

## **Indigenous Peoples Rights in DRC seen from the World Bank**

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The World Bank (“**WB**”) is deeply involved in the Democratic Republic of Congo (“**DRC**”), where it has been financing, as of September 1, 2019, 27 national projects and 4 regional projects valued at a total of \$3.9 billion. This involvement had been suspended for nearly a decade due to the situation then prevailing in DRC, before resuming in 2001.

The World Bank funded projects in DRC have covered many areas, including for instance health, education, infrastructure, energy or water. Many of them have had an impact on indigenous peoples and some of them are, to some extent, addressed to this population.

This has led the WB to issue some general statements regarding the situation of indigenous peoples in DRC. Their situation has also been emphasized in the course of various specific projects. While most of these statements are broad, some of them deal specifically with the situation of the Pygmy population in relation with the Kahuzi-Biega Park, especially in the context of the PREPAN project.

This report will address on one hand the WB general statements (**I**), before discussing on the other hand specific projects funded by the WB (**II**), and finally giving an overview of the Congolese law in the matter (**III**).

## I. World bank general statements

From a general standpoint, the **DRC Systematic Country Diagnostic**, issued by the World Bank Secretariat in March 2018, identified indigenous people in DRC as “a particularly vulnerable group who depend almost exclusively on resources of the land for their livelihood”<sup>1</sup>. It regretted that the members of these communities “do not receive the support needed to pull them out of poverty”<sup>2</sup> and stressed out the fact that they are particularly affected by the inefficiency of the land administration. Indeed, according to the Diagnostic, “local communities in general, and indigenous people in particular, are the most marginalized in regard to land claims in rural areas”<sup>3</sup>. This document also urged DRC to improve the management of protected areas, in collaboration with local and indigenous communities, calling for a dramatic increase of the funding of these protected areas. According to the Diagnostic, this increase could be achieved through the Okapi Fund. Nevertheless, it regretted that the setting up of this fund “has been very slow and hampered by bureaucratic obstacles”<sup>4</sup>.

Since it had funded various projects in DRC from 2001, the WB realized that these projects could have a significant impact, including an adverse impact, on indigenous communities, and especially the Pygmies. This explains why the WB issued in 2009 a **Strategic Framework for the Preparation of a Pygmy Development Program**. The aim of this study was to identify and analyse “the factors and causes behind the process of impoverishment of the Pygmies” and

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<sup>1</sup> World Bank, *Democratic Republic of Congo – Systematic Country diagnostic*, report n° 112733-ZR, March 2018, § 68, p. 26.

<sup>2</sup> Ibid., § 126, p. 48.

<sup>3</sup> Ibid., § 148, p. 55.

<sup>4</sup> Ibid., § 282, p. 96.

to propose “an overall strategic framework for the preparation of a development program over a period of 15 years and beyond”.

In this study, the WB recognized that Pygmies had been forcefully displaced in order to extend the Kahuzi-Biega Park in 1975, mentioned the attempts made by DRC to resettle them but also expressed doubts regarding this policy. Indeed, based on a comparison with other countries, the Strategic Framework stressed that the best solution would more probably be to allow them to live in the park as they used to. It nevertheless envisioned that the DRC policy could succeed given the willingness of the Pygmies to live like the Bantous<sup>5</sup>.

## II. Statements made in relation with World Bank funded projects

Turning now to specific projects funded by the WB, some of them have been directed towards indigenous communities, such as the Forest Dependent Communities Support Project (FDCSP), while many others have had a significant impact on their situation, such as the Project for the National Parks network rehabilitation project (PREPAN). In line with the WB operational policy 4.10 on indigenous peoples, the approval of these projects requires an Indigenous Peoples Plan (IPP) or and Indigenous Peoples Planning Framework (IPPF), prepared by the borrower or on its behalf.

This note is based on a review of the documents issued concerning the following projects:

- The Emergency Economic and Social Reunification Support Project (PUSPRES, according to its French acronym)
- The National Parks Network Rehabilitation Project (PREPAN)
- The Forest and Nature Conservation Project (PNFoCo)
- The Forest Dependent Communities Support Project

Other projects that have had an impact on indigenous communities have not been reviewed yet<sup>6</sup>.

