



# DEMOCRATIC REPUBLIC OF CONGO

Governance and management of protected areas: A country report on the criminalization of, and human rights violations against Indigenous Pygmy Peoples



**Indigenous Peoples  
Rights International**

Championing Indigenous Peoples Rights

## Acknowledgements

The report was written by Alex Kapupu Mwenelwata with inputs from Joseph Itongwa Mukumo. Further review and writing were done by marie joyce godio.

Copy editor: Luchie Maranan

Design and Layout: Paul Michael Nera

Translation from French to English: Aquilas Koko Ngomo

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Caption photo cover:

(above) Indigenous Batwa leader, Kasole Kalimbiro, stands on his community's customary forest next to Kahuzi-Biega National Park. (Photo: ANAPAC-RDC)

(below) Indigenous Pygmy Peoples from Bomoga village in Kalonge perform their traditional dance on the highland boundary of Kuhuzi-Biega National Park. (Photo: ANAPAC-RDC)

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## Contents

Executive summary	1
About this report	4
Overview of protected areas	5
Overview of Laws on Forestry Code and on Conservation of Nature	10
Loi N°011/2002 du 29 aout 2002 portant code forestier/Law N°011/2002 of August 29, 2002 on Forestry Code	11
Loi N° 14/003 du 11 février 2014 relative a la conservation de la nature/ Law N ° 14/003 of February 11, 2014 on Conservation of Nature	12
Creation of protected areas and their enduring impacts to Indigenous Pygmy Peoples	14
Kahuzi-Biega National Park	15
The Salonga National Park	16
Incidents of criminalization of, and human rights violations against Indigenous Pygmy Peoples in protected areas	19
Challenges and constraints of access to justice for Indigenous Pygmy Peoples living in and around protected areas	22
Actions taken by affected communities and/or their allies in relation to human rights violations	23
Conclusion and recommendations	25
References	27

## Executive summary

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The Democratic Republic of Congo (DRC) covers 60 percent of the 3.6 million km<sup>2</sup> Congo Basin Forest, which spans six countries of the African region. Indigenous Pygmy Peoples live by, and from the forests and have maintained ancient, intense and deep cultural, social and economic links with nature for millennia. Some areas of these forests are now protected by DRC in the name of conservation of fauna and biodiversity. This has resulted in Indigenous Pygmy Peoples' dispossession of their traditional land for the benefit of conservation without compensation or indemnification for any of their lands. The expropriation without prior consultation or accompanying measures resulted in conflicts between protected areas (national parks) and Indigenous Pygmy Peoples who are being criminalized and their human rights violated. Indigenous Pygmy Peoples have roamed these forests until they were colonized in the 1800s. Today, parts of these forests are protected by the state in the name of wildlife and biodiversity conservation and the original inhabitants are targets of criminalization and human rights violations in the DRC. They are victims of escalating violence perpetrated by eco-guards and this has led to arrests, imprisonments, killings, assassinations, murders and massacres.

In 2020, there were two incidents of killing involving five indigenous Batwa men during a protest. The three were killed after the violent dispersal by the Institut Congolais pour la Conservation de la Nature (ICCN) / Congolese Institute for the Conservation of Nature, and Forces Armées de la République Démocratique du Congo (FARDC) / Armed Forces of the Democratic Republic of Congo; while the other two were killed by eco-guards of Parc National de Kahuzi-Biega (PNKB) / Kahuzi-Biega National Park. This report also notes that in 2021, there were two separate incidents of criminalization involving twelve members of the Indigenous Pygmy Peoples. Seven of them were arrested while gathering dried wood in Parc National des Virunga (PNVi) / Virunga National Park and accused as accomplice of poachers.

This report also elaborates on the laws related to land, forestry ownership and conservation that affect Indigenous Pygmy Peoples' rights to their lands, territories and natural resources such as: (1) loi n°73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des suretés / Law n ° 73-021 of July 20, 1973; (2) loi n°011/2002 du 29 aout 2002 portant code forestier / Law N°011/2002 of August 29, 2002 on the Forestry Code; and (3) loi n°

14/003 du 11 fevrier 2014 relative a la conservation de la nature / Law n° 14/003 of 11 February 2014 relating to the conservation of nature. Among other gaps, all three laws do not provide for the respect of free, prior and informed consent (FPIC) of Indigenous Pygmy Peoples and security of tenure of their customary lands.

Protected areas make up 11 percent of the country's total land area which the government aims to further increase to 17 percent. Currently, there are five hunting grounds, seven natural reserves and eight national parks. Five of the national parks are World Heritage Sites namely, (1) PNKB, (2) Parc National de la Salonga (PNS) / Salonga National Park, (3) Parc National de Garamba (PNG) / Garamba National Park, (4) Parc National des Virunga (PNVi) / Virunga National Park, and (5) Réserve de Faune d'Okapi (RFO) / Okapi Fauna Reserve.

The ICCN is responsible for DRC's protected areas and for hiring rangers or 'eco-guards,' to protect, conserve and manage national parks, reserves and other sites of conservation interest. These eco-guards are armed and have been known to abuse their power over Indigenous Pygmy Peoples accessing the natural resources in these conservation areas. They treat Indigenous Pygmy Peoples like any other illegal poachers and criminalize, physically assault or kill them for subsistence hunting, fishing and gathering, even in areas outside national parks and in buffer zones. Although some eco-guards have been imprisoned for their acts of human rights violations, in general, making them accountable is an uphill battle, especially if it involves Indigenous Pygmy Peoples.

Discrimination against Indigenous Pygmy Peoples and their way of life is deeply entrenched in DRC's society affecting their access to justice, health services, education, livelihood and other basic social services. Generations of dispossession of their lands and territories led to a high number of the population living in a cycle of poverty and illiteracy. The continuing plunder of their customary lands since the colonial period until this day resulted in the degradation of their identity, culture, traditions, governance, and other self-sufficient and interdependent practices in the use and management of their lands and territories.

The Loi portant Promotion et Protection des Droits des Peuples Autochtones Pygmées en République Démocratique du Congo / Law on the Promotion and Protection of the Rights of Indigenous Pygmy Peoples in the Democratic Republic of the Congo (Law on Indigenous Pygmy Peoples hereon) signed by the President of DRC in 2021 is an astounding progress on the recognition and protection of the Indigenous Pygmy Peoples' individual and collective rights. They who have fought hard to attain such a feat are hopeful for its potential to address land rights issues and proper access to basic social services, particularly on health

and education, and address the violations of their human rights that regularly happen.

