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# **A Critical Review of the Legislation on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples (Law No. 22/030 of July 15, 2022) in DR Congo**

**Volume 1**



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## 1. Introduction

The indigenous "pygmy" peoples living in the Congo Basin and in the high mountain forests of the Great Lakes region of Central Africa were originally semi-nomadic hunter-gatherers. The Democratic Republic of Congo (DRC) is home to some 600,000 indigenous "pygmies", whose way of life is considered to be in harmony with nature. Access to their ancestral lands and security of tenure are of fundamental importance to the indigenous "pygmy" peoples, as they depend entirely on the forests for their well-being, identity and survival. The establishment of the modern state, with the arrival of the colonizer on Congolese lands from 1876 onwards, completely challenged the traditional organization of the indigenous "pygmy" peoples by imposing religious, social, economic and political models. Such Western models are often incompatible with the "pygmy" peoples' own moral and customary values in areas where they had their own expertise, such as survival techniques, health, self-sufficiency and the environment.

Today, the formal conditions of access to basic social services, including education, housing, healthcare and justice, remain largely unfavorable to this group. Their living conditions are characterized by various forms of abuse and stigmatization, which are at the root of their political, administrative, economic, social and cultural marginalization.<sup>1</sup> Under-represented in national decision-making bodies, indigenous "pygmy" peoples do not fully enjoy the lands they occupy or the resources they contain. They suffer involuntary displacement caused by armed conflict and communal strife based primarily on economic interests, notably control of arable land and land rich in strategic raw materials. Population expansion, unsustainable resource use and the global economy act as destructive forces that exert pressure on the lands of pygmy peoples, leading to the substantial transformation of their way of life and the loss of their cultural identity.

In 2022, Law no. 22/030 on the Promotion and Protection of the Rights of Indigenous Pygmy Peoples was promulgated in the DRC. It establishes the fundamental principles for the protection and promotion of the rights of indigenous "pygmy" peoples, in order to fill legislative gaps. The law aims to guarantee easy access to justice and basic social services for "pygmy" peoples, recognition of their uses, customs and pharmacopoeias, as well as their full enjoyment of land and resources in their traditional environment. The law is divided into eight chapters dealing

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<sup>1</sup> United Nations Development Programme. (2019). *Dynamique des Groupes des Peuples Autochtones (DGPA), Democratic Republic of the Congo*. Equator Initiative Case Study Series. <https://www.equatorinitiative.org/wp-content/uploads/2019/07/DGPA-DRC.pdf>

respectively with general provisions; civil and political rights; economic, social and cultural rights; the right to the environment; the right to land and natural resources; the right to work; penal provisions; repeal and final provisions.

In the general provisions (Chapter 1, Article 2), the Law refers to the right of the "pygmy" people to "free, prior and informed consent", defining it as "a collective right by virtue of which the indigenous "pygmy" peoples can give or withhold their consent to any project likely to have an impact on the lands and natural resources they traditionally own, occupy or use". According to the same law, free consent means approval or disapproval without coercion, intimidation or manipulation. Informed consent is approval or disapproval on the basis of objective and complete information, provided in a language that is understandable to and respects the traditions of the indigenous "pygmy" peoples, on decisions or projects that would have an impact on these peoples. Finally, prior consent refers to the approval or disapproval, before any decision is taken, of the project that would have an impact on indigenous "pygmy" peoples.

Yet the Congo region, as well as other places in the Global South and North, has a history of failure when it comes to the rights of indigenous peoples. The laws that the State has promulgated to date regarding the rights of indigenous "pygmy" peoples were not effectively applied on the ground, due to a number of factors and conditions, which can be legal, institutional, social, or other. One reason for the lack of effective implementation may be the haste with which some of these laws were drafted and promulgated, without prior study of their implementation on the eve of their entry into force. Another reason could be that they may encourage interference from various departments, politicians and other players with partly conflicting interests, and who might take advantage to enrich themselves unjustifiably. The absence of state authority to enforce such laws and the politicization of land acquisition have played a decisive and negative role. This has led to violations of the law and fuel the abuse and destruction of the natural environment of the "pygmy" people.<sup>2</sup>

The Law on the Promotion and Protection of the Rights of Indigenous Pygmy Peoples represents a historic step forward in the protection of human rights in the DRC. It is the country's very first legislation to formally recognize and protect the rights of indigenous peoples. However, implementation of the law appears to be lacking. In order to protect the rights of indigenous "pygmy" peoples against illegal or illegitimate exploitation of their forest lands, effective implementation of the new law is necessary, with strategic axes for desired results. The political process surrounding the law therefore needs to be examined more closely and highlighted.

As indicated above, effective implementation of the law under review is intended to combat the injustice suffered by the "pygmy" peoples, and could also lead to the protection of the Congolese forest environment and help mitigate climate change or biodiversity loss. The World-Wide Fund

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<sup>2</sup> *Idem.*

for Nature (WWF) has stated that indigenous peoples live in most of the remaining areas of significant natural value and are the main custodians and protectors of nature.<sup>3</sup> Areas occupied by indigenous peoples also store around 30% of the carbon in Central African forests, according to an assessment by the Woods Hole Research Center (2015). For the DRC, this figure exceeds 30% and represents seven times the country's annual emissions.<sup>4</sup>

"If we want to protect forests, we must protect the rights of the indigenous peoples and forest communities who have managed these areas for generations," said Helen Clark, Administrator of the United Nations Development Program, on April 22, 2016 at a meeting on "Protecting Forest Guardians" organized by the Ford Foundation to mark the signing of the Paris climate agreement.<sup>5</sup>

This study aims to raise awareness and stimulate discussion of the law among political decision-makers as well as Congolese indigenous "pygmy" peoples and national and international civil society organizations. It also aims to identify potential obstacles to effective implementation of the law, in order to discover possible ways of overcoming them.

To achieve these objectives, we address the historical, current and future threats to the existence and rights of indigenous peoples, and provide insights to questions relating to the use of forest land by non-pygmies, such as artisanal logging and the creation of protected areas. More specifically, we ask how the law came into being, and what interests and factors might explain the current lack of implementation. These include the competing interests mentioned above, but also wider domestic politics and the history that has shaped the power relations between these actors.

## 2. Study approach

To achieve the objectives of our study, we have applied the historical method, the exegetical (or careful analytical and interpretative) approach and the systems approach. The historical method seeks to establish the causes of historical events, as well as their consequences. It is the method used to construct history, to determine historical facts scientifically and to group them into a scientific system. For our study, we used the following method: We studied documents relating to the life of local populations in their ecosystems and the exploitation of forests to determine the specific events that took place in the past. Once we had established these facts, we grouped

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<sup>3</sup> See WWF, *Indigenous Peoples and Conservation: WWF Statement of Principles*, [https://wwfeu.awsassets.panda.org/downloads/Indigenous\\_Peoples\\_and\\_Conversation\\_french.pdf](https://wwfeu.awsassets.panda.org/downloads/Indigenous_Peoples_and_Conversation_french.pdf) <https://www.wwf.fr/espaces-prioritaires/bassin-du-congo/peuples-autochtones>

<sup>4</sup> Caramel, L. (2017). *Dans le bassin du Congo, les pygmées, gardiens oubliés du climat*. Retrieved from [https://www.lemonde.fr/afrique/article/2016/04/27/dans-le-bassin-du-congo-les-pygmees-gardiens-oubliés-du-climat\\_4909390\\_3212.html](https://www.lemonde.fr/afrique/article/2016/04/27/dans-le-bassin-du-congo-les-pygmees-gardiens-oubliés-du-climat_4909390_3212.html)

<sup>5</sup> *Idem*.

them together in a methodical construction to discover the relationships between them. We have subjected these documents to critical scrutiny, as it is our task to prove their authenticity, provenance and intentions.

For our study, we used official, semi-official, published and unpublished colonial sources, including: Bulletins Administratifs du Congo-Belge, Bulletins officiels de l'E.I.C et du Congo-Belge, Codes et lois du Congo- Belge, reports of the Chambers, Bulletins de la Banque Centrale du Congo, Bulletin de la société belge d'études coloniales, Bulletin de colonisation comparée, Journal Officiel de la RDC, as well as relevant doctrines.

This implies that constitutional provisions on the rights of indigenous peoples in the DRC and general legislative texts, as well as specific forestry, soil and environmental regulations, were used to guide our research. The legal texts were studied using an exegetical and sociological approach. There are several methods of interpretation in law, but for this study we have chosen to use the exegetical method. The aim of this approach is to interpret the text by asking what the legislator intended.

We have also used sources from state and non-state institutions such as the World Bank and NGOs that support the protection and promote the rights of the indigenous "pygmy" peoples of the DRC. These include projects, reports and working tools (maps), as well as a wealth of legal, economic, ecological and sociological information. Finally, we used official and unofficial documents, statistics and empirical studies carried out by CERIDAC researchers, from which we were able to draw not only quantitative, but also qualitative data, using the technique of documentary research. In January 2024, the CERIDAC team also gathered testimonies from the political authorities and some of the indigenous "pygmies" living in Kinshasa who campaigned for the enactment of this law.

To map the lands and living spaces of the indigenous "pygmy" peoples and find recent information on their identification and categorization, we used official data from the National Geographic Institute. We found that there are no historical maps of lands and living spaces of the indigenous "pygmy" peoples of the DRC. The maps we have produced are the result of superimposing different cartographic works, mainly from literature. We used a combination of the maps and the literature we found to delimit the areas of the ethnic groups. Thus, the maps are a synthesis of all geo-localization work on the history, migratory movements, languages and environments of the "pygmy" ethnic groups and groupings.

The systems approach, as applied in this study, enabled us to study feedback loops throughout history, rather than the linearity of events. In other words, we realized that the evolution of the rights of indigenous "pygmy" peoples to the exploitation of their lands in the DRC, established by the colonizers and perpetuated to the present day, is a set of institutions, discriminations, structures and activities interconnected by principles, norms, regulations and laws. In this context, the systems approach enables us to consider the rights of indigenous "pygmy" peoples

in the DRC as a set of sub-systems or institutions for the development and implementation of agricultural and land legislation. It links the constituent elements of an agricultural system, facilitates consideration of the effects of multiple interactions, integrates the short and long term, and is based on a global perception of phenomena.

### 3. A brief history of the indigenous "pygmy" populations in the DRC

In this section, we present the "pygmy" indigenous peoples and the main problems they face in their efforts to survive in regions that attract all kinds of covetousness. We begin by discussing the term "pygmy" and other terms used to describe these ethnic groups, and then go on to present the general context in which they live, including their history, ways of life, relationships with other groups and the injustices they suffer.

The term "pygmy" is a "category" that easily leads to a meaningless generalization. It refers to any small forest population with a mobile lifestyle. It therefore covers a heterogeneous group of scattered ethnic groups, all living in the Congolese basin, from the Atlantic coast to Rwanda, between 5° north and 5° south latitude, but differing physically, genetically, linguistically and culturally, as Bahuchet (1991 and 2012), Froment (1993), Patin *et al.* (2014), Seitz (1993) and Verdu *et al.* (2009) so aptly put it.<sup>6</sup> In Central Africa, the term "pygmy" is increasingly seen as pejorative and replaced in discourse by other designations, such as "4B" in Cameroon, or "indigenous population" more generally. Objections come in particular from advocacy organizations for the protection and promotion of these peoples' rights. One of the reasons for the rejection of the term "pygmy", particularly by African authors (e.g. Fisiy in 1994), is its reference to size, reducing "pygmies" or "little ones" to the rank of cadets or children.<sup>7</sup>

In 1870, explorer Georges Schweinfurth was visiting the kingdom of Mangbetu in the eastern Congo basin, when he came across a small person and gave him the name "pygmy", based on an ancient Greek expression "pygmè" meaning "cubit high" and referring to a mythical population.<sup>8</sup>

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<sup>6</sup> Bahuchet, S. (1991). Les Pygmées d'Afrique centrale: peuple de la forêt ou peuples des forêts? *Journal des Africanistes*, 61(1), 5-35.; Bahuchet, S. (2012). Changing language, remaining pygmy. *Human Biology*, 84(1), 11-43; Froment, A. (1993). Adaptation biologique et variation dans l'espèce humaine: le cas des Pygmées d'Afrique. *Bulletins et Mémoires de la Société d'Anthropologie de Paris*, 5(3-4), 417-448; Seitz, S. (1993). *Pygmées d'Afrique centrale* (L. Bouquiaux & G. Lex, Trans.). Peeters SELAF.; Verdu *et al.* (2009). Origins and Genetic Diversity of Pygmy Hunter-Gatherers from Western Central Africa. *Current Biology*, 19(4), 312-318.; Patin *et al.* (2014). The impact of agricultural diffusion on the genomic diversity of African hunter-gatherers and farmers. *Nature Communications*, 5, 3163.

<sup>7</sup> Fisiy, C. F., (1994). The Political Economy of Representation and Minority Rights in Cameroon. *African Journal of International and Comparative Law*, 6, 403-434.

<sup>8</sup> Schweinfurth, G. (1873). *The Heart of Africa: Three Years' Travels and Adventures in the Unexplored Regions of Central Africa from 1868 to 1871*, Sampson Low, London.

At the end of the 19<sup>th</sup> century, Congo explorers used the term "dwarf" and scientists invented other terms, such as "Hamy's Négrilles" in 1879.<sup>9</sup> All these names of European origin were applied indiscriminately to all groups that differed in one way or another from their neighbors. To these names were soon added local names, most often derived from names given by the neighbors of these groups: Batwa, Bambuti, Babinga.

The word "pygmy" is commonly used, but it has also been stigmatized and replaced by periphrases or ambiguous terminology: hunter-gatherers, hunter-collectors, foragers, forest peoples, forest dwellers and recently "autochthones" in French, translated as "indigenous". However, the synonymous use of the term "pygmies", "hunter-gatherers" and "indigenous peoples" leads to epistemological errors and tautologies that are not without political consequences today. An ongoing debate on the terms "pygmy" and "indigenous" prompted the Congolese legislator to reconcile these two concepts in Law no. 22/030 of July 15, 2022, which was analyzed in such a way as to exclude any pejorative connotations. In the Republic of Congo (RoC), the use of the word "pygmy" is prohibited by Law no. 5-2011 of February 25, 2011 on the Promotion and Protection of the Rights of Indigenous Peoples, Article 1: *"It is assimilated to the offence of insult provided for and punished by the penal code".<sup>10</sup>*

The forest populations of Central Africa are often distinguished by an *emic* distinction, based on different production methods and historical contacts. Europeans, on the other hand, instinctively add a phenotypic distinction. Thus, "hunter-gatherers" (mode of production) becomes directly "pygmies" (phenotypic characteristics). Nor does the "hunter-gatherer" category seem appropriate. It eliminates "pygmy" groups known to be artisans (Rwanda), fishermen (the DRC) or farmers (everywhere, today), and conversely, some groups who are mainly hunters are not "pygmies" (e.g. the Akele in Gabon). It is true that their members are not particularly distinguished by their size. Mobile lifestyles do not characterize all "pygmy" groups, since some are sedentary and live in fixed villages, while others are also farmers. It is for this reason that we have adopted the term "big blacks" to designate these village neighbors, since 1979 by Thomas. The farming populations practice slash-and-burn agriculture, which has led them to move. These populations are not sedentary either, strictly speaking, but nomadic.

Forest peoples may use a variety of terminology to distinguish themselves from other societies. In some cases, non-pygmy communities recognize several categories of society. Examples of societies in the western Congolese basin are given here. In south-east Cameroon, the Bajue distinguish between the Ojel, whom their ancestors met "originally" and who have since

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<sup>9</sup> Hamy, E.T. (1879). *Essai de coordination des matériaux récemment recueillis sur l'ethnologie des négrilles ou pygmées de l'Afrique équatoriale. Bulletins de la Société d'anthropologie de Paris* , 79-101.

<sup>10</sup> Loi n° 5 - 2011 du 25 février 2011 portant promotion et protection des droits des populations autochtones. (2011). In République du Congo, *Journal Officiel De La République Du Congo* [Legal document]. <https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/88187/COG-88187.pdf>

disappeared, and the Bibayagh, the "pygmies" with whom they live today, as pointed out by Koch in 1968. Today, the Maka use the term *ba.yeke* to designate the "pygmies" with whom they trade and who periodically live near their villages (the Baka), and *be.kol* to designate the "pygmies" of the forest, whom they never meet. The various "pygmy" groups, widely scattered throughout the Congolese basin, are unaware of the existence of other similar groups. Despite significant regional differences, the music can sometimes be considered familiar from one group to another.

To account for the socio-cultural diversity of the "pygmy" groups of the Congolese basin, it would be preferable to consider them as opportunistic (and fluid) associations of specialists, some in hunting, others in services, based on complementarity between ethnic groups with different skills. From this point of view, the concept of "peripatetic societies"<sup>11</sup>, nomadic service societies, developed by Aparna Rao, seems relevant. The example of the Oto and Twa in the DRC shows that, although the two types of society are distinct, they nevertheless see themselves as part of the same entity. In 2010, Robillard observed in Cameroon that these inter-ethnic relations can be multiple and complex, and constitute a *polyethnic system*, with permeable boundaries between communities.

Today, the various groups of indigenous peoples of the DRC, generally recognized as "pygmy" peoples, are generally known as Batwa, Batswa, Batoa, Balumbe, Bilangi, Bafonto Samalia and Bone Bayeki in Equateur province; Batsa, Batwa, Bamone and Bakengele in Bandundu province; Bambuti, Baka, Efe and Bambeleketi in Orientale province; Bashimbi (Bashimbe), Bamboté and Bakalanga in Katanga province; Batwa (Batswa) in the two Kasai provinces; Batwa (Batswa), Bambuti, Bayanda, Babuluku, Banwa, Bambuti and Bambote in Nord-Kivu, Sud-Kivu and Maniema province. Other groups are found in the forest region of the DRC, notably the Aka (Asua) along the north-west border with the Republic of Congo and the Bambega in Ubangi in Equateur. There are also groups called Twa and Cwa. The term "Mbuti" can be used to designate the five "pygmy" groups of the eastern province of the DRC. From a naming point of view, the name Batswa is not a fixed term: Batswa, Batshua, Bachwa, Batshwa, Batua or Batoa, are names being given according to the neighboring language that designates the "pygmies".

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<sup>11</sup> According to Rao, "The expression 'peripatetic communities' can be applied to all itinerant endogamous communities whose essential activities do not consist in the production of foodstuffs, and who live mainly from the sale of goods and services to individuals or human groups whom we shall henceforth refer to as their 'clientele'. " (1985: 100).

