. For the Congolese State, as natural resources, forests must contribute to the socio-economic and cultural development of the country in the spirit of sustainable development of the environment.

5.1.2 Management services

The forestry law of the DRC in its article 122 lists the services which work under the National Minister of the Environment and Sustainable Development, in the application of the forest code, in the control of its execution and its accompanying measures. These are the Provincial Coordination of the Environment and Sustainable Development, the Urban Coordination of the Environment and Sustainable Development, the Provincial Directorate of Revenue and the National Forest Fund.

5.1.3 Parafiscal obligations

According to the provisions of Articles 120 to 123 of the Forestry Law, any owner exploiting his forest concession must pay the tax known as the concession area fee (calculated according to the area granted), the felling tax (the rate of which varies according to classes of forest species and harvesting areas), the inventory tax, the deforestation tax (the rate of which corresponds to the cost of reforestation per

hectare). On the other hand, traders exploiting timber intended for export pay the reforestation tax, the rate of which corresponds to ten percent of the cost of reforestation per hectare. All these taxes are set by joint decree of the two national ministers having respectively Forests and Finance their attributions.

5.1.4 Sanctions regime

The Forest Code of the DRC (in its article 127) provides, against environmental offenders, the mobilization of the Congolese Penal Code and specifies that forest offenses are sought and recorded by forest inspectors. Three types of sanctions are thus provided for: administrative sanctions (for example the seizure or sequestration of the instruments, vehicles, etc. used to commit the offence, cfr article 129), criminal sanctions (such penal servitude of three months to two years in prison and fines ranging from 20,000 to 100,000 Congolese Francs) and environmental sanctions (including the execution of works of forestry interest, listed in Article 143). After having seen the elements on the normative framework of the forest code on the exploitation of timber, let us approach the fourth chapter which is essentially based on the analysis of field data.

5.2 Social representations of the forestry code and the risks of forestry exploitation

Olivier De Sardan, J.-P. (2008: 54) emphasizes that to conduct field research, the social representations of local actors are an essential element of any understanding of the social. This is how each time we address this or that other aspect raised by our speakers, we resort, as far as possible, to the speeches of the participants.

5.2.1 The Forest Code, an insult according to customary chiefs

When we approached certain customary chiefs (the traditional chiefs of the villages), in the manner of the sector chief Kafindo Mr. Kas, from their remarks we retained as an illustration the following:

"(...) For me, the forest code means tearing up our forests...but these forests are part of our ancestral heritage (...) In our eyes, this code is an insult (.). In all these times, it is we who give the forests in exploitation, and without consulting us, it becomes the State... We are not going to give up. "

Indeed, Alliot, M. (2003: 84) shows that "efforts to coerce peasants or involve them in the execution of development plans which they did not initiate are often in vain.... By the fact that we distrust any pre-existing law by which a State would limit the freedom and responsibility of men". Otherwise, for these peasants, the forest code should not start ex nihilo; It had to take into account the realities or long-lasting practices that left this management to the customary chief. This denial of the power of the customary notables awakens in them this spirit of resistance in the unilateral application of the provisions of the mining code and thus creates a two-headedness in the granting and exploitation of forests, the state services on the one hand and the notable's customs on the other hand.

5.2.2 The forest code, a bone of contention between the agents of the Environment services and the customary chiefs

A reflection on the perception of Congolese forests cannot ignore state agents of environmental services as formal managers of forest regulations. As part of our research, we found that logging takes place around multiple interactions between actors. The operator sends his informants to identify the forests containing the species sought. No reference is made here to compliance with the procedure recommended by the Forest Code.

When these informants manage to identify forest areas covered by the species sought, they inform the operator who visits said forest. Then the operator contacts the customary authority of these forests and negotiates the cut. And operations begin. Faced with these practices, the agents of the environmental services block the woods as they come out of the forests. The conflict becomes open. Conflict provokes the wrath of environmental agents who wait around the bend for the logger on the evacuation routes of the logs. In fact, the conflict aroused by the forest code, in its essence or spirit, not only opposes state power to customary chiefs but also to environmental agents. Because, for the latter, the traditional chiefs violate the forest law by interfering in the granting of forests or, they do not have quality or competence.

When we asked questions of the law enforcement officers who come to these situations in the bush or along the evacuation routes, they almost all minimized these conflicts by maintaining to paraphrase them that this "conflict is a war in the elephants", only herbs suffer for some, or even "that it is a battle between husband and wife, there will always be a solution", for others or even by declaring that mambo ya mu poriinaishiaka mu pori (which takes place in forests, ends in forests) a way of saying that only the actors who have participated in these practices will benefit from them.