A quick overview of the documents issued in relation with these various projects reveals that:

- Indigenous peoples, and especially the Batwa community, have been marginalized in DRC for decades.
- These communities are affected by the development projects led, especially in the Eastern part of DRC.
- The communities are being considered in the framing of these projects. The WB inspection panel report issued concerning the PUSPRES project in 2007 revealed that indigenous communities had not always been sufficiently associated with the projects and considered. Since then, Indigenous Peoples Plans and Planning Frameworks have regularly been prepared. That being said, the documents under review have mostly been drafted by the borrowers, mainly Congolese institutions and especially the *Institut*

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<sup>5</sup> WB, [Democratic Republic of Congo - Strategic Framework for the Preparation of a Pygmy Development Program](#), report n° 51108-ZR, December 2009.

<sup>6</sup> See, for instance, Project Development Objective of the Deforestation and Forest Degradation (REDD) Readiness Preparation Support Project (REDD + project)

*Congolais pour la Conservation de la Nature* (ICCN). Absent a follow-up report prepared by the WB, it thus remains difficult to say, through the sole reading of the documents issued during the WB process, if IPs' rights have actually been taken into account.

- The situation of the Batwa community regarding the great national parks, and especially the Kahuzi-Biega National Park, does not often appear as a matter of concern neither for the Congolese institutions nor for the WB organs themselves. As previously stated, their forceful displacement is mentioned as a matter of concern in the Strategic Framework for the Preparation of a Pygmy Development Program drafted by the WB secretariat. It is also described with some details in the Indigenous Peoples Plan issued in the framework of the PREPAN project, especially in the third volume that deals with the rehabilitation of the Kahuzi-Biega Park. This report recommended the reinstallation of the forcefully displaced people within the park. Some minor measures taken to redress the damage suffered by the community are also mentioned in this project's Implementation Completion and Results Report issued in July 2020. But, as recognized by the Bank, they remain modest.

#### 1. The Emergency Economic and Social Reunification Support Project (PUSPRES)

Approved: September 11, 2003; Closed: March 31, 2011.

##### *a. Project Overview*

The Emergency Economic and Social Reunification Support Project was approved by the Bank in 2003 in order to help DRC government implement its economic and social reunification programs and thus to contribute to the stability of the country. The main purpose of the project was to reunify the Eastern provinces to the rest of the country and to increase access to and use by the local population of basic infrastructures and social services in these provinces. According to the Bank, it “has been instrumental in helping the country achieve the reunification of its economic activities and has supported social reunification” and “has contributed to jumpstarting the economy in the eastern part of the country which had been cut off from the other parts of DRC for several years”.

The project was thus broad, including various components, some of which had or could have had an adverse impact on indigenous peoples. It included five components:

- The first two components were aimed at supporting implementation of economic reforms throughout the country - a balance of payments support component, and an institutional strengthening component.
- The next three components were aimed at both addressing urgent needs in reunified provinces:
  - a) rehabilitation of large infrastructure, in particular transport infrastructure;
  - b) rehabilitation in urban areas; and,

- c) provision of assistance to rural communities, where no service provider had been active in years, perhaps decades.

Biological diversity in the provinces concerned is such that the project was expected to potentially have a major impact.

#### *b. The situation of indigenous people in relation with the PUSPRES*

##### Component 2: strengthening institutions

As part of its second component, PUSPRES aimed at strengthening Congolese institutions. That included helping to restore effective institutions in the forestry sector in the provinces that had been reunified. It was intended to help improve local governance over natural resources, and in particular to help bring the new Forestry Code into practice and to address the problem of illegal logging.

To this extend, the project had a significant impact on indigenous peoples, and especially the Pigmy community. Despite this impact, the affected communities were not sufficiently involved in the design of the project according to the WB inspection panel, which had been seized by Pygmies and their supporting organizations.

Indeed, the Inspection Panel stated in 2005 that, although the review of the logging concessions can lead to highly significant impact on the Pygmy community, considered as an Indigenous community, the Bank failed to develop an Indigenous Peoples Development Plan, in breach of its OP 4.20. It also concluded that the 2002 Moratorium on allocation of new forest concessions had been “bypassed” and that no adequate actions had been taken in response to these violations by DRC authorities. It also identified several significant concerns related to the implementation of the “Concession Conversion Process.” It highlighted the importance of developing a balanced approach by emphasizing appropriate models of community forests as well as other actions to support community participation, land tenure, and forest use rights<sup>7</sup>.

