

**Convention on the Rights of the  
Child Shadow Report Submission:  
Indigenous Children's Rights  
Violations in the Democratic  
Republic of the Congo**

**December 2016**

*Prepared for 74th CRC Session*



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## **CRC Shadow Report Submission**

### **Indigenous Children's Rights Violations in the Democratic Republic of the Congo**

#### **I. Reporting Organization**

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: [www.cs.org](http://www.cs.org). Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

#### **II. Background Information**

In 1960 the then-Republic of the Congo achieved its independence from Belgium, under whose colonial rule it had been since 1908. The nation currently known as the Democratic Republic of the Congo (DRC) experienced instability and conflict throughout much of its independence. There has been a resurgence of violence particularly in the east of the country, near borders with Uganda, Rwanda, and Burundi, as well as in the capital of Kinshasa and cities like Lubumbashi, Goma, and Bunia. The violence in the east of the country is ongoing despite a peace agreement signed with the National Congress for the Defense of the People (CNDP), a primarily Tutsi rebel group. An attempt to integrate CNDP members into the Congolese military failed, prompting their defection in 2012 and the formation of the M23 armed group - named after the 23 March 2009 peace agreements. This deflection has led to continuous conflict causing the displacement of large populations and significant human rights abuses before the M23 was pushed out of DRC to Uganda and Rwanda in late 2013 by a joint DRC and UN offensive. The DRC continues to experience violence committed by other armed groups including the Democratic Forces for the Liberation of Rwanda, the Allied Democratic Forces, and assorted Mai Mai militias.

Geographically, the DRC contains a vast central basin and low-lying plateaus, with mountains in the east. There is a wealth of natural resources including coltan, copper, niobium, petroleum, diamonds, gold, silver, zinc, manganese, tin, uranium, coal, hydropower, and timber. The rate of export of these resources has increased in recent years as there is relative stability in the nation. This has boosted Kinshasa's fiscal position and GDP, although price declines are a threat to the growing economy. Additionally an estimated 8,284,395 children between the ages of five and fourteen are a part of the workforce, an issue the DRC is fighting against as it has ratified the Convention on the Rights of Children (CRC) and two of its three optional protocols. The total population of the country is 81,331,050 with approximately 63.64% of the country being below the age of 25.

In 2013, the country spent 2.2% of its GDP on education, and in that year there was a school life expectancy of nine years. Boys generally attend school for ten years, girls for eight. The literacy rate, which means people over the age of 15 who can read or write French, Lingala, Kingwana, or Tshiluba, is 63.8%, with 78.1% for men and 50% for women. Additionally there is a discrepancy between the literacy rates between rural and urban populations.

About 1 to 3% of the population of the DRC self-identifies as Indigenous, but Indigeneity in the DRC is a complex term. The 600,000 to 2,000,000 Indigenous Peoples predominantly identify as Baka, Mbuti, and Batwa (collectively also known as by a derogatory term Pygmy) and live in eleven of the twelve Congolese provinces.

The concept of “Indigenous Peoples” is generally accepted by the government and civil society but the constitution and laws do not explicitly mention Indigenous Peoples. Although, the DRC voted for the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, the DRC does not officially recognize Indigenous Peoples, and does not make a distinction between different lifeways of various populations ie. hunter-gatherers and farmers. In Africa the term “Indigenous” can be problematic as all Africans consider themselves native to the land, and thus specifically in the DRC context, Indigeneity becomes a term for marginalized, displaced, and culturally threatened hunter-gatherer and nomadic peoples. There is also a high rate of intermarriage, particularly between Indigenous women and Bantu men, which make the distinctions even more complex. Although there are many remote Indigenous communities, there are also significant numbers who have moved to urban areas to avoid conflict. The paternalistic attitude the government holds towards Indigenous Peoples creates an identity that equates them more to children, complicating the different paths towards full achievement of human rights.

The Baka, Mbuti, and Batwa lifeways are closely linked to the forests in which they live. These forests provide cultural and spiritual spaces as well as economic viability through hunting, gathering, and fishing, and medical resources, through location specific pharmacopeia and medicinal plants. Although approximately 65% of the DRC is covered in rain forests, many Indigenous Peoples have faced displacement for prolonged periods of time, mostly because of conflict, large scale infrastructure, conservation efforts, logging, and mining. In the country’s colonial era, Belgian infrastructure projects such as road building were accompanied with the resettlement of many communities closer to the new roads, in order to easily tax and enslave them. The influx of refugees and a quickly growing population have also contributed to the displacement of Indigenous communities. Their removal from ancestral land is paired with systemic racial discrimination, which ultimately places Indigenous Peoples on the fringes of society.<sup>1</sup> This multi-layered historical displacement has severed many ties Indigenous Peoples had with ancestral lands and their communities, requiring innovative responses to land rights and a framework to acknowledge the experiences of Indigenous Peoples who have moved to urban areas.

