

Country Technical Note on
Indigenous Peoples' Issues

Democratic Republic of the Congo



Investing in rural people



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Country Technical Notes on Indigenous Peoples' Issues

DEMOCRATIC REPUBLIC OF THE CONGO

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
AfDB	African Development Bank
CAMV	Centre for the Support of the Indigenous Pygmies and Vulnerable Minorities
CARPE	Central African Regional Program for the Environment
CAS	Country Assistance Strategy (World Bank)
CBD	Convention on Biological Diversity
CBFF	Congo Basin Forest Fund
CBFP	The Congo Basin Forest Partnership
CCA	Common Country Assessment
CPPA/IPPF	Cadre de Planification en faveur des Populations/Peuples Autochtones/Indigenous Peoples Planning Framework.
CPLA/IPLC	Communautés Locales/Peuples Autochtones /Indigenous Peoples and Local Communities
CI	Conservation International
CITES	Convention on International Trade in Endangered Species
COMIFAC	Central African Forests Commission,
COSOP	Country Strategic Opportunities Paper
COVID-19	Coronavirus disease
DGM	Dedicated Grant Mechanism
DGPA	Dynamique des Groupes Peuples Autochtones de RDC
DRC/RDC	Democratic Republic of the Congo République Démocratique du Congo
ERND	Institute Environnement, Ressources Naturelles et Développement
ESF	Environmental and Social Framework
ESS	Environmental and Social Standards
FAO	Food and Agricultural Organization
FCPF	Forest Carbon Partnership Facility
FIP	Forest Investment Program
FIPA	Festival International des Peuples autochtones
FIPAC	International Forum on Indigenous Peoples of Central Africa
FPIC	Free, Prior Informed Consent
FPP	Forest Peoples Programme
GEF	Global Environment Facility
GIZ	German Agency for Technical Cooperation (formerly GEZ)
GTLN	Global Land Tool Network
GPRSP	Growth and Poverty Reduction Strategy Paper
HDI	Human Development Index
HIV/AIDS	Human Immunodeficiency Virus/Acquired ImmunoDeficiency Syndrome
IASG	Inter-Agency Support Group on Indigenous Issues
IBRD	International Bank for Reconstruction and Development
ICCN	Institut congolais pour la conservation de la nature/Congolese Nature Conservation Institute
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention on the Elimination of All Forms of Racial Discrimination ICESCR International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IDP	Internally Displaced Person
IFAD	International Fund for Agricultural Development
ILO	International Labor Organization
IPC	Integrated Food Security Phase Classification

IPLC	Indigenous People and Local Communities
IPP	Indigenous Peoples Plan
IPPF/CPPA	Indigenous Peoples Planning Framework
ITTA	International Tropical Timber Agreement
IUCN	The World Conservation Union
JICA	Japanese Development Agency
LINAPYCO	National League of the Pygmy Associations of Congo
MRG	Minority Rights Group
MPTF	Multi Partner Trust Funds
ND-GAIN INDEX	Notre Dame Global Adaptation Initiative
NGO	Non-Governmental Organization
OCHA	Office for the Coordination of Humanitarian Affairs
ODA	Official Development Assistance
OHCHR	The Office of the High Commissioner for Human Rights
PAD	Project Appraisal Document
PIDEP	Programme d'Intégration et de Développement du Peuple Pygmée au Kivu
PNFoCo	National Forest Management and Nature Conservation Program
PNSD	Plan national stratégique de développement
GPRSP	Growth and Poverty Reduction Strategy Paper
RAPY	Network of Pygmy Associations
REDD	Reducing Emissions from Deforestation and Degradation of Forests
REPALEAC	Réseau des populations autochtones et locales pour la gestion durable des forêts denses et humides d'Afrique Centrale
RN-N	Rainforest Foundation Norway
RN-UK	Rainforest Foundation UK
RRN	Réseau Ressources Naturelles
SIDA	Swedish International Development Cooperation Agency
SNFC	Stratégie Nationale relative à la Foresterie Communautaire
SNV	Netherlands Development Organization
STD	Sexually Transmitted Diseases
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights
UEFA	Union for the Emancipation of Indigenous Women
UGADEC	Union of Gorilla Conservation Associations for the Community Development of Eastern DRC
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDAF	United Nations Development Assistance Framework
UNDG	UN Development Group
UNDP	UN Development Program
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural organization
UNFCCC	UN Framework Convention on Climate Change
UNFPA	United Nations Fund for Population Activities
UN-HABITAT	UN Human Settlements Programme
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Emergency Fund
UNS/SNU	United Nations System/Système des Nations unies
UNSDCF	United Nations Sustainable Development Cooperation Framework
USAID	US Development Agency
WB	World Bank
WCS	Wildlife Conservation Society
WFP	World Food Programme
WHO	World Health Organization

WIPO
WWF

Convention establishing the World Intellectual Property Organization
World Wildlife Fund

Summary

The DRC is a multi-ethnic country with some 250 ethnic groups, including several indigenous Pygmy groups. The concept of "Indigenous Pygmy People" is accepted and approved by the government and civil society organisations (CSOs) in the Democratic Republic of Congo (DRC). In the DRC, the term refers to the Mbuti, Baka and Batwa peoples, who, according to recent estimates, number about 1 to 3% of the total DRC population. Located over most of the country, Indigenous Pygmy peoples live in the forest as nomadic hunter-gatherers, or as semi-nomadic and sedentary communities. As a result of forced evictions, Indigenous Pygmies have had to more or less give up their traditional lifestyle and now live in settlements outside the forest. A sizable group live as IDPs in the still conflict-ridden eastern part of the country. The semi-settled and settled indigenous Pygmies live in dismal poverty and their situation is by all accounts far worse than that of other poor ethnic groups. They have no right to access land or use the forest and thereby sustain themselves; they lack decent job opportunities, access to health care and to education. They are the victims of pervasive and sometimes extreme discrimination, and they have little political representation at the local or the national level. All this puts their traditional culture at risk.

In 2021 the National Assembly's nearly unanimous vote on a law proposal on the Promotion and Protection of Indigenous Pygmy People's Rights. This law is now awaiting the Senate vote before it can be promulgated by the President. The DRC is party to the most important international and regional human rights instruments which, according to the Constitution, should automatically be transposed into Congolese legislation. The justice system is deficient, however, and laws giving effect to the provisions forward by the Conventions are not implemented and have therefore no impact on the situation of the indigenous Pygmies. The DRC has also ratified a number of international and regional environmental conventions and is a member of several regional environmental institutions. Several Indigenous and non-Indigenous NGOs and networks promote the rights of Indigenous peoples.

The DRC benefits from a large number of donors (UN agencies, bilaterals, international financing institutions, NGOs). The total ODA received by the DRC amounted to USD 3.1 billion in 2018 A notable decrease compared with 2011 (USD 9.1 billion). A substantial part of the external funding is given within the UNSDCF (United Nations Sustainable Development Cooperation Framework) and to projects addressing relevant issues (health, education, community based natural/forest management, etc.) in areas where indigenous people live. The DRC also receives funding from several environmental funding mechanisms including REDD+ and DGM. As a rule, these funds follow a policy that aims to secure the participation and engagement of indigenous peoples, but not always succeed in doing so.

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1. The indigenous peoples of DR Congo

1.1. The national context

The Democratic Republic of the Congo (DRC) is the second largest country in Africa. Covering 2 345 410 km², it lies in the heart of the continent, surrounded by nine countries and a 35 km. long coastline on the Atlantic Ocean. With an estimated 90 million inhabitants (2020)¹ population density is low (38.8 people per square kilometre) but the annual growth rate high (3.19%). The DRC has a semi-presidential regime, a bi-cameral legislature, and a federal system composed of the city of Kinshasa and 25 provinces.

The DRC is one of the richest countries in the world in terms of natural resources: fertile soils, abundant water resources, and great mineral wealth (copper, gold, coltan and diamonds, etc.).² DRC's biodiversity is a globally important asset and approximately 66% of the national territory (155 million hectares) are covered with forests.³ Yet in socio-economic terms, DRC is one of the poorest countries in the world. This is largely due to the legacy of a brutal and predatory colonial rule, and after Independence in 1960, to protracted armed conflicts, social unrest and decades of political and economic mismanagement. In 2020, the DRC experienced its first recession in 18 years because of adverse impacts of the COVID-19 pandemics⁴ and it was estimated that multi-dimensional poverty affected 74% of its population (RDC and SNU, 2020). In 2019, the country ranked 175 on the Human Development Index (HDI, UNDP 2020a). It is the fifth most "fragile state" out of 176 states (FSI, 2020). It also ranks 178 out of 182 countries in the ND-Gain Index (2021) for climate vulnerability.⁵

DRC is a multi-ethnic country with some 200-250 ethnic groups, including several Indigenous Pygmy groups. Bantu-speaking peoples constitute a large and dominant majority together with other smaller non-Bantu populations of Central Sudanic and Nilotic origin.⁶ Seven hundred (700) local languages and dialects have been identified and four national languages (Kikongo, Lingala, Swahili and Tshiluba) are recognized by the 2006 Constitution (rev.in 2011). French is the official language.

In 2019, the country saw its first peaceful political transition and recent political and legal developments have raised some hopes for more inclusive democratic processes.⁷ President Felix Tshisekedi has shown commitment to transitional justice, to waging war on the

¹The last official national census was conducted in 1984. A multilateral support project is currently being implemented with the specific objective to support the organization of the second General Population Census and facilitate the establishment of social databases using the census (<https://www.afdb.org/> accessed 24.02.2022).

² The extractive sector represents 61% of the economy (RDC & SNU, 2019b).

³ These forested areas include dense humid forests (101 million ha), mountain forests (1 million ha), dry forests (24 million ha) and savannahs (29 million ha). (RDC, 2018a).

⁴ African Development Bank on line at [afdb.org](https://www.afdb.org/) (11.01.2022), citing the slowdown in the extractive industries exports and measures taken to contain COVID-19.

⁵ ND-Gain Index (2019) at <https://www.landportal.org/organization/notre-dame-global-adaptation-initiative>. The DRC is the 8th most vulnerable country and the 9th least ready country when it comes to climate changes.