This report by the WB Inspection panel led to the completion of the “Strategic Framework for the Preparation of a Pygmy Development Program” in 2009 (*supra*).

##### Component 3: rehabilitation of the road network

The PUSPRES also included, as part of its third component, the rehabilitation of the road network. This constituted a sensitive part of the project, especially from an environmental standpoint. Indeed, highway RN4 traverses several protected areas: Babagulu Forest reserve, Fauna reserve of Okapi, Caves of Mont Hoyo; and Virunga national park, whereas highway RN2 crosses the Kahuzi Biega national park and the Itombwe mountains. This road network rehabilitation project had a significant impact on indigenous peoples, first by increasing the

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<sup>7</sup> World Bank Inspection Panel, DRC – TSERO and EESRSP, [Investigation report n° 40746-ZR](#), August 31, 2007; see also the description of the [case](#) on the Inspection Panel website.

access to the natural resources and, second, by forcing the mobile hunter-gatherers to leave the impenetrable forests.

According to the Indigenous Peoples Plan prepared by Kai Schmidt-Soltau in 2007, “in the long run the rehabilitation of the road network and the rural development will lead to an increasing permanent lifestyle of the Twa, Mbuti and Cwa who may have fewer capacities to defend their legal rights, become or remain as dependents of other ethnic groups, lose their cultural and social identity or become even more marginalized in the Congolese society”<sup>8</sup>.

#### Component 4 and 5: rehabilitation of urban areas and assistance to rural communities

The rehabilitation of urban areas and the provision of assistance to rural communities’ part of the PUSPRES also had an environmental and social impact.

In its Environmental and Social Assessment of the project issued in 2006 on behalf of the DRC ministry of Plan, Buursink concluded that, subject to the implementation of its recommendation, these parts of the project could be in compliance with the Safeguard Policies of the Bank. It emphasized:

- In relation with the Safeguarding Policy 4.12, on involuntary resettlement that PUSPRES’ interventions may require involuntary resettlement of population. Should future activities result in the possible displacement of populations, World Bank procedures and guidelines will be systematically applied to ensure that displaced populations are properly resettled and receive the necessary compensation, benefits and infrastructure. To meet the requirements of the policy, a Resettlement Policy Framework (RPF) has been developed to guide the preparation of specific resettlement plans (or other tools) and their implementation. The RPC can be found in Volume 3.
- In relation with Safeguarding Policy 4.20, on Indigenous Peoples that the interventions of PUSPRES, particularly those of its component 3 “Rehabilitation of priority transport axes”, are likely to affect the lives of pygmies both positively and negatively. To better meet the requirements of the policy, we propose the urgent development of an Aboriginal Peoples Action Plan to guide the project's actions in the areas where pygmies live<sup>9</sup>.

#### 2. DRC National Parks network rehabilitation project (PREPAN)<sup>10</sup>

From 30 September 2009 to 31 December 2018

##### *a. Project overview*

The World Bank began its support to forest and nature conservation in DRC with the National Parks Network Rehabilitation Project (PREPAN) in order to contribute to the preservation of

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<sup>8</sup> DRC, PUSPRES, [Indigenous People Plan](#), September 26, 2007.

<sup>9</sup> DRC, PUSPRES, Environmental and Social Impact evaluation for component 4 and 5, [Final Report](#), January 2006.

<sup>10</sup> See the World Bank Website : <https://projects.worldbank.org/en/projects-operations/project-detail/P083813>

the DRC biodiversity, which is an initiative including in the National Forest and Nature Conservation Program (PNFoCo, *infra*). This reform agenda aimed at removing the legacy of past mismanagement and at setting the stage for sustainable management of its natural resources' endowment.

The Congolese Institute for Nature Conservation (ICCN) was the main implementing actor. Investments from the World Bank offered an opportunity for this institution to enhance its capacity to manage targeted protected areas, including Kahuzi Biega National Park.

The main objectives of this project were:

- to enhance the ICCN capacity to handle its management of the environment.
- to strengthen coordination between the different actors in order to rehabilitate two national parks (including Kahuzi Biega Park).
- it also aims at building constructive relationship with local communities (system of consultation) and expand the existing protected areas network.