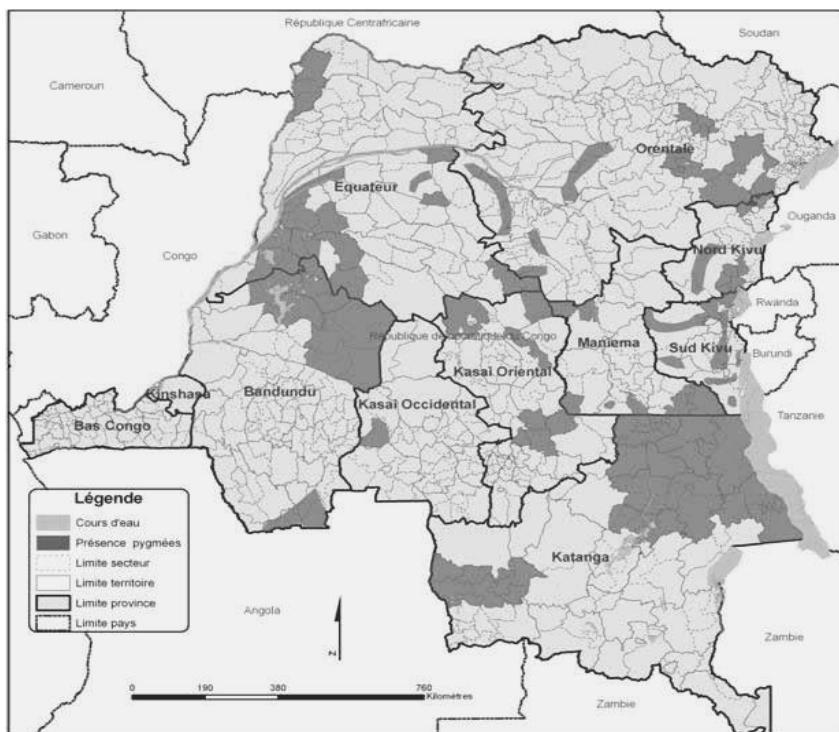


Figure 1: Map of indigenous peoples' sites in the DRC in 2010 [Chabiron et al., 2013]

The total population of "pygmy" indigenous peoples in the DRC is unknown, as there has never been an official census. According to a World Bank report, the "pygmy" population is around 600,000, or nearly 1% of the DRC's total population. According to another report by a pygmy rights organization, there are between 600,000 and 700,000 indigenous people living in the DRC. They live in the equatorial forest of Congo Kinshasa over a vast continuous area of almost 90,000 km<sup>2</sup>, roughly bounded by the Bomokandi (to the north), Ituri (to the east) and Lindi (to the south) rivers—between 3° and 1° north latitude and 26° and 30° east longitude. The presence of indigenous "pygmies" is reported in 21 of the 26 provinces of the DRC (90.9%), 13 of the 25 districts (52%), 55 of the 147 territories (37.9%), 140 of the 737 sectors (chiefdoms/local authorities, i.e. 18.9%), 338 of the 5397 groupings (i.e. 6.3%), in 511 localities and 1030 camps.

**The languages of the "pygmies"** have been studied by many researchers, such as Hulstaert (1978/1986)<sup>12</sup>, Motingea (2021)<sup>13</sup> and Demolin (1990)<sup>14</sup>, and classified by Guthrie (online version of the reference list for the classification of Bantu languages 2009). We have compiled the lexicon available in the literature and compared the languages of the "pygmies" and neighbouring ethnic groups. Some lexical lists come from the database of the Royal Museum for Central Africa in Tervuren. For example, in the region of the former Orientale province of the DRC, there are three

<sup>12</sup> Hulstaert, G. (1978). Notes sur la langue des Bafoto, *Anthropos*, 73, 113-133; Hulstaert, G. (1986). La Langue des Jofe. 227-26. Récupéré sur Honoré Vinck.

<sup>13</sup> Mangulu, A. M. (2021). Vers une écologie linguistique des anciens chasseurs-cueilleurs du bassin central congolais: Traces d'une proto-population ancestrale homogène, *Anthropos*. 116, 137-144.

<sup>14</sup> Demolin, D., & Serge, B. (1990). *Les langues des Pygmées du Haut-Zaïre : un réexamen de la question*. Twentieth Colloquium on African Languages and Linguistics.

language families and 30 different languages, of which the "pygmies" (Mbuti) of the region speak three.

**Source:** WGS Geographic Coordinate Systems; Ancienne Catre de base de l'Institut Géographie du Congo data and organic laws no. 15/006 of March 25, 2015.

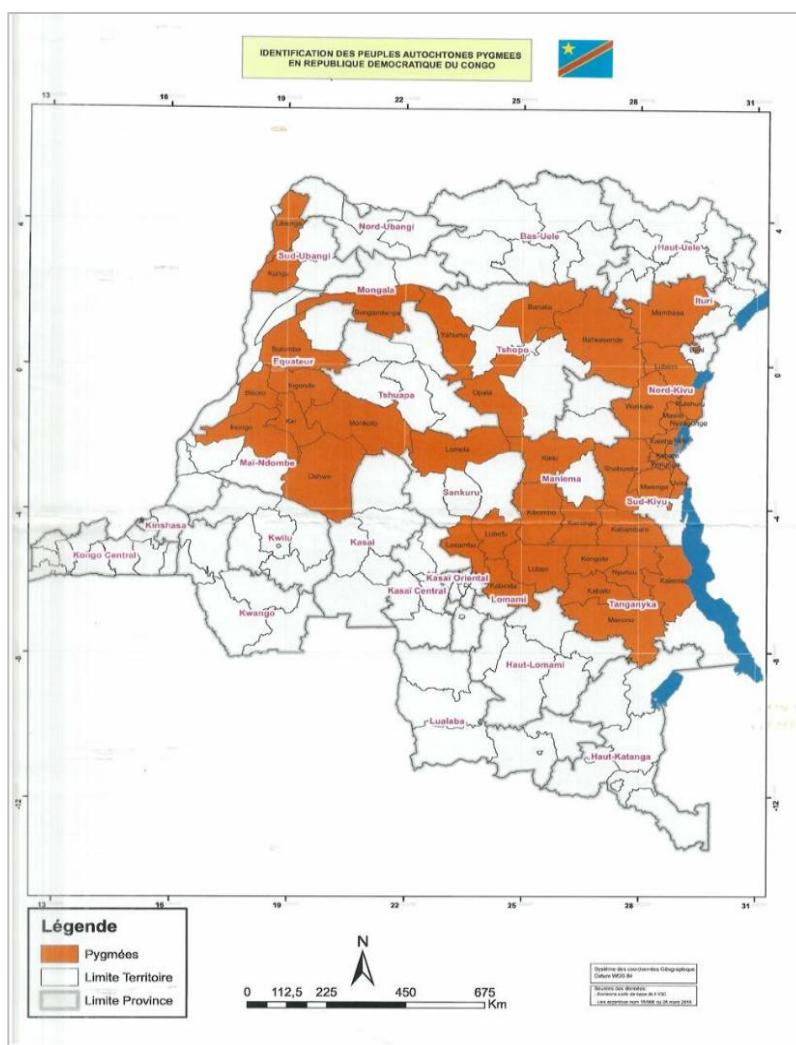


Figure 2: Recent map identifying the indigenous "pygmy" peoples of the DRC [WGS Geographic Coordinate Systems]

Since time immemorial, the indigenous "pygmy" peoples have lived in harmony with nature. They are particularly attached to their traditional territories, on which they depend for their physical survival. Their cultural and spiritual identities, lifestyles and well-being are intrinsically linked to their ancestral

Three dialects of Ki.sua, from the Niger-Congo language family (Bantu branch), are spoken by the Basua, Bacwa and Bakango peoples. Efe (a dialect of Lese-Dese) and Asua belong to the Nilo-Saharan branch of the Central Sudan language family. This leaves the Ubangi branch of the Niger-Congo family, languages not spoken by the region's "pygmies" (Van Bulck, 1952, Demolin & Bahuchet, 1990).<sup>15</sup> In 2020, Lewis mentions that along the Sangha River, the "pygmies" on the left bank speak a dialect of Aka, a Bantu language, while those on the right bank speak Baka, an Ubangian language, without understanding each other.<sup>16</sup>

<sup>15</sup> See Van Bulck, R. (1952). *Les Pygmées du Congo Belge*. Institut Royal Colonial, Brussels.

<sup>16</sup> Robillard & Bahuchet. (2012). Les Pygmées et les autres : terminologie, catégorisation et politique. *Journal des Africanistes*, 82-1/2, 15-51.

forests. The traditional practices of hunting, fishing and gathering wild plants, including those related to pharmacopoeia, species preservation techniques and traditional land management structures have greatly contributed to the survival of their communities and the preservation of ecosystems. They are renowned for their ability to harvest only the resources they need for their daily survival.

Among the different groups of hunters, part of the diet consists of mammals, bushpigs (wild suids), duikers (small forest antelopes), giant rodents (porcupines, Gambian rats) and tree monkeys. They hunt with nets and bows. Collective net hunts involve all the men and women of a band or residential group, as well as neighboring bands. Hunting plays a central role in social organization, as it is linked to religious activities and individual stages of development. Other components of the common diet include products such as yam tubers, liana leaves, mushrooms, oilseeds, caterpillars, termites, beetle larvae and honey. The search for food occupies most of the time. There are no craftsmen, and everyone is capable of making the objects they need. However, the "pygmies" do not transform metal or clay, obtaining the necessary utensils (cooking pots, knives, axe and assegai blades) by trading with neighboring societies.

Traditionally, "pygmies" live in hemispherical plant huts, forming encampments, where collective activities, food sharing and ritual events take place. They live in small, non-hierarchical social groups. In general, the "pygmy" calendar alternates between a season close to the villages, when they work in the fields of the "Great Blacks", and a season of hunting and gathering in the open forest. "Pygmy" society is fundamentally dynamic and mobile; each camp moves five to seven times a year within a given territory, due to depletion of food resources, group size, visits, proximity to neighboring bands, social unrest or death. Communities alternately regroup or divide, in a perpetual movement of fusion and fission. Ceremonies and rituals performed collectively play an important role, as they mark the reaffirmation of the community around its god, materialized by the great songs.

As for the "pygmies" neighbors, the "Great Black" communities of the Bira (Bantu-speaking) and Lese (Sudanese-speaking) are generally cited.<sup>17</sup> The Bira don't seem very comfortable in the forest and rarely go hunting with the BaSua "pygmies", whereas the Lese are very well adapted to the forest and frequently mix with the Efe.<sup>18</sup> These relations are based on economic exchanges between regular partners: each "pygmy" supplies his/her village with game and honey, receiving metal tools and agricultural produce in exchange. Sometimes, the "pygmies" also work in the

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<sup>17</sup> Bahuchet, S. et al. (2001). *Tropical forest peoples today: Volume I Tropical Forests, Human Forests: An overview*. Future of Rainforest Peoples.

<sup>18</sup> Grinker, R. R. (1994). *Houses in The Rainforest: Ethnicity and Inequality Among Farmers and Foragers in Central Africa*. University of California Press.

fields of the "Great Blacks", while remaining close to their villages.<sup>19</sup> The association between the "pygmies" and the "Great Blacks" is also reflected in the sharing of key social institutions, and the mythological importance of the "pygmies" to the "Great Blacks" is a mark of the antiquity of their relationship. "Pygmies" are present in their religion, cosmogony and magic.<sup>20</sup>

"Pygmies" and "Great Blacks" alike wear bark loincloths (sometimes called "tapa", after the Polynesian name for beaten tree bark) pulled over the crotch at the front and more widely at the back, and held in place by a belt. The size of the shreds used varies widely, and they can be dyed or kept their natural colour. Mangbetus loincloths always alternate white and black stripes.<sup>21</sup> The Lese wear white loincloths in their daily lives, while red bark loincloths are used for ceremonies and celebrations. Among the Bambuti, it's the men who prepare the tapas, but it's the women who decorate them. Further information on the loincloths and cultures of the "Great Black" communities is available in the full report.

It is widely accepted that the ancestors of the various "pygmy" peoples were the first inhabitants of the Congo Basin and the Great Lakes region, where they lived for thousands of years before the arrival of farming groups. This notion is supported by their perfect technical adaptation and ethnoecological knowledge of the equatorial forest environment, as well as their morphological adaptation to its climate.<sup>22</sup> Specialists put forward a period of isolation of 20,000 years to justify this genetic differentiation<sup>23</sup>. Finally, the oral traditions of all peasant populations in this region point to the "pygmies" as the oldest inhabitants of the forest, whom they all met when they settled there.<sup>24</sup> However, archaeological data are still lacking to confirm this.<sup>25</sup>

The terminology used to describe the neighbors of the "pygmies" also varies: villagers, farmers, Bantu, "Great Blacks", "non-Pygmy". The term Bantu is certainly the most inappropriate, since

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<sup>19</sup> Turnbull, C. (1965). *The Mbuti Pygmies: an ethnographic study*. New York: American Museum of Natural History; Ichikawa, M. (1982). Ecological and Sociological Importance of Honey to the Mbuti Net Hunters, Eastern Zaire. *African Study Monographs*, 1, 55-68.

<sup>20</sup> Hewlett, B. S. (1991). *Intimate fathers: the nature and context of Pygmy paternal infant care*. University of Michigan Press; Lewis, J. (2002). *Forest hunter-gatherers and their worldview: a case study from the Congo Basin*. PhD Thesis, University of London.

<sup>21</sup> Gillon, W. (1984). *A Short History of African Art*, Penguin Books; Bahuchet, S. (2001). *Tropical forest peoples today*. UNESCO; Turnbull, C. M. (1965). *The Mbuti Pygmies: an Ethnographic Survey*. American Museum of Natural History.

<sup>22</sup> Hewlett, B. S. (2014). *Hunter-Gatherers of the Congo Basin: Cultures, Histories and Biology of African Pygmies*. Routledge.

<sup>23</sup> Patin et al. (2009). Inferring the Demographic History of African Farmers and Pygmy Hunter-Gatherers Using a Multilocus Resequencing Data Set. *PLoS Genetics*, 5(4), e1000448.

<sup>24</sup> Sebag et al. (2013). Coupled Rock-Eval pyrolysis and Spectrophotometry for lacustrine sedimentary dynamics: Application for West Central Africa rainforests (Kamalété and Nguène lakes, Gabon). *The Holocene*, 23(8), 1173-1183.

<sup>25</sup> Vansina, J. (1990). *Paths in the Rainforests: Toward a History of Political Tradition in Equatorial Africa*. University of Wisconsin Press.

it refers to a linguistic family.<sup>26</sup> Most of the languages of the "pygmy" groups in the Congolese basin belong to this family.<sup>27</sup> Relations between the "pygmies" and neighboring populations are distinguished from other African hunter-gatherers by their social integration and membership of the same linguistic community. This testifies to a long-standing relationship and shared history. This is what we call the "pygmy paradox".<sup>28</sup> During the pre-colonial era, from its origins to 1876, populations from diverse horizons met and mingled, exchanging beliefs, customs and rites for several centuries. Fragmented clans crossed paths, clashed and allied, while some tried to subjugate others.<sup>29</sup> The inter-African trade in ivory and slaves developed over long distances.<sup>30</sup>

At the end of the 19th century, European colonial penetration profoundly transformed the pre-colonial system of alliances.<sup>31</sup> Leopold II's independent state of Congo, renamed Belgian Congo (1908), set up a trading economy to supply the "mother country" with agricultural products and raw materials. The government created a system of forced labor and established cocoa, coffee, cotton, palm and rubber plantations, which also competed with food crops.<sup>32</sup> "Pygmies" were involved in supplying meat to administrative posts in exchange for small items such as beads, shells or a piece of cloth, as Demuenynck wrote in 1908.<sup>33</sup> After independence in 1960, a

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<sup>26</sup> *Ibid.*

<sup>27</sup> Dimmendaal, G.J. (2008). Language ecology and linguistic diversity on the African continent. *Language and Linguistics Compass*, 2(5), 840-858.

<sup>28</sup> Bahuchet, S. (2012). Changing language, remaining pygmy. *Human Biology*, 84(1), 11–43.

<sup>29</sup> Harms, R.W. (1981). *River of Wealth, River of Sorrow: The Central Zaire basin in the era of the slave and ivory trade 1500-1891*, Yale University Press.

<sup>30</sup> Lovejoy, P. E. (2011). *Transformations in Slavery: A History of Slavery in Africa*. Cambridge University Press.

<sup>31</sup> Vansina. J. (1964). *Le royaume Kuba*. Musée royal de l'Afrique centrale.

<sup>32</sup> Nzongola-Ntalaja, G. (2002). *Congo: From Leopold to Kabila*. Zed Books; Hochschild, A. (1998). *The Ghosts of King Leopold*. Éditions Belfond; Anstey, R. (1966). *King Leopold's legacy: the Congo under Belgian rule, 1908-1960*. Oxford University Press.

<sup>33</sup> Demuenynck (1908). *RP Mission reports*. Archives of the Belgian Catholic Missions, Tervuren.

rebellion against the central government and everything that represented the old colonial order

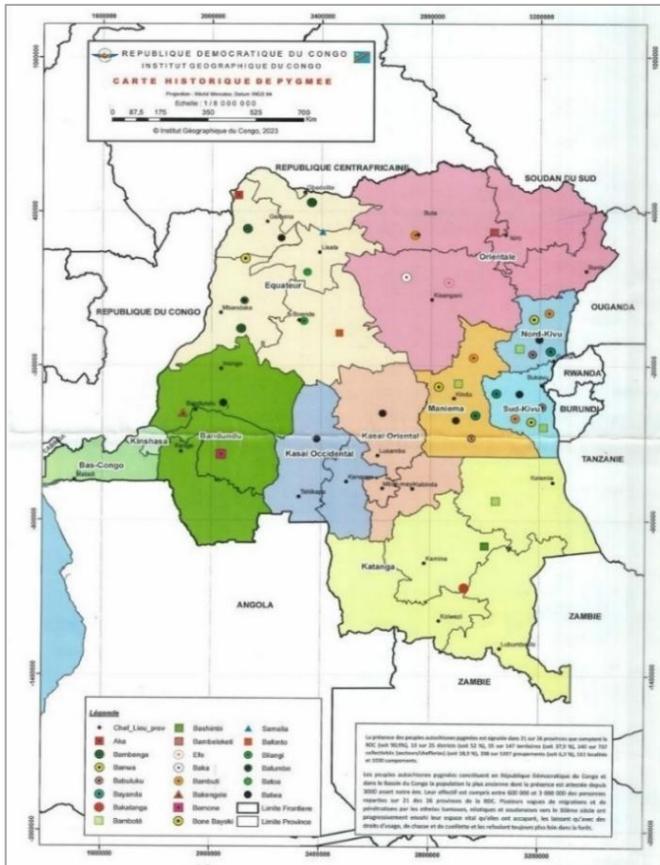


Figure 3: Historical map of the indigenous "pygmy" peoples of the DRC. (Institut Géographique du Congo, 2023)

led military troops to scour the forest. Groups of "pygmies" were used as guides and trackers.<sup>34</sup>

The authoritarian system and colonial brutality hardened relations between the "Great Blacks" and the "pygmies". The market economy that succeeded the slave economy has maintained this type of relationship, in which villagers tend to regard the "pygmies" as inferior.<sup>35</sup> Servants, slaves, parasites are all terms used in the literature to describe "pygmies" in relation to their neighbors. In 2008, some 100 "pygmies" were freed from slavery in the DRC, and many families had been enslaved for several generations.<sup>36</sup> Here are some of their nicknames in the various provinces: "Bayanda" (those who steal), "Batuabuki" (those who provide honey), "Benakiyombo" (those who love the bush), "Bashimbi" (animal hunters), etc. On the one hand, they're mean, but on the other, they're not. On the one hand, they are despised; on the other, they are admired as hunters and connoisseurs of the forest, and for their magical powers.<sup>37</sup>

"Beko" (creatures who frighten people). Other nicknames, on the other hand, are more in the nature of praise: "Batuabuki" (those who provide honey), "Benakiyombo" (those who love the bush), "Bashimbi" (animal hunters), etc. On the one hand, they're mean, but on the other, they're not. On the one hand, they are despised; on the other, they are admired as hunters and connoisseurs of the forest, and for their magical powers.<sup>37</sup>

<sup>34</sup> Gérard-Libois, J. (1963). *Secession in Katanga*. CRISP, Brussels.

