



Embargoed until: 00.01 GMT Friday 1st February 2019

Oil rights in Salonga National Park could be null and void, Global Witness analysis reveals

Global Witness reveals today that an opaque Guernsey-owned company's oil rights threatening a protected national park in Democratic Republic of Congo (DRC) could be null and void, according to our legal analysis.

In February 2018, Guernsey-owned oil company CoMiCo won approval for a contract originally signed in 2007, under a previous version of the oil law. As [we revealed last May](#), one of the three oil blocks assigned to CoMiCo encroaches on DRC's Salonga National Park, the largest protected tropical rainforest in Africa and a [UNESCO-protected World Heritage Site](#).

Global Witness's legal analysis of the contract and the oil law indicates that rather than give CoMiCo a long-awaited green light for oil exploration, the presidential ordinance signed in February 2018 may have rendered CoMiCo's contract void.

In January, Felix Tshisekedi was declared the winner of a disputed presidential election in DRC. Tshisekedi will succeed outgoing President Joseph Kabila, who had been in power since January 2001.

"President Tshisekedi and his administration must seize the opportunity to improve upon the record of the previous government by enforcing strict adherence to Congolese law in natural resource deals, especially in terms of transparency around contracts and the real beneficiaries behind natural resource companies," said Peter Jones, Campaign Leader at Global Witness.

According to Global Witness's analysis, CoMiCo's contract formally came into effect after Kabila signed the presidential ordinance in February 2018, and it contains clauses that are not in line with the new oil code, dating from 2015. The law makes it clear that any contract coming into force after 2015 cannot contain clauses that contradict the standards set by the 2015 oil law, "under penalty of being void".

"According to our legal assessment the contract could be considered void, meaning CoMiCo should not pursue oil exploration in its blocks," said Jones. "Any attempt to go ahead under this contract would set a dangerous precedent as the government appears to have disregarded its own laws," continued Jones.

Specifically, CoMiCo's contract is not in line with the 2015 oil law's provisions on area taxes, royalty rates, profit oil, or exploration license renewals. In most of the key ways in which the contract deviates from the current law it favours CoMiCo, potentially at the expense of DRC's public purse.

The previous Congolese government under Kabila had considered opening up Salonga National Park to the fossil fuels industry. In February of 2018, [the DRC government announced the creation of an inter-ministerial commission](#) to examine the possibility of redrawing the boundaries of the park, to 'declassify' areas that fall under oil licences. This would jeopardise Salonga's World Heritage Site status and potentially mean it would no longer benefit from the protections afforded to UNESCO sites.

"Oil exploration in Salonga National Park could have a devastating impact on the park's integrity, its biodiversity and the local communities living off its resources," said Jones. "Salonga is home to 40 percent of the world's remaining bonobo population and several other rare and endangered species, and plays a fundamental role in averting climate breakdown. It is vital that Felix Tshisekedi's administration affirms DRC's commitment to environmental protection," he added.



CoMiCo's lawyer disagreed with Global Witness' interpretation of the contract's terms and the DRC legal framework, calling the analysis "clearly wrong". He rejected the invalidity of the contract and argued that the stabilisation clause contained in the contract "takes effect with respect to the conditions in force as of 2007".

Global Witness is calling on the new Congolese government to review CoMiCo's contract in light of the questions raised by our legal analysis. DRC should also dismantle the inter-ministerial commission that was set up to examine declassification projects for Salonga National Park, implement the transparency terms of its oil law by publishing oil contracts, and renew its international commitments to protect World Heritage Sites by immediately cancelling all oil blocks or natural resource concessions which impinge on these sites or their buffer zones.

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Editor's Notes

- CoMiCo's contract was signed by the company and relevant DRC ministers in 2007. It was then approved by presidential ordinance on the 1st February 2018. According to both the DRC 1981 oil law and the 2015 law which superseded it, a contract does not take effect until it is approved by a presidential ordinance; this, according to our legal analysis, includes any stabilisation clauses in the contract that may protect it from changes in the law. Article 43 of the 2015 oil code reads: "Under penalty of being void, hydrocarbon agreements cannot in any case contain provisions which derogate to the 2015 oil law". According to our analysis, as CoMiCo's contract contained clauses that are not in line with the 2015 oil code, the presidential ordinance, by approving the 2007 text that had not been brought into line with the 2015 law, appears to have rendered it null and void.
- In investigations following the approval ordinance in 2018 Global Witness found that at its formation, on the 17th April 2006, CoMiCo was linked to Monfort Konzi, a former Congolese politician who was a cabinet member of the Mouvement de Libération du Congo, and Idalécio de Castro Rodrigues Oliveira, a businessman later convicted of corruption as part of Brazil's Car Wash Investigation, in relation to the sale of an unrelated oil block. Lawyers representing CoMiCo said de Oliveira is not a direct or indirect beneficial shareholder of CoMiCo. Today, the present ownership of the majority of the company is hidden behind a nominee company.
- [Salonga National Park](#) is the [second largest tropical forest park in the world](#) and is home to a number of endangered or vulnerable species such as bonobos, forest elephants, Congo peacocks, hippopotamuses and giant pangolins.
- Global Witness asked CoMiCo to make a public statement committing to not explore for oil anywhere within the current boundaries of Salonga National Park, regardless of any future changes. In response, CoMiCo's lawyer said: "My client's position as to the Salongo [sic] National Park is as previously stated: it has no intention of drilling within the boundaries of the national park." Given the risk that the DRC government might choose to redraw the boundaries of Salonga National Park to facilitate oil drilling, CoMiCo's comment falls short of a strong and binding commitment to stay out of Salonga's existing territory.