This report recommends to the DRC government to ensure human-rights based approach to natural resources management and that national laws be in line with international human rights instruments. It should also ensure proper implementation of the Law on Indigenous Pygmy Peoples and adopt specific regulations on Indigenous Pygmy Peoples' right to FPIC in relation to conservation and other programs that affect their lives, culture and governance. It should recognize and protect their sustainable customary practices in natural resource management and establish meaningful partnership with them in managing conservation areas, particularly those that encroach their customary lands. It should ensure that the ICCN and its eco-guards are made accountable for their acts of human rights violations, and guarantee justice and reparation to the victims and their families.

## About this report

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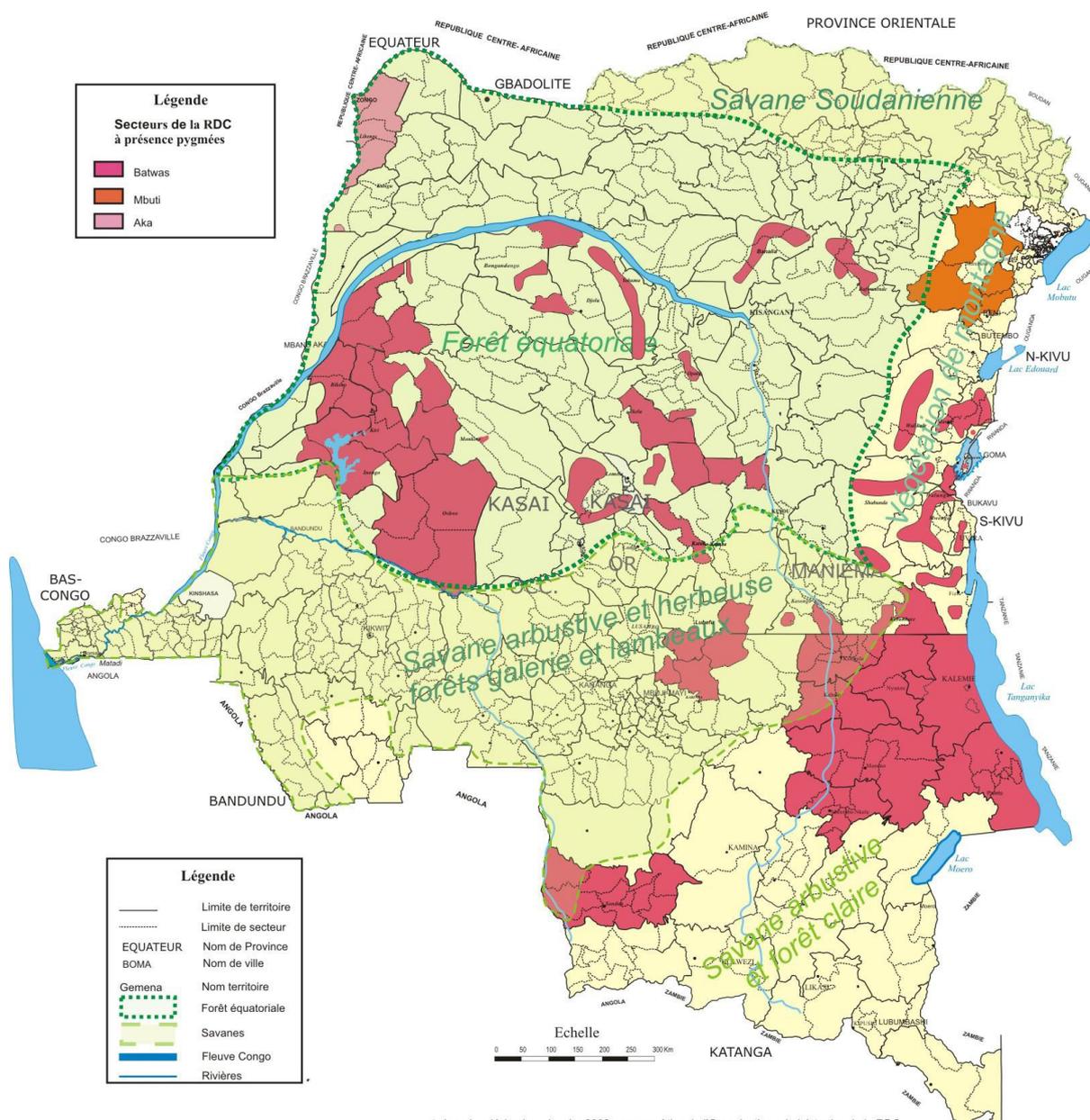
As part of its work to confront criminalization of, and human rights violations against Indigenous Peoples, Indigenous Peoples Rights International (IPRI) decided to contribute to the ongoing calls for a human rights-based approach to conservation. As a start, we conducted a research study on the issue and commissioned global and country reports covering the Democratic Republic of Congo, Kenya, Tanzania, Nepal, and Thailand. Each report is published independently and can be read as stand-alone publications.

The study aims to contribute in raising awareness and attention to the issue of criminalization and violations of Indigenous Peoples' rights in relation to environmental conservation. We hope that it will be useful for Indigenous Peoples and human rights organizations in their advocacy initiatives at the national, regional, and global levels. We also hope the reports will be useful for states and conservation institutions when developing programs and policies that aim to address human rights violations in conservation areas, including the access to justice and remedy of the victims of criminalization and human rights violations.

The cases of criminalization and violation of the human rights of Indigenous Peoples presented in the country report of the Democratic Republic of Congo cover January 1, 2020 to July 31, 2021. The report focuses on cases in Kahuzi-Biega and Salonga National Parks. The initial meetings and surveys conducted by the research team with their key informants demonstrated that these two areas have high number of human rights violations against Indigenous Pygmy Peoples. The two national parks also exemplify the deterioration of Indigenous Pygmy Peoples' lives because of the parks' establishment and ongoing conservation approach that discriminate their way of life and violates their individual and collective rights.

## Overview of protected areas

The DRC's more than 170 million hectares of dense humid forest and more than 116 million hectares of other types of forests abound with enormous wealth of biodiversity and are home to diverse peoples and cultures. Indigenous Pygmy Peoples have depended on the richness of the Congo Basin biodiversity since time immemorial, but development projects such as conservation and protected areas that began during the colonial period have since put their survival and the Congo Basin's biodiversity in peril.



