

ANALYSIS

Analysis of rights and REDD+ safeguards

New law recognizes and protects Indigenous Pygmy Peoples in the Congo Basin



MARIE-BERNARD DHEDYA LONU

Thursday, 29 Dec 2022



<
Previous
Article

>
Next
Article

Woman carrying wood, Yangambi, DRC Axel Fassio/CIFOR

The United Nations Framework Convention on Climate Change (UNFCCC) framework for reducing emissions from deforestation and forest degradation, and enhancement of forest carbon stocks (REDD+) refers to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, not all REDD+ countries have legal systems that build on UNDRIP and few, especially in Africa, have ratified other relevant agreements such as the International Labour Organization Convention 169 on Indigenous and Tribal Peoples.

As such, the national interpretation processes of the Cancun Safeguards depend on national legal frameworks that do not always favour the recognition and respect of the rights of Indigenous ^

Peoples and local communities (IPs and LCs).

This is in spite of the evidence that IPs and LCs are effective forest stewards while at the same time being among the most vulnerable populations to the climate crisis.

In the Democratic Republic of the Congo (DRC), Indigenous Peoples have long been under-represented in national public bodies; suffered the dispossession of their land without fair and proportional compensation; lacked full enjoyment of the land they occupy and its resources; and had poor access to basic social services such as education, housing, health care and justice. This is despite the protection of international conventions and the recognition that they were the first occupants of the land,

However, after a lengthy multi-actor process, the DRC Senate passed Law No. 22/030 on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples in June 2022. It was signed into law by the President in November 2022.

The new law improves the foundation for a more equitable REDD+ and contributes to the potential for better safeguard policies.

Since 2002, with the advent of the Forestry Code, progress has been made in nature conservation and the environment. However, certain vulnerable groups that may be affected by activities in the sector have not had sufficient legal protection, including Indigenous Pygmy peoples. The new law recognizes their legal status, which constitutes the basis for the establishment of an adequate and effective normative framework for their protection.

In the DRC, IP have been equated with local communities, defined legally as: “*a population traditionally organized on the basis of custom and united by the bonds of clan or parental solidarity that underpin its internal cohesion. It is also characterized by its attachment to a territory*”. This definition did not allow for the recognition of the separate rights of IPs, who are also commonly marginalized by some neighbouring peoples.

The new law seeks to address this issue by defining them as “*hunter-gatherer peoples who generally live 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 link with nature and their indigenous knowledge*”. Although the law is general in scope, it provides extensive guarantees of the environmental rights of Indigenous Pygmy peoples. The law also sets out a normative framework for the protection of IPs in the DRC in 62 articles, divided into 8 chapters, including civil and political rights, economic, social and cultural rights, the right to the environment, the right to land and natural resources, and the right to work.

The principles in the law cover a wide range of issues related to environmental matters, including free, prior and informed consent (FPIC), the participation of Indigenous Pygmy peoples in the

free, prior and informed consent (FPIC), the participation of Indigenous Pygmy peoples in the management of their ecosystems, and their enjoyment of their land and resources; it also establishes criminal sanctions to guarantee its application.

The law guarantees several rights.

The right to justice will provide tools to address injustice and rights violations; the law reaffirms the constitutional principles in this sector and imposes the appointment of a lawyer at the expense of the public treasury to assist Indigenous Pygmy peoples in criminal matters.

The recognition of customary law and traditional practices reinforces the self-determination of IPs and the valorization of their practices. These include a wide scope, such as relating to matters of marriage, access to resources, Indigenous knowledge, and access to sacred sites.

The right to basic social services considers the particularities of the Indigenous Pygmy peoples. For example, it recognizes free access for Pygmy children to primary, secondary and vocational education in public schools. Traditional medicine is also protected and promoted by the state as long as such practices are not harmful to health.

Cultural rights recognize and respect the identity of the Indigenous Pygmy peoples through the protection and promotion of their cultural, intellectual, religious and spiritual assets, supporting the transmission to future generations of their histories, languages, oral traditions, and philosophies.

The right to the environment guarantees a healthy, unpolluted environment in the lands occupied or used by Indigenous Pygmy peoples. It also strengthens the involvement and participation in governance and ecosystem management of the indigenous pygmy peoples by introducing requirement for FPIC.

The inclusion of land and natural resource rights is a significant step forward. They guarantee the recognition and protection of the land and resources that Indigenous Pygmy peoples traditionally own, occupy or use, in accordance with their customs and traditions. These rights are guaranteed, inter alia, by the prohibition of their relocation or resettlement without FPIC and in return for fair and equitable compensation.

The right to work guarantees the right to healthy employment, fair remuneration, social benefits and social security without discrimination. It prohibits all forms of discrimination against Indigenous Pygmy peoples of the DRC in terms of access to employment, working conditions, vocational training, remuneration and access to social security. This right also guarantees the protection of children against economic exploitation, dangerous work, or work that hinders their education or health.

Looking forward

Despite these merits, there is still progress to be made.

Indeed, knowing the efforts and time taken to obtain this law, it is worrying to see that its proper application requires 9 specific measures and mechanisms to be taken by the state, the provinces and the decentralized territorial entities, 3 decrees from the Prime Minister and 1 order from the Minister for Social Affairs. Implementation remains to be seen. Further, women's rights are mentioned only in a general way, thus failing to recognize that women are often marginalized with regard to land and resource access. Regarding FPIC, it only requires the prior consent of IPs in the case of the creation of protected areas on their land whenever this may directly or indirectly affect their way of life.

Still, the law is timely and continues to hold out hope for an improvement in the living conditions and treatment of the Indigenous Pygmy Peoples of the DRC. It remains to be seen how the recognition of rights to land and resources that is central to the law will support the equitable participation of IPs and their territories in the DRC's REDD+ efforts.

This research is part of CIFOR's Global Comparative Study on REDD+ (www.cifor.org/gcs). The funding partners that have supported this research include the Norwegian Agency for Development Cooperation (Norad), the International Climate Initiative (IKI) of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the United States Agency for International Development (USAID) and the CGIAR Research Program on Forests, Trees and Agroforestry (CRP-FTA), with financial support from the donors contributing to the CGIAR Fund.

Copyright policy:

We want you to share Forests News content, which is licensed under Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). This means you are free to redistribute our material for non-commercial purposes. All we ask is that you give Forests News appropriate credit and link to the original Forests News content, indicate if changes were made, and distribute your contributions under the same Creative Commons license. You must notify Forests News if you repost, reprint or reuse our materials by contacting forestsnews@cgiar.org.