<sup>35</sup> Vansina, Jan. (1990). *Paths in the Rainforests: Toward a History of Political Tradition in Equatorial Africa*. University of Wisconsin Press.

<sup>36</sup> Minority Rights Group International. (2009). *State of the World's Minorities and Indigenous Peoples 2009: Congo (DRC)*.

<sup>37</sup> Lewis, J. (2000). *The Batwa Pygmies of the Great Lakes Region*. Minority Rights Group International; Ichikawa, M. (2012). Central African Forests as Hunter-Gatherers' Living Environment: An Approach to Historical Ecology. *African Study Monographs*, Supplementary Issue 43.

Today, indigenous "pygmy" peoples continue to suffer severe discrimination. Their living conditions are characterized by various forms of mistreatment and stigmatization, which are at the root of their political, administrative, economic, social and cultural marginalization. Under-represented in national political bodies, "pygmies" do not fully enjoy the land they occupy, and have extremely difficult access to justice and basic social services, including education, health and housing.<sup>38</sup> A World Bank study shows that only 18.7% of indigenous "pygmy" children (aged 6 to 11) are enrolled in elementary school in the DRC, compared with a national rate of 56.1%.<sup>39</sup> Many "pygmies" have no identity card, which complicates their legal recognition and access to rights.<sup>40</sup> Political representation of indigenous peoples in the DRC is virtually non-existent, as there are no indigenous "pygmy" members in the Senate or National Assembly,<sup>41</sup> and only one indigenous deputy in the provincial assemblies.<sup>42</sup> Their level of illiteracy, combined with stigmatization and ignorance of their rights, lack of access to legal and judicial information, the use of unfamiliar official languages and the geographical remoteness of judicial bodies, as well as the lack of financial means necessary to initiate legal proceedings, are all obstacles preventing indigenous "pygmy" peoples from gaining access to justice.<sup>43</sup>

Their traditional way of life is undergoing radical change as a result of increasing pressure on the forests in which they live. This pressure is due to many factors: industrial and artisanal logging and mining, the creation of protected areas, oil and gas exploration, land grabbing by elites, demographic pressure and cultural conflicts with dominant groups taking precedence over others. Their customary rights to land are not recognized; on the contrary, the government considers these lands vacant. The dispossession of "pygmies" from their ancestral lands precipitates the loss of their cultural identity. The influx of migrants has led to a decline in animal populations and, consequently, weakened the "Pygmies'" access to wild resources. The result is a loss of hunting and gathering, efficiency and increasing economic fragility for the "pygmies". Without access to traditional forest foods and medicines, displaced "pygmies" often fall ill. Pygmy women are sexually assaulted, and infant and maternal mortality rates are high. Despite the absence of statistics, it is generally accepted that indigenous "pygmy" peoples have a lower life expectancy than their non-indigenous fellow citizens.<sup>44</sup>

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<sup>38</sup> United Nations Human Rights Council. (2010). Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, A/HRC/15/37; Minority Rights Group International. (2019). *World Directory of Minorities and Indigenous Peoples - Democratic Republic of the Congo*.

<sup>39</sup> World Bank. (2017). Congo, Democratic Republic of - Support to Basic Education Program Project: indigenous peoples plan: Plan en faveur des populations autochtones.

<sup>40</sup> Forest Peoples Programme. (2008). *Beyond tenure: rights-based approaches to peoples and forests*.

<sup>41</sup> Speaking of the third legislature 2018-2023.

<sup>42</sup> International Peace Information Service (IPIS) and Forest Peoples Programme. *Political representation of indigenous peoples in the DRC*, 2021.

<sup>43</sup> Forest Peoples Programme. (2016). *Report: Securing Forest Peoples' Rights and Tackling Deforestation in the Democratic Republic of Congo*.

<sup>44</sup> See in particular: African Commission on Human and Peoples' Rights. (2021). *The Indigenous World 2021*; Lewis, J. (2012). Technological leap-frogging in the Congo Basin. Pygmies and geographic

Having lost access to their ancestral lands, the “pygmies” have also lost some of their mobility. As a result, their contacts with villagers lengthen in the annual cycle, and their dependence on agricultural products and casual labor increases. Their sedentarisation makes them dependent on the farmers or traditional chiefs to whom they are subject to. Many “pygmies” have become sedentary squatters on uninhabited land, and face recurrent land disputes with their neighbors. They generally work for the Bantu peoples for low wages in cash or in kind, such as small quantities of food, cigarettes or alcohol. The conditions in which they live are extremely precarious, due to their poverty and vulnerability. Some “pygmies” have now embarked on a sedentary lifestyle, wishing to “live like men”.<sup>45</sup>

Some “pygmies” have rebelled against the mistreatment they have endured for generations, leading to violent conflict, death and displacement. “Pygmy” communities have suffered greatly from the ongoing conflicts in the DRC. Rogatien Kitenge, an activist for the rights of the “pygmies” in northern Katanga, believes that no lasting solution will be found until the underlying anthropological and socio-economic questions that help to understand the motivations of all parties, including the authorities, have been answered.<sup>46</sup> Human Rights Watch said: “*The issues underlying the violence will not be resolved until the fundamental rights of the long-oppressed [“pygmies”] are respected.*<sup>47</sup> These conflicts are rooted in questions of land and identity. Both Bantus and “pygmies” can claim to originate from a certain region.<sup>48</sup>

It's important to note that between “pygmy” peoples and others, there are as many types of relationship as there are social groups, often varying within the same “pygmy” group due to the different societies with which they come into contact. A description of these variations can be found in Arom and Thomas (1974), in Bahuchet in 1985 and in Guillaume's very detailed sociological and historical study in 2001.<sup>49</sup> Only a fraction of Central Africa's forest populations maintain privileged relations with “pygmy” communities. The type of relationship between “pygmies” and “non-Pygmy” must therefore be defined on a case-by-case basis, before any political intervention is undertaken.

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positioning systems in Central Africa: What has happened and where is it going? *African Study Monographs*, Supplementary Issue 43, 15-44; United Nations. (2018). *Report of the 17th Session of the United Nations Permanent Forum on Indigenous Issues. Indigenous peoples' collective rights to lands, territories and resources.*

<sup>45</sup> Bahuchet, S. (2001). *Tropical Forest Peoples Today*, UNESCO; International Peace Information Service (IPIS)

<sup>46</sup> Kitenge, R. (2017). *Conference on peace and the rights of indigenous peoples in Katanga*.

<sup>47</sup> Human Rights Watch. (2016). *Democratic Republic of Congo: Discrimination fuels violence in Tanganyika*.

<sup>48</sup> Higgins, C. (2010). *Land, Power and Identity: Roots of violent conflict in Eastern DRC*. International Alert.

<sup>49</sup> Arom, S. & Thomas, J-L. (1974). *Les Mimbo, genies du piegeage, et le monde surnaturel des Ngbaka-Mabo, Republique Centrafricaine*. SELAF.

## 4. Brief introduction and background to Law no. 22/030 of July 15, 2022

### 4.1 Development of the law

From 1885 to 2021, the DRC had no law to protect indigenous peoples in accordance with their legitimate rights, but rather, as we elaborated in the previous section, the “pygmies” were subjected to abuse, and the forests as the basis of their lives were destroyed. The injustices committed against the “pygmies” have not been resolved by successive regimes, namely Joseph KASA-VUBU from 1960 to 1964, MOBUTU from 1965 to 1997, Laurent Désiré KABILA from 1997 to 2001, followed by Joseph KABILA from 2001 to 2019. He was followed by President Félix TSHISEKEDI, although his political group Cap pour le Changement (CACH) formed an alliance with Joseph KABILA's Front Commun pour le Congo (FCC), which consequently continues to influence politics and power in the DRC, directly and through intermediaries and institutional allies.<sup>50</sup>

However, despite the history of ignorance of indigenous peoples, there have been major developments with regard to their rights in the DRC, also highlighted in Willy LOYOMBO and Adrien SINAFASI's book.<sup>51</sup> The 1990s saw the emergence of indigenous peoples' organizations in the DRC, first in the east in the 1990s, then in the west of the country from 2000 onwards.<sup>52</sup> This is significant, because the work on the new law began with the mobilization of these organizations, which took a stand against a World Bank proposal to exploit the DRC's forest resources. To revive the economy of a country ravaged by thirty-two years of dictatorship and fifteen years of civil war, the Bank wanted to promote the exploitation of the Congo Basin's forests. The Bank granted loans in 2002 and 2005 on condition of political and forestry reforms in the DRC.<sup>53</sup>

The organization Dynamique des groupes des peuples autochtones (DGPA) was of particular importance as it campaigned for the law for several years, working at local and national level, demanding recognition of the rights of “pygmies” and putting an end to their discrimination. In 2005, the DGPA petitioned the World Bank's Inspection Panel, asking it to reconsider its plan to finance two forestry projects in the DRC. Criticism focused on the lack of involvement of local communities in forest zoning and the risk of violating the rights of indigenous populations. The DGPA considered that these World Bank projects would significantly affect “pygmy”

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<sup>50</sup> International Crisis Group. (2018). *Electoral Poker in DR Congo*.

<sup>51</sup> Loyombo, W. & Sinafasi, A. (2021). *Les droits des peuples autochtones en RDC: De l'oubli à la reconnaissance*, L'Harmattan.

<sup>52</sup> Forest Peoples Programme. (2016). *Report: Securing Forest Peoples' Rights and Tackling Deforestation in the Democratic Republic of Congo*.

<sup>53</sup> World Bank. *Democratic Republic of the Congo: Forestry Sector Review*, Reports no. 26925-ZR (2002) and no. 36602-ZR (2005).

communities, and therefore violate the Bank's operational guideline 4.20, which calls for the preparation of an indigenous development plan for investment projects affecting them. After examining the file, the Inspection Panel concluded that the "pygmies" of the DRC should be considered as peoples within the meaning of operational directive 4.20".<sup>54</sup>

This is why, in 2006, the indigenous populations of the DRC obtained official recognition from the World Bank.<sup>55</sup> In 2007, the Panel concluded that the Bank had failed to respect its own standards for the protection of local communities. This decision was a decisive victory for the DGPA, enabling it to gain recognition and legitimacy from a major international institution. Following the Panel's decision, the World Bank decided to suspend its plans to finance logging concessions covering 600,000 square kilometers of forest in the DRC. Taking advantage of this victory to launch a national campaign in partnership with other civil society organizations, the DGPA succeeded in obtaining a moratorium on the allocation of new forest concessions in the country. The unprecedented mobilization that enabled the World Bank to back down gave new impetus to the drive to incorporate the rights of indigenous "pygmy" peoples into national legislation. The panel's work can be seen as the starting point for the recognition of their rights as indigenous peoples of the DRC. In 2009, the World Bank drew up a strategic framework for the preparation of a development program for "pygmies" in the Democratic Republic of Congo.<sup>56</sup>

The years 2012-2014 were a period of openness to positive policies in favor of indigenous peoples. During these years, the DGPA initiated an international consultative process for the drafting of a bill recognizing the rights of "pygmies" in the DRC. It also launched a consultation process within the country's "pygmy" communities. The DGPA consulted indigenous groups in the Central African Republic and Republic of Congo, as well as legal specialists, international human rights organizations and conservation NGOs. The organization lobbied parliamentarians from both the presidential majority and the opposition to consider the proposed law, and also mobilized key representatives to submit and defend the bill in parliament. In a further attempt to secure recognition of the rights of indigenous "pygmy" peoples, the DGPA campaigned for the adoption of national and international policies. During this period, the DGPA also launched an agrarian reform with the participation of indigenous peoples.

In July 2014, a text was submitted to the National Assembly. The Parliamentary Group for the Defense and Promotion of Indigenous Peoples finalized and submitted the bill to the Congolese

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<sup>54</sup> World Bank (1991). *Operational Guideline 4.20: Indigenous Peoples*; World Bank Inspection Panel. (2007). *Rapport d'enquête: République démocratique du Congo: Projet d'appui transitoire à une opération de crédit au redressement économique (TSERO) et Projet d'urgence à l'appui de la réunification économique et sociale (EESRSP)*

<sup>55</sup> World Bank Inspection Panel. (2007). *Case of the Democratic Republic of Congo - Indigenous peoples and forestry projects*.

<sup>56</sup> Minority Rights Group International (2010). *State of the World's Minorities and Indigenous Peoples 2010: DRC Chapter*; World Bank. (2009). *Democratic Republic of Congo Strategic Framework for the Preparation of a Pygmy Development Program*. Report no. 51108-ZR.

Parliament on July 31, 2014. On August 9, 2014, to mark the United Nations International Day of the World's Indigenous People, the DGPA mobilized thousands of "pygmies" to march through the streets of the capital Kinshasa to demand the law's adoption. In 2017, Congolese deputies were due to examine the texts, and the law was placed on the agenda of the Congolese National Assembly. In 2019/2020, to consolidate the power acquired and avoid being overthrown by KABILA, the new president Félix TSHISEKEDI took advantage of this historical, legal and political situation, using his political strength to rally the forces of the nation and by drawing closer to the indigenous "pygmy" peoples, using the claims of state and local institutions as an asset.

On June 5, 2020, under the presidency of Madame Janine Mabunda Liyoko, the National Assembly of the Democratic Republic of Congo adopted without amendment and forwarded to the Senate, headed by Alexis Thambwe Mwamba, the bill on the protection and promotion of the rights of indigenous "pygmy" peoples.<sup>57</sup> The vote in favor of the bill's admissibility was a historic step. With this vote, the National Assembly took the Congolese state one step further in the process of recognizing the rights of indigenous peoples, thirteen years after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>58</sup> The text aimed to put the country on a par with its neighbors in terms of legal protection of the rights of indigenous peoples. In 2011, the neighboring Republic of Congo adopted a law on the promotion and protection of the rights of "pygmy" peoples.<sup>59</sup>

On July 15, 2022, President Félix-Antoine Tshisekedi promulgated Law n°22/030 on the Promotion of the Rights of Indigenous "Pygmy" Peoples in DRC. A few months later, Félix-Antoine Tshisekedi broke with Joseph KABILA by breaking the FCC-CACH agreement. From then on, the government's priority was to put an end to the insecurity and war in Eastern DRC. In this context, Law n°22/030 of July 15, 2015 promoting the rights of indigenous "pygmy" peoples seems to be suffering from its application by the Congolese administration and even organizations defending the rights of indigenous peoples.

In addition to indigenous organizations, other civil society organizations, political figures, the World Bank and the UNDP were among the actors whose work motivated the elaboration and adoption of the law. This process of preparation and dialogue drew on the abundant scientific literature produced by Congolese and West African historians, anthropologists, linguists, environmentalists, sociologists and ethnographers on the "pygmy" peoples. While campaigning for the law, state and non-state institutions have also produced a wealth of literature: projects, reports and working tools, as well as legal, economic, ecological and societal information. We

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<sup>57</sup> National Assembly of the DRC. (2020). *Minutes of the plenary sessions of June 5, 2020*.

<sup>58</sup> United Nations General Assembly. (2007). Resolution 61/295. *United Nations Declaration on the Rights of Indigenous Peoples*.

<sup>59</sup> Republic of Congo. *Law n°5-2011 of February 25, 2011 on the promotion and protection of the rights of indigenous peoples*.

have used these sources in the present study, and present them below classified by date of publication.

**1. Democratic Republic of Congo, Ministry of Public Works and Infrastructures. *Projet PRO-Routes - Plan des Peuples Autochtones: Kisangani-Bunduki et Fizi-Kasomeno. PROJECT, GDE, September 2007.***

In 2007, the DRC set up the PRO-ROUTES project, financed by donors coordinated by the World Bank, aimed at rehabilitating major roads and mitigating their negative impacts. This project involved the indigenous populations. The presence of "pygmies" is attested along the road from Fizi to Kasomeno, for example. The project's planning framework aimed to fully respect the dignity, human rights, economy and culture of indigenous populations, and to ensure that they derived appropriate socio-economic and cultural benefits. This report demonstrated how these objectives could be achieved, and defined measures to avoid negative impacts on indigenous populations, or to mitigate, minimize or compensate for such impacts.<sup>60</sup>

**2. World Bank-Democratic Republic of Congo: *Strategic framework for the design of a development program for fragile "pygmies",* Development Department, Africa Region "Fragile States, Conflict and Social Development" - Sustainable Development Department, Africa Region. Report n° 51108-ZR, December 2009, 130 pages.**

This World Bank document forms the basis of a strategic framework for the development of the "pygmy" indigenous peoples of the DRC. It was validated at a workshop organized in Kinshasa in 2009 by the Minister of the Environment, Nature Conservation and Tourism, in the presence of representatives of the Ministries of Finance and Social Affairs, members of civil society and NGOs. The report details the situation of the "pygmy" peoples, whom it describes as poor, vulnerable and marginalized. According to the document, they are suffering from sedentarisation caused by increasing pressure on the forest environment, and denials of their rights are increasing due to their unfavorable social and administrative environment. All their indicators—income, education, health, social capital, security—are lower than those of their "neighbors".<sup>61</sup>

**3. Civil Society Working Group on Climate and REDD. *Forest-dependent and indigenous peoples in DR Congo speak out on REDD.* Kinshasa: World Bank-funded project, June 2010.**

The DRC has signed up to REDD+ (*Reducing Emissions from Deforestation and Forest Degradation*), an international mechanism for reducing deforestation and forest degradation through financial incentives.<sup>62</sup> In 2010, the civil society REDD Climate Working Group published

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<sup>60</sup> Kisangani & Fizi (2007). *Projet PRO-ROUTES: Réhabilitation des routes prioritaires en RDC - Cadre de planification pour les peuples autochtones.* République Démocratique du Congo, Ministère des Travaux Publics et Infrastructures, EDG. Draft.

<sup>61</sup> World Bank. (2009). Democratic Republic of Congo Strategic Framework for the Preparation of a Pygmy Development Program. Report no. 51108-ZR.