Indigenous Peoples in DRC. There have existed several versions of the map on the location of indigenous populations in the DRC. The one presented above is one of the last to have been produced in the Strategic Framework document for the Preparation of a Pygmy Development Program in the DRC prepared by the World Bank based on the results of a national survey. This map was published in 2009.

The DRC has four major ethnic groups, i.e., the Bantu, the Nilotics, the Sudanese, and the Indigenous Pygmy Peoples. The latter are among the first people in Central Africa and considered first settlers in what is now the state of DRC. They were initially referred to as pygmy but the term was considered derogatory. With the rise of Indigenous Peoples movements around the world and in the DRC, they had incorporated the term and refer to themselves as Indigenous Pygmy Peoples.<sup>1</sup>

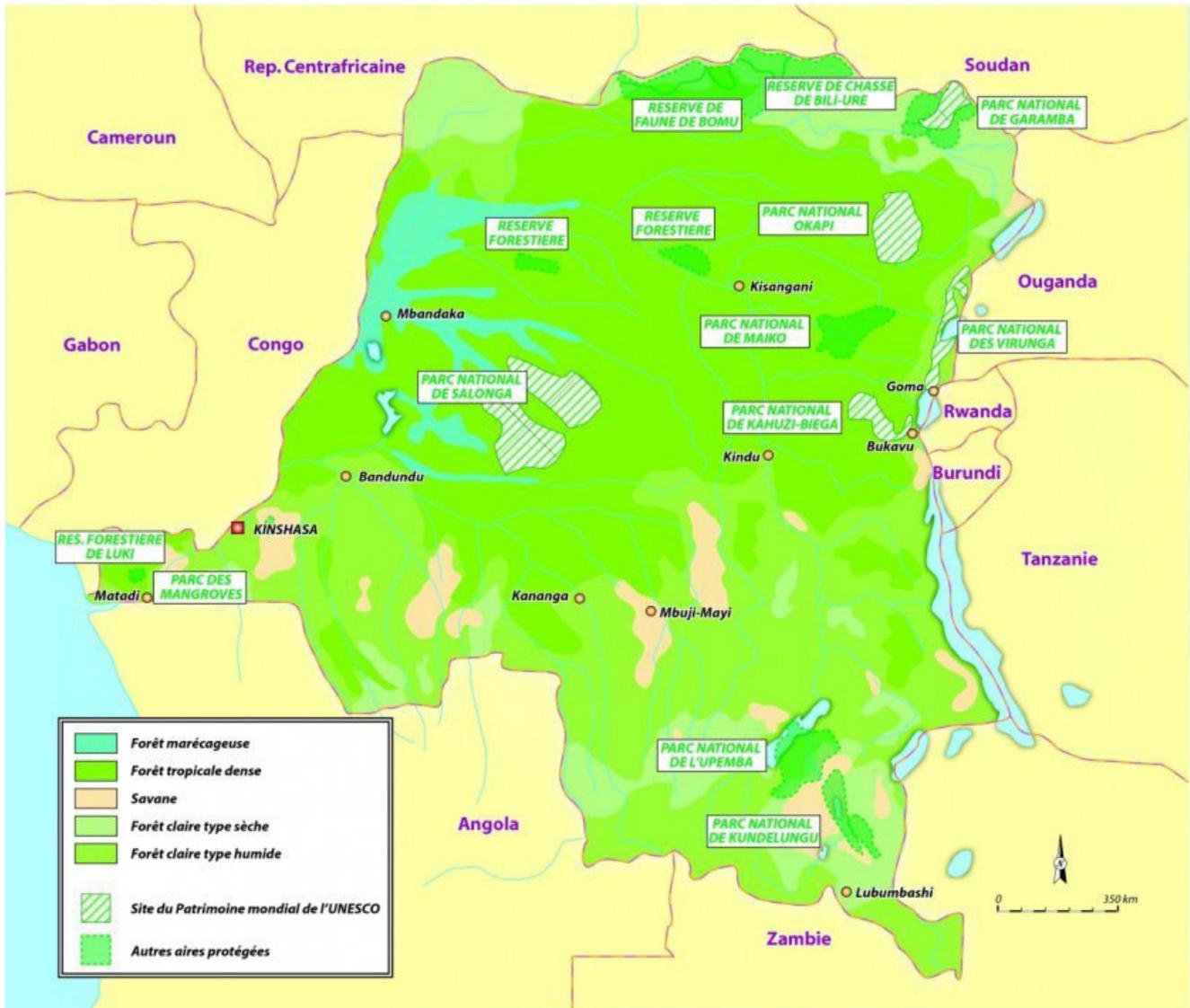
They self-identify and recognize other ethnicities as Indigenous Pygmy Peoples. Although there is no official data on their population and actual number of ethnicities, among those known are: Batwa, Twa, Cwa, Mbuti, Bambuti, Bashwa, Bambote, Efe, Babenga, Balumbo, Basoa, and Babuluku. They occupy 21 of the 26 provinces of the DRC except the provinces of Congo Central, Kwilu, Kwango, Kinshasa and Lualaba.<sup>2</sup>

The Congolese State's primary priority is conservation over Indigenous Pygmy Peoples' lives and rights, particularly their collective rights to lands and territories, and their self-determination. Since the demarcation of these conserved and protected areas, they have been prohibited to access these spaces. Their establishment has been marred with violence that persists to this day. Land dispossession severed their connection to sites of cultural and spiritual importance. They have been pushed to poverty, food insecurity and dependence on government projects and humanitarian aid. They continually face challenges in achieving justice and legal remedies. Although it was deemed admissible at the Parliamentary in April 2021, the Bill on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples is yet to be signed by DRC's current president, Felix Tshisekedi.

The network of protected areas in the DRC includes national parks, nature reserves and hunting grounds, as indicated in Article 12 of the N°011/ 2002 du 29 Août 2002 portant code forestier en RDC / Article 12 of Law N°011/ 2002 of August 29, 2002 on the DRC's Forestry Code. It covers approximately 32.5 million hectares or 13.83 percent of the country's total area, which the government intends to expand to 30 percent. These protected areas overlap with what the Indigenous Pygmy Peoples consider as their ancestral lands that they have freely roamed during pre-colonial times.