### **III. Issue Summary: Rights of Indigenous Children in DRC**

The constitution of the DRC recognizes and assures citizenship for all born on its territory, as well as to the ethnic groups whose members and territories form the DRC. Additionally the constitution prohibits discrimination on the basis of membership of a certain race, ethnicity, tribe, cultural or linguistic minority, but fails to specifically prohibit discrimination against Indigenous Peoples.

The lack of official recognition has significant consequences regarding the recording of Indigenous experiences in the DRC, a type of invisibility worsened by the fact that only 31% of births nationally are recorded.<sup>2</sup> It creates a troubling lack of data on Indigenous Peoples. Indigenous Peoples in the DRC have

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<sup>1</sup> <http://www.iwgia.org/regions/africa/democratic-republic-of-congo> accessed on 11/28/2016

<sup>2</sup> <http://www.humanium.org/en/africa/democratic-republic-congo/> accessed on 12/1/2016

faced increased displacement due to rising conflict, armed rebel groups, extractive industries, and conservation efforts that resulted in the destruction of their societal fabric. Too often Indigenous Peoples are left out of the political processes and the decisions affecting them.

A. Armed Conflict and Education (CRC Articles 4, 6, 7, 8, 19, 28, 29, 30, 32)

Tensions are rising in the DRC as an uncertain post-President Kabila transition period is expected to commence, violence is increasing in Burundi, and armed groups remain active throughout the east. The increased uncertainty surrounding the democratic processes as President Kabila's final term is ending is limiting the organizational potential of Indigenous Peoples and their organizations.<sup>3</sup> The limits this poses on Indigenous advocacy, including the rights of children, is troubling. Similar concerns have been expressed by CESCR and CEDAW concerning the disproportionate violence vulnerable communities have faced and are likely to continue to face during these circumstances. According to UNHCR there are 2.6 million Internally Displaced Persons, including many Indigenous Peoples, that do not have a comprehensive legal system protecting their rights and ensuring that children receive the services they need.

According to les Dynamique des Groupes des Peuples Autochtones (DGPA), a coalition of 43 different Indigenous rights organizations in the DRC, Indigenous communities have faced violent attacks from both armed rebel groups as well as representatives of the government. In 2014 DGPA recorded several massacres in different Batwa communities perpetrated by armed groups such as the Mai Mai rebels and members of the national army that as of now have not yet been investigated. In Kagula 18 people were killed, and in Luella 29 people, of which nine were children. In Kabolo territory 17 people were killed, including several children and a four month old baby. DGPA commented that "this shows how much the government does not pay particular attention to the problem of peaceful coexistence of local communities in this part of the country. This state of affairs seriously undermines the efforts of the government in its search for lasting peace in the country."<sup>4</sup> Violence caused by the Mai Mai rebels has affected different Indigenous communities, such as the Nande, Bira, and Lese. Batsinga Sepi, a Batwa headman of a community uprooted as a result of the violence said "we did not just hear about the war, we lived through it. This has been a serious war and many of our relatives have been killed in the fighting. Our message to the world is that we cannot remain living like this."<sup>5</sup> Additionally, the increased violence, displacement of communities, and an increased Indigenous voice asking for basic human rights, has made tensions flare up between different ethnic groups, for example between the Batwa and Luba. "They started to shoot arrows at us. We had no arms to protect ourselves. They massacred us. They killed so many Pygmies. They killed us like animals, like things with no value," an anonymous Batwa woman said as Luba attacked and destroyed the Vumilia 1 refugee camp, a predominantly Batwa camp.<sup>6</sup> Violence from both sides has made the situation deteriorate further, increasing the precarious position many Indigenous Peoples are in.