<sup>62</sup> See the REDD+ -United Nations Framework for Climate Change (UNFCCC) site: <https://redd.unfccc.int/>

a document on indigenous and forest-dependent peoples in the DRC. Its specific objectives are as follows: Enable indigenous and forest-dependent communities to understand REDD and test their understanding of payments for environmental services; Use their mapping methodology to find a participatory way to reduce deforestation and degradation; Capitalize on the information and data collected from these communities and include it in law n°22/030. More than 3,000 indigenous people and local communities have been directly affected and have contributed to the REDD process.<sup>63</sup>

**4. *La protection du droit à la terre et aux ressources naturelles en droit international et régional africain: Trousse d'information à l'intention des ONG de la République Démocratique du Congo*, July 2010, p. 36.**

In 2010, an information kit for NGOs in the Democratic Republic of Congo was published. It was produced by five Congolese NGOs: Actions pour les Droits, l'Environnement et la Vie (ADEV), Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV), Cercle pour la Défense de l'Environnement (CEDEN) and Réseau CRÉF, with support from the Forest Peoples Programme (FPP). It deals with the protection of rights to land, territories and natural resources under international and African regional law. It aims to provide NGOs, indigenous peoples and local communities with accessible information on the legal framework relating to these rights, so that they can claim their rights and advocate for the DRC government to respect its international legal obligations.<sup>64</sup>

**5. Jean Mpia Bikopo and Bruno Perodeau, *Cadre fonctionnel de la stratégie du WWF (Fonds mondial pour la nature) sur les peuples autochtones pygmées en République Démocratique du Congo*, Kinshasa, WWF, December 2012, 23 p.**

The WWF Declaration of Principles on Indigenous Peoples and Conservation was first drafted in 1996, then adapted to local realities by the Congolese WWF in 2008. These commitments were made specifically to recognize the rights of indigenous peoples to customary territories and resources, while promoting the principle of free and informed consent. These principles derive from WWF's biodiversity conservation mission, and imply recognition of indigenous peoples as key custodians and protectors of nature, and legitimate architects and partners of conservation and development strategies that affect their territories. WWF recognizes the right of indigenous peoples to exercise control over their lands and to define management systems best suited to their cultural and social needs, while respecting national sovereignty.

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<sup>63</sup> REDD Climate Working Group. *Forest-dependent and indigenous peoples in DR Congo speak out on REDD*. Kinshasa. World Bank-funded project, June 2010, pp. 5-12.

<sup>64</sup> Actions pour les Droits, l'Environnement et la Vie (ADEV) et al. (2010.) *La protection du droit à la terre et aux ressources naturelles en droit international et régional africain: Trousse d'information à l'intention des ONG de la République Démocratique du Congo*, July 2010, p. 1, 12 and 36.

**6. NGO report on indigenous "pygmy" peoples: Universal Periodic Review of the Democratic Republic of Congo (2014), Indigenous peoples in the DRC: The injustice of multiple forms of discrimination, September 2013.**

This alternative report by indigenous "pygmy" associations and non-governmental organizations was published in 2013. The author organizations are FDAPID-Hope, LINAPYCO, OSAPY, PIDP SHIRIKA LA BAMBUTI, REPALEF, PREPPYG and UEFA. They deplore the lack of commitment to protecting the rights of indigenous "pygmy" peoples, who face multiple forms of discrimination and live in conditions of extreme vulnerability and poverty. This report highlights their situation, the devastating effects of displacement and discrimination in education, health, participation and access to justice. The author organizations call on the Human Rights Committee to adopt a holistic approach that takes into account the cumulative effects of the various forms of discrimination against indigenous "pygmy" peoples.<sup>65</sup>

**7. République Démocratique du Congo, Plan pays - Soutien aux communautés et peuples autochtones dans le cadre de la REDD+ (CBR+), February 2015, 36 p.**

In 2015, the Democratic Republic of Congo set up a national support plan for indigenous communities and peoples as part of the REDD+ mechanism. The REDD+ process in the DRC began in 2009 and is led by the Ministry of the Environment, Nature Conservation and Tourism (MECNT), in partnership with UN-REDD and the World Bank, with very active involvement of other stakeholders, including Congolese civil society organizations and indigenous peoples, notably organized through the Groupe de Travail Climat-REDD+ (GTCR). This process has been marked by great efforts, intense consultations and a great willingness on the part of the government to advance REDD+ in its development agenda.<sup>66</sup>

**8. Inclusion of minorities and indigenous "pygmy" populations, Kinshasa, October 30, 2016. Report on the electoral process in the DRC, with the help of the Espoir Pour Tous team.**

This report was produced in 2016 with technical support from the Projet de Renforcement de l'Observation Citoyenne des Élections au Congo (PROCEC), implemented by the Electoral Institute for Sustainable Democracy in Africa (EISA) and Democracy Reporting International (DRI). This report focuses on the factor of inclusion in electoral cycles in the DRC, in particular the involvement of vulnerable communities, minorities and indigenous groups. The report examines the conformity of the Congolese legal framework for election management and the positions of stakeholders with international legal instruments ratified by the DRC. The aim was

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<sup>65</sup> Foyer de Développement pour l'Autopromotion des Pygmées et Indigènes Défavorisés et al. (2013). *NGO Report on Indigenous Pygmy Peoples: Universal Periodic Review of the Democratic Republic of the Congo*. p.1,2, 5 and 7.

<sup>66</sup> Democratic Republic of the Congo. (2015). *Country Plan - Support for indigenous communities and peoples in the context of REDD+ (CBR+)*, February 2015, p. 1.

to gain a better understanding of the depth of Congolese democracy, including the institutions that guarantee fundamental rights for all citizens, including minorities.<sup>67</sup>

**9. DRC National REDD+ Fund. Towards mobilizing climate finance for DRC's sustainable development, Program document for the World Bank's National REDD+ Fund, expected start date: December 31, 2016.**

The program submitted to the Fonds National REDD+ of the DRC aims to promote sustainable forest management by strengthening the rights of indigenous peoples and their participation in REDD+, and to build the capacity of communities to increase their influence on the definition of sectoral policies, land use planning and sustainable land management. The project also aims to develop production activities linked to the sustainable management of forest landscapes, defined in a participatory manner and carried out by local organizations. A key aspect is the involvement of all local and "pygmy" communities in the project design, with principles such as joint decision-making, transparency, and the inclusion and protection of vulnerable members of society guide this project.<sup>68</sup>

**10. Dynamique des Groupes des Peuples Autochtones (DGPA), *Rapport alternatif au Rapport périodique de la République Démocratique du Congo au Comité des Droits de l'Homme: Les peuples autochtones pygmées en RDC - l'état de leurs droits et la situation dans la province du Tanganyika*, September 2017, 16 p.**

In 2017, the DGPA published *Alternative Report to the Periodic Report of the Democratic Republic of Congo to the Human Rights Committee Indigenous "Pygmy" Peoples in the DRC*. This report deplores the almost total absence of information on the legal status of indigenous "pygmy" peoples and the lack of measures to promote and protect these peoples. This report first examines the state of their rights in the DRC, and respectfully requests the Human Rights Committee to adopt a holistic approach in examining their situation and in its recommendations to the DRC government, which takes into account the multiple forms of discrimination suffered by indigenous "pygmy" peoples, as well as the cumulative effects and impacts of these different forms of discrimination on them.

**11. Dynamique des Groupes des Peuples Autochtones (DGPA), *Democratic Republic of Congo. UNDP Equator Initiative Case Studies: Local sustainable development solutions to support resilient people, nature and communities*, UNDP Equator Initiative Case Study Series, Equator Initiative, 2019, 14 p.**

According to the UNDP Equator Initiative case study series, local and indigenous communities around the world are developing innovative solutions for sustainable development. According to

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<sup>67</sup> *Inclusion des minorités et des populations autochtones " pygmées "*, Kinshasa, October 30, 2016, report produced with the support of Espoir Pour Tous and the PROCEC Project (EISA and DRI), p. 1.

<sup>68</sup> DRC National REDD+ Fund. (2016). *Towards mobilizing climate finance for DRC's sustainable development*, Program Document for the World Bank's National REDD+ Fund, December 31, 2016, p. 1, 8, 14 and 18.

this source, DGPA is working with communities in the DRC to produce forest maps delineating areas of traditional and customary use, sacred sites and areas where other human activities take place, highlighting competing rights and uses of the landscape, and illustrating the situation of "pygmies" in the face of dominant powers, such as the state and industry. This use of reverse mapping can reinforce the recognition of customary land rights and management practices of indigenous peoples. It is also a powerful tool for lobbying against forest zoning and land allocation policies.

**12. République Démocratique du Congo, Fonds Social de la République Démocratique du Congo, *Projet de prévention et de réponse aux violences basées sur le genre (PRVBG), IDA Grant No. D3330-DRC, Plan en faveur des populations autochtones (PPA), Provinces du Nord et du Sud Kivu - Rapport final*, June 2020, 166 p.**

The Government of the DRC is committed to combating gender inequality, including gender-based violence (GBV), recognizing that gender inequality weighs heavily on social and economic development. A grant from the International Development Association (IDA) has been used to finance the Gender-Based Violence Prevention and Response Project (PRVBG) in the country.<sup>69</sup> The project is expected to reach 785,000 direct beneficiaries (including indigenous communities), and around 400,000 women in North and South Kivu. The project aims to ensure the participation of indigenous populations in project activities, including free access to care services for survivors. Activities include community mobilization training and awareness-raising on GBV issues among communities, health staff and local NGO partners.

**13. United States Agency for International Development (USAID), *Analysis of conflict dynamics around Kahuzi-Biega National Park*, July 2021.**

This study by the US Agency for International Development focuses on the complex dynamics of conflict in the Kahuzi-Biega National Park (KBNP). The exploitation of land, flora, fauna and other natural resources, on the one hand, and the cultural affirmation of indigenous peoples/"pygmies" on the other, are the issues at stake in the conflicts surrounding the park. This study looks at the prospects for implementing effective solutions to restore peace and peaceful cohabitation between the PNKB and local communities, in particular indigenous peoples/"pygmies". The main question is what factors explain the dynamics of conflict around the PNKB, and what effective mechanisms can be put in place to build lasting peace between the PNKB and the indigenous "pygmy" peoples and other local communities.<sup>70</sup>

**14. Dynamique des Groupes des Peuples Autochtones (DGPA), *Atlas monographique des peuples autochtones pygmées en République Démocratique du Congo*, Kinshasa, 2022**

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<sup>69</sup> World Bank (2020). *Projet de prévention et de réponse aux violences basées sur le genre en RDC (PRVBG)*, IDA Grant No. D2980-ZR.

<sup>70</sup> Busane, R. (2021). *Analyse des dynamiques des conflits autour du Parc national de Kahuzi-Biega (PNKB)*, USAID - Solutions for Peace and Recovery. p. 1, 18, 33 and 57.

In 2022, the DGPA published a *monographic atlas of the indigenous "pygmy" peoples of the Democratic Republic of Congo*. It provides basic geographical, scientific and technical information on the living spaces of the indigenous "pygmy" peoples of the DRC. It locates and monographs the indigenous "pygmy" peoples, highlighting their history, types of land occupation, traditional practices, attachment to the forest and endogenous knowledge, as well as the challenges they face and possible solutions for strengthening national cohesion despite cultural diversity. This tool can also help indigenous "pygmy" peoples to identify these areas themselves, in order to better defend their interests. This information contributes to a better understanding of the realities of the Congo Basin in terms of its population and resources, and enables clearer communication to influence decision-makers.

**15. Willy Loyombo and Adrien Sinafasi, *Les peuples autochtones de la RDC: Histoire d'un partenariat*, 2017, 132 p.**

This book reviews the evolution of relations between the indigenous peoples of the Democratic Republic of Congo and the World Bank. Author Adrien Sinafasi sees the work of the World Bank's Inspection Panel as the starting point for the recognition of the rights of the DRC's indigenous peoples. The book discusses this process and the progress made since, in regards to the relationship between IPs and the World Bank.<sup>71</sup>

## 4.2 History and legal basis

The explanatory memorandum to Law 22/030 of July 15, 2022 recalls the situation of indigenous peoples in the Democratic Republic of Congo, as well as "the constitutional provisions which impose on public authorities the duty to ensure the equality of all citizens by eliminating all forms of discrimination", as well as the treaties ratified by the country and other human rights commitments. In this section, we present an explanatory list of laws and regulations relating to the protection and promotion of the rights of indigenous "pygmy" peoples in the DRC, starting with the constitution, moving on to other national legislation and finally presenting the above-mentioned international commitments relating to indigenous rights.

As the law under review was intended to fill legislative gaps in the rights of indigenous peoples in the DRC, it is useful to discuss these related legal frameworks. The International Labor Organization (ILO) produced a summary of the said in April 2023.<sup>72</sup> This is a detailed analysis of how the law strengthens the position of "pygmy" indigenous peoples in accordance with the Constitution, on various subjects such as equality and non-discrimination, land and natural resources, consultation and participation, education, forced and child labor, health, customary law and access to justice. We shall confine ourselves here to a few general points.

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<sup>71</sup> Loyombo, W. & Sinafasi, A. (2017). *Les peuples autochtones de la RDC Histoire d'un partenariat*.

<sup>72</sup> International Labor Organization. (2023). *Summary of the legal analysis of the Law on the Protection and Promotion of the Rights of Indigenous Peoples in the DRC*, April 2023.

The Constitution of the Democratic Republic of Congo of February 18, 2006, as revised by Law no.º 11/002 of January 20, 2011, states that "all Congolese are equal before the law and are entitled to equal protection of the laws" (article 12). Article 13 of the same Constitution deals with grounds for discrimination, including "religion, family origin, social status, residence, political opinions or beliefs, membership of a race, ethnic group, tribe or cultural or linguistic minority". Individuals may not be discriminated against "in education, in access to public services or in any other matter". Article 3 of Law no. 22/030 of July 15, 2022 on the protection and promotion of the rights of indigenous "pygmy" peoples contains a general provision prohibiting discrimination and reiterating the principle of equality: Indigenous "pygmy" peoples are free and equal in dignity and rights to Congolese citizens. Any form of discrimination against them is prohibited, in accordance with article 13 of the Constitution".

Article 51 of the Constitution reiterates the State's duty to "guarantee and promote the peaceful and harmonious coexistence of all ethnic groups in the country. It shall also ensure the protection and promotion of vulnerable groups and all minorities. It shall ensure their development". Article 123 states that "the law shall determine the fundamental principles concerning [inter alia] [...] the protection of vulnerable groups". However, the Constitution does not specifically mention indigenous peoples. The explanatory memorandum to Law no. 22/030 of July 15, 2022 refers to articles 51 and 123 of the Constitution as the legal basis for drafting a law on the rights of indigenous peoples.

Article 2 of the law under review defines "indigenous 'pygmy' peoples" as "hunter-gatherer peoples, generally living in the forest, who identify themselves as such and are distinguished from other Congolese peoples by their cultural identity, their way of life, their attachment to and close ties with nature, and their endogenous knowledge". The requirement of conformity is all the more relevant as, in accordance with the provisions of articles 51 and 123 of the Constitution of the DRC, it provides the country with a legal framework particularly suited to determining the fundamental principles relating to the protection and promotion of "pygmies" as a vulnerable indigenous group.

Other legislation in the Democratic Republic of the Congo does not refer to indigenous peoples, but uses other terminology, such as "local community", defined for example in Law no. 011/2002 of August 29, 2002 on the Forestry Code in the Democratic Republic of the Congo as "a population traditionally organized on the basis of custom and united by ties of clan solidarity or kinship which form the basis of its internal cohesion. It is also characterized by its attachment to a specific area" (article 1). The same is true of article 1er, litera 9 of Law n° 007/2002 of July 11, 2002 on the Mining Code, as amended and supplemented by Law n°18/001 of March 9, 2018, which lent the same definition to the Forestry Code, with a nuance at the end of the text in that it is characterized, in addition, by its attachment to the territory of the mining project.

With regard to citizenship, article 4, paragraph 1 of Law no. 87/010 of August 1, 1987 on the Family Code, and in particular Law no. 04/024 of November 12, 2004 on Congolese nationality, stipulate that "All ethnic groups and nationalities whose persons and territory constituted what became the Congo (now the Democratic Republic of the Congo) at independence, shall enjoy equal rights and protection under the law as citizens". However, no special provision is made for indigenous populations with regard to the granting of civil status documents, necessary for participation in public life and access to social services, which represents a major challenge for these populations who appear to be marginalized.<sup>73</sup>

Law no. 22/030 of July 15, 2022 reflects other legal provisions, as it recognizes that indigenous peoples are "free and equal in dignity and rights to Congolese citizens" (article 3). It provides for the implementation of "awareness-raising and citizenship education campaigns for indigenous 'pygmy' populations" (article 17), but does not provide for any specific measures to facilitate their access to birth certificates, other proof of nationality or other civil status documents.

**Extracts from the relevant provisions of the Constitution of February 18, 2006 as revised by Law no. 11/002 of January 20, 2011 affecting the rights of indigenous peoples in the DRC.**

- Article 10, paragraph 3 of the Constitution: "Anyone belonging to the ethnic groups whose people and territory made up what became the Congo (currently the Democratic Republic of the Congo) at independence is Congolese by origin";
- Article 11 of the Constitution: "All human beings are born free and equal in dignity and rights. However, the enjoyment of political rights is recognized only for Congolese, with exceptions established by law";
- Article 12 of the Constitution: "All Congolese are equal before the law and are entitled to equal protection of the laws";
- Article 13 of the Constitution: "No Congolese may, in matters of education and access to public functions or in any other matter, be the object of a discriminatory measure, whether resulting from the law or from an act of the executive, by reason of religion, family origin, social condition, residence, political opinions or convictions, membership of a race, ethnic group, tribe, cultural or linguistic minority";
- Article 14, paragraph 1 of the Constitution: "The public authorities shall ensure the elimination of all forms of discrimination against women and the protection and promotion of their rights.
- Article 30 of the Constitution: "All persons on national territory have the right to move freely, to take up residence, to leave and to return, under the conditions laid down by law. No Congolese may be expelled from the territory of the Republic, forced into exile, or forced to live outside his or her habitual residence";

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<sup>73</sup>The aim here is not to create a special status of citizenship, but to set up mechanisms for identifying and granting citizenship titles to this nomadic people.

- Article 50, paragraph 1 of the Constitution: "The State protects the rights and legitimate interests of Congolese both inside and outside the country";
- Article 51, paragraph 2 of the Constitution: "The State has a duty to ensure the protection and promotion of vulnerable groups and all minorities, and to oversee their development;
- Article 34 of the Constitution: "The State guarantees the right to individual or collective property, acquired in accordance with law and custom;
- Etc.

**International instruments duly ratified by the DRC and affecting the rights of indigenous peoples in the DRC.**

Over the decades, recognition of the rights of indigenous peoples has progressed significantly, as demonstrated by the establishment of several international or regional instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (2007).<sup>74</sup> This recognition has been accompanied by the creation of global institutional mechanisms to promote the rights of indigenous peoples, such as the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on the Rights of Indigenous Peoples.