⁶ These three groups are generally, and in this report, referred to as "Bantu".

⁷ See, e.g., UNHCHR. 2021. Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 46th session of the Human Rights Council (March 2021).

endemic corruption⁸ and to “fight poverty, exclusion and vulnerability”, and “leaving no one behind”.⁹ Since 2009, several important steps towards the recognition of Indigenous peoples and their rights have been taken, culminating in April 2021 when the National Assembly adopting a proposed law on the Promotion and Protection of Indigenous People’s Rights.

1.2. Terminology

“Pygmy” is a generic term referring to various peoples found throughout Central Africa.¹⁰ In the DRC, five major groups are usually identified according to their own denominations as indigenous peoples, namely the Aka, the Batwa, the Mbuti, the Cwa and the Twa.¹¹ These groups often include smaller groups with distinct names, as e.g., the Asua and the Efe of the Mbuti group. At the national level, they have decided they should be called “*le Peuple Autochtone Pygmée de la RDC*” i.e., the Indigenous Pygmy People of the DRC.¹²

The Indigenous Pygmy people are generally considered as the most ancient occupants of the current Congolese territory. However, they have generally and until recently, been referred to as “vulnerable people” rather than “Indigenous” since the concept “indigenous” is often considered controversial in the African context.¹³ The Congolese Constitution 2006 (rev. 2011),¹⁴ for instance, recognizes the existence of ethnic minorities and vulnerable groups (Articles 51 and 123) within its borders but does not mention Indigenous Peoples (*peuples autochtones* in French). Today, however, the concept of “Indigenous Peoples”, as understood internationally and by the African Commission on Human and Peoples’ Rights (ACHPR),¹⁵ is now accepted and endorsed by the government¹⁶ - but only in relation to the Indigenous Pygmy people, who are considered to be the only ethnic group in DRC to whom the term “indigenous” can be applied.

1.3. Demography and location

There is no comprehensive census of the Indigenous Pygmy population, and their number has always been based on estimates. Estimates vary between 660,000 (1% of the total DRC population),¹⁷ to up to 2,000,000 (3% of the population).¹⁸ The Indigenous Pygmies live scattered over more than 60 territories in 22 of the country’s 26 provinces (see Table 1 in

⁸ DCR ranks 170 (out of 180) on Transparency International Corruption Index 2020.

⁹ These priorities are reflected in the National Strategic Development Plan (PNSD) for the period 2018-2023. (RDC. 2018b).

¹⁰ “Pygmy” is a term traditionally used by Europeans and refers to their small height. Certain Pygmies consider the term demeaning and prefer the expression Indigenous Pygmy/Peoples, which is the term used in this Technical Note.

¹¹ Prefixes are used to denote singular (Mu-) or plural forms (Ba-) and found written as e.g. MuAka (or Muaka) and BaAka, Baaka, MuMbuti or BaMbuti, etc. This report uses the names without prefixes (see IPP790, 2015).

¹² *Echos du PACDF*, 4 Mars 2021.

¹³ In the eyes of the DRC government, the Bantu are equally indigenous in the sense that they pre-existed prior to the European colonization.

¹⁴ See at <http://www.constitutionnet.org/>

¹⁵ See ACHPR Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities (ACHPR & IWGIA 2005).

¹⁶ See, IWGIA at <https://www.iwgia.org/en/democratic-republic-of-congo.html>

¹⁷ This estimate is suggested by the World Bank funded Report –Strategic Framework for the Preparation of a Pygmy Development Program (2009) and is based on extensive field work carried out in Indigenous Pygmy communities throughout the country by the member organizations of the NGO network Dynamique des Groupes des Peuples Autochtones (DGPA) and with the active participation of Pygmy representatives. See also DGPA website (<http://www.dgpardc.org/>) and DGPA, 2012).

¹⁸ See Dynamique des Groupes des Peuples Autochtones: www.dgpardc.org

Annex). Just as their precise number is not known, the location of their areas of land use is also approximate. Many live in the tropical rainforest and wetlands of the provinces of Mai-Ndombe (formerly Bandundu), Equateur, Tshuapa, Mongale, Sud Ubangi (formerly Equateur) Tshopo, Ituri (formerly Orientale), Lomani, Sankuru (formerly part of Kasai Oriental) and Kasai (formerly Kasai Occidental). Others reside in the eastern provinces of Nord Kivu, Sud Kivu and Maniema where the environment is characterized by plateaus, high mountains and the great lakes on the border with Uganda, Rwanda and Burundi. The greatest number (almost 50%), however, are found in the Tanganyika Province (formerly northern part of Katanga), on the edge of the rain forest where woodlands and savannah dominate (See Map, Annex 1). Despite the vastness of the Congolese territory, the different eco-systems they live in, the isolation of their communities, and the many different languages they speak, these groups recognize that there is a common link between them in terms of their origin and lifestyle.

Until the 1950s, the Indigenous Pygmies lived as nomadic hunter-gatherers depending entirely on the forest or the savannah and their produces. Today, only a few smaller groups have retained this way of life and the Indigenous Pygmies can be grouped into three categories: the nomadic, the semi-nomadic and the settled Indigenous Pygmies. These categories represent different stages of overlapping lifestyles and in no way preclude the fact that most, if not all, Indigenous Pygmy people remain extremely closely attached to the forest or the savannah, which they consider to be the center of their spiritual and intellectual life.

The nomadic forest dwellers

Only some 30,000 to 40,000 Indigenous Pygmies are considered to still live as hunting and gathering nomads. They may also do some fishing in the rivers and lakes and cultivate small garden plots. Nomadic groups are found among the Mbuti in Ituri (former Oriental Province), the Twa in Nord Kivu, the Aka in Nord Ubangi and Sud Ubangi (formerly part of Equateur Province) and among the Twa (or Cwa) of Kasai Central and Sankuru provinces (formerly Kasai Occidental and Kasai Oriental).¹⁹

Traditional access rights to Indigenous Pygmy territories are based on family lineage and social groupings. Areas for gathering and hunting tend to be extensive and overlap with other uses and users. Indigenous Pygmy forest dwellers usually gather in small camps consisting of a few families and live in simple huts made of leaves and branches. They will move on to new hunting grounds as soon as the resources in a specific area have been exhausted, 4-6 times a year.

Indigenous Pygmies are monogamous. Girls marry when they reach sexual maturity (12-14 years old) and move to reside with or near their husband's parents. While men hunt, collect wild honey, fish, etc., the women tend to gather wild plants and berries and engage in agricultural activities. However, regular female participation in subsistence hunting has been reported among some Pygmy groups.²⁰ There is a long-standing tradition of mutually beneficial exchanges with the Bantus—game, ivory and forest produce being bartered against metal tools, clothes, etc.

Traditional Pygmy society has been characterized as being essentially egalitarian. Men are born heads of family but women play an important role when it comes to agricultural and domestic tasks (building the family's hut, caring for the education and the health of the

¹⁹ According to some reports, most Cwa should, however, have given up their hunting.

²⁰ See World Bank Project appraisal - PAD 1038 (2016c):99.

children, etc.). Women manage the household's resources and decide on important family matters. At the group level, decisions are taken on a consensus basis, but elders are acknowledged and respected for their wisdom as the keepers of the group's knowledge of their environment (sites, plants, animals), their practices (pharmacopeia, hunting, fishing, gathering), their religious beliefs (holy sites, initiation rites, rituals, etc.) and cultural heritage (music, dances, etc.) for which the indigenous Pygmies are famous.

The sedentary and semi-sedentary indigenous Pygmies

Most Indigenous Pygmies live in permanent settlements on the edge of forests or in the periphery of Bantu villages. It is difficult to establish the number of fully sedentarized Indigenous Pygmies (i.e., those that have stopped hunting altogether) as the degree of sedentarization varies considerably across communities and regions and depends on the possibilities of shorter or longer trips to the forest, and on work opportunities. Some groups, like the Mbuti in Ituri Province, tend to spend up to 1/3 to 2/3 of their time in hunting and gathering camps far away in the forest. For these groups, the forest still provides a fundamental part of their basic needs, while others living in certain parts of North Kivu and Tanganyika provinces seem to have nearly or completely severed their link to the forest and depend on agricultural or other activities (mining, fishing, craftsmanship, etc.). In the most advanced cases of sedentarization, Indigenous Pygmies may have settlements that are the same size as those of the Bantus. An unknown number of Indigenous Pygmies also live in larger cities, e.g., Kinshasa, the capital city. It should be noted that many "may engage in a range of other complementary livelihoods: as day-labourers but also as priests, soldiers, popstars, NGO workers or local politicians" (Weyman, 2019).

The sedentarization process is, to a large extent, the result of campaigns conducted during and after the colonial period but has accelerated since independence with the expansion of logging and mining concessions, the establishment of national parks and other nature conservation initiatives²¹ and the promotion of agriculture, which are all encroaching on the Indigenous Pygmies' traditional territories. In most of these cases, evictions take place and sedentarization is being forced upon the Indigenous communities without prior consultation, let alone consent and without any or sufficient compensation.²² Sedentarization is also the consequence of internal displacement caused by armed attacks or clashes and intercommunal conflicts,²³ particularly in the eastern part of the country. With the gradual sedentarization of the Indigenous Pygmies their relationship with the Bantu has changed. Today it can be characterized by a true ambivalence and often conflictive (World Bank, 2009: 31).

2. Socio-economic profile

Since surveys were made in connection with the Second National Growth and Poverty Reduction Strategy Paper 2011-2015 (GPRSP, 2011) the socio-economic situation in DRC has not improved (World Bank, 2018a and 2020, UNDP, 2020a and 2000b). Overall

²¹ Protected areas cover some 15% of the national territory but in order to fulfill its commitment to the Nagoya Protocol the Congolese government plans to increase it to 17%. (RDC & SNU, 2019a).

²² See Pyhälä et al. 2016. To name but a few examples of evictions: during the 1960–1970 period, between 3,000 and 6,000 individuals were forced out of the Kahuzi–Biega Forest in the eastern part of the DRC in order to establish the Kahuzi–Biega Park (Barume, 2000). In Beni in North Kivu and in Ituri Province, the ancestral lands of Indigenous Pygmy families have become logging concessions.