The PREPAN included four main aspects:

- Component 1 of the project focuses on re-establishing a functional financial management at ICCN headquarters, consolidating ICCN coordination, communication, monitoring/evaluation, and social impact systems and assisting ICCN to develop a viable financing strategy.
- Component 2 focuses on offering support to national parks. It aims at rehabilitating national parks.
- Component 3 of the project relates to technical studies and consultations. This component should strengthen the capacity of ICCN to carry out technical studies, surveys, and local consultations essential for the identification of new protected areas, in order to ensure a better representativeness of the national network of protected areas.
- Component 4 involves the creation and capitalization of the Okapi Fund, a fiduciary fund that will ensure long-term sustainable funding for the country's parks system.

In order to tackle the different issues taking care by the PREPAN project, several activities had been organized:

- Strengthening institutional capacities of ICCN for administrative and financial management, coordination and advocacy at central level.
- Strengthening management of three key Pas and their buffer zones
- Supporting technical studies and consultations

Significant changes can be identified as part of this project's implementation. The project received several additional financings to fund and expand existing activities to enhance the capacity of ICCN. A new component had been added which is the Okapi Fund establishment and capitalization.

More transparency in the different initiatives and action must be highlighted: introduction of the percentage of ICCN staff that have a written job description and are evaluated on its basis

(Comp. 1); ICCN publishes all agreements, contracts and protocols entered into with its public and private partners for the financing of all centralized or decentralized ICCN operations (Comp.1).

Concerning the Kahuzi park, the PREPAN project concretely led to the:

- Construction of 5 houses in Tshivanga,
- Construction of 3 patrol posts in Tshibati, Musenyi and Madiri.
- Construction of 5 houses of eco-guardians in Itebero.
- Construction of 6 bungalows in Tshivanga.
- Development of the park headquarters in Tshivanga.
- Purchase of 5 pick-ups and provided maintenance to strengthen surveillance.

A performance management system was introduced at ICCN including the Kahuzi Park with a performance bonus, which encouraged staff to achieve the strategic objectives. Job evaluations were done when there was funding for performance bonuses in 2015 and 2016 from external sources but not in 2017-2019. Contracts and agreements have been shared with the Bank but not published.

#### *b. The situation of indigenous people in relation with the PREPAN*

Pursuant to the operational policies of the World Bank, every project funded that could have an impact on indigenous peoples has to comply with the PO 4.10. This operational policy aims to reduce poverty and promote sustainable development by ensuring that the Bank's development process respects human dignity, human rights, the economic systems and cultures of Indigenous Peoples. Whenever the Bank is requested to finance a project directly affecting indigenous populations, it requires the borrower to carry out a preliminary free consultation based on the communication of information to the affected indigenous communities.

Thus, PREPAN project had to show that it would avoid any negative impact on indigenous people, or that it could, at least, mitigate it. It is in this context that the **Indigenous People Planning Framework** (IPPF) was drafted in 2014<sup>11</sup>, after several consultations were conducted with indigenous people.

According to this IPPF, indigenous people are to be considered as Congolese, then as equal as other citizens. However, in reality, they do not have the same political influence, nor the same legal and economical organization. That is why, if no measures are implemented for the forests and nature conservation, the indigenous people would abandon the forest areas in which they live from hunting and fishing. The principal impact of doing nothing would be a further marginalization and impoverishment of the indigenous people.

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<sup>11</sup><http://documents1.worldbank.org/curated/en/581511468025767364/pdf/IPP3000V30FREN00Box385451B00PUBLIC0.pdf>



According to the IPPF, during the consultations, indigenous people expressed particular enthusiasm for the project, which is nevertheless conditioned by the resolution of access to land, which is the key problem for them. Indigenous people are also particularly enthusiastic about actions related to reforestation, forestry, promotion of the wood-energy sector but on their "own land". However, they remain fearful regarding the risk of discrimination in hiring and in the treatment of *Bambutu* in construction sites. Another major fear is the risk of overvaluing agricultural land accessible by renting and raising the competition on land.

Nevertheless, the Planning Framework also stressed that ICCN shall ensure the consequences of rehabilitation and the extension of the network of protected areas for indigenous populations as part of the PREPAN project. It shall in particular ensure that these populations:

- do not lose access to land, areas of use and physical cultural resources which they currently use as a source of livelihood;
- are not further marginalized within Congolese society;
- do not receive reduced assistance from government services;
- are no less able to defend their legal rights;
- do not become more dependent on other ethnic groups;
- do not lose their cultural and social identity.