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<sup>3</sup> <https://www.hrw.org/blog-feed/democratic-republic-congo-crisis> accessed on 11/29/2016

<sup>4</sup> [http://www.synchronicityearth.org/assets/uploads/DRC\\_Massacres\\_Statement\\_-\\_July\\_2014\\_-\\_English\\_Translation.pdf](http://www.synchronicityearth.org/assets/uploads/DRC_Massacres_Statement_-_July_2014_-_English_Translation.pdf) accessed on 11/28/2016

<sup>5</sup> [https://www.unicef.org/childalert/drc/content/Child\\_Alert\\_DRC\\_en.pdf](https://www.unicef.org/childalert/drc/content/Child_Alert_DRC_en.pdf) accessed on 11/29/2017

<sup>6</sup> <https://www.hrw.org/news/2015/08/11/dr-congo-ethnic-militias-attack-civilians-katanga> accessed on 11/29/2016

The destabilization of Indigenous communities also has grave consequences for the school attendance rate of Indigenous children, which already was much lower than the national average to begin with. It uproots these children from established schools and learning environments. This instability intensifies trauma from conflict, and hinders the participation of children in academic environs. Additionally, educational costs are often too high for Internally Displaced Indigenous Peoples to cover. Bambuti chief Mupepa Muhindo explains that he cannot pay school fees or afford school uniforms for his children. “Pygmy children don’t study,” he said. “Because we don’t have any education, we can’t consider ourselves people like others.”<sup>7</sup> Currently, a majority of schools are operated by faith-based organizations such as Catholic schools. This creates the complicated situation of providing education but doing so through a particular lens that historically has been harmful to the continuation of Indigenous cultures. These situations are often paired with the fact that many Indigenous children have not been registered at birth, based on a lack of resources and the armed conflicts. “In these post-conflict situations, the role of the school is very important,” says Ms. Chantal Kapinga Nzemba, an education specialist at UNICEF. “A school that takes in children again in a village is above all a sign that peace has returned. But beyond that, school also offers an opportunity to learn to live together again.”<sup>8</sup> Education is a powerful post-conflict tool to create sustainable peace, but only if the schools explicitly recognize the historically disadvantaged situations of Indigenous Peoples, as the school Ms. Nzemba talks about does. Currently 18.7% of Batwa children aged 6-11 are enrolled in schools, compared to the national average of 56.12%.<sup>9</sup> It is also important to address the gender disparities within the Batwa and other Indigenous communities, as boys are twice as likely to attend schools as girls.<sup>10</sup> Besides the limit this poses on educational opportunities, it also hinders these children from receiving healthcare services, which disproportionately affects women and newborns. “We are completely neglected and forgotten,” a Twa man from Kalehe district explains, “even our wives do not have access to midwives. They are permanently exposed to death because of lack of care during their pregnancy and deliveries. This came with the so-called modern life into which we were dragged. It did not exist when we were living in our natural environment. We had so many plants for such problems.”<sup>11</sup>

## B. Child Soldiers and Violence Against Women and Girls (CRC Articles 30, 32, 34, 35, 36)

The violence that destabilizes these Indigenous communities is increasingly complicated by the conscription of child soldiers, including children from Indigenous communities. Rebel groups disproportionately target Indigenous people for their knowledge of the forests and local resources. There are roughly two ways in which child soldiers are deployed; the first is as actual members of the army. This can involve cooking and cleaning, but often translates to combat. These children, both boys and girls, are deployed to attack communities and taught to kill. Displaced communities are especially vulnerable to these armed groups and militias as safety structures such as family, community, and school

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<sup>7</sup> <http://www.fmreview.org/DR Congo/displacement%2526discrimination.html> accessed on 11/30/2016

<sup>8</sup> [https://www.unicef.org/education/drcongo\\_91244.html](https://www.unicef.org/education/drcongo_91244.html) accessed on 11/30/2016

<sup>9</sup> Deborah J. Johnson, DeBrenna LaFa Agbényiga, Robert K. Hitchcock, *Vulnerable Children: Global Challenges in Education, Health, Well-Being, and Child Rights*, Springer Science & Business Media, Jul 8, 2014, pp. 224.

<sup>10</sup> <http://unpo.org/article/11115> accessed on 11/30/2016

<sup>11</sup> <http://www.forestpeoples.org/region/africa/publication/2010/health-situation-women-and-children-central-african-pygmy-peoples> 11/30/2016

are often absent or fractured. Although the DRC is implementing many different programs for survivors, these programs do not specifically address the extraordinary position Indigenous children inhabit.

The other major component of the conscription of children into armed groups and militias is the violent sexual exploitation of mostly girls by other soldiers. This type of violence against Indigenous girls and women only intensifies as a history of racism and oppression has devalued these people as less than human, which created the circumstances for the epidemic of sexual violence against Indigenous women and girls. The violence against girls and women is extreme, and Minority Rights Group International found that 100% of Batwa women have said they have faced incidents of violence.<sup>12</sup> Over 50% of these incidents of violence were rape. Although the DRC has many programs and projects in place concerning the epidemic of sexual violence, there remains a need for the explicit inclusion and recognition of the particular experiences of Indigenous women and to provide culturally and linguistically appropriate resources. Additionally education resources and shelters need to be made available to Indigenous women who have experienced these war crimes, as well as the need of the creation of more culturally appropriate spaces and resources for Indigenous women and girls that have experienced spousal rape and other forms of sexual violence within their communities.