²³ Intercommunal conflicts represent 98 per cent of the causes of displacement (UNOCHA, 2020).

indicators are still among the worst in the world. Poverty is a generalized, chronic, mass phenomenon affecting more than 74% of the overall population, being more prevalent in rural areas. Increasing insecurity and natural disasters (floods, droughts) have had a devastating impact on people's capacity to grow and access food (OCHA, 2020). Around 27.3 million people in the Democratic Republic of Congo are experiencing high levels of acute food insecurity (IPC online 2021). The situation has further been exacerbated by recent outbreaks of epidemics such as COVID-19, cholera, measles, and the Ebola Virus Disease. The epicenter of COVID-19 has been in Kinshasa and other cities, and "the pandemic did not affect the health in the rural communities but rather their socio-economic situation" (FPP et al., 2021) due to the imposed restrictions (e.g., closing the access to local markets, basic services, etc.) including Indigenous Peoples have had difficulties of accessing markets and selling their products (see CPPA No.135610, 2019).

Within this grim context, it is generally agreed that the Indigenous Pygmies belong to the poorest and most vulnerable communities in the country. Since the Report on the Strategic Framework for the Preparation of a Pygmy Development Program (2009) was validated, there has been no comprehensive surveys and the relatively few official surveys and statistics available²⁴ do not provide segregated data.²⁵

2.1. The right to access land and forest

For most Indigenous Peoples, poverty is related to the lack of rights and access to land and forest, as this impacts negatively not only on their livelihood and economic resources but also on their social and cultural identity. Indigenous Pygmies still living as traditional nomadic hunter-gatherers and with practically no material goods do not necessarily consider themselves as being poor since the forest meets their vital needs and allows them to live with dignity and in harmony with their environment. These fundamentals of the traditional lifestyle are today under threat or have already disappeared during the sedentarization process, without being replaced by other benefits (such as secure land tenure, improved access to public services, etc.). Unable to enjoy the rights accorded to other citizens, and marginalized from policies and decision-making, sedentary Indigenous Pygmies feel impoverished and vulnerable.²⁶

The lack of land is a common denominator for the settled or semi-settled indigenous communities. Access to land for subsistence purposes on the outskirts of the forest and near Bantu villages usually depends on the goodwill of the local Bantu and is often only given in exchange for (agricultural) work, and without any tenure security as such land is not considered as being officially occupied and may therefore be allocated to someone else by the local authorities, or simply taken over by individuals from other ethnic groups if they so wish. An analysis of several micro-projects promoting agricultural activities in local communities show that the results when it comes to indigenous peoples have been mixed, a recurrent issue being their lack of land tenure security and the marginalization they suffer (PACDF et al., 2018).

The Forest Code (Art. 36, 39)²⁷ acknowledges and regulates – in a restrictive way –

²⁴ See, e.g., Deuxième Enquête Démographique et de Santé en République Démocratique du Congo 2013-2014. (2014a).

²⁵ The following socio-economic profile is therefore based on information mainly found in DRC/World Bank Indigenous Peoples' Plans (IPP/CPPA), e.g., CPPA Report no. SFG6188 (2020); Report no. 135610 (2019). See also PACDF et al. 2018.

²⁶ See WB IPP324 (2008), 89.

²⁷ Loi N° 011/2002 du 29 août 2002 portant Code Forestier.
https://leganet.cd/Legislation/Tables/droit_economique.htm#FORETS

traditional user rights to non-timber forest produce but the user rights of Indigenous Pygmies on the ground are often not respected. This affects the livelihoods of many Indigenous Pygmies, who still depend to a large degree on gathering. A case in point is that of the Indigenous Pygmies evicted from the National Parks of Virunga²⁸ and Kahuzi-Biega. In both cases, the land plots received in compensation are too small to sustain them and they have little or no access to the resources in the parks. In the case of Kahuzi-Biega, the Congolese Nature Conservation Institute (ICCN), that manages the National Parks, gives them just one day a week to collect firewood, - not enough for them to light a daily fire or get wood to build their homes.²⁹

The Forest Code's provisions regarding the possibility of having community-based natural resource management zones are now regulated by law (see section 3.3) and specific standards and guidelines regarding the concession and management of local community forests have been adopted. A national Strategy on Community Forestry was validated in 2018 (RDC, 2018a).³⁰ One of its objectives is to give "local communities and Indigenous peoples a special position in local forest governance, and to recognize and strengthen their rights with the purpose of sustainable and equitable management, including improvement of their living conditions" (Rainforest UK, 2018). Once implemented this strategy may on the long term give the IP some rights to access land and get usage rights.

2.2. Economic poverty

As landless squatters on the edge of Bantu villages, Indigenous Pygmies have become increasingly dependent on a cash economy to which they have very limited access. So far, few if any Indigenous Pygmies seem to have been involved in the management and running of protected areas or drawn any income or other benefits therefrom.³¹ In larger settlements, Indigenous peoples may work in agriculture, as craftsmen, or "in the informal sector of the economy, without the security of a contract ... [They] are frequently paid less than other workers³² and often expected to work longer hours. A relationship of personal debt (bondage), often spanning generations, has in some cases led to situations of forced labour or servitude, particularly among youth and men and women who work on the plantations of their Bantu neighbours. Indigenous children are disproportionately exposed to hazardous conditions of work".³³ This prevailing poverty situation is also reflected in Indigenous Pygmy households' nutritional status which is characterized by high levels of food insecurity and malnutrition (see PACDF et al., 2018). The overall economic situation of the indigenous Pygmies therefore gives cause for concern, especially since the forest, mining and agricultural sectors in post-conflict DRC are expected to become the cornerstones for economic growth and development (RDC and SNU, 2019a). By ratifying the CBD Nagoya Protocol in 2015, the DRC has committed itself to increase the percentage of national territory covered by protected areas to 17% of the national territory, an increase of 2% from the present 15%. All such developments may well lead to more land alienation, more

²⁸ See ACHPR (2011), 64; Pyhälä et al. (2016).

²⁹ See ACHPR (2011), 71.

³⁰ This Strategy has been informed by a National Roundtable that since 2015 has gathered representatives from local and international organizations, government agencies and community groups to develop the strategy to strengthen the capacity of provincial authorities and ensure that the country's community forestry laws do in fact include and benefit communities. (See Rainforest UK, 2018)

³¹ Pyhälä et al. (2016). The probable impoverishment of indigenous peoples as a result of the establishment of national parks has been documented for those living outside the Virunga and the Kahuzi-Biega National Park. See WB IPP324 (2008: 91).

³² See ILO/ACHPR Report (2009), 124; see RDC/World Bank, various CPPA/IPP.

³³ See ILO/ACHPR Report (2009).

evictions, and more forced sedentarization.

2.3. The access to basic infrastructure and services

Although both basic infrastructure and services in rural areas of DRC are highly deficient and the access for the population in general therefore limited, the access of Indigenous Pygmies is generally found to be far worse due to their poverty, and their marginalization.³⁴ Becoming sedentary has exposed them to unfamiliar diseases, which their traditional medicine cannot cure or alleviate³⁵, and which appear to affect them more than other population groups, as, e.g., diarrhoea, tropical parasites, tuberculosis, malaria, infectious diseases, etc. Infant and maternal mortality rates are high. Indigenous women are often the victims of violence and sexual abuses, in particular during armed conflicts, and this has contributed to the spread of STDs including HIV/AIDS in the indigenous communities (see PIDP et al., 2018). Other factors that affect Indigenous peoples' poor health are related to their lifestyle (poor hygiene, lack of access to potable water, promiscuity, smoke-infested huts, alcoholism, etc.) as well as certain cultural practices (e.g., early marriages). Their de facto exclusion from the healthcare system means that they may not be reached by immunization campaigns and do not receive vital health information.³⁶ According to ACPROBATWA et al. (2013) only 24% of Indigenous Pygmy children have access to the vaccination program.

Few indigenous children attend school. Although primary public education is free,³⁷ they face other barriers such as paying related out-of-pocket expenses, deficient and often remote school infrastructure, and discrimination from teachers as well as from Bantu children. Enrolled indigenous children may often have an erratic school attendance due to trips to the forest for several days or weeks and they are hampered by the fact that their parents themselves have received little or no school education. Illiteracy rates among Indigenous Pygmies are often over 80% and close to 100% for women and much higher than for their Bantu neighbours (40-60%). The result is that there are relatively few well-educated Indigenous Pygmies and that they and they are weakly represented in public services, civil society organizations and church structures.³⁸

2.4. The lack of respect for human and fundamental rights

Recent reports document that the human rights situation in DRC in general is deteriorating, with an increasing number of human rights violations being reported.³⁹ In conflict affected areas such as the Ituri province, the number of women victims of appalling sexual violence, including crimes against humanity— has increased. While it has been documented that Indigenous women often have been the victims of gross abuses,⁴⁰ recent disaggregated data are not available.

³⁴ See World Bank, 2009: 28; WB IPP529 (2011), 28.

³⁵ See CCPA Report No. SFG2530, 2016, IPP529, 2011.

³⁶ See WB IPP529 (2011). CCPA Report No. SFG6188. (2020).

³⁷ Article 43 of the 2006/2011 Constitution (<https://leganet.cd/>) But parents must often pay the teachers' salary.

³⁸ World Bank (2009), 30.

³⁹RDC & SNU 2019a: 15. See UNOCHA periodical reports at <https://reliefweb.int>

⁴⁰See UNJHRO (2020). Sexual and gender-based violence (GBV) in DRC has become a wide-spread social phenomenon and represents a significant barrier to women's full engagement in social and economic life (RDC, 2014a). While it is well documented that Indigenous women often have been the victims of gross abuses (See e.g., UN Human Rights, 2010:334; CCPA Report No. SFG4303, 2018) Recent official reports do not provide disaggregated data.