Law No. 14/003 of 11 February 2014 on the conservation of nature defines them as:

- Article 2, paragraph 31 of the law defines a national park as a category of protected areas consisting of a vast natural or quasi-natural area set aside to protect large-scale ecological processes, as well as the species and characteristics of the ecosystems of the region, which also provide a base for visiting opportunities of a spiritual, scientific, educational and recreational nature, respecting the environment and the culture of local communities;
- Paragraph 12 of the same article defines a hunting ground as a category of protected areas where hunting activities are authorized but regulated;
- Paragraph 39 of the same article defines an integral nature reserve as a category of protected areas that are set aside to protect biological diversity and also, possibly, geological and/or geomorphological characteristics, where visits, use and human impacts are strictly controlled and limited to ensure the protection of conservation values.
- Hunting reserve: category of protected area or interior zone of a protected area in which hunting activities are prohibited in order to promote the reproduction of wildlife.
- Furthermore, Article 12 of Law N°011/ 2002 of August 29, 2002 on the DRC's forestry code, mentions that classified forests are part of the public estate of the State. The following are classified forests: integral nature reserves, forests located in national parks, botanical and zoological gardens, wildlife reserves and hunting grounds, and biosphere reserves. The forestry code does not define all the terms, and leaves the definitions/details to sectoral laws such as the law on conservation, the 2011 framework law on the environment, the decree creating the ICCN, and the national strategy on nature conservation.



## National Parks

Parc National de Garamba (PNG)/ Garamba National Park	490,000 ha
Parc National de Kahuzi-Biega (PNKB)/ Kahuzi-Biega National Park	600,000 ha
Parc National de Kundelungu (PNK)/ Kundelungu National Park	760,000 ha
Parc National de la Maïko (PNM)/ Maïko National Park	1,083,000 ha
Parc National de la Salonga (PNS)/ Salonga National Park	3,600,000 ha
Parc National des Virunga (PNVi)/ Virunga National Park	784,368 ha
Parc National d'Upemba (PNU)/ Upemba National Park	1,773,000 ha
Parc National de Lomami (PNL)/ Lomami National Park	887,900 ha

## Hunting grounds and reserves

Domaine de chasse et réserve de Mangai/Mangai hunting ground and reserve	1,176,875 ha
Domaine de chasse de Bili Uere/Bili Uere hunting ground and reserve	6,000,000 ha
Domaine de chasse de Bombo Lumene (DCBL)/Bombo Lumene hunting ground and reserve	350,000 ha
Domaine de chasse et réserve de Bushimaie/Bushimaie hunting ground and reserve	487,000 ha
Domaine de chasse et réserve de Basse Kando/Basse Kando hunting area and reserve	17,500 ha

## Natural reserves

Réserve naturelle d'Itombwe (RNI)/ Itombwe natural reserve	760,000 ha
Réserve de faune de Lomako (RFL)/ Lomako fauna reserve	362,500 ha
Parc marin des Mangroves (PMM)/ Mangroves marine park	76,800 ha
Réserve intégrale du Mont Hoyo/Mont Hoyo integral reserve	6,000 ha
Réserve naturelle intégrale de Nsele/Nsele integral natural reserve	3,550 ha
Réserve de faune d'Okapi (RFO)/ Okapi fauna reserve	1,376,200 ha
Réserve naturelle de Tumba- Ledîma (RTL)/Tumba - Ledîma natural reserve	750,000 ha

## Overview of Laws on Forestry Code and on Conservation of Nature

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The Constitution of the DRC, 2006 does not mention Indigenous Pygmy Peoples nor does it recognize their rights as a people with distinct identity and culture inextricably linked to their lands and territories. Despite the promulgation of various laws, the violations of the rights of Indigenous Pygmy Peoples continue in protected areas such as their rights to access, use and occupy their lands.

Since 2002, the DRC has embarked on a process of reforms including land reform, land use planning, forestry policy and agriculture and has adopted laws and policies some of which are under development. These reforms have led the DRC to integrate the recognition of the rights of Indigenous Pygmy Peoples into policies and laws.

Currently, indigenous leaders and organizations, particularly the Programme Intégré pour le Développement du Peuple Pygmée au Kivu (PIDP), Alliance Nationale d'Appui et de la Promotion des Aires et Territoires du Patrimoine Autochtone et Communautaire en République Démocratique du Congo (ANAPAC-RDC), and Ligue Nationale des Associations Autochtones Pygmées du Congo (LYNAPICO) are engaging in these processes to ensure that reforms integrate the respect and promotion of the rights of Indigenous Pygmy Peoples.

Except for the Loi portant Promotion et Protection des Droits des Peuples Autochtones Pygmées en République Démocratique du Congo / Law on Indigenous Pygmy Peoples, there is currently no other specific law or policy that protects their individual and collective rights. The disregard of their rights as Indigenous Peoples is prevalent in several laws and policies on protected areas and conservation, and land use and management in general. In instances that provisions of laws allow for Indigenous Pygmy Peoples to utilize and defend their rights, the deeply entrenched discrimination against them and their way of life pose a challenge for these laws to be effective in protecting their rights.

The prevailing laws and regulations on protected areas and land management do not take into account the Indigenous Pygmy Peoples' collective rights to self-determination and lands, territories and natural resources. Even in laws that should cover their other civil, political, and socio-economic rights, the general disdain and discrimination against them pose a challenge to protect them from human rights violations.

Furthermore, the government's 2021 -2023 Action Program outlines commitments, priorities and strategies that will be implemented in the three years of the President's five-year term, but did not take into account the living conditions of Indigenous Pygmy Peoples.

### **Loi N°011/2002 du 29 aout 2002 portant code forestier<sup>3</sup>/Law N°011/2002 of August 29, 2002 on Forestry Code**

It regulates the management and use of forests in DRC and provides for the recognition that classified forests are part of the public estate of the State. They include integral nature reserves, forests located in national parks, botanical and zoological gardens, wildlife reserves and hunting grounds, biosphere reserves.

While Indigenous Pygmy Peoples are recognized in the Plan de Convergence pour la Gestion Durable des Ecosystèmes Forestiers d'Afrique Centrale de 2015-2025 or 2015-2025/ Convergence Plan for the Sustainable Management of Forest Ecosystems of Central Africa as custodians of the country's tropical forests through their conservation practices, there is no mention of their traditional systems of governance and management of these forests. In its priority pillar number five, the revised Convergence Plan recognizes the significant contributions of the endogenous knowledge of Indigenous Peoples and recommends that Central African States involve them at all levels in the decision-making processes in the management and governance of natural resources.