In addition to the constitutional provisions requiring public authorities to ensure the equality of all citizens by eliminating all forms of discrimination, the DRC is also required to bring its legal arsenal into line with the specific international instruments relating to the promotion of the rights of indigenous "pygmy" peoples to which it has freely subscribed. Although article 215 of the DRC Constitution stipulates that international treaties and agreements duly concluded have, from the moment they are ratified, an authority superior to that of national laws, the Congolese government is slow to implement its international legal obligations, particularly with regard to the rights of indigenous populations.<sup>75</sup>

Nevertheless, it is these international legal instruments that served as the basis for drafting the explanatory memorandum and preamble to Law no. 22/030 of July 15, 2025 under review:

- the Universal Declaration of Human Rights;
- the United Nations Declaration on the Rights of Indigenous Peoples;
- the International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on Biological Diversity;
- International Convention on the Elimination of All Forms of Racial Discrimination;

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<sup>74</sup> United Nations General Assembly Resolution 61/295. (2007). United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

<sup>75</sup> United Nations Human Rights Council (n.d.) *Les Peuples autochtones et les droits de l'homme*. <https://www.ohchr.org/fr/indigenous-peoples>

- the Convention on the Abolition of Slavery;
- the African Charter on Human and Peoples' Rights

For example, the United Nations Declaration on the Rights of Indigenous Peoples, signed by the DRC in 2007, states that "*indigenous peoples have the right to the lands, territories and resources which they have traditionally owned and occupied*".<sup>76</sup> Since the signing of this declaration, no measures have been taken to promote and protect the rights of indigenous "pygmy" peoples in the DRC, which runs counter to the recommendations of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination and the African Commission on Human and Peoples' Rights on the need to adopt measures to protect their rights, including their right to land.<sup>77</sup>

The Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right of indigenous peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.<sup>78</sup> What is serious is that the DRC has ratified neither the Indigenous and Tribal Populations Convention, 1957 (No. 107), nor the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labor Organization (ILO).<sup>79</sup> It has nevertheless ratified a number of ILO Conventions particularly applicable to indigenous peoples, notably the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Forced Labour Convention, 1930 (No. 29).<sup>80</sup>

#### **Extracts from relevant provisions of laws affecting the rights of indigenous peoples in the DRC.**

- Article 53 of Law no. 73-021 of July 20, 1973 on the general property regime, land and property tenure and securities, as amended and supplemented by Law no. 80-008 of July 18, 1980: "Land is the exclusive, inalienable and imprescriptible property of the State". In reality, this right is not contested in the customary vision of things; what traditional communities seem to be demanding at present is recognition of the land to which they are traditionally attached, with a well-defined and protected right of enjoyment (like that of the concession holder with the certificate of registration). All customs recognize the land rights of traditional

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<sup>76</sup> See United Nations General Assembly Resolution 61/295. (2007). United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), art. 26.

<sup>77</sup> United Nations, *Concluding observations of treaty bodies on the DRC* (CCPR, CESCR, CRC, CERD), sessions from 2006 to 2021; African Commission on Human and Peoples' Rights, Resolutions on the rights of indigenous peoples, 2003 to 2017

<sup>78</sup> See United Nations, *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights, Vienna, 1993; UN, *Charter of the United Nations*, art. 1, para. 2; *ICESCR*, art. 1; *ICCPR*, art. 1.

<sup>79</sup> See International Labor Organization (ILO), Conventions Nos. 107 and 169.

<sup>80</sup> ILO Conventions no. 29 and no. 111, ratified respectively in 1960 and 2001 by the DRC.

communities over the lands over which they exercised sovereignty even before the advent of the State. Congolese land law therefore contains no requirement for meaningful consultation of communities, their participation in decision-making processes or the granting of their free, prior and informed consent for activities carried out on lands and territories they traditionally own<sup>81</sup>;

- Law n° 011/2002 of August 29, 2002 on the Forestry Code. The Forestry Code makes no distinction between customary use rights and customary ownership rights, a distinction which is at the heart of custom and very logical since forest ownership is affirmed by the Code as being the responsibility of the State, even though article 22 of the Code recognizes customary possession of forests by communities;
- Article 281 of Law no. 007/2002 of July 11, 2002 on the mining code addresses the issue of compensation for land occupants, highlighting the prejudice that local populations (without distinction) could suffer as a result of the occupation of their land;
- Law no. 11/009 of July 9, 2011 on the fundamental principles of environmental protection. This law also makes no mention of indigenous peoples. However, its explanatory memorandum states that "it is inspired by the fundamental and universal principles relating in particular to sustainable development and the principle of public information and participation in the environmental decision-making process, which concern the entire Congolese population without distinction, as emphasized by the Constitution".
- Law n°11/022 of December 24, 2011 on the fundamental principles relating to agriculture does not take into account the specific characteristics of indigenous peoples.
- Law no. 15/013 of August 1, 2015 on the modalities of application of women's rights and parity, whose explanatory memorandum states that since gaining independence, the Democratic Republic of Congo has been making efforts to provide legal opportunities for men and women with a view to their protection and security. However, much remains to be done to give women sufficient access to decision-making bodies. Inequalities in terms of rights, opportunities and gender persist between men and women, depriving the Democratic Republic of Congo of the useful contribution of women to the achievement of its sustainable human development goals. This persistence of disparities between men and women can be observed in almost all areas of national life, particularly in the political, economic, social and cultural spheres, disparities which inevitably lead to discrimination hampering the proper implementation of gender parity.<sup>82</sup>

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<sup>81</sup> Forest Peoples Programme (2010). *La protection du droit à la terre, territoire et ressources naturelles en droit international et régional africain: Trousse d'information à l'intention des ONG de la République Démocratique du Congo*. p. 28.

<sup>82</sup> <https://www.leganet.cd/Legislation/Droit%20Public/DH/Loi.15.013.01.08.html>. The law is based on international and regional instruments, all of which proclaim equal rights for men and women, including the Universal Declaration of Human Rights; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women; the United Nations Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the SADC Memorandum of Understanding on Gender and Development; and United Nations Resolution 1325.

#### **Other national instruments relating to indigenous rights**

- Education and training sector strategy 2016-2025.
- Projet d'appui aux communautés dépendantes de la forêt République Démocratique du Congo (PACDF).  
Participation of indigenous peoples in the implementation of the national community forestry strategy in the DRC.

### **4.3 Arguments and stories from defenders and opponents of indigenous peoples' rights**

In this section, we will look at the advocates of the law under review, and the type of arguments and narratives they have used. Since 2009, the indigenous peoples' platforms and networks DGPA, REPALEF and LINAPYCO have been engaged in a dialogue with the Congolese government and parliament to define a legislative framework that would guarantee indigenous peoples the enjoyment of their fundamental rights as recognized by the Constitution of the DRC, and protect their way of life, traditional practices and endogenous knowledge.<sup>83</sup> The Rainforest Foundation Norway and other partners, such as Synchronicity Earth, DGM-PACDF, FPP, BHCNUD, etc., supported this advocacy campaign with the country's executive and legislative bodies.<sup>84</sup>

The main defender of the rights of "pygmy" indigenous peoples, including this law, could well be the DGPA. Created in 2005, the Dynamique des Groupes des Peuples Autochtones (DGPA) is a network of 43 groups of indigenous peoples, "pygmies" and their supporters, from all over the DRC.<sup>85</sup> Five of these organizations are headed by women. For many years, the organization has been fighting for a legal framework that promotes and protects the rights of indigenous peoples in the DRC. Active in 23 provinces where indigenous "pygmy" peoples live, DGPA is one of the main campaigning networks for the promotion and protection of the rights of indigenous "pygmy" peoples in the DRC.

This network supports the Congolese government in the development of policies and programs aimed at the responsible and voluntary integration of indigenous "pygmies" into national life, with the aim of guaranteeing the full enjoyment of their rights and the legal security of their ancestral lands and territories. The DGPA's main activities are advocacy, lobbying and

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<sup>83</sup> See, for example, the coordinated efforts of the *Political and Social Dialogue on the Rights of Indigenous Peoples in the DRC*, 2021.

<sup>84</sup> Supporting documentation is available via Rainforest Foundation Norway annual reports and FPP (Forest Peoples Programme) press releases. Read also DGPA: Dynamique des Groupes des Peuples Autochtones ([www.dgpardc.org](http://www.dgpardc.org)); Le Réseau des Populations Autochtones et Locales pour la Gestion Durable des Écosystèmes Forestiers de la RDC (REPALEF-RDC); Synchronicity Earth; OHCHR, [www.ohchr.org/en/countries/democratic-republic-congo](http://www.ohchr.org/en/countries/democratic-republic-congo)

<sup>85</sup> See "About DGPA", [www.dgpardc.org](http://www.dgpardc.org), accessed May 8, 2025.

participatory research. For the DGPA, "pygmies" are one of the most disadvantaged ethnic groups in the world. The DGPA has lobbied hard for changes to national policies and laws, and maintains an ongoing dialogue with local and government authorities on issues of vital importance to "pygmy" communities. Protecting forests and maintaining their access to forest resources are key priorities for the DGPA. At local level, the organization strives to combat stereotypes and strengthen dialogue to put an end to violent conflicts between communities.

The DGPA has a number of partners who have also played a role in lobbying for this law. These partners include

1. Natural Resource Network: supports DGPA's advocacy programs;
2. The Ligue nationale des indigènes "pygmées" du Congo (LINAPYCO), and the Réseau des populations autochtones et locales sur la gestion des écosystèmes forestiers en RDC (REPALEF), which supports the DGPA's land rights initiatives;
3. Environment and Natural Resources Communication Network (RCEN): a network of journalists providing media coverage of the DGPA's activities;
4. Parliamentary group for the promotion and defense of the rights of indigenous "pygmies" in the DRC: gives political support to the DGPA;
5. Rain Forest Foundation Norway: provides financial and technical support to the DGPA;
6. World Bank Forest Carbon Partnership Facility and UN-REDD (the UN REDD program): supports DGPA's participation in REDD+ development and implementation in the DRC;
7. Forest Peoples Program (FPP): supports DGPA initiatives to improve Pygmy rights, food security and good governance;
8. European Union: financing implementation of the FPP / DGPA project "Promoting the rights and food security of forest populations, and good governance in forest and climate policies: from principles to practice";
9. United Nations Democracy Fund: supports the DGPA's efforts to improve the participation of "pygmies" in the country's political and electoral processes;
10. Well-Grounded: provides technical support for DGPA's organizational development;
11. Synchronicity Earth: supports the DGPA's participatory video project.

Many organizations played a key role in producing publications that were essential material for the development of this law, beyond what was discussed earlier in section 4.1. The periodic review is one such key publication, highlighting the marginalized and vulnerable position of the "pygmies".<sup>86</sup> The author organizations are Foyer de Développement pour l'Autopromotion des Pygmées et Indigènes Défavorisés (FDAPYD - Hope Indigenous peoples), Ligue Nationale des Associations des Peuples Autochtones Pygmées du Congo (LINAPYCO), Organisation d'Accompagnement et d'Appui aux Pygmées (OSAPY), Programme d'Intégration et de Développement du Peuple Pygmée au Kivu (PIDP SHIRIKA LA BAMBUTI), Programme de

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<sup>86</sup> The Universal Periodic Review report is available via the Office of the High Commissioner for Human Rights (OHCHR), in particular for the 2014 and 2019 cycles on the DRC.

Réhabilitation et de Protection des Pygmées (PREPPYG), Réseau des Populations Autochtones et Locales pour la Gestion Durable des Ecosystèmes Forestiers en République Démocratique du Congo (REPALEF/RDC), and Union pour l'Emancipation de la Femme Autochtone (UEFA).

The Worldwide Fund for Nature (WWF) is another organization that has supported the rights of indigenous peoples. Although there is no information in this literature review that WWF has directly defended this law in the DRC, WWF supports the rights of indigenous peoples, including "pygmy" peoples. WWF's strategy is one of the important publications that had an impact on the argumentation throughout the drafting of the law. The arguments WWF uses to promote IPs' rights focus on their ability to preserve biodiversity, recognizing the importance of indigenous knowledge and resource rights for the conservation of many fragile ecosystems. The preamble to WWF's Policy Statement on Indigenous Peoples and Conservation states that indigenous peoples live in most of the remaining areas of high natural value, and that their knowledge, social and subsistence systems—their cultures—are closely linked to the natural laws that govern local ecosystems.

Support organizations for pygmy peoples as well as members of pygmy communities welcomed the new law, based on statements they made after the National Assembly voted in favor of the bill's admissibility in 2020.

A young "pygmy" girl named Brunelle IBULA said:

*The admissibility of the law in the National Assembly and the subsequent process that led to its adoption offer a glimmer of hope for the strengthening of equity for indigenous youth and women in relation to other social groups in DR. Congo. It is a strong signal of the Congolese government's commitment to initiating programs to make up for the social backwardness experienced by our community, which will ensure our emergence and that of future generations.*

Another member of the "pygmy" youth, a boy by the name of Rigobert MOLA, declared:

*The fact that this text has been accepted by the National Assembly is a strong signal to us, young indigenous pygmies, that we hope to live with dignity in the DRC and be proud of our cultural identity.*

Kapupu DIWA, national president of LINAPYCO, stressed that the law is a tool that will correct social injustices, a legal frame of reference to be used in various reforms of the legal sector in DRC. Joseph ITONGWA, Chairman of REPALEF's Board of Directors, expressed the view that legal recognition of the rights of the "pygmy" peoples will strengthen the vitality of the "pygmy" culture, consolidate dignity and stability in their territories, and guarantee the preservation of forest ecosystems through their traditional knowledge and practices, conducive to nature conservation. He also declared that the "pygmy" peoples have a cultural heritage that is beneficial to the country's development.

Patrick Saïdi, national coordinator of the DGPA, and all those involved in the campaign recognize the difficulty of changing traditions. The law merely creates a legal framework for indigenous

peoples, but its effectiveness will depend on mechanisms to promote peaceful cohabitation between ethnic groups. There is still a long way to go before mutual acceptance between the Bantu and "pygmy" ethnic groups. Nevertheless, the adoption of this law would be a first in a country deeply marked by ethnic cleavages exploited by politicians. This legal breakthrough is a first response, and cannot be envisaged without educating the population on the subject, in particular to combat inter-ethnic violence.

However, as "pygmy" peoples continue to suffer from discrimination and stigmatization, it's not surprising that not everyone is enthusiastic about the idea of adopting a law that reinforces their rights. Some actors said that no one needed such a law, and that it was impossible to implement anyway, as one informant pointed out in an interview. The representative of a civil society organization argued that the law is seen by many as inappropriate for our times, and that "pygmies" have a responsibility to adapt to current societal conditions (personal information, 2022). This indicates that not all actors support the law in unison, and although there is no open opposition to the law itself, the lack of implementation and general awareness of its existence seems to indicate a silent opposition. In the following sections, we raise a number of issues that might help explain the gap between the law's intent and its (missing) implementation.

## 5. Conditions affecting the implementation (or non-implementation) of the law

Obstacles to this law have been numerous and still threaten its final adoption and implementation. As the Honourable Bruno Lapika, representative of the Feshi district in Bandundu province and a supporter of the law, points out, it will most likely be amended. In this section, we explore the various factors that may have hindered the implementation of Law no. 22/030 of July 15, 2022 on the protection and promotion of the rights of indigenous "pygmy" peoples. The legal text itself is vague, with no guidance on implementation. However, rather than focusing on the legal text, we will begin by outlining the underlying factors, policies and issues relating to land ownership and the principle of free, prior and informed consent, which is a key element of the law. The following sections highlight the various actors who have seized "pygmy" land in the past and who are currently vying for it, as well as the interests at stake. As indicated in the introduction, we have focused on three areas of competing interest: artisanal logging, tree planting and conservation. Finally, we address the question of who this law actually applies to, the question of *indigeneity*, which refers to the problem of who would have to be recognized as indigenous for their human rights to be promoted by a law such as this.

### 5.1 Competing interests

Since the colonial occupation around 1876 by Leopold II between 1876-1907 and by Belgium from 1908-1960, the indigenous "pygmy" peoples of the DRC have been deprived of their legitimate rights as a whole. This resulted in the dispossession of their lands for the abusive exploitation of natural resources such as rubber, cocoa, coffee, cotton and palm, in the name of

the dominant capitalism of the late 19th century. The takeover of land in recent decades has been facilitated by the government's imposition of written or "modern" laws to the detriment of the unwritten habits and customs of the "pygmy" people. In a short space

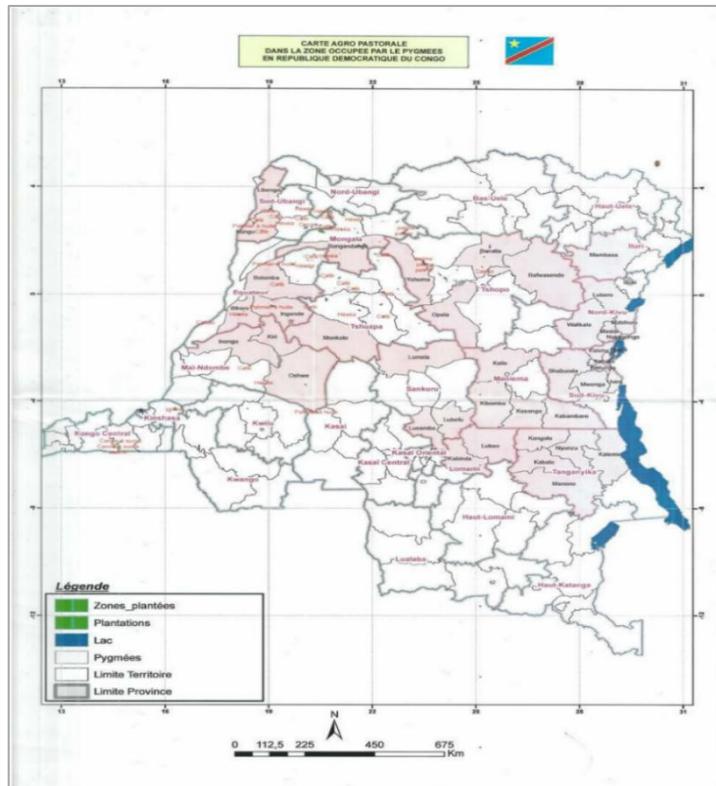


Figure 4: Map of agro-pastoral exploitation in areas occupied by indigenous "pygmy" peoples in the DRC (Institut Géographique du Congo, 2023)

activities in the provinces of the DRC. In many provinces, these activities overlap with areas inhabited by "pygmy" peoples. For example, in Mai-Ndombe province, coffee and rubber plantations are grown in the territories of Inongo, Kiri and Oshwe, home to "pygmies" known as Bakengele, Bamone and Batswa. In Kasai province, to the north, on the border with Oshwe territory, oil palm plantations are planted in areas occupied by "pygmies" known as Batswa. In Equateur province, there are cocoa and rubber plantations in Bikoro territory, oil palm and coffee plantations in Ingende territory, coffee and oil palm plantations in Bolamba territory and coffee plantations in areas occupied by the Bakengele and Batswa "pygmies", a little further north in the province. In the province of Sud-Ubangi, coffee, oil palm, rubber and cocoa are grown in the territories of Kungu, Libenge and others. The same applies in Mongala province, where coffee, oil palm and rubber plantations are planted in areas of the Bongandaganda territory inhabited by "pygmies". In Bas-Uélé province, there are plantations here and there. In Tshuapa province, several coffee plantations are cultivated in areas occupied by "pygmies". In Tshopo province, oil palm and cocoa plantations are cultivated in the Yahuma and Banalia territories occupied by

of time (more or less 150 years), the indigenous "pygmy" peoples have gone from being managers and guardians of the territory and its resources to being subject to modern laws that largely favor the economic interests of the Congolese state and foreign investors approved by it. Since then, their ancestral territories have been exploited without the consent of the communities who have managed and preserved them over the long term. The dispossession of these lands generally takes place without regard for their existence or fair, equitable and proportional compensation.