In everyday life, discrimination is typically manifested through negative stereotyping, the denial of rights and social exclusion. Abuses include forced labour, theft of their harvest, and seizure of hunting and gathering equipment.⁴¹ Due to their ethnicity and poverty, Indigenous Pygmy women are extremely vulnerable to exploitation, prostitution and several types and forms of sexual violence.⁴² Their relationships with land and natural resources are not considered in reform processes. Indigenous women leaders have therefore advocated for inclusion in the current land reform process, and the gender working group that has been set up within the land tenure reform process represents an obvious opportunity to push for greater gender equality“(CIFOR 2018)⁴³

For a host of reasons, the access of indigenous people to the judicial system is difficult: they often do not know or do not understand their rights, including the right to free process due to their poverty; they lack birth certificates and national identity cards, etc. Trials are often to their disadvantage, even though there are recent examples of Indigenous Pygmies⁴⁴ taking legal actions and/or asserting their legitimate rights despite the serious and often deadly consequences they may suffer in return. This is largely due to the support provided by local and national civil society organizations such as DGPA, LYNAPCO, ERND, UEFA, etc. that have empowered Indigenous Pygmy communities and, with the support of international NGOs, advocated their cases nationally and internationally, e.g., through alternative reports to the Treaty bodies (CERD, CEDAW and CCPR) and to the ACPHR (2017).

Asserting their rights: Two Case studies

In 2013, a conflict erupted between Pygmy peoples and the Bantu's Luba community in Tanganyika province when indigenous peoples refused to subject themselves to their Bantu "masters" and stopped paying customary fees to the Bantu chiefs. The discontent among the Luba was further fueled by the resettlement of Pygmy communities on their land in connection with the Pro-route program.⁴⁵ The conflict soon escalated with both sides organizing self-defense militia and the Luba allying themselves with a Mayi-Mayi armed militia⁴⁶ to carry out attacks against indigenous Pygmy communities. In 2017, over 33,000 people had been displaced (DGPA, 2017).⁴⁷ The case was described in an Alternative Report to the DRC's Periodic Report to the Human Rights Committee (DGPA et al., 2019) and a complaint to the World Bank's Inspection Panel who published a damning report on the ProRoute project (Report No.124033-ZR, 2018).

The situation of the Batwa people living beside Kahuzi-Biega National Park has further

⁴¹ World Bank (2009), 30.

⁴² ACROBATWA et al. (2013).

⁴³ The government has also established a Ministry of Gender (CIFOR Forest News, 2018).

⁴⁴ See, e.g., Forest Peoples Programme at <https://www.forestpeoples.org>; Minority Rights Group at <https://www.minorityrights.org>; IWGIA at <https://www.iwgia.org>

⁴⁵ The "Pro-route" program, a World Bank funded road infrastructure program implemented by the Ministry of Infrastructure in Kalemie territory, Tanganyika province. One of its objectives was to allow indigenous peoples to reap the benefits of road infrastructure. This implied that they should be "easily" accessible. In this view, the program relocated them along roads in different villages created on Bantu territory, the Bantu being compensated with only a symbolic sum of money (DGPA 2017).

⁴⁶ The term Mai-Mai or Mayi-Mayi refers to any kind of community-based militia group and have existed in the eastern part of the DRC since the 1960s (Vlassenroot, 2008). Originally, their function was to protect their community but they have since the late 1990s become a force in themselves, competing to maintain control over mining areas and as retaliation against government military -led operations (TNH, 2006).

⁴⁷ The conflict in Tanganyika is ongoing and has escalated to other territories. As of July 2021, nearly 310,000 people have been uprooted by insecurity and violence and are currently displaced in the province.

(<https://www.unhcr.org/news/briefing/2021/8/611618344/unhcr-gravely-concerned-systematic-sexual-violence-dr-congos-tanganyika.html>)

deteriorated over the past years. Appeals submitted since 2008 by the Batwa community to the Supreme Court have been pending for years and commitments made by the park authorities have not been met. In the absence of any progress from negotiations, some Batwa chose in October 2018 to return to their ancestral lands within the park. This has resulted in several violent retaliations from the park authorities: Batwa have been killed, their homes burnt down, the latest case occurring in November 2021.⁴⁸ In 2015, the Minority Rights Group (UK) and its Congolese partner organization ERND decided on behalf of the community to submit a complaint to the African Commission of Human and Peoples' Rights, who, in 2019, declared it admissible. It is hoped that "This decision has the potential to bring real change in the way the Democratic Republic of Congo addresses the issue of indigenous peoples' right to land and the reparations they are due".⁴⁹

2.5. Towards political recognition and participation at national and local levels

The political and administrative systems in the DRC have always been closely intertwined with the customary Bantu system of chiefdoms. Because the nomadic Indigenous Pygmies are not considered to be "landowners" and have no hereditary chiefs, they have been excluded from participating or being represented in the country's administrative and political institutions, as, e.g., the Association of Customary Chiefs.⁵⁰ At the local level, most indigenous settlements are considered as "neighborhoods" within a Bantu village and are under the authority of a Village Chief, usually a Bantu. As Indigenous Pygmies seldom have a national ID card,⁵¹ they are also in principle not allowed to vote. However, in connection with the 2006 elections, the distribution of voting papers by the Independent Electoral Commission (IEC) was perceived as a symbolic recognition of their individual and communal citizenship, and therefore had a considerable political and psychological impact, resulting in a high electoral participation.

The present government has taken some positive initiatives to address the issue of Indigenous Pygmies' under-representation: the principle of non-discrimination in the recruitment of administrative staff will be applied; a new "Indigenous Pygmy department" has been created as well as a national fund to support Pygmy development (FONADEP) (RDC, 2020: 53).

At the local level, the recognition of administrative interlocutors for the Pygmy communities is beginning to emerge and the new focus on the establishment of community-managed forests with the active participation of local and Indigenous communities is beginning to materialise on the ground notably through the Dedicated Grant Mechanism (DGM).

⁴⁸ Forest Peoples Program online <https://forestpeoples.org> (accessed 04.01.2022)

⁴⁹ MRG's online <https://minorityrights.org> (accessed 04.01.2022).

⁵⁰ The 2006/2011 Constitution of DRC recognizes the institution of customary authority and foresees the adoption of a law to regulate this. In 2015, Law n°15/015 of 25 August 2015 was promulgated establishing the status of customary chiefs, their duties, and obligations, etc. At <https://leganet.cd/>

⁵¹ Due to several factors (distance to the civil registry offices, poverty, and the discriminatory attitude of civil servants) Indigenous Pygmies seldom register their births, marriages, and deaths. It should be noted that many Bantu children are not registered either as only 25 per cent of children under 5 years of age have been registered in the civil registry and 15% have a birth certificate.

2.6. The cultural impact of sedentarization

The lack of access to forests and of use rights to NTFP is a threat to the Indigenous Pygmies cultural and spiritual well-being: “they can no longer obtain the medicinal plants they use in their traditional medicine. Most of their religious activities and rites, for example the initiation of males, which can be performed only in the forest, have become impossible in their new environment”.⁵² It also means that their incomparable knowledge of the forest, the wild plants and their hunting techniques are being lost.⁵³

Sedentarization also means acculturation and the loss of social and cultural identity. The indigenous Pygmies and their animist beliefs are under strong pressure both from the various evangelizing churches and from the Bantus who want them to become “their brothers in Christ”. To resist is seen as a sign of backwardness and primitiveness. Their music, too, seems to be gradually disappearing from sedentary camps. On the other hand, it has been noted that arts and crafts such as pottery, braiding and weaving are flourishing, and the indigenous Pygmies are known for the high quality of their work.

Indigenous Pygmies often have ambiguous feelings toward their own culture, which they see, on the one hand, as an archaic symbol and the cause of their marginalization and rejection by many Bantus, but, on the other hand, as a precious cultural heritage that must be protected and preserved. This tension runs through Pygmy society and their relations with and attitudes toward the Bantu.⁵⁴ In order to revitalize, strengthen and promote Pygmy and Indigenous cultures in general, the NGO DGPA has since 2013 organized an International Festival of Indigenous Peoples (FIPA) in Kinshasa (see www.DGPA.org).

2.7. Climate Change

The National REDD + program (initiated in 2009) has had, as one of its objectives to, “promote the informed and meaningful involvement of local communities and indigenous peoples in forestry management”.⁵⁵ Several reports, however, have concluded that Indigenous Pygmy/Local communities (IPLC) do not seem to have benefitted much from the program⁵⁶ but “remain marginalized and their claim to the forest resources on which they depend for a living is precarious at best”.⁵⁷ Overall, IPLC underrepresentation has been identified as a major issue at all levels preventing their participation in local, national, and international discussions on policies that directly affect them. With the aim to address this issue, the Dedicated Grant Mechanism (DGM) for IPLC⁵⁸ and its country-level operation – the Forest Dependent Community Support (FDGS/PACDF) Project (initiated in 2016)⁵⁹ have taken a more locally based and participatory approach, prioritizing the capacitation and empowerment of IPLC. with the dual purpose: to enable their representatives to participate

⁵² See A. K. Barume, *Heading Towards Extinction?* 2000: 81.

⁵³ See State of the World’s Indigenous Peoples 2009: 35.

⁵⁴ World Bank, 2009: 23.

⁵⁵ See <https://www.unredd.net/>

⁵⁶ In July 2012 civil society organisations tracking REDD+ policies in the DRC suspended their engagement with the National REDD coordination process due to the lack of effective public and community participation in national REDD+ policymaking (Memorandum of Congolese Environmental Civil Society on the REDD process in DR Congo at <https://www.forestpeoples.org/>

⁵⁷ See FPP et al. (2010); Rights and Resources Initiative (2018). See foot note 37 in RDC, IPP 790 (2015)

⁵⁸ The DGM is part of the Forest Investment Program (FIP) – a window of the Climate Investment Funds.