Article 22 of the law states that a local community may request to obtain a part or the whole protected forest as a forestry ground/concession regularly owned by virtue of custom. Although it does not specifically refer to Indigenous Pygmy Peoples, they are covered by this law which allows them to secure the areas they customarily occupy. Again, however, the deeply embedded discrimination against them in society is an obstacle to make this a reality. Their traditional practices and occupation on conservation, management and use of the forest remain unappreciated, if not outrightly rejected. Addressing this gap requires amendment of the law to specifically recognize customary forest rights of Indigenous Pygmy Peoples, distinct from other sectors within a local community.

## **Loi N° 14/003 du 11 février 2014 relative a la conservation de la nature<sup>4</sup>/ Law N ° 14/003 of February 11, 2014 on Conservation of Nature**

This law oversees the creation, management and conservation of nature and protected areas. It states the types and categories of protected areas, and specifies the type of governance and management.

The management categories apply to a typology of governance - a description of who has authority and responsibilities over the protected area. IUCN defines four types of governance:

- Governance by government: governance by a federal or national agency or ministry; by a responsible sub-national agency or ministry; or delegate (e.g. of an NGO)
- Shared governance: collaborative governance (various degrees of influence); joint (pluralist management board); and/or cross-border (varying degrees on both sides of international borders)
- Private governance: governance by an individual owner; by non-profit organizations (NGOs, universities, cooperatives); by for-profit organizations (individuals or companies)
- Governance by Indigenous Peoples and local communities: areas and territories declared, conserved, and managed by Indigenous Peoples or local communities

It repeals Ordinance Law No 69-041 of 22 August 1969 on the Conservation of Nature. It is viewed as more reflective of DRC's commitment to international conventions, including among others, the Treaty on protection and sustainable management of forestry ecosystems in Central Africa.<sup>5</sup> It includes public participation in decision-making processes; local communities' involvement in the strategic steps for establishing and managing protected areas; social and environmental impact studies for all projects relating to the creation of protected areas; traditional knowledge on nature conservation; access to biological and genetic resources; and just and equitable benefits derived from resources.<sup>6</sup> Strong measures and criminal provisions are defined through six chapters: General Dispositions; Conservation Measures; Biological and Genetic Resources and Traditional Knowledge; Financial mechanisms; Infractions and Punishments and the Final Repeal clauses.

Article 60 of the Law on Nature Conservation provides for access to biological and genetic resources and to associated traditional knowledge related to the fair and equitable sharing of monetary and non-monetary benefits arising from their use. Therefore, principles related to the distribution must be defined in the various application measures. However, it should be noted that there are ongoing initiatives including a draft decree on fair and equitable sharing of the benefits arising from their use by the Ministry of Environment and Sustainable Development. This requires vigilance from organizations and leaders of Indigenous Peoples for the consideration of their rights. It does not clearly define the process of sharing the benefits arising from the sustainable and equitable use of biological resources.

The ICCN was created by the Décret n° 10/15 du 10 avril 2010 fixant le Statut d'un Etablissement Public dénommé Institut Congolais pour la Conservation de la Nature en sigle (I.C.C.N.) or Decree n ° 10/15 of April 10, 2010 fixing the Status of a Public Institution called the Congolese Institute for the Conservation of Nature ( I.C.C.N ). This law defines "zone tampon" or buffer zone as an area located between the central part of a protected area and the surrounding land or marine landscape. As an essentially transition area, it protects the network of protected areas from external influences that are potentially negative.

## Creation of protected areas and their enduring impacts to Indigenous Pygmy Peoples

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The means of subsistence of Indigenous Pygmy Peoples who live within and around protected areas were taken away with the establishment of conserved and protected areas. They are now restricted from hunting, fishing, picking, and gathering natural resources from their forests and territories, which they have roamed freely prior to demarcation of protected areas and even prior to Western colonization in the 19<sup>th</sup> century. In all those years, Indigenous Pygmy Peoples have always regarded land as economic, social, and cultural asset that should not be sold. The land and its natural resources should be managed collectively and enjoyed freely by everyone.

Forced to unconditionally leave the forest they are inextricably linked with, the Indigenous Pygmy Peoples experience not only plunder of their land but forced alienation from their socio-cultural and moral values. They have been forced to gradually abandon their own culture resulting in the breakdown of their traditional knowledge and practices. The generations of devaluation and desecration of their mores have irreversible impacts to their ongoing issues of poverty and food insecurity. Deeply entrenched discrimination by the majority of the population against their way of life leads to violence and abuse. This is particularly harrowing in host villages where they are forcibly relocated. The discrimination against them is also linked to their ongoing lack of access to basic social services, particularly health care, education, and sustainable livelihood.

Indigenous Pygmy Peoples are suffering from extreme poverty,<sup>7</sup> which also affects their children's access to education. The estimated number of children who have access to primary school education is 0.5 percent.<sup>8</sup> Malnutrition is common among Indigenous Pygmy children living within and around Kahuzi-Biega and Salonga National Parks because their families have insufficient means for subsistence. High rate of infant mortality is also common as women lack access to proper health care and nutrition. Indigenous Pygmy men and women are often vulnerable to exploitation when they seek livelihood as daily wage laborers in the capital or in agribusinesses. Indigenous Pygmy women are more likely to suffer from sexual harassment and violence in these working environments.

## Kahuzi-Biega National Park

Kahuzi-Biega, with an area of 75,000 hectares, has been an integral zoological and forest reserve since 1937. The area was reduced to 60,000 hectares when it was made into a national park on November 30, 1970. In 1975, its perimeter was expanded by 900 percent. Today, it spans 600,000 hectares and comprises two parts: the high-altitude area, which includes the old part of the reserve and the rainforest and is the center of Afro-mountain endemism; and Mount Kahuzi which is a community conservation site that the Indigenous Pygmy Peoples protected and conserved according to traditional rules.

Between the period of 1970 to 1985, around 6,000<sup>9</sup> Indigenous Batwa Peoples were forcibly evicted from their ancestral lands. The expansion in 1975 affected the Indigenous Bambuti and Babuluko Peoples of Isangi, Bangenengene, Mbongolo, Misenya, Myassa villages.