**More specifically, the ICCN recognized that, from the 1960s until 1975, 580 Twa families, representing between 3,000 and 6,000 people, were forcefully expelled from the Park area. Although this expulsion destroyed their culture, spiritual practice and way of life, no prior consultation had been led and nothing had been done to assist them to find a new land or any alternative source of income.**

Recalling some measures taken from 2005 in order to relocate Pygmy communities close to the Virunga Park, the IPPF nevertheless recognized that **the solution would more probably lay on the maintenance of these communities within the park, with the authorization to hunting, fishing and gathering.**

According to the IPPF, this solution remained difficult to implement in the Congolese legal framework. But it insisted on recent legislative development, including the enactment of a new 2014 act on the wildlife conservation, that could permit the coexistence between conservation policies and indigenous communities. Indeed, article 14 of this act includes an exception to conservation measures towards the wild flora to the benefit of the communities that benefit from forest-usage rights<sup>12</sup>.

Among the various measures to implement in order to avoid adverse effects of the PREPAN on indigenous communities, the IPPF eventually stressed the necessity to

**“Action 3: Retroactively review cases of displacement of indigenous populations. imposed during the creation of the Kahuzi-Biega NP in 1970, or during its**

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<sup>12</sup> *Id.*, p. 44-45.

**extension in 1975, and, where appropriate, develop relocation and/or compensation plans”<sup>13</sup>.**

This measure was meant to be implemented after discussion with all the stakeholders and mediation.

### 3. Forest Dependent Communities Support Project

Approved: April 8, 2016; expected to end on July 31, 2021.

#### *a. Project Overview*

The government of the DRC, with the support of the World Bank, implemented this project. It was approved on the 8<sup>th</sup> of April 2016, and expected to end on the 31<sup>st</sup> of July 2021.

The overall objective of the project, within the framework of the Forest Investment Program (FIP), is to contribute to the country's efforts in the field of:

- Development, with a view to reducing emissions from deforestation and forest degradation and promoting sustainable forest management;
- Enhancement of forest carbon stocks (REDD+).

The objective of the Project is also for the DRC to strengthen the capacity of targeted Indigenous Peoples and Local Communities (IPLC) in selected territories and at the national level to participate in REDD oriented land and forest management activities.

The Forest Dependent Communities Support Project is one of the three projects of the FIP. The development objective of the project is to strengthen the capacities of Indigenous Peoples and Local Communities of 19 territories in order to promote their engagement and participation in the implementation of REDD + policies and the activities of the Forest Investment Program (PIF) at the local and national levels, and enable them to benefit fully from them.

The project beneficiaries are at the local level, indigenous peoples, local communities and local entities (such as community-based organizations) in the 19 target territories. The expression “indigenous peoples and local communities” is limited to Indigenous Peoples and local communities living in neighboring areas who share the same traditions, rituals (including religious events) and livelihoods (focused on hunting).

The project involves three sectors: 50% of forestry, 25% of other agriculture, fishing and forestry, and 25% of public administration. Regarding the private sector development, the project aims to create job opportunities for indigenous peoples and the local communities. It ensures a social development and protection by preserving their participation and civic engagement, and helping them in their social inclusion. The project also targets the urban and

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<sup>13</sup> *Id.*, p. 9.

rural development, in addition to the environmental and natural resource management such as environmental health, water and soil pollution, and air quality management.

In the long term, the project will contribute to:

- Improve the management of natural resources by supporting the PA-COLOs in their development efforts;
- Support the decentralization process in the DRC by supporting the emergence of new rural leaders and strengthening their voice with regard to management policies land use;
- Secure the land use rights of the rural poor by improving their inclusion in land use management policies; and
- Offer prospects for alternative development that would have a reduced impact on the forest and that will be culturally appropriate for the forest dwellers. The beneficiaries of the project are at the local level, the PA-COLOs and local entities (such as the grassroots community organizations) in the 16 target territories.

In the document Mid-Term Review Mission from the 8<sup>th</sup> to the 17<sup>th</sup> of 2019<sup>14</sup>, despite the project delay, the outcome is positive: fiduciary management has improved, the project management team has been strengthened and contracts with implementing operators have been re-launched.