⁵⁹ For more information on the Forest-Dependent Communities Support Project (PACDF) see World Bank/RDC2016c; P.149049 at <https://projects.worldbank.org/> and DGM GLOBAL at <https://www.dgmglobal.org/drc/>; or consult les *Echos du PACDF*, 2021 online at <http://peuplesautochtones.cd/>). For a global Learning Review of the DGM, and the FIP see Itad 2019.

in the design and implementation of forest policies and programs which impact them, as e.g., the National Land Tenure Reform process and the REDD+ activities and to enhance their ability to develop and implement sub-projects of “their own choice, and under their own control” before being given grants. IPLC representatives, e.g., REPALEF,⁶⁰ a network representing both IP and LC, sit in the National Steering Committee (NSC) that governs the sub-project grant-making and engage in national-level REDD+ and FIP processes, supported by a National Executing Agency (NEA).⁶¹

3. DRC legislation and indigenous peoples

3.1. The Constitution

The Constitution 2006 (revised 2011) does not mention the Indigenous Pygmy People (nor any other ethnic group), since all Congolese citizens are considered to be equal before the law, and racial and ethnic discrimination is prohibited.⁶² It does however stipulate that “The State has the duty to ensure and promote the peaceful and harmonious coexistence of all ethnic groups in the country. It also ensures the protection and promotion of vulnerable groups and all minorities. It ensures their development.” (Art.51) Yet it is precisely because of discrimination and the failure of the State to fulfill its obligations as stipulated in Article 51, that the indigenous Pygmies’ human and fundamental rights are not respected, that the abuses they suffer are not sanctioned⁶³ and that they are treated as second-class and “vulnerable” citizens.

The international community, including the Human Right bodies monitoring the UN Conventions signed by DRC, has repeatedly urged the Congolese state to recognize and protect the rights of Indigenous Pygmies.⁶⁴ A Report delineating a Strategic Framework for the Preparation of a Pygmy Development Program (World Bank, 2009) was validated at a national workshop organized by the Ministry of Environment, Nature Conservation and Tourism (MECNT).⁶⁵ Among its many recommendations, it suggested the creation of a new legal framework that “would underscore existing citizen and human rights, officially recognize the Pygmies’ indigenous status and, where appropriate, incorporate new specific rights.

3.2. Towards the Legal recognition of indigenous peoples

Since then and based on Article 123 of the Constitution that provides that “the law shall determine the fundamental principles concerning” a list of 16 issues, the 16th being “the

⁶⁰ This network of Indigenous and Local Populations for the Sustainable Management of Forest Ecosystems (REPALEF) presently includes 180 member associations reaching 30,000 to 50,000 people in all the DRC provinces. This platform aims to increase the participation of indigenous peoples in the community based sustainable management of natural resources in the country.

⁶¹ At the global level, IPLC representatives govern the overall DGM as members of the Global Steering Committee (GSC) and engage in international climate and forestry processes, supported by the Global Executing Agency (GEA). The global component shares learning across country projects. See DGM GLOBAL website

⁶² See Art. 12 and 13 of Constitution.

⁶³ See, e.g., ACHPR, (2011:22).

⁶⁴ See, e.g., CERD Concluding Observations (2007), §18-21; CESCR, Concluding Observations (2009), §17. ⁴⁸ World Bank 2009: 37.

⁶⁵ The report (World Bank, 2009) was the result of the joint efforts of supportive Congolese NGOs, representatives of Indigenous Pygmy communities and with the support of the World Bank.

protection of vulnerable peoples”, several proposals for an organic⁶⁶ law on fundamental principles relating to the rights of Indigenous Pygmies peoples have been debated. In April 2021, and after several delays the National Parliament adopted almost unanimously (389 out of 390 votes) the Law proposal on the Promotion and Protection of Indigenous Pygmy People's Rights.⁶⁷ Besides including provisions regarding *inter alia* free health care, free primary and secondary education and assistance before the judiciary, Article 42 raises the central issue of the right to land and natural resources, stating that the Indigenous Pygmies have the right to the land and natural resources which they possess, occupy or use traditionally; and that any relocation or resettlement requires their free, and prior informed consent. The vote in the National Parliament has been a breakthrough, but much remains to be done: the law still needs to be approved by the Senate and promulgated by the President before it can be implemented effectively by all the sectoral ministries and have an impact on the lives of Indigenous peoples.

Several provincial Assemblies,⁶⁸ exploiting the competences they have been given by the Constitution 2006/2011 have initiated similar processes. In Mai-Ndombe and Sankuru provinces, the provincial authorities have promulgated edicts in 2018 and 2019 respectively, promoting and protecting the rights of their Indigenous Pygmy population on their ancestral forests.

3.3. Legislation and sector strategies of specific relevance for indigenous Pygmies

The laws relevant to Indigenous Pygmies include Law 73-021 on land tenure (*Code Foncier*, 1973), the Forest Code (*Code Forestier*, 2002) the Mining Code (*Code Minier* 2002), and Law No 14/003 (2014) on Nature Conservation.⁶⁹ These laws do not mention Indigenous Pygmies or address their concerns. However, some of them are under review and three major sectoral strategy papers have been elaborated, some of them based on participatory consultations at the provincial level with, among other stakeholders, Indigenous representatives. These national strategy papers - the Community Conservation Strategy (2007-2011) (RDC/DCR, 2008), the Conservation of Biodiversity in Protected Areas Strategy (RDC/DCR 2012) and the Community Forestry Strategy (RDC/DCR, 2018a) are representative of the paradigm shift in Conservation towards community forest and community based natural resource management, promoting the involvement of local/Indigenous communities (CPLA/IPLC)⁷⁰ in the implementation, creation and management of new protected areas (FPP and CAMV, 2018:9).

The Law on Land tenure (1973) gives the state the ownership of all land but allows customary rights to regulate the use of unallocated land in rural areas. Customary right owners may thus have “private properties” although the resources concerned are at all times likely to be taken over by the State and become “concessions”. Land matters are therefore treated in accordance with the respective rules of each community. These differ considerably and give little protection to indigenous peoples’ land rights. Large areas of indigenous peoples’ lands have thus been lost and turned into protected areas⁷¹ or concessions. Although the law establishes that indemnity should be paid, this seldom

⁶⁶ Organic laws (*lois organiques*) are a special kind of legislation that organizes key areas of national life and requires absolute majorities to be passed and amended.

⁶⁷ At <http://www.dgpardc.org/wp-content/uploads/2020/10/PROPOSITION-DE-LOI-PA-01-MAI-2019.pdf>

⁶⁸ These include the provinces of Nord-Kivu, Sud-Kivu, Equateur, Tshopo, Mai-Ndombe and Sankuru.

⁶⁹ All laws can be found at <https://leganet.cd>

⁷⁰ French acronym for « Communauté Locale/Peuples Autochtones »

⁷¹ An example of this is the creation of the Wildlife Reserve of Lomako-Yokokala in 2006. See ILO/ACHPR (2009), 105.

happens in the case of evicted Indigenous Pygmies. The law, however, has also proven to be inadequate to resolve the multiple conflictive issues faced by the land sector in today's DRC, and a land reform process was therefore launched in 2012. One of its objectives is to adopt a new land tenure policy that will provide for sustainable and non-conflictual land management, clarifying land rights in general but with particular attention to vulnerable people (local communities, indigenous peoples, women, and children) (CONAREF, 2018). According to the first draft of this policy Indigenous Pygmy peoples will have the right to access to land will be secured. In cases of extreme vulnerability related to land rights denials, a process of land redistribution may be organized, in agreement with the customary chiefs and the State being obliged "to organize negotiations based on local dialogues in order to resolve "the glaring problems of access to land suffered by indigenous Pygmy peoples" (ibid.). The on-going reform process is largely participatory and during 2020, workshops and consultations that included Indigenous men and women representatives were held in 15 provinces.⁷² Based on the conclusions drawn from these consultations, a second Draft Policy paper was elaborated and discussed during a similar process in 2021. This draft was validated by a workshop held in Kinshasa in November 2021 with 300 participants, including Indigenous Pygmies. The next steps are to develop an implementation plan for the land policy and to prepare a new land law that reflects the policy decisions.⁷³

Law No. 011-2002 or Forest Code has not been revised but some of its provisions regarding local community forests (Concession forestière de communauté locale or CFCL) have been regulated by two legal texts.⁷⁴ A National Strategy for Community Forestry (French acronym: SNFC) has been validated (DRC/RDC, 2018a). This strategy integrates parts of a special study reflecting Indigenous Peoples' situation and concerns regarding community forest concessions⁷⁵ stating that in the implementation of the Strategy, "the forest rights and culture of Indigenous Peoples will need to be taken into account, including offering them equal legal, organizational, technical, financial and cultural opportunities" (ibid.). The SNFC is based on a long-term vision for 2032, with an experimental period of five years. In the meantime, the Forest Code and its provisions on usage rights remain in force. As noted in the above-mentioned special study (DRC, 2017) these are quite restrictive for Indigenous pygmies and their subsistence possibilities since any commercial activity related to hunting in protected and productive forests is prohibited (Art. 37),⁷⁶ and agriculture is not allowed in local community forestry concessions.

Law No. 007-2002 (Mining Code) has been revised and amended by Law n°18/001 du 09 mars 2018 notably by including socio-environmental obligations and responsibilities of mining operators vis-à-vis local communities affected by their projects. The law does not mention Indigenous Peoples.

Law No 14/003 (2014) on Nature Conservation introduces important innovations in

⁷² <https://www.cafi.org/countries/democratic-republic-congo/drc-land-tenure-reform> - (accessed 27.12.2021).

⁷³ The UN-Habitat has supported the DRC land tenure reform process since 2012.

⁷⁴ Decree No. 14/018/ of 02 August/2014 (procedures for awarding forest concessions to local communities) and Ministerial Order No. 025/CAB/Min/ECN-DD/CI/00/RBM/2016 of 9 February 2016 (provisions relating to the management and exploitation of local community forest concessions. Article 74 of the Order 025 stipulates that a National Strategy for Community Forestry should be elaborated.

⁷⁵ Indigenous Peoples were not included in Decree No. 14/018/of 02 August 2014. It was therefore decided to carry out a study on Indigenous Peoples' situation and concerns, resulting in a number of recommendations, some of which has been incorporated in the final strategy. See Report "Participation des Peuples autochtones a la mise en œuvre de la Stratégie nationale relative à la foresterie communautaire en RDC" (RDC/DRC, 2017).

⁷⁶ Hunting is totally prohibited in classified forests.

the protection of the environment, showing a positive change in the discourse in favour of the recognition of customary land rights and the positive role that local communities can play in conservation, including consultations⁷⁷ with local populations prior to any project and the involvement of local communities in establishing and managing protected areas, recognizing the value of traditional knowledge, and benefit sharing (FPP and CAMV, 2018). All of which is in stark contrast to how, in the past, the establishment of protected areas has led to dispossession and conflict, and to current practice in protected area management, which has shown a tendency towards exclusion rather than co-management.