These speeches show that there is a kind of laxity in the application of the device of the forest code. Laxity linked to the implicit recognition by the actors of plural powers over the management of forests.

5.2.3 The Forest Code, a traumatic law

In some countries; as in the outskirts of Mututa village, a customary chief, called Jean-Marie, was even imprisoned in Kamarenge prison at the level of the Territory's chief town, according to them from Kipushi because he opposed to the agents of the state environmental protection services and this incarceration did not leave the members of his biological family indifferent, who considered that the forest law is a nightmarish situation in the sense that the brutal arrest of a customary notable was never seen. Stopping it just because of the "trees", they declare, they; couldn't believe it, and lacked sleep because of it.

5.2.4 The forest code, an epidemic law

The arrest of the notable Jean-Marie made a shock wave in the population of the Mututa and Katumba village so that other notables said they were flabbergasted by the provisions of the forest code. One of them called "False edge" stated it in this sense:

"...I am no longer motivated to collaborate with the environmental agents because even if you tell them the truth, they will not believe you. They want to control everything as if we are ordinary citizens. Besides, even if you take initiatives because the seekers of the woods first approach us the chiefs, when you give them the report, they do not believe you. So why collaborate with people who do not allow you to succeed in what you have initiated? For fear of suffering what our colleague Jean-Marie experienced as severe, we no longer help these State agents in their work to protect the environment.

In short, the practices around the materialization or the application of the forest code provoke resignation on the part of certain participants, in particular the customary notables.

5.2.5 The Forest Code, a resilient law

If the notable called "False Edge" is in shock of resignation, on the other hand some of the other participants seem to have suffered the pain born of this unilateral transfer of their power over the forests in favor of the State. Sometimes, they confirm that it is necessary to work with the agents of the State who now have the power because, without this collaboration, even the local population risks running out of spaces to practice their small agriculture, underlines the customary Chief Elvis of the Mututa village.

5.2.6 The forest code, an unknown law and the basis of social disorder according to the villagers

In the villages, most villagers stick only to the discourse developed by their notable, on any issue that concerns their community. By way of illustration, this speech by Mrs. Kalunga:

"We don't know about this (forestry) law. Only the head of the land is our state. Everything he tells us is what we do (...) As he is not mentioned in this law, it is disorder that the State wants to create in our village ... If we do not respect the words of the chief, we will be condemned by the spirits he will send us".

The villagers are unaware of the existence of the Forest Code. And yet, the customary chiefs recognize its existence. Conceived in the spirit of the Western world which cedes power to the welfare state, it opposes an indigenous, local law which organizes their society from the customary chief. The only one with power over people and nature. As shown by Alliot, M. (2003: 132), we must be all the more attentive because, although we can, with relative ease, adopt new texts, the objectives of the populations do not change easily. A law that favors national rather than local aspirations, such as the forest code, upsets local mentalities and therefore is not appropriated by the villagers because it is contrary to their customs. Finally, as Alliot, M. (2003:133) points out, the law is a set of practices which receive general agreement (...), and the reason why, ignored and unaware of the way of

life of rural populations, the code is perceived by these populations as a basic element of social disorder.

5.2.7. Logging, a case of economic crime in the Province of Haut-Katanga

During one of our returns to the Likasi road, we had met several people at the barrier erected by the Kipoi company (mining company), in the forests of Sofimongo (around the Likasi road). When we approached one of the agents of the National Intelligence Agency to find out about this crowd, the latter did not shy away from telling us that "all these people are looking for the per diem (money from tips) paid by the operators who pass by to evacuate their logs. Asked about the fact that what receipt or paper they gave to truckers, he will tell us, no may:

"(...) For a truck, ten wheels, so twenty tons that takes between 100 and 110 logs three meters long and 50 centimeters wide, the per diem is 100,000 Congolese Francs for the National Forest Fund agent; 20,000 Congolese Francs for the ANR Agent; 25,000 Congolese Francs for the FARDC soldier; 25,000 Congolese Francs for the Land Chief; 25,000 Congolese Francs for the Environmental Agent; 150,000 Congolese Francs for the Group Leader; 50 US dollars for the policeman of the Mines Police (...). If it is a new model of Howo truck that takes 40 tons, the per diem of each service must be doubled (...)".