This map shows plantations, livestock farming and other

"pygmies". Plantations are cultivated in Maniema province, more specifically in the Kibombo territory, and also in territories occupied by "pygmies" in Haut-Lomami province.<sup>87</sup>

Today, the forest environment in which indigenous "pygmy" peoples live is under pressure from many factors and activities, beyond small- and large-scale agro-pastoral activities, namely mining and logging.<sup>88</sup> In addition to the pygmy peoples, other Congolese peoples also need forest resources. Around 70% of the population depends on forests for survival, and uses them for subsistence, commercial and cultural purposes. Wood also remains the main accessible source of energy.<sup>89</sup> There is also oil and gas exploration, industrialization, urbanization and development projects, as well as land grabbing by elites.<sup>90</sup> Some conservation organizations deny "pygmies" their rights to forests that are now protected. These sectors and actors may oppose the adoption of legislation that would grant land rights to "pygmy" communities. Companies fear eviction if the law is passed. Authorities, too, may fear the shift in power associated with the emancipation of indigenous peoples.<sup>91</sup>

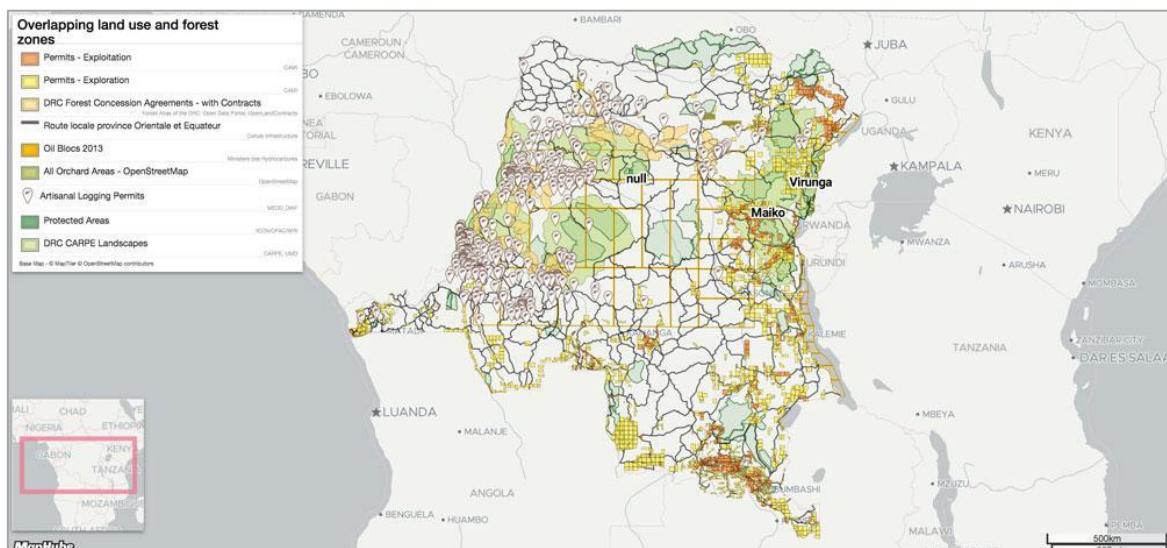


Figure 5: Overlay of land use and forest zones DRC (Climatelinks, n.d.)

<sup>87</sup> Lewis, J. (2012). Technological leap-frogging in the Congo Basin. Pygmies and geographic positioning systems in Central Africa: What has happened and where is it going? African Study Monographs, Supplementary Issue 43, 15-44; Ministère des Colonies (1925). *Rapport annuel sur le Congo Belge*, Bruxelles.

<sup>88</sup> Greenpeace Africa (2021). *Annual Report 2021*. p. 38-30.

<sup>89</sup> FAO (2022). *State of the World's Forests*; World Bank. (2020). *Profil énergétique de la RDC*.

<sup>90</sup> Ferré, Cécile, L'accaparement des terres en Afrique centrale, in *Politique africaine*, no. 124, 2011.

<sup>91</sup> Rainforest Foundation. (2021). *Community Forest Tenure Mapping in Central Africa: DRC Case Study*; Geschiere and Jackson (2006). Autochthony and the Crisis of Citizenship: Democratization, Decentralization, and the Politics of Belonging. *African Studies Review*, 49(2), 1-7.

One of the reasons for their land problems is that the DRC has never adopted a comprehensive land tenure and planning policy capable of bringing together all the sectoral policies. The 1973 Congolese land law, known as the "Bakajika law", amended in 1980 and supplemented to date<sup>92</sup>, does allow for private or individual enjoyment of land in both urban and rural areas, but other provisions have been introduced to remedy this situation. These provisions have recently been supplemented by the Forestry Code and the Mining Code from a fiscal point of view in favor of communities. According to a study published in October 2015 by the NGO Rights and Resources Initiative (RRI), no land managed by indigenous peoples or local communities is titled in the countries of the Congo Basin. The DRC had taken a step forward in the 2002 Forest Code by issuing a decree allowing local communities to become owners of forest concessions covering up to 50,000 hectares in perpetuity. However, no further steps were taken.<sup>93</sup>

With regard to the legal framework governing forests in the DRC, the basic text of the Congolese forestry regime dates back to 1949. Implementation of this regime has proved difficult as the country's political, economic, social and cultural development has progressed. As a result, decades after gaining independence, the Democratic Republic of Congo still lacks an appropriate legal framework that would enable the forest to fulfil its ecological and social functions in a balanced way, to make a substantial contribution to national development, and to enable local populations to participate actively in forest management in order to derive legitimate benefits.

The DRC has almost 155 million hectares of forest, i.e. 55% of the national territory. The Congolese Forest is subject to deforestation and degradation at an accelerating rate. Between 2001 and 2023, the Republic of Congo will lose *19.7 million hectares of forest cover*, equivalent to a 9.9% decrease in forest cover since 2000 (Global Forest Watch).<sup>94</sup> The Democratic Republic of Congo is aware of its key role in the balance of the biosphere at international, continental, national and even local level, and is ready to assume its responsibilities. It has ratified numerous international conventions and agreements on environmental protection, and is endeavoring to harmonize its laws accordingly. There are a large number of sectoral laws and regulations concerning forests, which are also important in terms of the rights of indigenous "forest peoples". Detailed information on this legal framework can be found in the full report/complementary documents. Here, we give just a few examples in the chapter below.

Despite assurances from the DRC government that local communities would play an active role in forest sector reforms, and even a recent declaration that it would respect the principle of free, prior and informed consent, to date, the rights of indigenous "pygmy" peoples to their lands

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<sup>92</sup> *Law n°73-021 of July 20, 1973 on the general property regime, land and real estate regime and security regime, amended in 1980.*

<sup>93</sup> Nzita Nsuami, L. (2019). *Problématiques foncières et politiques d'aménagement en RDC*. Éditions L'Harmattan; Ministère de l'Environnement et Développement Durable (MEDD), RDC. (2020). *État des lieux de la gouvernance forestière*.

<sup>94</sup> Global Forest Watch. (2023). *Democratic Republic of the Congo Deforestation Rates*.

have not been guaranteed and continue to be violated. The DRC Constitution, the 1973 Land Law and the 2002 Forestry Code make no mention of indigenous "pygmy" peoples or their rights. Furthermore, the right to land ownership is not recognized for gathering, collecting and hunting lands; only the right to land ownership for arable and livestock lands is recognized. Furthermore, current governance initiatives and land and forestry reforms do not take into account the views of indigenous "pygmy" peoples, nor do they guarantee their active participation. For example, the Congolese forest zoning process currently underway in the DRC does not include any mechanism for identifying and protecting forests and territories belonging to indigenous "pygmy" peoples. The multilateral REDD+ (Reducing Emissions from Deforestation and Forest Degradation) initiative and the European Union's FLEGT (Forest Law Enforcement Governance and Trade) action plan are also processes to which the DRC is committed and which risk having negative repercussions on indigenous peoples if the DRC government continues to deny their land rights and if special measures are not taken.<sup>95</sup>

Outside concessions (rural, urban, forestry and mining), customary law applies, although the resources concerned may at any time be the subject of concessions with a view to their exploitation. In practice, however, no concession transaction takes place in the DRC without the holders of customary rights receiving a share if, in the general sense, "they have sold their property". In practical terms, this means that a portion of land is generally purchased from the owner or customary right-holders, then the concession thus acquired is registered with the Congolese state, which is the legal owner and the purchaser a mere tenant, thus offering the state the possibility of taking over the concession for works of general interest, but very often without prior consultation or consent obtained in due form, and consequently without fair and equitable compensation.<sup>96</sup>

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<sup>95</sup> REDD+ RDC. (2012). Stratégie nationale REDD+; United Nations Convention on Biological Diversity (CBD).

<sup>96</sup> Greenpeace Africa. (2021). *Zonage forestier et droits des communautés locales*; Central African Forest Commission. (2015). Convergence Plan Edition 2 : 2015-2025; Observatoire Congolais des Droits de l'Homme. (2019). *Rapport annuel 2019 : droits de l'Homme au Congo-Brazza : La terreur et la répression permanentes conjuguées avec la manipulation de l'opinion publique internationale par les gouvernants*.

The lands of indigenous "pygmy" peoples have often been plundered for extractive industry projects, often in violation of national consultation law. For example, concessions have been created on and adjacent to the ancestral lands of indigenous "pygmy" peoples without their prior

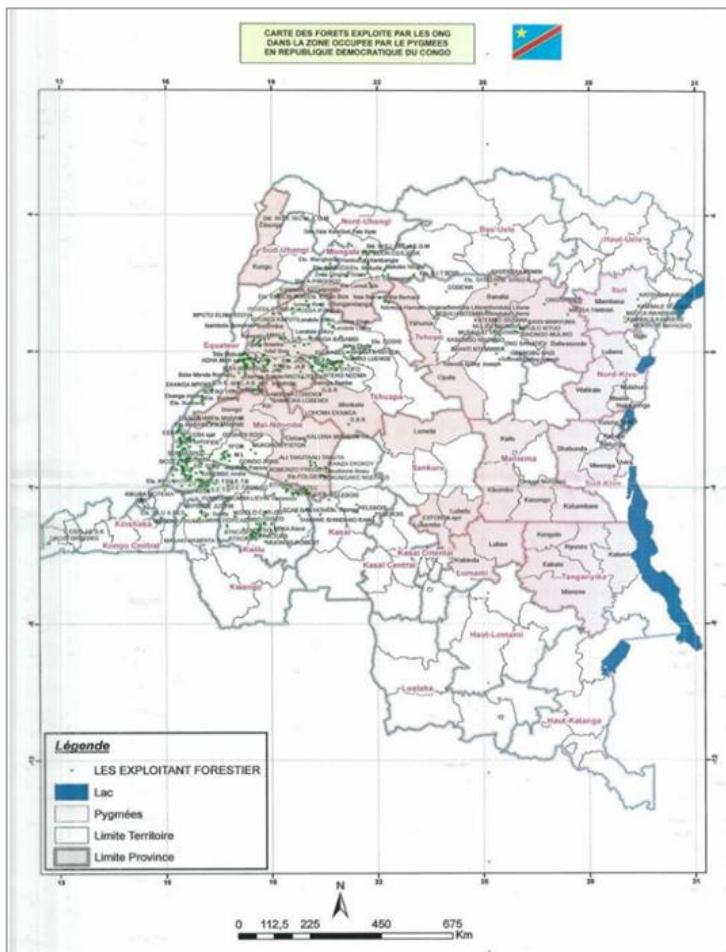


Figure 6: Map of logging by NGOs, institutions and companies in areas inhabited by indigenous "pygmies" in the DRC. (Source: Institut Géographique du Congo, 2023)

consultation or consent, such as the BBC and Industrie de Transformation du Bois (ITB) concession in the territories of Ingende and Bikoro in Equateur province. These and other operators often operate without regard for the rights of indigenous peoples.<sup>97</sup> It should also be noted that to officially claim their land and obtain a title deed, it is necessary to contact state officials and go through the bureaucracy, which can be an impossible task for many "pygmies", due to their remoteness, language barrier and lack of education. This can also represent an obstacle in the FPIC process.

If, according to the Congolese Constitution, land belongs to the State, can indigenous peoples veto the exploitation of the natural resources of "the land bequeathed" by their ancestors?

And what is the role of the State in the face of globalization, which seems to ignore indigenous peoples? And if indigenous peoples are to be consulted, what are the conditions for their consent to be free, informed and prior? And to what extent will this consent really be free, informed and prior if the majority of these peoples are illiterate, and if the information comes from experts commissioned by multinational corporations? All these questions reveal the difficulties encountered in applying the principle of free, prior and informed consent (FPIC) in the strict sense. A major problem affecting the implementation of the law is that the territory of the "pygmy" peoples is not defined at all in this legal text. No cartography accompanies the law.

<sup>97</sup> Mulvagh, L. (2006). *The impact of commercial logging and forest policy on indigenous peoples in the Democratic Republic of Congo*. International Work Group for Indigenous Affairs.

Perhaps the maps produced by the DGPA in collaboration with the Pygmies could have been used. However, it should be noted that strict boundaries based on colonial rules probably differ greatly from the customary understanding of land ownership by "pygmy" peoples.<sup>98</sup> However, it should be noted that strict boundaries based on colonial rules probably differ greatly from the customary understanding of land ownership by "pygmy" peoples.<sup>99</sup> Areas belonging to different "pygmy" groups may have been defined by certain landmarks, such as mountains or rivers, and handed down by ancestors over the course of history. So, it's not easy to say which lands the law applies to. In general, we can say that the law would be relevant and necessary in areas where "pygmy" peoples live or have lived, and where other actors have an interest in starting to operate, whether in logging, mining, farming or other areas.

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<sup>98</sup> DGPA (Direction Générale de Planification et Aménagement) <https://amenagement.gouv.cd/>; Rainforest Foundation. (2021). *Community Forest Tenure Mapping in Central Africa : DRC Case Study*.

<sup>99</sup> Ibid.

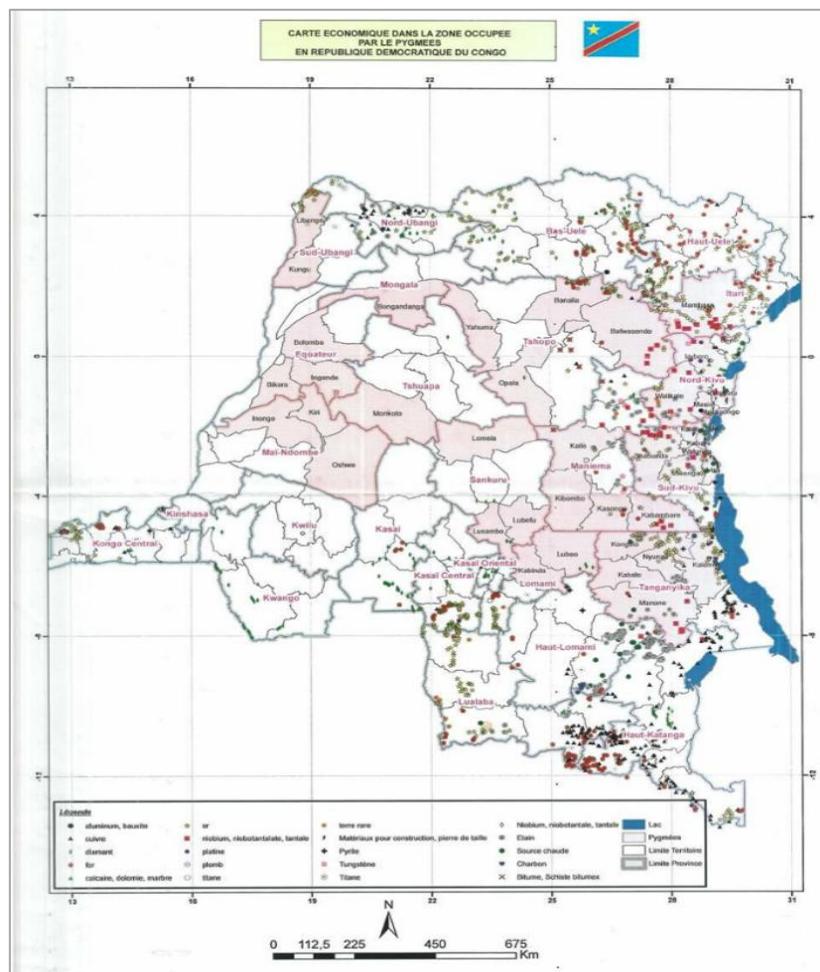


Figure 7: Economic and mining map of areas occupied by indigenous "pygmies" peoples in the DRC (Source: Institut Géographique du Congo, 2023.)

- 1) In the province of Sud-Ubangi, gold, diamonds, iron, lead, titanium and copper are found in mines located in the Libenge and Kungu territories occupied by the "pygmies";
- 2) The province of Nord-Ubangi is home to copper, diamonds, gold, tin and pyrite;
- 3) Bas-Uélé province is home to gold, diamonds, iron, aluminum, copper and bauxite;
- 4) Haut-Uélé province is home to gold, diamonds, iron and copper;
- 5) Ituri province is home to gold, diamonds, iron, copper, niobium, niobotantalate, tantalum, limestone, thermal springs and tungsten;
- 6) North Kivu province is home to gold, diamonds, iron, copper, niobium, niobotantalate, tantalum, limestone, dolomite, marble, tin, rare earths, platinum, thermal springs, building materials, dimension stone and tungsten;
- 7) Gold, diamonds, iron, copper, niobium, niobotantalate, limestone, dolomite, marble, tin, rare earths, platinum, hot springs, building materials, dimension stone and tungsten, coal and pyrite are found in the Shabunda region of South Kivu province;

- 8) Gold, diamonds, iron, tin and tungsten are present in Maniema province in the Kailo and Kasongo territories, while niobium and niobotantalate are present in the Kabambare territory;
- 9) Tanganyika province is rich in gold, copper, coal, niobium, niobotantalate, tantalum, tin, thermal springs and pyrite in the Kongolo, Nyunzu, Manono and Kalemie regions;
- 10) In Sankuru province, diamonds are found in areas occupied by "pygmies", notably in the Lubefu and Lusambo territories.
- 11) In Lomami province, diamonds, titanium and pyrite are found in the Kabinda and Lubao territories.

## 5.2 Forestry, agriculture and environmental protection- case studies

In this section, we examine some of the activities that compete for the forest land and natural resources on which "pygmy" peoples have traditionally depended. While mining and its history in the DRC can be seen as very important for understanding social and environmental injustices in the DRC, including persistent conflict and land grabbing, we focus here on the less studied and documented impacts of small-scale land users and artisanal logging, as well as tree plantations and conservation, which have led and continue to lead to the displacement of "pygmy" peoples and the forest with which they live. The results are based on exploratory research with case studies carried out by CERIDAC researchers. The guiding principle of the research was that "we cannot study a law on the promotion and protection of the rights of indigenous "pygmy" peoples without taking into account their environment; their ecosystems being threatened by various forms of exploitation".

### 5.2.1 Artisanal logging and agricultural activities

The case studies were selected on the basis of their relevance to the objectives of the study and to the main threats to "pygmies" currently being discussed in the DRC. One of the direct drivers of deforestation, often referred to in the field, is artisanal logging, while the wider literature on deforestation in the DRC refers to small-scale, possibly non-mechanized forest clearance for agriculture.<sup>100</sup> Artisanal exploitation of wood-based forest products is a difficult concept to define, due to the diversity of activities and actors involved. However, it is characterized by small-scale activities outside forest concessions, manual work with rudimentary equipment, the absence of royalties or fixed income, minimal manpower and a lack of control over sales. Licenses are issued at sub-national level, while forest concessions are granted or withdrawn at national level. According to one definition, in artisanal logging, the cutting area does not exceed

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<sup>100</sup> Tyukavina et al. (2018). Congo Basin forest loss dominated by increasing smallholder clearing. *Science Advances*, 4(11).