The right to culture and intellectual property is guaranteed by the Constitution's Article 46, and Congolese law protects sites of cultural importance.⁷⁸ However, indigenous peoples' access to the source of their cultural and spiritual sustenance—their traditional forests and savannahs—is severely compromised by the continuing take-over and destruction of their traditional lands and there is an urgent risk of immediate and irreparable harm to the cultural and spiritual well-being of the indigenous peoples in the DRC, which threatens their survival as distinct peoples.

4. International and regional human rights instruments

The Democratic Republic of Congo has signed and ratified a wide range of international and regional human rights instruments including several international environmental conventions. All these instruments could be of great significance for indigenous peoples since, according to Article 215 of the 2006 Constitution, they are automatically transposed into domestic legislation once they have been ratified.⁷⁹ As long as the justice system is deficient on all counts,⁸⁰ however, and laws giving effect to the provisions being hardly implemented, the provisions put forward by the Treaties, Conventions, etc., have practically no impact on the situation of the Congolese people, let alone Indigenous Pygmies. The Treaty bodies have, furthermore, been hampered in their monitoring by the fact that the Congolese government for many years failed to provide periodic reports in a regular manner. The same has occurred with its reports to the African Commission on Human and Peoples' Rights. This situation has improved somewhat since 2017.

4.1. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

The DRC was among the 30 African states that voted in favour of the Declaration (September 2007).⁸¹ Indigenous peoples' rights to lands, territories and resources and the right to Free, Prior and Informed Consent (FPIC) have a prominent place throughout the Declaration, and although it is not a legally binding document for the signatories, it is becoming a standard-setting document to which civil society organizations in the DRC increasingly refer to.

⁷⁷ The law talks about "consultation" instead of "consent". In 2017, a Ministerial Order no 26 was issued regulating free, prior and informed **consent** (FPIC) within the implementation frame of REDD+ in DRC was issued in November 2017.

⁷⁸ Both the Forestry and the Mining Codes emphasize that all actions in those domains must be done with strict adherence to the protection and conservation of cultural property, including respect for sacred sites. See ILO/ACHPR (2009), 73.

⁷⁹ This has, e.g., been the case with the CRC and led to the adoption on 10 January 2009 of the Child Protection Code.

⁸⁰ See CESCR (2009), § 10.

⁸¹ Prior to the UN General Assembly's adoption of UNDRIP, and in response to concerns raised by several African states regarding, among other things, the right of self-determination and respect for territorial integrity, nine amendments were inserted in the original text. See A.K. Barume, "Responding to the Concerns of the African States" in *Making the Declaration Work*, edited by Charters and Stavenhagen, (2009), 170-181.

4.2. International human rights treaties

The DRC has ratified seven of the nine core international human rights treaties:⁸²

- The International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol 1 (ICCPR-OP1)⁸³
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol
- The Convention on the Rights of the Child (CRC) and its 2 Optional Protocols
- The Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol

The DRC has furthermore ratified several UNESCO conventions of importance to Indigenous Peoples (Convention concerning the Protection of the World Cultural and Natural Heritage; Convention for the Safeguarding of the Intangible Cultural Heritage; and Convention on the Protection and Promotion of the Diversity of Cultural Expressions), as well as several universal human rights instruments related to armed conflicts.

The DRC is party to the eight core ILO Conventions,⁸⁴ including C110 and C111 (Elimination of Discrimination in respect of Employment and Occupation); C138 and C182 (Abolition of Child Labour), which are specifically relevant to indigenous peoples. It has not ratified ILO Convention No.169 on Indigenous and Tribal Peoples in Independent Countries but there have been promises by government representatives to set the ratification process in motion.⁸⁵

The DRC is also Party to several international conventions related to environment, biodiversity and climate change such as the Convention on Biological Diversity (CBD); Agenda 21; the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol on the Reduction of Overall Emissions and its Nagoya Protocol; the Ramsar Convention on Wetlands;⁸⁶ the Convention on International Trade in Endangered Species (CITES) and the International Tropical Timber Agreement (ITTA). The DRC was in 2016 among the 193 countries who officially adopted the historic new agenda, entitled "Transforming Our World: The 2030 Agenda for Sustainable Development".

4.3. Regional human rights instruments

At the regional level, the DRC has ratified or signed the following human rights instruments:

⁸² The DRC has not signed the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) nor the Convention for the Protection of All Persons from Enforced Disappearance (CPPED).

⁸³ The DRC has not signed Optional Protocol 2 regarding the abolition of the death penalty.

⁸⁴ C87 & C98 (Freedom of association and collective bargaining); C29 & C105 (Elimination of Forced and Compulsory labour); C100 & C111 (Elimination of Discrimination in respect of Employment and Occupation); and C138 & C182 (Abolition of Child Labor).

⁸⁵ See ACHPR (2011), 23.

⁸⁶ In 2008, the Ngiri-Tumba-Maindombe became the largest Ramsar Wetland Area of International Importance. This vast (twice the size of Belgium) area of rainforest, rivers and lakes on the eastern side of the Congo River is home to several indigenous Pygmy groups.

- The African Charter on Human and Peoples' Rights (ACHPR)
- The African Charter on Rights and Welfare of the Child (signature)
- The Protocol to the ACHPR on the Rights of Women in Africa
- The Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights

4.4. Other relevant regional instruments

The DRC has ratified the African Convention on the Conservation of Nature and Natural Resources. It is also member of the Central African Forests Commission (COMIFAC), the coordinating entity on forests for the Central African Region, and has adopted its Convergence Plan, a road map for conservation initiatives in the Congo Basin.⁸⁷

It is a member of several environmental institutions, including CBFP—the Congo Basin Forest Partnership, a non-binding partnership based on a voluntary agreement between the 10 member states of COMIFAC, donor agencies, international organizations, NGOs, scientific institutions and representatives from the private sector.

5. National and grassroots organizations

The DRC has many local and national NGOs promoting the rights of Indigenous Pygmies. Some of them have been created by Indigenous Pygmy activists; others are NGOs supporting indigenous' rights. Several of these NGOs have formed larger networks that operate at the national, regional or provincial level. Most of these organizations have limited funding and only some have a website. The following list includes some of the major networks and NGOs.

- **DGPA**—*Dynamique des Groupes Peuples Autochtones de RDC* groups several networks and NGOs from all the provinces with indigenous peoples and works with advocacy, documentation and capacity building. <http://www.dgpa.org>
- **OSAPY**—*Organization for Settlement, Literacy and Advocacy for Pygmies* is a national NGO (1998) based in Kisangani (Province Orientale). It focuses exclusively on defending and promoting the rights of Pygmies.
- **LINAPYCO**—*the National League of the Pygmy Associations of Congo* affiliates a large number of local church institutions and NGOs. It is active in South Kivu, North Kivu, Katanga and Orientale provinces in the areas of human rights, community development, women and youth and environmental programs.
- **RAPY**—the *Network of Pygmy Associations* (2002) is formed of 10 local organizations and Pygmy associations. The member organizations work in South and North Kivu. RPY produces guidebooks in local languages and documents human rights abuses.
- **CAMV**—the *Centre for the Support of the Indigenous Pygmies and Vulnerable Minorities* works out of Bukavu with indigenous populations in several provinces in the eastern part of the country. It publishes two news bulletins: *Echo des Pygmées* and *Le Forestier*. <http://www.camv-pygme.org/>
- **UEFA**—*Union for the Emancipation of Indigenous Women* is involved in several environmental and education activities in Sud Kivu and Equateur provinces.
- **PIDEP**—*Programme d'Intégration et de Développement du Peuple Pygmée* in Kivu is

⁸⁷ The core of this road map is land-use planning in 12 priority landscapes, which are large ecosystems with consistent biological and socio-economic features. See section 7.2 below.

an NGO created in 1991 by Indigenous Pygmy activists. Its activities focus on ensuring “customary security” through mobilization and awareness raising.

- **RRN**—*Réseau Ressources Naturelles* is a monitoring and governance platform (2002) with more than 250 member organizations in all the provinces. Member organizations include well-organized umbrella organizations as well as small, local grassroots organizations.
- **REPALEF**—*Réseau des Populations Autochtones et Locales pour la Gestion Durable des Ecosystèmes Forestiers de la République Démocratique du Congo* (network of Indigenous and Local Populations for the Sustainable Management of Forest Ecosystems) is a network connected to the regional indigenous environmental network for Central Africa REPALEAC (*Réseau des populations autochtones et locales pour la gestion durable des forêts denses et humides d’Afrique Centrale*) and the Central African Forests’ Commission—COMIFAC. In DRC, REPALEF presently includes 180 member associations (including **DGPA, and LINAPYCO** and reaches 30,000 to 50,000 people in all the DRC provinces. **REPALEF** is part of the REDD+ process and plays a leading role within the framework of the PACDF. See www.Peuplesautochtones.cd

6. International organizations

Overall official development assistance (ODA) to DR Congo is characterized by many donors (UN agencies, bilateral-agencies, international financing institutions, NGOs, etc.). In 2018, ODA to RDC exceeded USD 3.1 billion⁸⁸ –The flow of bilateral aid has seen a continuous decline since 2011 (where ODA reached USD 9.1 billion). Compared with other sub-Saharan countries, the ODA per capita has also experienced a downward trend and in 2016-2018 it was significantly lower (29 USD) than the sub-Saharan African average during the same period (45 USD) (RDC, 2020)

In 2019 a Common Country Assessment (CCA) of the DCR was elaborated as the first step in the process of formulating the United Nations Development Assistance Framework (UNDAF) now renamed the UNSDCF (*United Nations Sustainable Development Cooperation Framework 2020-2023* for the DCR. This Cooperation Framework has been called “the most important instrument for planning and implementation of the UN development activities at country level in support of the implementation of the 2030 Agenda for Sustainable Development (2030 Agenda)” Its focus will be on three strategic axes: Peacebuilding, respect for human rights, protection of civilians, social cohesion and democracy. Both CCA and the UNSDCF aim at providing a basis for harmonizing approaches and programs and coordinating donor support. The DRC also benefits from several large environmental funds.