The latest review from 26 June 2020<sup>15</sup> shows that despite the slowdown in 2018 due to political uncertainty, there have been progress in 2019 « *in particular increased support to facilitate the participation of Indigenous Peoples (IP) in the land tenure reform and in the improvement of their capacity to operate the Grievance and Redress Mechanism for the project and, more generally, for the management of Natural resources* ». However, it is worth noting that due to the COVID-19 pandemic, its implementation slowed down.

The major challenge of the project remains the identification, design and implementation of micro-projects. While two methodologies have been tested in 2017 and 2018, they were unsuccessful. However, in 2019, 3 very promising micro-projects were identified as pilot operations and represents examples that should be replicated. As of today, they haven't been launched yet. Regarding the contact with indigenous peoples organizations, good progress has been made in the regular sending of reports. Moreover, the quality of reporting and monitoring has improved.

#### *b. The situation of indigenous people in relation with the Forest Dependent Communities Support Project*

The project has 3 components.

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<sup>14</sup> <http://documents1.worldbank.org/curated/en/943251575545762062/pdf/Congo-Democratic-Republic-of-Forest-Dependent-Communities-Support-Project-PACDF-Mid-Term-Review-Mission-October-8-to-17-2019.pdf>

<sup>15</sup> Disclosable Version of the ISR, Forest Dependent Communities Support Project - P149049 - Sequence No.08 <http://documents1.worldbank.org/curated/en/413071593175824734/pdf/Disclosable-Version-of-the-ISR-Forest-Dependent-Communities-Support-Project-P149049-Sequence-No-08.pdf>

Firstly, reinforce the participation of indigenous peoples and local communities in forest and land management processes related to REDD component. To this end, the project will provide tailored support, including on administrative and financial management issues, and improve dissemination of information about REDD and its impact on the indigenous peoples and local communities.

Concerning the first component, legal provisions for the recognition of the concept of “Indigenous People’s land” which would be in the law are expected. There is a need to further the decentralized activities between the different committees.

Secondly, support community-based sustainable forest and land management component will help empower indigenous peoples and local communities by (i) supporting initiatives exploring how to attain formal recognition of their traditional user rights and (ii) financing natural resource management activities that enhance climate change adaptation and the sustainable management of forest landscapes to improve rural livelihoods.

Regarding the second component, many initiatives have been created which goal is the sustainable management of natural resources. However, only new activities have been created rather to traditional activities such honey production, forest products and so on. The review highlights the need to further the communication and justifications of the project.

Thirdly, increase the capacity to implement development activities for indigenous peoples and local communities and consolidate feedback component aims at ensuring the smooth implementation of the project in compliance with World Bank procedures but with enough flexibility to match the capacity of the communities. This third component is still in process.

According to the Environmental and Social Management Framework drafted in the course of this project<sup>16</sup>, it could have positive and negative impact on indigenous communities.

Main positive social impacts: The process of recognition of the community-based forest management and governance could contribute to the land security for IPLC, to the reinforcement of the IPCL positioning in decision making (governance) as regards of conservation of their territories, to the reinforcement of IPCL associative system, and of their representation at the local level. The promoting alternative livelihood and revenue generating activities could allow to increase the IPCL financial capacity and their production capacity to lands, to participative, rational and sustainable management of land, to the improvement of the access of the IPLC to the sub-products in particular non timber forest products. It will constitute a means of protection and of development of the valorization of ritual and archaeological sites.

Main negative social impacts and measures: The process of recognition of community-based forest management and governance could lead to the political recovery of sensitization and

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<sup>16</sup> <http://documents1.worldbank.org/curated/en/142441468018663392/pdf/CGES-PDGM-final.pdf>.

defense actions on the land security. For this purpose, it is required to ensure the maintenance of the apolitical character of the various movements and demonstrations to be organized and the implication of all the groups of actors at the national and local level some is their political obedience. There is also a risk of development of the scenes of jealousies on behalf of the non-profit IPLC of the supports of the project and a risk of spontaneous creation of NGO of defense of IPLC which could be active just during the period of implementation of the project. For that, it will be necessary that only NGO working with the IPLC for at least two years have had priority and that a mechanism is set up to ensure the durability of these NGO of accompaniment. The development of alternative activities could generate conflicts in the event of possible discriminatory attributions of the micro-grants. For that, it will be necessary to impulse the revival of the local structure of management of conflicts (CLCD, CGCD, CoCoSi) existing or creation if they do not exist.