50 hectares.<sup>101</sup> Artisanal logging is presented by some stakeholders as beneficial in terms of providing organic matter for a diverse fauna, creating jobs, improving the local economy and supplying building materials, while others point to its many adverse impacts. These include alteration of forest structure, soil and water pollution, landslides, wildlife disturbance, disruption of the hydrological cycle, flooding, climate change, bush fires, loss of habitat, insufficient caterpillar production, etc. It can also lead to accidents, land conflicts, ethnic wars, malnutrition, poverty, insufficient agricultural production, inadequate medical care and so on. Many of these impacts are detrimental to indigenous "pygmy" peoples, whose way of life and survival are linked to forests.

However, while small-scale land clearing is steadily increasing according to GFW, more and more large-scale concessions for commodities such as rubber and oil palm, as well as for mining, are being issued, thereby excluding local populations from vast tracts of land. In addition, the DRC is also subject to large-scale forest conservation and tree planting initiatives, with varied species compositions and, once again, a multitude of actors involved. We have therefore analyzed the results of case studies that refer to these activities, focusing on their impacts on the environment and local populations.

With regard to artisanal logging, a report by Lauson and Macfaul in 2010 states that artisanal logging appears to be "a real threat to the future of the DRC".<sup>102</sup> In a joint study by CIFOR and CIRAD in 2014, the authors defend large-scale formal logging, arguing that the footprint of logging concessions is considered small compared to that of artisanal logging, estimated at 3 million m<sup>3</sup> of roundwood. Current estimates suggest that over 90% of wood produced comes from informal artisanal logging. Regulations have been put in place to mitigate the negative impacts of artisanal logging on the environment.<sup>103</sup> These regulations are expressed in the DRC Forest Code, Ministerial Order No. 050 of 23/09/2015 on logging and the EFIR standards for reduced-impact logging. An example of a prohibited practice is the felling of trees whose diameter is less than the minimum logging diameter required for each species.

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<sup>101</sup> European Commission, Marcken, P. d., Wasseige, C. d., & Devers, D. (2009). *Les forêts du bassin du Congo: état des forêts 2008*; Cerutti, P.O. & Lescuyer, G. (2011). *Le marché domestique du sciage artisanal au Cameroun: état des lieux, opportunités et défis*. Document Occasional 59. CIFOR.

<sup>102</sup> Lauson, S. (2014). *Illegal Logging in the Republic of Congo*. Chatham House.

<sup>103</sup> de Wasseige, C., Flynn, J., Louppe, D., Hiol Hiol, F., Mayaux, Ph. (Ed.). (2014). *Les forêts du bassin du Congo – État des Forêts 2013*. OFAC, COMIFAC.

### **Artisanal logging and the promise of profits**

The study on artisanal logging was carried out by BAKOTIBE ZINDA Jules in the Banga-Kungu area, more precisely in the *Bominenge* groupement, where artisanal logging is expanding and destroying the forests of the indigenous "pygmy" peoples. The study revealed that there are 13 artisanal loggers in the selected area, whose logging operations cover an area of 312 km<sup>2</sup> (Bakotibe Zinda, Jules, *Étude sur l'exploitation forestière artisanale dans le groupement de Bominenge, secteur de Banga-Kungu*, Unédit, 2024). Logging is carried out using methods, principles and techniques that do not comply with the DRC Forest Code, Ministerial Order n°050/CAB/MIN/EDD/01/03/BLN/2015 of September 23, 2015 on artisanal logging standards in the DRC or EFIR rules. Articles 52 and 54 of the DRC Forestry Code stipulate that the deforestation permit is issued by the provincial governor when the area to be deforested is less than or equal to 10 hectares, and by the national minister when the area to be deforested is greater than or equal to 10 hectares; any deforestation must be compensated by reforestation equivalent in quality and area of the original forest cover, carried out by the deforester or at his expense. They are all involved in irregular or illegal logging, as none of them has a logging permit signed by the provincial governor, as required by Law 11/2002 of August 29, 2002 on the DRC's Forestry Code. Law no. 14/003 of February 11, 2014 on nature conservation, which replaces Ordinance-Law no. 69/041 of August 22, 1969, stipulates in Article 112 that private artisanal loggers may only operate in local community forests if they have a permit issued by the provincial governor, on the recommendation of the local forestry administration. The results of this research show that, of the 5 operators sampled, none had an operating license, let alone a certificate of approval, but that the rights of local populations and indigenous "pygmy" peoples were taken into account by all these operators. The results of his study show that operators are not applying the Forestry Code and Ministerial Order 050 on timber exploitation, nor the EFIR standards for reduced-impact logging as proposed by the legislator. For example, the skidding techniques used by forestry companies are not the same as those used in reduced-impact logging, and the felling carried out by these operators is not controlled, which means that trees can cause damage when they fall. There is no coherent forestry planning prior to logging. Logging operators do not take care of reforestation or waste management, nor do they take care of farm tracks. 2 out of 5 operators respect the dendrometric harvesting volume and the 1-meter felling height. Article 89 of the same law stipulates that a specific clause relating to the creation of socio-economic infrastructures for the benefit of local communities, in particular: construction and development of roads; rehabilitation and equipping of hospital and school infrastructures; infrastructures for transporting people and goods. Our discussions with local people have shown that, since loggers have been exploiting their forests, nothing has been done in this area. For example, when asked whether artisanal loggers had ever contributed to the construction of a school or a church, 91.6% of the 90 people interviewed replied in the negative. As for the dividends they receive from this activity, 37.5% of our sample replied that they receive help with coffins, a few third-rate pieces are sold to them at a derisory price, and sometimes this quality is given to them as a gift.

At present, logging practices frequently result in non-compliance with low-impact logging standards (EFIR), leading to serious damage including deforestation and forest degradation, immediate impacts on wildlife and the displacement of indigenous "pygmy" populations. The negative impacts on the environment and the local population are due to non-compliance with the standards and laws governing artisanal logging. Many local loggers show little concern for the future of forest ecosystems. Numerous environmental impacts have been observed at logging sites, including deforestation, extensive destruction of vegetation, forest artificialization, loss of biodiversity, scaphite removal, soil erosion and compaction, soil contamination by waste products such as fuel and lubricants, and climate change. The study also shows that logging causes watercourses to dry up, variations to occur, food insecurity and shortages of building materials. The impacts are significant and are likely to pose long-term problems.

#### **The impact of logging on the lives of Pygmies**

The studies by BAKOTIBE ZINDA Jules and GUY ROGER KAMBOGO focus on logging activities and the creation of small and medium-sized enterprises (SMEs). One of the main obstacles identified relates to the role of public authorities. They observed that instead of public authorities getting involved in standards, some politicians, particularly provincial deputies and ministers, are illegally exploiting forests on an artisanal basis without paying for the logging permits that would give the provincial economy the biggest boost, with strong destructive impacts on the livelihoods of local "pygmy" groups. Others assert that there is no relationship between the company and the local population living under the logging permit (Androma Volebe Mahulo, 2022). His study showed that community rights are respected and that if local people's fields are destroyed during logging, they are compensated. However, in this study too, the consequences of forest loss and fragmentation linked to the various objectives were visible, as primary forests and animals move further and further away from the village, and gathering and hunting become difficult and rare.

These observations concur with those of Yenge Bomba (2021), who points out that in the Congo Basin, as throughout the DRC, the destruction of forest ecosystems is linked to multiple causes forming a complex set of economic, social and political pressures, to which are added problems of natural resource management. Lassagne (2015) shows that current forms of forest governance, developed through decentralization policies and participatory projects, have the same objective of ensuring the cohesion of constraints in order to facilitate the exploitation of forest resources and relay the assumption of coercion by indigenous elites themselves. His findings confirm those of Lecourt (2014), who asserts in his thesis that logging is a source of conflict, particularly environmental and social.

Forest destruction was also studied by Tonga Lambo (2018) in the Groupement Bomago in the Bodangabo sector, North Ubangi Province.<sup>104</sup>

#### **Agriculture and its impact on forests**

Deforestation and its consequences have become a chronic problem in the Bodangabo area, and in the Bomago group in particular, where the population is in a worrying state of upheaval, due to the complete destruction of its forest resources, the damage caused to the ecosystem and the loss of its means of subsistence.

In the context of this work, there are two main causes of forest destruction in the Bomago group. These were logging by the Belgian colony (1950) and the massive return of natives to their home villages after independence, who immediately set up a form of agriculture in which one person could occupy a plot of 3 to 5 hectares for food and perennial crops. On top of all this, a bush fire ravaged the Bodangabo area in 1982, sparing no group. These problems have had a negative impact on the population of the BOMAGO group. For several decades, the Bomago group's 9036 km<sup>2</sup> area has been unable to meet the needs of its population, and it has not benefited from any policy to improve living conditions, despite the strong demographic explosion of this population.

Tonga Lambo (2018) conducted a survey which revealed that 51.3% of respondents cited agricultural activity as the main factor contributing to deforestation. Bush fires were cited by 20.3% of respondents, while population explosion and small-scale logging were other factors. This deforestation has devastating effects on wildlife, affecting hunting opportunities. 27% of those questioned acknowledged that there is a real disappearance of animal and plant species in their region, followed by 23.4% who declared that deforestation has had a negative impact on their agricultural income and the life of their households. The increase in illiteracy, the drying up of watercourses, the disruption of cropping seasons and soil degradation as consequences of deforestation were recognized by over 10% of respondents.

#### **5.2.2 Nature conservation / Creation of protected areas**

Unfortunately, the objectives of nature conservation, on the one hand, and the protection of indigenous cultures and livelihoods, on the other, have sometimes been perceived as

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<sup>104</sup> Tonga Lambo, Jean Alfred, 2018, *Impacts environnementaux et sociaux de l'exploitation forestière artisanale dans le Groupement Bomago, secteur de Bodangabo, Nord-Ubangi*, Research report, University of Gbadolite, Nord-Ubangi, DR Congo.

contradictory rather than mutually supportive. For example, much of the Walikale forest is in a satisfactory state of conservation, thanks to the region's indigenous "pygmy" peoples and their non-destructive cultural practices.

However, the creation of protected areas in certain areas of Walikale territory, as elsewhere in the DRC, has come at a price for forest communities in the form of forced displacement, denial of access to basic means of survival and subsistence, and police surveillance leading to serious human rights violations (as in the case of the lower reaches of Kahuzi National Park in Itebero). The creation of protected areas to the detriment of indigenous and local populations has been described as green colonialism.

### **Conservation, land conflicts and implications for the “pygmies”: the case of Kahuzi-Biega**

The forced expulsion of indigenous "pygmy" populations from their ancestral lands to create national parks began during the colonial period, with the royal decree of 1925 creating the Virunga National Park. It continued after the independence of the DRC, with the creation of the Kahuzi-Biega and Maiko National Parks. Between the 1960s and early 1980s, around 6,000 Twa were forcibly evicted from their ancestral lands in the hills of Chatondo, Katasomwa, Munango, Kabona, Kahuzi-Biega and Maiko, respectively. When it was created in the 1970s by the Institut Congolais de Conservation de la Nature, the Kahuzi-Biega National Park (PNKB) covered an area of 60,000 hectares, and in 1975 its area was extended to 600,000 hectares. This extension led to the expulsion of 3,000 to 6,000 indigenous "pygmies" from their lands, without their being consulted or giving their consent, and without fair and equitable compensation, in violation of international law and the provisions of Congolese law on expropriation for public utility.<sup>105</sup>

The Kahuzi-Biega National Park (PNKB) became a World Heritage Site in 1980. It is currently characterized by conflict and violence between forest rangers and "pygmies", following a massive return of "pygmies" to the park. Around the PNKB, alliances, counter-alliances and differences of opinion are developing between several players, the most notable of which are the State through the PNKB/ICCN, human rights organizations, nature conservation organizations and local organizational initiatives.<sup>106</sup>

NGALA NILEY Georges conducted surveys and interviews in villages on the periphery of the PNKB (Tshivanga, Kalonge, Kalehe, Kaniola, Mudaka, Miti, Kavumu, Tshibati, Lwiro, Katana, Walungu, Izege, Cirunga, Kamituga, Muyange, Kasheke, Bushushu, Katasomwa), between July 2019 and February 2021. He met with beneficiaries, customers, stakeholders and visitor service providers (transporters, hoteliers, indigenous "pygmy" populations, craftsmen, etc.) Another survey was

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<sup>105</sup> Luoma, C. (2022) *Fortress Conservation and International Accountability for Human Rights Violations against Batwa in Kahuzi-Biega National Park*. Minority Rights Group.

<sup>106</sup> UNESCO. (2021). *Parc national de Kahuzi-Biega*. <https://whc.unesco.org/fr/soc/4029/>

aimed at managers of specialized departments, NGOs, ETD heads and community leaders (of indigenous peoples). Interviews were held with officials from national and international organizations, donors, traditional chiefs, development and tourism experts, local residents' committees, indigenous populations, etc. Three focus groups were also organized.<sup>107</sup>

With regard to the merits of the site's creation, the interviewees unanimously felt that the creation of the PNKB as a protected area and its designation as a World Heritage Site had been beneficial. It has raised awareness. However, they deplore the way in which the State has established the site as a park, without informing, involving or compensating local populations.<sup>108</sup> As far as tourism and the management of the income generated are concerned, when the site became a national park and was then awarded the label, there were agreements in principle on management between the stakeholders. But the role and power of local populations remained symbolic. Everything is done by ICCN. They deplore the fact that the State is one of the accomplices in the mega-management, the sale of land on the site and the groping of the local population. PNKB-ICCN, Self-financing and partner support section.<sup>109</sup> For local residents and indigenous "pygmy" populations, the site managers' bad faith is a clear violation of the clause. As a result, they are automatically under no obligation to protect the site (in their view). While the "pygmy" peoples continuously provided services to visitors, the support they received from the state or NGOs was not sustainable or empowering.

### 5.3 Debate on indigeneity

The question of who is considered indigenous is relevant to Law no. 22/030 of July 15, 2022 on the promotion and protection of the rights of "pygmy" indigenous peoples. Why are "pygmy" peoples recognized as indigenous, and why do they need special attention?

Article 2 of the Law on the protection and promotion of the rights of indigenous "pygmy" peoples defines "indigenous "pygmy" peoples" as "hunter-gatherer peoples, generally living in the forest, who identify themselves as such and are distinguished from other Congolese peoples by their cultural identity, their way of life, their attachment to and close relationship with nature and their endogenous knowledge". Other legislation in the DRC does not refer to indigenous peoples, but uses other terminology, such as the "local community", defined for example in Law no. 011/2002 of August 29, 2002 on the Forestry Code in the DRC as "a population traditionally organized on the basis of custom and united by ties of clan or kinship solidarity that underpin its internal cohesion. It is also characterized by its attachment to a specific terroir".<sup>110</sup>

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<sup>107</sup> Ngala Niley, G. (2021). *Conflits et gouvernance territoriale autour du Parc National de Kahuzi-Biega : Acteurs, perceptions et stratégies locales*, Research thesis, Université Officielle de Bukavu.

<sup>108</sup> Parc national de Kahuzi-Biega-Congolese Institute for Nature Conservation. *Self-financing and partner support section*, Annual reports, 2000-2020.

<sup>109</sup> *Idem*.

<sup>110</sup> See above.

The fact that all "pygmy" groups maintain economic relations with farmers in the same regions has given rise to lively discussion as to whether they are "true" hunter-gatherers. The category of "hunter-gatherer", although defined in numerous works since the famous and seminal *Man the Hunter* published by Lee & DeVore in 1968, is still debated.<sup>111</sup> Moreover, doubts about its relevance were raised some time ago. The relationship between "hunter-gatherers" and the surrounding communities is a recurring topic of discussion, as it contradicts the idea that hunter-gatherers are autarkic. In reality, in many parts of the world, they traded with communities, particularly farming communities.

While it is widely accepted that "pygmy" peoples were the first inhabitants of the Congo Basin forests, or hunter-gatherers in Africa as in Asia, the question of initial settlement is much more difficult to establish than on the American continent, with the possible exception of South Africa. All the more so as African history, before and after colonization, is marked by incessant population movements that constantly redefine and complicate territories and identities.<sup>112</sup> This difficulty of identification is also raised by the African Union, which explains the reasons for the political reluctance of states to consider all Africans as indigenous, although the term *autochthonous* is not totally rejected.

This leads to a definition based less on the idea of first settlement (even if it remains underlying), and more on a plurality of criteria that can be combined. Territorial anchorage is no longer the only principle: relations of domination, discrimination and marginality enrich and complicate the definition of an indigenous person. Populations that have historically faced unequal power relations with the nation-states in which they live can be considered indigenous.

In this international context, the term "indigenous people" aims to create a category of international law in which the indigenous person is considered not as an individual but as a member of a people, a subject of international law with the prospect of legal personality. The aim of the UN Declaration is to enable a category considered marginalized and discriminated against to gain a foothold in the concert of nations. To achieve this, it must be supported by the implementation of positive discrimination, as Bellier pointed out in 2009. This acceptance of autochthony as a tool in the fight against discrimination is now an integral part of many international policies and programs.<sup>113</sup>

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<sup>111</sup> Lee, RB. & DeVore, I. (1968). *Man and the Hunter: The First Intensive Survey of a Single Crucial Stage of Human Development— Man's Once Universal Hunting Way of Life*.

<sup>112</sup> See, for example: Vansina, Jan. (1990). *Paths in the Rainforests: Toward a History of Political Tradition in Equatorial Africa*. University of Wisconsin Press.

[https://openlibrary.org/books/OL1888674M/Paths\\_in\\_the\\_rainforests](https://openlibrary.org/books/OL1888674M/Paths_in_the_rainforests)

<sup>113</sup> For more details on these issues, see Arnould (2005), Berkes et al. (2000), Gray and Newing (1998).

Henceforth, in all projects relating to sustainable development, natural resource exploitation or biodiversity conservation, indigenous and local communities must be taken into account, consulted and, better still, involved. Since 2005, indigenous peoples have been given special attention in World Bank policies (with the current operational guidelines and banking policies DO/PB.4.10). In this context, being recognized as indigenous gives access to special treatment (in terms of access to resources, territories, etc.) and, even more so, to new sources of financing.<sup>114</sup> Claims will multiply, and will be facilitated by the ambiguity of definitions: the terms "indigenous peoples", "indigenous and local communities", "customary rights" and "traditional" are not defined.

Thus, according to the multi-criteria definition used in international law, there is no doubt that "pygmies" are indigenous. Moreover, since 2003, at the insistence of the International Work Group for Indigenous Affairs (IWGIA), representatives of the Batwa and other "pygmies" (as they called themselves at the UN) participate in the UN Working Group on Indigenous Issues.<sup>115</sup> Although they were not the only Africans to claim indigenousness, they have struggled to find a place within the indigenous forum. What is more, this recognition is far from unanimous at the national and local level, and runs up against a great deal of opposition. While the concept of indigenous peoples is developing internationally as part of the discourse on human rights, the reality in Africa is quite different.