These crimes against children result in an array of intersecting traumas such as PTSD, physical disabilities, and social exclusion. Although several NGO's indicate that child soldiers have historically and contemporarily included Indigenous Peoples, there is a lack of data on exact amounts and recording of experiences. This is likely due to a variety of factors, but the absence of explicit recognition of Indigenous Peoples contributes to an invisibility that directly infringes on the rights of Indigenous children. It also adds the concern if the services offered to survivors are culturally and linguistically appropriate and effective.

### C. National Parks and Conservation Efforts (CRC Articles 24, 25, 26, 7, 30, 31)

The creation of the Kahuzi-Biega National Park in 1970 was followed by the expulsion of many Batwa communities from their ancestral land, and has served as an example<sup>13</sup> of the presumed dichotomy between Indigenous rights and successful environmental protection. This dichotomy, which has often infringed upon the basic rights of Indigenous Peoples particularly in regards to land rights, is shifting but its consequences remain starkly visible. Although attitudes are changing, reparations for communities like the ones expelled from Kahuzi-Biega National Park are not likely, especially as these Batwa communities have faced unfavorable court rulings and are currently awaiting trial at the supreme court.<sup>14</sup> The expulsion from ancestral lands affects children's ability to learn their languages and cultures and increases the overall food insecurity, health risks, limited education and general poverty experienced by Indigenous Peoples.

Besides the unaddressed long-term consequences of past mismanagement, recent developments are posing new threats disproportionately to Indigenous Peoples, which will have similar consequences for

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<sup>12</sup> <http://unpo.org/article/11115> accessed on 11/30/2016

<sup>13</sup> [http://www.iwgia.org/publications/search-pubs?publication\\_id=125](http://www.iwgia.org/publications/search-pubs?publication_id=125) accessed on 11/28/2016

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[http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2016/Democratic\\_Republic\\_of\\_Congo\\_IW2016\\_web\\_redu.pdf](http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2016/Democratic_Republic_of_Congo_IW2016_web_redu.pdf) accessed on 11/29/2016

Indigenous children. Rainforest Foundation Norway is anticipating that the Congolese government will lift a moratorium on industrial logging it has had since 2002 in order to boost the country's economy. Irène Wabiwa Betoko of Greenpeace Africa outlines that this would wreak environmental havoc, threaten the fragile biodiversity present, and threaten the people that depend on these forests, while the economic promises are likely to fall through.<sup>15</sup> Indigenous Peoples rely on these forests, and increased logging or exclusive rash conservation policies would disproportionately affect these communities.

Recent work from the local NGO Program for the Integration and Development of the Pygmy People (PDIP) is showing that contemporary conservation policies are still harming Indigenous Peoples. In Virunga National Park, created by the Belgians in 1925, Bambuti communities were expelled from their ancestral lands. They now live largely in Mudja, about 20 miles north of Goma. Imani Kabasele, head of the PDIP, said<sup>16</sup> that two years ago a Mbuti man from the neighboring village of Biganiro went to the park to look for honey, a traditional economic activity for Bambuti. He disappeared for three days, and his body was discovered later with the markings of machetes. It is unclear if this act was committed by the highly militarized park rangers or the armed group Democratic Forces for the Liberation of Rwanda (FDLR). The violence adds a layer to the displacement of Indigenous Peoples and affects children as it causes trauma, broken families, and death. As Indigenous land rights are not explicitly protected by Congolese law, Indigenous Peoples often have nowhere to turn to. The displacement of Indigenous Peoples from their ancestral lands also contributes to high rates of malnutrition and infant mortality. For example, under-five mortality rates for the Mbendjele peoples in northern Congo are reported to be 1.5-2.4 times higher than nearby non-Indigenous populations.<sup>17</sup> The lack of culturally appropriate health care institutions only worsens the situation, as traditional knowledge and pharmacopoeia are lost. Increasingly Indigenous Peoples are experiencing new diseases such as HIV/AIDS, yaws, and respiratory illnesses, which are foreign to their cultural vocabulary and culturally insensitive clinics limit the effectiveness of treatment and understanding of these ailments for Indigenous Peoples.