### III. Report on Congolese law based on WB documents<sup>17</sup>

At the international level, the DRC has adopted or ratified important texts in this area, including the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Economic, Social and Cultural Rights. International civil and political rights, the African Charter on Human and Peoples' Rights, the African Charter on Human and Peoples, as well as the Convention on Biological Biodiversity, which has provisions in for the benefit of indigenous and local communities.

According to the law, all land belongs to the State. The laws of the DRC recognize specifically customary land management by the “*chef de terre*” and enable them to issue ownership documents for a short period of time (generally 5 to 25 years) when the property needs to be formalized. Therefore, from a legal point of view, the Mbuti, Twa, Cwa and Aka populations are equal citizens through report to all other persons born in the DRC.

The DRC Constitution in its Article 12 affirms that "*all Congolese are equal before the law and are entitled to equal protection by the laws*". Moreover, Article 13 provides that "*no Congolese may, with regard to education and access public functions or in any other matter, be subject to a discriminatory measure, whether it results from the law or from an act of the executive, because of his religion, his family origin, social condition, residence, political opinions or beliefs, social status, residence, political opinions or beliefs, or belonging to a race, ethnic group, tribe, cultural or linguistic minority*", and Article 51 affirms that « *the State has the duty to ensure and promote peaceful coexistence and of all ethnic groups in the country, and also ensures the protection and harmonious*. ». In practice, the equality of women and men in the

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<sup>17</sup><http://documents1.worldbank.org/curated/en/581511468025767364/pdf/IP3000V30FREN00Box385451B00PUBLIC0.pdf>

workplace is not only a question of citizens declared in the Constitution is not always exercised: for example, education is not always exercised officially open to all, but it just so happens that the children of indigenous peoples will rarely in school (only 12% of Twa children go to school; Plumptre et al 2004), the most often because their parents don't have the money to pay for the costs of schooling (USD 15 per year for primary education, USD 30 for secondary).

The Congolese land law, the so-called Bakadeza law of 1973 on the general property, land and real estate regime and the systems of securities, amended in 1980, (in force in awaiting the promulgation of the Land Code) specifies that the land in the national territory belongs to the State. Concessionary provisions, however, allow for the establishment of secure private enjoyment of land in both urban and rural areas. The Forestry Code and the Mining Code have recently completed these provisions. Outside concessions (rural, urban, forestry and mining) customary law applies, although the resources concerned are at all times likely to be subject to concession logic.

In practice, no concession transaction takes place in the DRC without the customary rights holders receiving something and, in the common sense, selling "their property". One buys from the customary owner and then registers one's property with the state.<sup>18</sup>

The Forestry Code in its Article 36 grants the forest right of use of the populations living in or near the forest estate are those resulting from local customs and traditions provided as long as these are not contrary to the laws and the public order. They allow the harvesting of forest resources by these populations, in order to satisfy their domestic, individual or community needs. The exercise of right of use is always subordinated to the state and potential of the forests. In addition, the management plan for each classified forest determines the right of use authorized for the forest concerned. However, Article 37 prohibits any commercial activity related to hunting and agriculture in forest concessions. Indigenous peoples are therefore prohibited from marketing the products of their main activity and are forbidden from farming. Another difficulty for indigenous peoples appears in Article 22 of the same Code. It provides that a "local community" may, at its request, obtain as forest concession, a part or all of the protected forests among the forests regularly owned by virtue of custom. The modalities for the attribution of concessions to local communities are determined by a decree released by the President of the Republic. This article excludes any allocation of community forest concessions for the benefit of indigenous peoples, since the latter do not regularly own any forests by virtue of custom. The modality of presidential allocation of community concessions is thus an additional blocking factor for indigenous peoples.<sup>19</sup>

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<sup>18</sup> <http://documents1.worldbank.org/curated/en/198111468020050219/pdf/SFG1864-IPP-FRENCH-P143307-PUBLIC-Disclosed-2-22-2016.pdf>

<sup>19</sup> <http://documents1.worldbank.org/curated/en/198111468020050219/pdf/SFG1864-IPP-FRENCH-P143307-PUBLIC-Disclosed-2-22-2016.pdf>