The sum of the figures of the amounts collected by the participants, to the detriment of the Congolese State, gives 350 US dollars (for a so-called 10-wheel truck) and 700 dollars for that of 12 wheels. If this sum can be minimal or minimized, but it will be necessary to take into account the hundreds of trucks which are rented by the various "smugglers" to measure the financial haemorrhage that the Congolese State is experiencing in this part of its territory.

A passive and lasting corruption set up as a modus operandi by the actors. In addition to state actors, there are even those of state power (and national security elements) who nevertheless dispute the legitimacy of forest management. These two types of actors thus cause more perverse effects than the effects expected by the Forest Code.

However, these practices can be assimilated to what the Congolese penal code provides for, in its article 147 to 150, and qualified as offenses committed by public officials and other persons in charge of public services known as corruption, illegal remuneration, etc. and the corresponding penalties are even listed there. But this device is not mobilized. Faced with money, the powers are bogged down in co-service and conflicts of jurisdiction are buried.

5.2.8. Logging, a case of environmental crime ignored in Haut-Katanga

We had a long interview with a soldier who is currently assigned to the entry post to Katumba village at their camp in Kakana. Before giving us the elements on the exploitation of the forests in the depths of these two villages, the latter drew our attention to the fact that:

"...When you're in town, you don't know what's going on in the bush. I was part of the battalions sent to evict the thousands of miners along the concessions of the TenkeFungurume Mining company on the Lubumbashi Kolwezi road... It was believed that they returned to Lubumbashi or Likasi or even Kolwezi. No, they poured out with their families into the forests. They cut everything, they sell the trees and the embers. It's devastating..."

Further, in relation to logging, he will go on to state this:

"...Kakana and Mututa are good evacuation grounds because the cargoes of red wood and other species that go into the manufacture of firearm accessories and which are prohibited for cutting by the State come from Jean -Marie, at Elie and Katumba and do not go through Lubumbashi... the applicants and especially the Chinese traders are waiting for them on the Zambian side, near the Kasenga village....there is life here..."

As this law enforcement officer and regular in the field shows, there is reason to consider that these forests constitute "workshops" for active populations entrenched in these environments and in search of remunerative work, by felling and selling trees. Indeed, the Padouk called red wood or pink wood is sought after by traffickers because of its color, its floral scent, its texture of purity and density which make it one of the most coveted precious woods by the China, where the dreams of the new rich are priceless (Camel, L., 2015: 55).

6. Conclusion

This work sought to understand the way in which the forest code is perceived and applied by the actors of the state services in the rural areas of Haut-Katanga. Driven by the International Monetary Fund and adopted by the Congolese State, this forest code reform program provokes a kind of metanoia, characterized by the change of life or the reversal of thought in relation to the way of life of rural populations. The undeniable fact is that small-scale logging is driving deforestation. The latter is taking place at an accelerated pace following the thousands of idle people entrenched in these forests and also following strong foreign demands.

Behind this apparent submission of customary notables hide practices of verbal but effective attribution of forest exploitation and the enthusiasm for plant species sought after by Asian countries. This "indigestible and disrespectful" code of customary authority arouses wrath and different kinds of fear among both rural populations and those of customary notables because it wants to dispossess them or deprive them of their "natural cakes" (without compensation or substitution) what are the ancestral forests.

These populations apply their "natural" law as the owner of this ancestral heritage and do not care about the search for the socio-economic and cultural happiness of all Congolese as advocated by the forest law. The manifestations of this contestation or this legal bicephalism result in kinds of

psychological trauma, resilience and even resignation of the rural populations, but the sabotage of the forest law takes place with corollary effects relating to financial losses and damage. environmental issues resulting from peddling between two "rival" institutions, state agents and customary notables. Faced with this double reality, this forest code is controversial, being considered as a code of others, a code imposed from above, a code contested from below and therefore a forest code that should be rethought because it constitutes an existential threat from rural populations.

In a country like the DRC where the majority of the rural population is estimated at 70% of inhabitants, the forest constitutes a vital reserve. Rethink the forest code in order to avoid the radicalization of local populations and the laxity of state agents which have an impact on economic and environmental crime. We conclude this research by making our own this passage from the former French President, Mr François Hollande (2018: 247) who emphasizes that "A reform is not a technocratic product, an obligation conceded in the air of time, or adaptation to a pre-established standard. It is a change that makes sense and that marks a philosophy and a conception of society".

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