A 2017 census estimated that there were around 9,608 Indigenous Batwa People living in 101 villages that border the park's high-altitude part, particularly in Kabare and Kalehe territories in the province of South Kivu.<sup>10</sup>

Decades have passed, but the creation of PNKB is etched in the memories of the Indigenous Pygmy Peoples who were forced out of the park's perimeter. As Munganga Nakulire remembers, he was five years old when a "white man they called Adrien Deschryver arrived with a couple of village leaders and settled things."<sup>11</sup> Deschryver is PNKB's founder and a descendant of the last minister of Belgian colonies. Munganga Nakulire recalls that in all those years, his family lived "like animals, maybe even a bit worse" on the fringes of Kahuzi-Biega National Park. In 2017, he and his 17-year-old son, Christian Nakulire, were shot at by eco-guards while gathering medicinal plants. He was wounded while his son died. Until today, the eco-guards have not been made accountable and are enjoying impunity.

Indigenous Pygmy Peoples' life outside of the park continues to worsen as time passes. The lands in the relocation areas are often barren, which gravely affects their food security and livelihood. The DRC government has still not addressed the lack of adequate and proper access to food and medicinal plants that Indigenous Pygmy Peoples use and practice as their subsistence occupation.

The killing of Christian Nakulire and the deteriorating living conditions outside the park prompted the Indigenous Pygmy Peoples to reclaim their ancestral lands encroached by PNKB. In October 2018, 40 households of Indigenous Pygmy Peoples from Buhobera village in Kalehe territory decided to return and occupy

their ancestral lands. They were gradually joined by other Indigenous Batwa People from Kabare and Bunyakiri villages. The move was met with several violent attacks and criminalization. Different organizations realized the need to document incidents of human rights violations against Indigenous Pygmy Peoples in and around Kahuzi-Biega National Park. The series of incidents of human rights violations eroded any possibilities of collaboration between them and the ICCN.

The tension between them continued and on July 17, 2019, clashes between park rangers and the Batwa people resulted in the death of two people; a member of the Batwa people and an eco-guard in Kalonge. Further clashes around Muyange resulted in the death of an Indigenous Pygmy and several cases of serious gunshot wounds. On August 1, 2019, an Indigenous Pygmy and an eco-guard were killed in another clash between the two sides in Bungamanda in Kalehe territory.

## **The Salonga National Park**

The Salonga National Park (SNP) is the largest protected area with dense humid forests in the African continent. It is isolated and accessible only by water. It constitutes the habitat of many endangered species such as dwarf chimpanzees also known as Bonobo, the forest elephant, and the Congo peacock, among others. Also created in 1970, the SNP spans 3,334,600 hectares and is composed of the north and south sectors with a forty-kilometer-wide corridor known as the Monkoto corridor. It has a history of forced movements and known as a site of conflict.<sup>12</sup>

To make way for the SNP, ICCN ordered Indigenous Pygmy Peoples to settle in the Monkoto corridor which had previously been occupied by local communities. ICCN regarded this as compensation for the eviction of Indigenous Pygmy Peoples from their ancestral lands. Conflicts ensued as existing communities and Indigenous Pygmy Peoples struggled over access to land and resources. The repercussions of the conflict and tension remain until today, especially with population increase and the land area of the Monkoto corridor remaining as is.

About a third of the southern sector of the SNP is home to Indigenous Pygmy Peoples and they are claiming a part of this sector. Many of them have died, and houses have been set on fire as a result of these land claims. The river boundaries of the park remain intact, which indigenous activists point out, should be credited to Indigenous Pygmy Peoples living along the river.

The southern part of the park is populated mainly by the Indigenous Mongo People, represented by the sub-groups Nkundo and Ndengese.<sup>13</sup> The Indigenous Isulu People and Indigenous Ihaelima People reside in the southern block of the park.<sup>14</sup> Other Indigenous Pygmy Peoples living within and around the park are the Mbole, the Twa Pygmies and a small population of the Indigenous Ngombe People.<sup>15</sup>

Indigenous Pygmy Peoples report deaths and abuses such as arrests and torture committed by eco-guards for their subsistence activities such as hunting, fishing and gathering even in areas outside the park and its buffer zone. These are the many accounts of abusive use of force by armed eco-guards, who sometimes work in conjunction with soldiers from the Forces Armées de la République Démocratique du Congo (FARDC) / Armed Forces of the Democratic Republic of Congo. On July 19, 2021, the UNESCO removed Salonga National Park from its list of World Heritage in Danger, due to unsustainable exploitation of resources, threats and armed conflicts.

Between 2015 and 2016, a man named Gaby from the Indigenous Twa People was arrested by eco-guards while he was fishing in the Luila River.<sup>16</sup> The eco-guards allegedly beat him severely before taking him to Bombole village. According to eyewitnesses interviewed, the eco-guards exhibited him in the marketplace to "set an example" for those who would dare to challenge them. Eyewitnesses said that Gaby was stabbed and his eye was gouged out. The eco-guards allegedly dumped his body and left him to die in front of a local church. Local sources said the incident was immediately reported to the park's management team, but despite repeated requests, investigators were unable to access park documentation on the matter.<sup>17</sup>

In 2013, Yalita village chief Hausa of the Indigenous Twa Peoples, and his brother Bavene, who was suspected of possessing guns, were reportedly arrested and severely beaten by eco-guards. They were held in a makeshift cell in Yalita for two days, before being transferred to Bongimba Beach hospital. Hausa died less than a week later and his brother a month later. Villagers interviewed are convinced that their deaths were caused by injuries sustained.

In February 2015, four young women from the village of Boonga were reportedly beaten, tortured (their breasts tied and pulled with a string) and gang-raped by eco-guards from the ICCN Watsikengo station, near the Iyenge river (in the park).<sup>18</sup> The attack was reportedly overseen by the head of Watsikengo station. Two of the victims interviewed insisted they were pregnant at the time of the incident. One of them miscarried the day after the rape, while the other gave

birth to a stillborn child six months later which she blames on the abuse by the eco-guards. The case was reportedly brought before local authorities, ICCN and Monkoto police, but nothing has been done.