At the time of independence, in a context of the formation and territorialization of new states, autochthony became inseparable from the process of territorialization and the construction of national identity, as Geschiere and Jackson asserted in 2006.<sup>116</sup> In short, it is a question of who belongs to a particular nation and can therefore be a fully-fledged citizen, and who does not. As mentioned by Bayard *et al.* in 2001, by defining who "the others" (*allochtones*) are and creating "us" (natives), autochthony first made it possible to build the nation-state by going beyond the ethnic character.<sup>117</sup> National identity is built around the idea of roots as proof of belonging.

However, elections as a means of devolving power, which became the norm in the 1990s with democratization and a multi-party system, as well as decentralization processes, have revived political competition and opposition and tend to divide society between those who consider themselves the legitimate holders of rights and power, the natives, and those who do not, because they are foreigners, the *allochtones*. The game consists in reinforcing local political

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<sup>114</sup> World Bank (2005). Operational Manual 4.10: Indigenous Peoples.

<https://thedocs.worldbank.org/en/doc/2e32d9beec85a16da0bac98d14df191-0290012023/original/OP-4-10-Indigenous-Peoples.pdf>

<sup>115</sup> Mulvagh, L. (2006). The impact of commercial logging and forest policy on indigenous peoples in the Democratic Republic of Congo. International Work Group for Indigenous Affairs.

<sup>116</sup> Geschiere, P., & Jackson, S. (2006). *Autochthony and the Crisis of Citizenship: Democratization, Decentralization, and the Politics of Belonging*. African Studies Review, 49(2), 1–7.

<sup>117</sup> Bayart, J.-F., Geschiere, P. and Nyamnjoh, F. (2001). Autochthony, Democracy, And Citizenship in Africa. *Critique internationale*, No 10(1), 177-194.

legitimacy by asserting one's identity and origins in the face of non-natives. *Autochtony*, in its definition of the relationship with place and anchorage in the territory, is reactivated, while at the same time relying on the exclusion of foreigners.

In this context, the *allochton*e is no longer just someone of a different nationality, but also someone from another region, from the neighboring village, from the neighbor. African history is made up of migrations, movements and integration of ethnic identities, thanks to the flexibility of the boundaries between "us" and "them" and the open terminology of kinship facilitating the incorporation of the foreigner. The activation of *autochthony* as a political slogan brings with it a new phase of ethnicity, leading to a form of "ethnicization" of politics.<sup>118</sup>

Whereas history and independence had favored movement and exchange, the notion of *autochthony* cuts short the social body. It is indeed a utopia, as the idea of primary settlement and ethnic identity is used without reference to primordial identities predating colonization. This is what Achille Mbembe (2000) called the "imaginary identity", which is much more post-colonial than traditional. These few points highlight the difference in perspective between *autochthony* as defined in human rights discourse, and *autochthony* as lived and historically constructed in Africa.

Whereas in Africa, indigenousness is linked to citizenship and the nation-state, in the international context, it refers to human rights and aims to create a legal category in which the indigenous person is considered not as an individual, but as a member of a people and, as such, as a subject of international law. The difficulty lies in the fact that we end up with two ambiguous, concomitant but different uses of the same concept. To sum up, in Africa, the concept of *autochthony* is used both at national level, to designate the "true" holders of rights (citizens) as opposed to *allochthones* or immigrants, and at international level, by marginalized (often transnational) minorities, to claim rights, using international legal texts with the support of NGOs.

Who are the natives? Those who declare themselves as such. When, in 2003, the African Union examined the question of the rights of indigenous peoples in Africa, in relation to the African Charter on Human Rights, it analyzed the possible criteria for identifying indigenous peoples, pointing out that some peoples identify themselves as indigenous. The United Nations Declaration on the Rights of Indigenous Peoples (2007), which very cautiously does not define indigenous peoples, is also based on the principle of self-determination: those who declare themselves indigenous are indigenous.

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<sup>118</sup> Geschiere, P. L. (2009). *The Perils of Belonging: Autochthony, Citizenship, and Exclusion in Africa and Europe*. The University of Chicago Press.

African nations are therefore faced with the difficulty of moving from the dominant paradigm of "indigenous people = 'first nations', *first people*", applied in America and Australia, to that of cultural minorities, adapted to Africa and Asia, based on cultural distinction and favored by the UN challenge and the principle of *self-identification*, as Hodgson explained in 2009.<sup>119</sup> However, self-determination requires information. As far as Africa is concerned, we can only wonder at the role played by "indigenous" international NGOs, which imply that they decide who is indigenous. The actions of these NGOs are aimed solely at these designated and selected populations, who are therefore legitimately inclined to call themselves "indigenous".

What about other, no less marginal and minority groups, who nevertheless speak their own language and practice their own rituals and music? There's no need to wonder about the place of small groups of slash-and-burn farmers in the equatorial forests, including those of the Congo Basin. This claim to indigenousness by "pygmy" groups, with the decisive support of foreign NGOs (and generally at their instigation), is still a nascent movement, triggered by major environmentally disruptive projects such as the Chad-Cameroon pipeline. Current issues surrounding mechanisms to compensate for deforestation (timber certification, the fight against greenhouse gas emissions, etc.) are also at stake.

So, more than the creation of a legal category, what worries local populations and States alike, and fuels movements to reject the recognition of "pygmies" as an indigenous people, are the socio-economic implications of positive discrimination policies, especially as today this recognition goes hand in hand with processes of decentralization and *bypassing* of States in the allocation of external financial aid. Such aid no longer goes through governments, which are seen as weak, corrupt and incapable of implementing development or responding properly to market prerogatives and global expectations. On the contrary, it is aimed directly at local players, populations and communities themselves.

As Geschiere confirmed in 2009, these "bottom-up" policies revive fierce struggles over the idea of belonging, i.e. who can claim to belong to the target community and who cannot. It is therefore easy to understand what is at stake in the fight to grant "indigenous people" status to "pygmies", which creates a category of exception enabling them to benefit from favorable treatment in the context of conservation projects, sustainable management of biodiversity or the construction of major infrastructures, a category over which states have no control. This is why, while the majority of countries have adopted the 2007 Declaration, some (such as France) have done so by specifying that it simply does not apply to them, as there are no "indigenous peoples" in their country!

Recognition of the indigenous character of the "pygmies", however legitimate it may be in terms of the criterion of cultural marginality, subtly works to the disadvantage of other forest

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<sup>119</sup> Hodgson, D. L. (2009). *Becoming Indigenous in Africa*. *African Studies Review*, 52(3), 1-32.

populations in the same region, by reinforcing local myths of the previous presence of "pygmy" populations encountered in the course of historical migrations, thus mixing cultural particularism and initial settlement, without asking whether they too may have migrated and moved in remote times. In other words, without recognizing that "pygmies" also have a history. Even scientific minds can't escape such a mental schema when posing their hypotheses.

Advocacy NGOs are the first to use archetypal images of "pygmies" as good forest savages, while denouncing racist prejudice against them. In this way, they convey the image of populations incapable of taking charge of their own lives, locked into a traditional mode of production. This attitude, linked to the "myth of the forest cocoon", leads to them being seen as the guardians of the forest, and as a kind of "umbrella species": "Save the forest and save the 'Pygmies' at the same time" or, worse still, "save the 'pygmies' to save the forest". So, what are we to think of the "pygmies" who have opted for a more "modern" lifestyle than the others, for example those who grow manioc? Are they not "indigenous"? In passing, we also forget that modern laws, notoriously adopted thanks to the efforts of the same NGOs, prohibit access to the "protected" forest for hunting, which is the basis of these populations' way of life.

The image of indigenous populations is that of naturally delimited and culturally distinct groups, occupying specific spaces, living in another, eternal time. It's the time of lost origins, the time of wisdom and long-awaited harmony between man and nature. And all this means neglecting inter-ethnic relations, displacements and migrations—in other words, history! But it also denies the capacity of these populations to be strongly connected to international spheres. "Pygmy" populations, like other minority peoples, are also engaged in fierce struggles around the idea of belonging, struggles that go hand in hand with the intensification of globalization processes. Geschiere in 2009,<sup>120</sup> Mbembe and Simone in 2001<sup>121</sup> have stressed that the claim to autochthony is a local effort to preserve oneself from the invading flood of globalization, while at the same time demonstrating strong connections with the global.

The tension between the global (i.e. international) and local meanings of autochthony stems from the polysemy of the term and the fact that, historically, the concept has been a tool manipulated to meet political objectives. On the other hand, from a local point of view, it is exclusive: having allogeneity as a corollary, it leads to the exclusion of modern "pygmies", as well as "non-pygmy" minority groups in the same region. The discourse imported from outside infuses arguments that are taken up and transformed within "pygmy" groups themselves to create a dichotomy between "true" and "false" "pygmies", between those who fit a certain image and those who don't, notably in the establishment of local NGOs seeking to dominate official negotiations.

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<sup>120</sup> See above.

<sup>121</sup> T. Blom Hansen & F. Stepputat (Eds.), *States of Imagination: Ethnographic Explorations of the Postcolonial State* Duke University Press, 2001, pp.267-284.

Paradoxically, the symbolic autochthony of the "pygmies" attributed to them by "non-pygmy" societies runs counter to the effective recognition of their autochthony at the international level. Indeed, for local populations, "pygmies" are not human beings like others, they are not citizens like others, whereas "modern" autochthony is linked to the idea of citizenship, as Leonhardt pointed out in 2006. The danger of an ethnic and racialist content to autochthony<sup>122</sup> takes on its full meaning in today's world, where unequal relations between social groups, between farmers and hunters, generate jealousy and therefore conflict. It seems that the negative effects of positive discrimination denounced by Campbell in 2004<sup>123</sup>. The global syllogism we denounce amounts to artificially separating "pygmy" populations from other peoples with whom they have coexisted for millennia. This generates a vision based on opposition, whereas it is above all a question of associations and complementarity between these populations, in other words, in terms of polyethnic systems.

In the case of the DRC, the term "autochtone" has had different meanings over the course of its evolution since the beginning of Belgian colonization of the Congo. Under King Leopold II, all people living on their native lands in the independent state of Congo were called "indigènes"<sup>124</sup>. They were regarded as people without history who needed to be civilized and educated. After the First World War, and especially with the creation of the League of Nations in the early 1920s, the fight against racial discrimination led to the populations of the Belgian Congo being referred to differently. It was mainly in the second half of the 1940s, following the intervention of the UN, that the populations of the Belgian Congo were referred to as "indigenous".

After independence in 1960, this consideration was limited to certain Bantu and "pygmy" tribes who had not "modernized". They often entrusted their traditional chiefs and organizations with the task of representing them, distinctly and independently of the dominant society or culture. While many of them still have their own language, different from the official language(s) of the country or region where they live, many indigenous languages are extinct or on the brink of extinction because their speakers have been driven off their lands and/or relocated to other territories. In 2011, the DRC banned the use of the term "pygmy". Today, the term "indigenous" is in the process of supplanting the term "pygmy", so that the analogy "pygmies= hunter-gatherers" becomes "pygmies" = hunter-gatherers = indigenous", without taking into account the complexities we have raised. The use of this term to refer to the heterogeneous group under the label "pygmies" raises many questions. Ultimately, is the term "indigenous" really more

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<sup>122</sup> Bayart et al. (2001). Autochthony, Democracy, And Citizenship in Africa. *Critique internationale*, No 10(1), 177-194.

<sup>123</sup> Campbell, J. R. (2004). Ethnic Minorities and Development: A Prospective Look at the Situation of African Pastoralists and Hunter-Gatherers. *Ethnicities*, 4(1), 5-26.

<https://doi.org/10.1177/1468796804040326>

<sup>124</sup> These terms have been used several times in official documents including: *EIC Official Bulletins*, 1885-1907

appropriate than "pygmy", as claimed by some members of these communities and increasingly in communication materials?

The noun "autochtone" defines "those who live in their place of origin" and, from this point of view, appeals to history and ancient societies. Indigenousness thus implies the idea of a *first settlement*, a specific link to a place, a territory, as well as an idea of temporality that would forge identity. It is commonly accepted, both internationally and locally, that "pygmies" are the original inhabitants of the forested areas of Central Africa and, as such, are the "true natives". Yet advocacy NGOs and representatives of the "pygmies" are engaged in a struggle for recognition of their rights as indigenous peoples, as evidenced by the discussions held in March 2011 at Impfondo, Congo, and the annual meetings of the *Réseau Recherches action concertées Pygmées* (RACOPY), in which one of us participated in 2007 and 2008.<sup>125</sup> This paradox stems from the fact that the concept of autochthony is not only highly polysemic, but also widely used in political and economic power games, with different meanings depending on the context.

In fact, what the "pygmies" (and advocacy NGOs) are asking for is to be recognized as indigenous peoples within the *United Nations Declaration on the Rights of Indigenous Peoples*, adopted in 2007 after more than twenty years of controversy, some of which is far from over. This long journey has its roots in the struggles for their rights waged by the peoples of Latin America following the development of indigenous politics in the early 20th century. This geographical origin has had a lasting impact on the problematic definition of indigenous peoples in international law. In this respect, while the notion of primary settlement remains underlying in this context, it has been the subject of much debate since 1957, with the first text to mention the indigenous question, the Indigenous and Tribal Populations Convention (International Labor Organization C107, revised in 1989 under reference C169). Although it briefly defines a certain number of criteria for identifying the groups concerned, this convention remains very evasive on the scope of the notion of indigenous people and on all questions relating to land and territories.

Following José Martinez Cobo's 1981 and 1986 reports for the UN Commission on Social Affairs, the concept of "indigenousness" became more complex.<sup>126</sup> Initially synonymous with the *first* (or *indigenous*) people, it then acquired another dimension, described as structural or constructivist, notably under the impetus of the Working Group on Indigenous Populations (WGIP), which in the early 1990s included several representatives of African and Asian populations claiming autochthony (and unofficially recognized as such in certain documents).<sup>127</sup>

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<sup>125</sup> Direct observation, participation in Recherches Actions Concertées Pygmées (RACOPY) meetings (2007, 2008); see also: RACOPY, *Annual activity report*, 2008.

<sup>126</sup> Martinez Cobo, J. (1987). *Study of the Problem of Discrimination Against Indigenous Populations*. United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

[https://digitallibrary.un.org/record/133666/files/E\\_CN.4\\_Sub.2\\_1986\\_7\\_Add.4-EN.pdf](https://digitallibrary.un.org/record/133666/files/E_CN.4_Sub.2_1986_7_Add.4-EN.pdf)

<sup>127</sup> United Nations Working Group on Indigenous Populations (WGIP), *Reports of the annual sessions*, 1991-1995; see also: Bellier, I. (2013). *Peuples autochtones dans le monde: Les enjeux de la reconnaissance*. L'Harmattan. <https://dumas.ccsd.cnrs.fr/OPENAIRE/halshs-00876381v1>

While a large proportion of the land occupied by indigenous peoples belongs to them under customary law, many governments recognize them as the official or legal owners of only a tiny fraction of these territories. And even in the case of official recognition, the means to protect the boundaries of the territory or to use and exploit natural resources are often inadequate.

Land tenure insecurity is a factor in conflict, environmental degradation, and limited economic and social development. It threatens the survival of essential cultures and knowledge systems, and these cultural losses accentuate the risks of fragility, loss of biodiversity and deterioration of environmental and animal health systems, jeopardizing the ecosystem services on which we all depend. It is therefore essential to secure land tenure, strengthen governance, promote public investment to provide quality services adapted to traditional cultures, and preserve the indigenous systems that support resilience and livelihoods. All these elements are essential to tackle the multidimensional aspects of poverty while contributing to sustainable development. The World Bank works with indigenous peoples and governments to ensure that major development programs take into account the views and aspirations of indigenous peoples.

## 6. Law no. 22/030 of July 15, 2022: politics, silences and underlying power relations

Generally speaking, in this research on the rights of indigenous "pygmy" peoples in DRC, we did not limit ourselves to reading the writings left by elders to find out what happened, as these accounts do not tell the whole story of indigenous peoples' protection and logging, and may consist in whole or in part distorted information. However, we have carried out a critical analysis of the materials and complemented with results of field surveys.

Before embarking on the research, we considered which documents might provide answers to the historical, legal, anthropological and social questions posed by our problem. A. Prost sums up this process with this beautiful image: "The historian does not cast his trawl at random to see if he will catch any fish, and if so, which ones".<sup>128</sup> History is made with written documents, without a doubt. Perhaps the most exciting aspect of our work as historians is the constant effort to make silent things speak. We maintained a critical attitude towards the textual material we engaged with - and we reflected on the texts we did *not* find and why this was not considered as worthy of reporting, neither in the eye of the colonizer, nor in that of the nation-state apparatus that followed the Belgian regime. It is this constant doubt that makes the profession of historian.

In addition to the internal, external and provenance criticism carried out on our working documents, historical criticism has led us to compare testimonies relating to the issue in question. When they agree, it is a sign that the facts are true or at least agreed on. However,

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<sup>128</sup> Prost, A. (1996). *Douze leçons sur l'histoire*. Seuil. p. 71.

when a witness is contradicted by several others, this does not automatically mean that he or she is lying or mistaken. These other witnesses may be relying on the same erroneous source. Disagreement can also result from different positions, perspectives and knowledge.

Our study has shown that the knowledge that matters and the definition of identity that matters can change over time, with rights being rejected, protected and rejected again, and laws being born, hibernating in administrative drawers, and possibly being resuscitated in the near future. Analysis of the evolution of the law has shown how political opportunity structures and highly committed parliamentarians, as well as representatives of indigenous populations and other civil society actors, can press for significant, even radical, change. However, our study also shows the politics at play when there are delays in the implementation—and "enforceability"—of such an ambitious law: when there is no formalized record of what is "pygmy" territory, how do you defend what is rendered invisible? And when identity politics, shaped by colonial mentalities, are reproduced in today's national debates about who should adapt to whom, and who deserves (or not) special treatment and what's best for "the country"? And when those who have the power to decide what constitutes a "pygmy" and a "Pygmy territory" do not represent these groups, do power relations not allow for open contestation either? Finally, what space is available for the forest-dependent way of life of the "pygmies", when dominant interests have long divided up forest and forest land for extraction and exploitation in the DRC?

## **7. Conclusion**

With this study, we aim to raise awareness among the general public, political decision-makers, Congolese IPLCs and international and national civil society organizations of Law n°22/030 of July 15, 2022 on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples in the Democratic Republic of Congo, in order to stimulate discussion and exchange on its efficient application through recommendations. Convinced that it would be illusory to return to their initial situation, the indigenous "pygmy" peoples remain just as confident in their ability to maintain a relationship of recognition of their historic role in the rational management of their spaces and resources, and of mutual respect with the various state, social and private players. Indigenous "pygmy" peoples and their ethnic communities could play a key socio-economic role by contributing to the application of appropriate methods for sustainable development and greater respect for the environment throughout the ancestral territories of their settlements. These peoples are ready to share these areas equitably in the interests of all, including the State and future generations. We hope that this summary report will contribute to the efforts to inform and mobilize different actors and groups to recognize and appreciate application of the said law.

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