6.1. UN agencies

The United Nations System (UNS/SNU) in DRC includes the UNJHRO (United Nations Joint Human Rights Office in the DRC) that since 2008 integrates the peacekeeping mission (MONUSCO) and the OHCHR country office and some 20 UN specialized programs, funds and agencies that work together and alongside the Congolese government for the stabilization and development of the DRC while providing humanitarian assistance to the most deprived.

⁸⁸ This amount is equivalent to about half of the annual expenses of the DRC government (Norwegian Refugee Council, 2019).

The UN agencies working in the DRC include UN-WOMEN, UNDP (UN Development Program), UNHCR (UN High Commissioner for Refugees), UNOCHA (Office for the Coordination of Humanitarian Affairs), UNAIDS (Joint United Nations Programme on HIV/AIDS), UNFPA (United Nations Fund for Population Activities), UNHABITAT, UNESCO (United Nations Educational, Scientific and Cultural organization), UNICEF (UN Children's Fund), UNMAS (United Nations Mine Action Service) UNOCHA (UN Office for the Coordination of Human Affairs), FAO, ILO, IFAD, WFP (World Food Programme) and WHO (World Health Organization). UNDP, UNIDO (UN industrial development Organization), IOM (International Organization for Migration), and UNOPS (United Nations Office for project services)

These UN agencies all work within sectors highly relevant to the situation of indigenous peoples (humanitarian aid, health, education, forestry, etc.) and they have activities in all the provinces where Indigenous Pygmy people live.

6.2. Bilateral international development agencies

The following countries and their bilateral international development agencies—Belgium (BTC and Belgian Survival Fund), Canada (CIDA), France (AfD), Germany (GIZ, formerly GTZ), Japan (JICA), China, the Netherlands, Italy, Spain (AECID), Sweden (SIDA), UK (Foreign, Commonwealth & Development Office (FCDO) and the USA (USAID)—coordinate with the UN agencies. Several of them, provide funds directly to programs within specific areas, in particular the environment, and these are implemented by large NGOs. CARPE (the Central African Regional Program for the Environment), for instance, is a regional USAID initiative that supports the development of local, national and regional capacity in 12 critical landscapes. Six of these landscapes are in the DRC.⁷⁸

Some of these bilateral agencies (e.g., CIDA, GIZ, AECID, NORAD) have policies on indigenous peoples' issues.

7.3 International financial institutions

7.3.1. The World Bank Group

The World Bank Group (WBG) is by far the main international financial institution involved in development activities that directly or indirectly target Indigenous Peoples. WBG engagement is guided by a [Country Partnership Framework \(CPF\)](#) prepared for a five-to-six-year period. A new DRC-WBG CPF for 2021-2026 is currently under preparation. Used in conjunction with a [Systematic Country Diagnostic⁸⁹ \(SCD\)](#), the CPF guides the World Bank Group's support to a member country. The World Bank is a member of the Donor Coordination Group that aims to harmonize development partner activities in the field. It is working closely with the UN, UNFPA, UNICEF, WHO, USAID, the Agence française de développement (AFD), the British Development Agency (FCDO), GIZ/KfW and the Belgian Cooperation Agency.

As of March 1, 2021, the World Bank portfolio in the DRC totaled \$4.8 billion, with 20 national projects (\$4.23 billion) and four regional projects (\$565 million). Engagements span key development areas, including: economic management, governance, and private sector development; human capital (health, education, social protection); sustainable development (infrastructure and connectivity, agriculture and food security, access to electricity and water, urban development); women's empowerment and prevention and

⁸⁹ World Bank (2018a).

response to Gender-Based Violence.⁹⁰

Thirteen projects, have triggered OP4.10 and include an indigenous peoples' plan (IPP). The WB has heightened its attention to safeguard issues and made significant adjustments to its operational standards, by adopting in 2016 the Environmental and Social Framework (ESF) to become effective on October 1, 2018. Ten new Environmental and Social Standards (ESS) are listed and will eventually⁹¹ replace safeguard policies; the former Indigenous Peoples Policy (OP 4.10) will be replaced by ESS7 and its guidelines that specifically apply to "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities" (World Bank 2018b).⁹² ESS7 requires only "meaningful consultations" with Indigenous Peoples prior to project decisions, but free, prior, and informed **consultations** (FPIC) can be required **in specific circumstances**, depending on the scope of impacts (ibid.). ESS7 includes a grievance mechanism for projects involving Indigenous Peoples, which is culturally appropriate, accessible and takes into account the availability of judicial recourse and customary dispute settlement mechanisms. (ibid.) In order to enhance the visibility and inclusion of Indigenous Peoples in the Bank's analytical work, Systematic Diagnostics, CPFs and national policy dialogues, the World Bank has also established a network of Regional and Global Focal Points, consisting of staff with expertise on Indigenous Peoples' issues across different regions. (<https://www.worldbank.org/en/topic/indigenouspeoples>)

7.3.2. African Development Bank

The AfDB Group is another major donor. In 2016, the Bank commissioned the preparation of an issues paper to provide an overview of the state of Indigenous People in Africa, highlighting options for their inclusion in the Bank's development projects in its Regional Member Countries (RMCs). The AfDB's 2018 Country Strategy Paper for DRC aims "to support the diversification and competitiveness of the Congolese economy, for inclusive and sustainable growth" Therefore, the Bank's strategy seeks to tackle the causes of the country's fragility by, among other things: (i) promoting agribusiness value chains and (ii) strengthening human capital and governance.

8. IFAD and IPAF operations in DR Congo

IFAD projects:

https://www.ifad.org/en/web/operations/w/country/democratic-republic-of-the-congo#anchor-projects_and_programmes

IPAF projects:

https://www.ifad.org/documents/38711624/41839851/ipaf_africa_e.pdf/73fe84da-7916-b06b-6f38-01484a056426

9. Opportunities and challenges

Over the past decade, important progress has been made regarding indigenous issues at the national level: the concept of 'indigenous peoples' is now widely accepted and the Pygmies' identity as indigenous peoples with specific needs has been recognized. A strategic

⁹⁰ World Bank online at <https://www.worldbank.org/en/country/drc/overview#2> (accessed 10.01.2022)

⁹¹ The two systems will run in parallel for an estimated seven years.

⁹² The ESS7 use this new terminology in order to encompass the variety of terms that exists in the national context. The term "vulnerable" is used. (ibid).

framework for a Pygmy Development Program was validated (2009) and has opened up for the participation of Indigenous representatives in the elaboration of relevant strategies and in the revision of the Land Tenure law (Code foncier). In 2021, a new specific law recognizing the rights of indigenous peoples was passed by the National Assembly (although it is still awaiting approval by the Senate at the time of writing). Indigenous organizations and networks have grown stronger and, together with supportive local, national and international NGOs, Indigenous communities assert their rights, challenging the World Bank in 2017 (successfully), addressing the international human rights community through alternative reports to the Treaty Bodies and the ACHPR and challenging the State and the ICCN by getting the ACHPR to consider their case; indigenous representatives are taking part in forums and processes in which relevant issues and concerns are being discussed. Much of this is due to the work done by the African Commission on Human and Peoples' Rights, the World Bank and to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Targeting development efforts towards indigenous communities must therefore be included on the work agenda of the multilateral and bilateral donor agencies in a concerted way, by applying their own policies for indigenous peoples and/or the UNDG guidelines and IASG recommendations.

Specific efforts will have to be made in order to reach the indigenous communities and different approaches will have to be developed. To do this, the donor community can greatly benefit from seeking the advice of, and collaborating with, local and national organizations.