One man interviewed disclosed that while he was detained at ICCN Mondjoku Station in 2013, eco-guards beat him and then tied his penis with fishing line to hang it from a tree branch. A man from Bongimba also said that in 2014, he was stripped naked and beaten so severely that he is now partially disabled. Another man from the same village suffers from partial vision loss as a result of the abuse he suffered in 2016. Other examples of abuse include lashes and being forced to carry heavy loads over long distances. There was a double murder case in 2017, during which, according to the families of the victims, a man was shot dead in the forest by eco-guards and his companion beaten up, dying of his wounds a few days later. A man in his sixties at the time of the investigation also explained that he was raped by three eco-guards in 2007.<sup>19</sup>

## Incidents of criminalization of, and human rights violations against Indigenous Pygmy Peoples in protected areas

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The Congolese state has not taken any measures to guarantee the rights of Indigenous Pygmy Peoples evicted from protected areas, which means that currently, several crimes are being committed by national parks rangers or eco-guards. They pose similar threats to the safety and security of Indigenous Peoples living around these parks. From November 30 to December 31, 2020, eco-guards from PNKB and SNP were involved in the murder of five Batwa men, injuring several others, the rape of an Indigenous Pygmy woman and torture of three others.<sup>20</sup> These are just a few incidents among many other human rights violations involving eco-guards who are emboldened by the persistence of conservation management rooted in colonialism.

In the first half of 2021, Indigenous Pygmy Peoples were victims of human rights violations including massacres, killings, imprisonment, and displacement.

These cases can be summarized as follows:

- On November 30, 2020, three Indigenous Batwa Pygmy men were killed and several others injured outside PNKB when a demonstration led by indigenous Batwa Pygmies was violently suppressed by public order reinforcement agents. A soldier of the FARDC was also killed during this altercation.
- On December 28, 2020, five eco-guards of Salonga National Park were found guilty of serious crimes against four women living around the park (one of rape and four of torture).
- On December 31, 2020, five PNKB eco-guards were found guilty of murder and assault and battery against two Indigenous Batwa Pygmy men.
- On January 10, 2021, at least six eco-guards on patrol in Virunga National Park were killed by an armed group.
- From February 1 to 5, 2021, 67 indigenous pygmies were killed, including children, young people and adult women and men in Monkoto village in Salonga National Park, Bianga sector, Monkoto territory in Tshuapa province.

- From April 4 to 17, 2021, five Indigenous Pygmy Peoples were killed, including women and men near Kahuzi Biega National Park in Cirimo village, Mubugu grouping, Kalehe territory in South Kivu province. The perpetrators of the crimes are the Rwandan Hutu (Nyatura).
- From April 4 to 17, 2021, 206 Indigenous Pygmy Peoples including women and men were injured and were without access to health care in Cirimo village, Mubugu grouping, in Kahele territory in South Kivu province.
- On May 22, 2021, two Indigenous Pygmy Peoples, namely Mr. Lusombo Kamangu and Mastaki Kamala from Busisi village in Walikale territory were illegally arrested and imprisoned for defending their land.
- On March 5, 2021, Mr. Makumba Nyambatsi was arrested following a land dispute between him and Mr. Kabawa Sindani in Kamuobe village, Ufamandu grouping, Masisi territory in North Kivu province.
- Julien Kambasele Imani from Mudja and Bifuko from Biganiro in Nyirangongo territory were arrested by law enforcement officials with the complicity of certain customary chiefs and traditional authorities on the basis of trumped-up charges.
- On March 27, 2021, seven Indigenous Pygmies who were in search of dead wood were arrested in Virunga National Park in Biganiro in the Nyirangongo territory, and in Mubambiro in the Masisi territory. They were incriminated and detained in the ICCN prison in Kibati before being taken to Rumangabo (the general station of Virunga National Park in Mieno and Nyamulagira sector). Eco-guards accused them of being accomplices and collaborators of poachers.
- On April 18, 2021, five Indigenous Pygmies from Mudja were arrested by eco-guards in collaboration with the Forces Armées de la République démocratique du Congo/Armed Forces of the Democratic Republic of Congo. The five were searching for a medicinal plant in Virunga National Park. Two among them were used by the Bantu to carry charcoals in the province of North Kivu.
- From April 4 to 17, 2021, 10,000 households moved to Bulambika following the killings perpetrated by the Rwandan Hutu of the Nyatura and FDLR armed groups in the villages of Katasomwa, Ramba, Cirimiro, Mirenzo, Cigoma, Mushunguti, Karasi, Bagana, and Maibano in Mubugu grouping in the Kalehe territory, South Kivu province.

- From February 1 to 5, 2021, 20,130 people were displaced from the villages of Bakako, Manga, Sambwankoy, Inkanjab, Ilemba, Bombelenge B, Bondongo, Ikolombo, and Bokongolifale in Bianga sector, territory of Monkoto in Tshuapa province.
- From February 1 to 5, 2021, 1,215 houses belonging to Indigenous Pygmy Peoples were burned down in the villages of Bakako, Manga, Sambwankoy, Inkanjab, Ilemba, Bombelenge B, Bondongo, Ikolombo, and Bokongolifale in the Bianga sector, Monkoto territory in the province of Tshuapa by their Bantu neighbors.

## Challenges and constraints of access to justice for Indigenous Pygmy Peoples living in and around protected areas

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Eighty percent of conflicts submitted to courts and tribunals relate to land. Given that the Congolese courts and tribunals are limited by the Code Foncier Immobilier et du Régime des Sûretés: Textes légaux et réglementaires coordonnés/ Real/Immovable Estate Land Code and Security Regime : Coordinated legal and regulatory texts, which does not clearly resolve the situation of Indigenous Peoples, it would be appropriate for Parliamentarians to take matters into their own hands by facilitating the work of judges by voting on a law governing the rights of Indigenous Pygmy Peoples in the DRC and putting an end to the ambiguity posed by the land code.<sup>21</sup>

Despite this, it is still possible for the Congolese judge to apply international legal instruments on the rights of Indigenous Peoples. Article 215 of the Constitution<sup>22</sup> gives the Congolese judge the possibility of resorting to international legal instruments to fill in the gaps in domestic law and / or to state the law. The constitution allows the judge to apply international legal instruments at the national level, thus giving him/her the role of not only an internal or local, but also an international judge. Therefore, the judge should not limit himself/herself to the land code when dealing with an issue relating to lands occupied by indigenous communities. However, the Congolese judge never appeals to, nor cites international and regional laws in his/her decisions. An example is the case of the Indigenous Pygmy Peoples of Kahuzi-Biega National Park who initiated legal action to claim their lands before the High Court of Kavumu, the Bukavu Court of Appeal and the Supreme Court of Justice. The latter has not yet won the case precisely because the Congolese judge seems to be confined to domestic laws. Lawyers who assist Indigenous Peoples have the same problem as the judges. They limit themselves to domestic laws which have gaps that international laws have come to fill. Thus, capacity building of Congolese legal actors is necessary to enable them to do their work properly and thus facilitate the issue of the Indigenous Pygmy communities still faced with the lack of land.

If the Congolese judge and lawyer had knowledge of regional and international legal instruments, their application would not pose a problem and the Indigenous Pygmies would be able to recover their rights like their Bantu counterparts. It

is indeed regrettable that the Congolese courts and tribunals are unable to do justice to Indigenous Peoples because of the ambiguity of domestic land laws and the lack of knowledge of regional and international legal instruments in the area of Indigenous Peoples' land rights.

## Actions taken by affected communities and/or their allies in relation to human rights violations



Indigenous Pygmy Peoples from Bomoga village in Kalonge perform their traditional dance on the highland boundary of Kuhuizi-Biega National Park. (Photo: ANAPAC-RDC)

The actions carried out by indigenous communities since 2018 would demonstrate the actions of traditional authorities at several levels in the chiefdoms of Kabare, Bulohu and Buhavud. The initiatives were taken either by the chiefs of chiefdoms (Bami) or by the chiefs of groupings, or even by the chiefs of villages and sub-villages. Among these, the following should be noted: the rent of Indigenous Pygmy Peoples in the royal court in Kalehe or in concessions assimilated to customary properties; advocacy with provincial authorities; permanent mediations with Indigenous Pygmy Peoples; negotiations with Indigenous Pygmy Peoples for their exit from the PNKB; and ongoing awareness-raising.

The eviction of Indigenous Pygmy Peoples from PNKB without any compensation compelled them to take the hard decision to return to the park by force. They then had to fight with the eco-guards which resulted in deaths, injuries, and other damages. Therefore, the negotiations started by ICCN and other stakeholders such as customary chiefs helped in reducing the tension/clashes between both parties. Following the violations of Indigenous Peoples' rights in protected areas, indigenous leaders and organizations advocated at national and provincial levels. At the provincial level, in Bukavu, South Kivu on September 19 and 20, 2019, a dialogue on PNKB between Indigenous Pygmy Peoples and eco-guards was held, following the problems of co-habitation and conflicts. The dialogue brought together different categories of participants including 18 Indigenous Pygmy leaders from 55 villages around PNKB, representatives of indigenous organizations, provincial political and administrative authorities, representatives of ICCN, and partner organizations such as GIZ, KFW, WSC, WWF. By the end of the dialogues, a roadmap was signed to respond to some of the claims/recommendations of the Indigenous Peoples.

After the unexpected return of Pygmy Indigenous Peoples to the PNKB in 2018, traditional and territorial authorities\* particularly in Kalehe, began negotiations to convince them to release the occupied spaces and stop the cutting of trees. The mediations were carried out to encourage collaboration between the PNKB eco-guards and the Indigenous Pygmy Peoples, with a view to reducing their mistrust and the risk of clashes. These negotiations made it possible to renew contact between the PNKB and the Indigenous Pygmy Peoples in order to discuss the basic problems between them.

In Salonga National Park, WWF put in place local committees for development to support the park and for the socio-economic, rural and agricultural development of the riparian communities in that area. The heads of these committees/structures are elected democratically and they organize community activities. For example, bikes are distributed to members of the communities for transportation of agricultural products to the market, etc.). These committees defend equitable sharing of the benefits from agricultural activities. However, there are existing conflicts between communities there, thus, an investigation mission is necessary to find out the causes and check whether the management of these local committees is not part of the causes of conflicts.

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\* August 2015 fixing the status of customary chiefs”:

- Customary authority is power recognized by the customary chief and functioning in accordance with local custom or the person vested with this power;
- Local custom is a set of uses, practices and values which, through repetition and publicity, impose themselves, at a given moment, in a community, as compulsory rules;
- Customary power is a set of community administration mechanisms based on customs and traditions;
- Land of local communities is land occupied by local communities who inhabit, cultivate or otherwise exploit, individually or collectively, in accordance with local customs or practice.

Six forest concessions (172,807 ha) were granted by the Governor to the indigenous and local communities in the area, securing and recognizing the management and governance power of these concessions by the riparian communities.

## Conclusion and recommendations

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The DRC does not have the necessary mechanisms to promote and protect the rights of Indigenous Pygmy Peoples. Despite the vote in Parliament of the Law on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples, its implementation remains a challenge.

In view of the above, we recommend the following:

To the attention of the Congolese Government:

- Adopt human rights-based conservation laws and policies;
- Adopt and promulgate the implementing texts relating to the law of February 2014 on nature conservation;
- Adopt specific regulations on FPIC for conservation in the DRC;
- Recognize that access to traditional lands of Indigenous Peoples effectively contributes to nature conservation, the preservation of biodiversity, as well as the reduction of poverty in rural areas;
- Implement the provisions of international human rights and environmental treaties ratified by the Government in nature conservation policies.

To the attention of ICCN

- Guarantee the effective participation of marginalized groups, including Indigenous Peoples, in the management of Protected Areas;
- Recognize the right of Indigenous Peoples to determine their own development priorities in Protected Areas;
- Integrate community conservation approaches as effective models for managing and resolving conflicts between managers of Protected Areas and Indigenous Peoples;
- Create an appropriate system of accountability and redress for violations of the rights of Indigenous Peoples in the context of conservation.

To the attention of national parks managers:

- Experiment and implement equitable revenue sharing mechanisms arising from the management of Protected Areas for the benefit of Indigenous Peoples;
- Update the development plans and simple management plan of Protected Areas by integrating an approach based on human rights and access to land and traditional resources of Indigenous Peoples;
- Adapt conservation legislation to the human rights-based conservation requirements of Indigenous Peoples in adopting measures at the local level.

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**Indigenous Peoples  
Rights International**

Championing Indigenous Peoples Rights

🏠 #7 G/F Calvary Street, Easter Hills Subdivision,  
Central Guisad, Baguio City 2600 Philippines

✉ [ipri@iprights.org](mailto:ipri@iprights.org)

🌐 [iprights.org](http://iprights.org)