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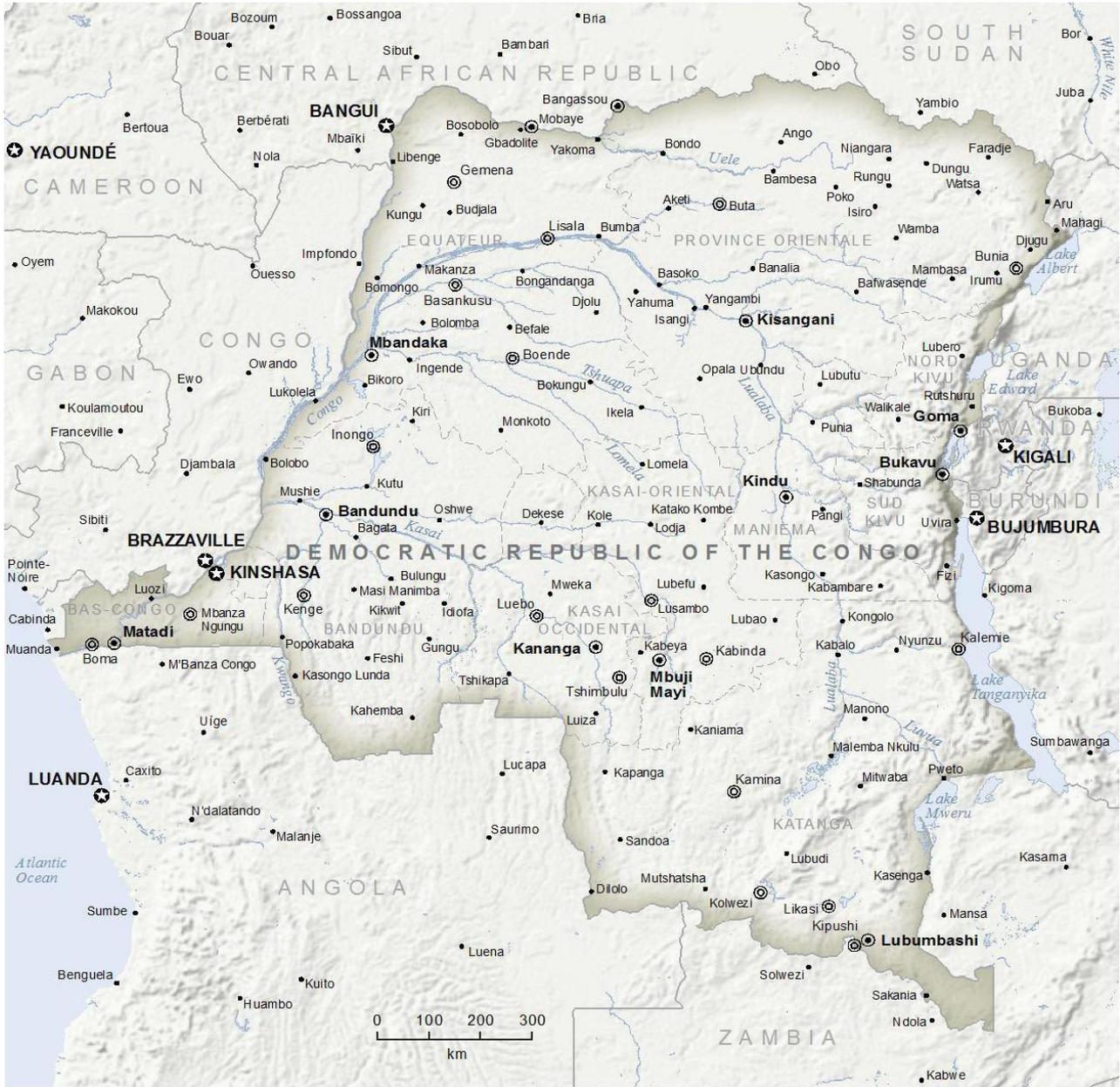
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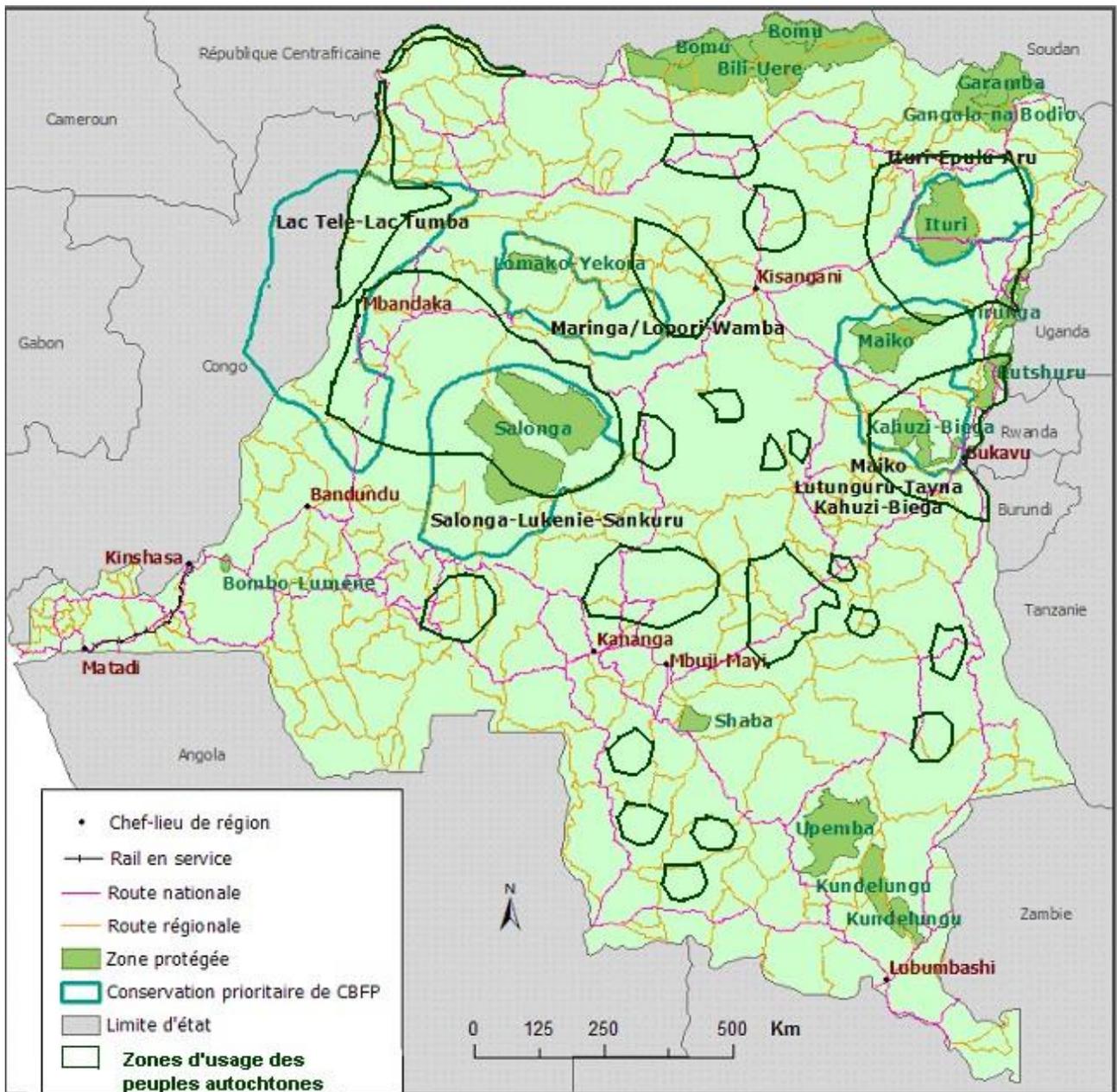
- **ACHPR:** <http://www.achpr.org>
- **Climate Funds Update:** <http://www.climatefundsupdate.org/listing>
- **COMIFAC** <http://www.comifac.org>
- **Multi-Partner Trust Funds:** <http://mdtf.undp.org/factsheet/fund/HCG10>
- **UN-REDD** <http://www.un-redd.org/> + country
- **UNPFII** <http://www.un.org/esa/socdev/unpfii>
- **World Bank**<http://www.worldbank.org>
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 - Social sustainability: <https://www.worldbank.org/en/topic/socialsustainability>
- **CARPE - USAID Central African Regional Program for the Environment** At: <http://carpe.umd.edu/>
- **FFP (Forest Peoples Programme):** <http://www.forestpeoples.org>
- **IWGIA:** <https://www.iwgia.org>
- **MGR (Minority Rights Group)**<https://www.minorityrights.org>
- **NGO DGPA** (Dynamique des Groupes Peuples Autochtones de RDC) <http://www.dgpardc.org/>

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- **REPALEC and the PACDF project website:** www.peuplesaut



Source: OCHA (2011), iv.

Map showing the use zones of indigenous peoples in the DRC



Source : WB IPP324—Cadre de Politique pour les Peuples Autochtones (CPPA) du PNFoCo – AGRECO (2008), 84.

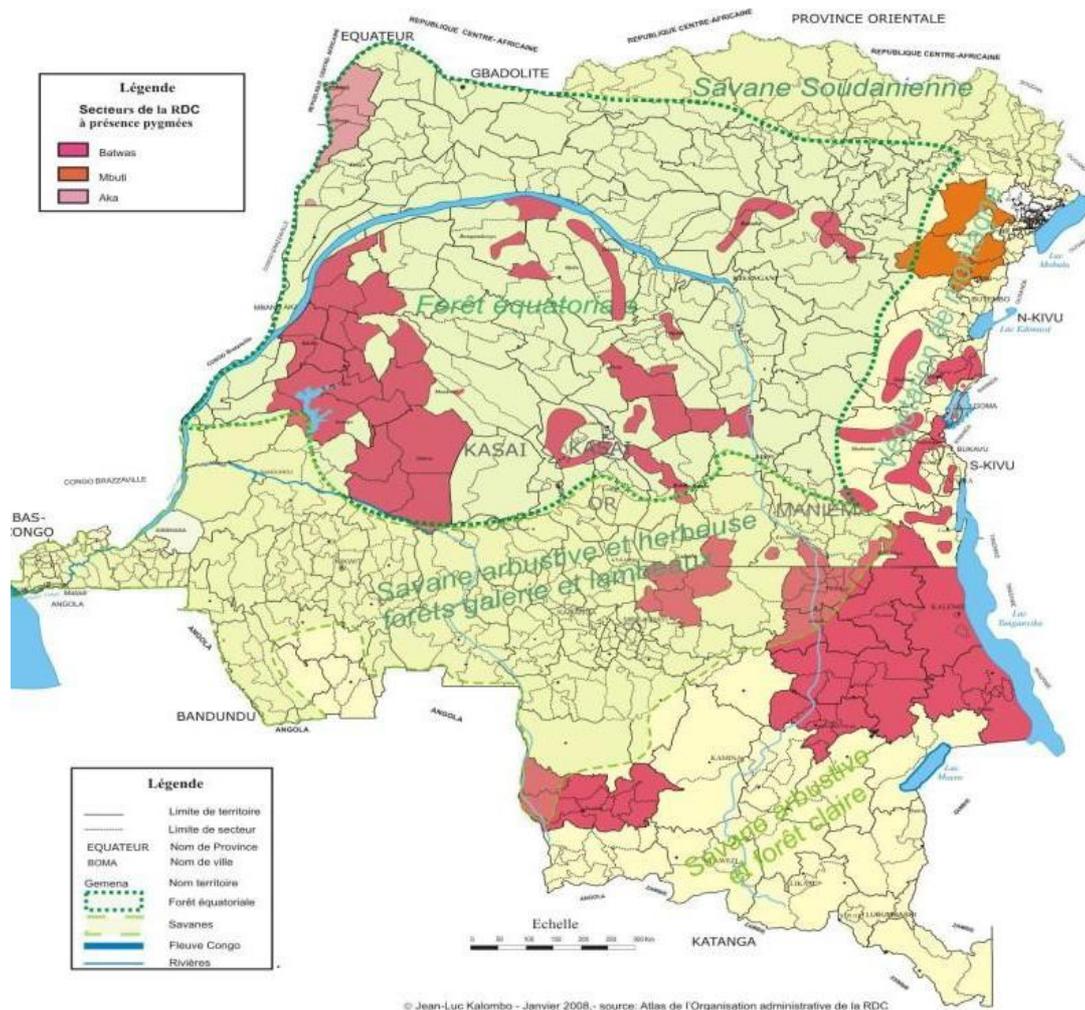


Figure 2: Location map of indigenous populations in the DRC

Source : http://www.dgparc.org/wp-content/uploads/2020/10/Atlas-PA_A4.pdf