#### D. Extractive Industries and Modern Slavery (CRC Articles 24, 25, 26, 30, 32, 34, 35, 36)

There is a wide variety of environmental issues that contribute to difficulties faced by Indigenous Peoples, such as poaching, unstable wildlife populations, and an influx of refugees who often do not receive governmental assistance and exhaust natural resources. The displacement of Indigenous communities and many of the hardships these peoples face are strongly related to the extractive industries in the DRC, many of which are illicit and run by rebel groups. The majority of these industries are mining and logging, and cause significant deforestation, water pollution, and soil erosion. The destruction of the ecosystems of which Indigenous Peoples are a part of creates food insecurity, poverty, and displaced communities. It also interrupts cultural and linguistic traditions and poses a direct threat to the continuation of Indigenous cultures.

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<sup>15</sup> <http://www.regnskog.no/en/news/congo-threatens-to-open-worlds-second-largest-rainforest-to-new-industrial-loggers> accessed on 11/28/2016

<sup>16</sup> <http://www.ipsnews.net/2016/09/militarised-conservation-threatens-drcs-Indigenous-people-part-1/> accessed on 11/28/2016

<sup>17</sup> <http://www.forestpeoples.org/region/africa/publication/2010/health-situation-women-and-children-central-african-pygmy-peoples> accessed on 11/30/2016



The wealth generated from these extractive industries is not equally distributed across the Congolese people, and those who pay the price through the destruction of their lands barely receive benefits. Dieudonné Akilimali, representative of Batwa de la République Démocratique du Congo (BRDC), mentioned how extractive industries were intended to improve the livelihood of all, for example through providing elementary education and ensure that all Congolese children would be able to attend quality schools. Akilimali points out that this has not happened and Indigenous Peoples lack access to elementary education.<sup>18</sup> The unequal distribution of wealth in the DRC keeps Indigenous children from enjoying the same rights as non-Indigenous children, while also having to live in environments rife with pollution and displacement.

These extractive industries employ many children, many of whom are Indigenous. Particularly in the mineral-rich provinces of North Kivu and former Katanga a significant amount of children work in terrible conditions in mines. Humanium reported that in Katanga and Copperbelt approximately 40% of the laborers in these mines are under the age of 18. In extreme heat, clouds of dust and mercury, narrow tunnels, and limited light these children work at depths of 200 to 300 meters exposed to risks of asphyxiation, rockslides, and other accidental deaths. Wages are about one to two US dollars a day. Numerous cobalt mines in the DRC have employed and employ children as young as seven.<sup>19</sup> “I would spend 24 hours down in the tunnels,” Paul, a 14-year-old orphan and cobalt miner shares. “I arrived in the morning and would leave the following morning.”<sup>20</sup> This grueling and illegal work barely sustains impoverished Indigenous communities, deprives a child of the right of education, and impacts the child’s physical and mental health. Bertin Masansa Ma-Nkamba, executive director of ForS-Pax Network, shared the example of the mines in the former province of Western Kasai. There is a high prevalence of sexual violence at these mines, which has largely affected women and girls and has increased HIV/AIDS rates. Drug addictions and higher crime rates are also increasingly common. Child labor disrupts healthy families and creates a vicious cycle through which Indigenous Peoples disproportionately become trapped in poverty.

The exploitation of labor takes form in a variety of ways in the DRC. In 2008 over a hundred Indigenous individuals escaped slavery,<sup>21</sup> indicating how the mistreatment of Indigenous Peoples leads to inhumane and exploitative situations. Since then, the commitment to and evidence of change have remained remarkably absent, leading to a coalition of 15 different Indigenous rights organizations to explicitly demand the implementation of “measures [which] must put an end to forms of contemporary slavery manifested in the patronage of certain other ethnic groups to the detriment of Indigenous Pygmy minorities.”<sup>22</sup> This document alludes to the particular experience of Indigenous Peoples in in the DRC, where other larger ethnic populations engage in traditionally sanctioned slavery. Although the

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[http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9874/0f515236.dir/EM16Akilimali084.pdf#search="Dieudonne AKILIMALI"](http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9874/0f515236.dir/EM16Akilimali084.pdf#search=) accessed on 12/1/2016

<sup>19</sup> <http://www.humanium.org/en/child-labor-in-the-mines-of-the-democratic-republic-of-congo/> accessed on 12/1/2016

<sup>20</sup> <https://www.amnesty.org/en/latest/news/2016/01/Child-labour-behind-smart-phone-and-electric-car-batteries/> accessed on 12/1/2016

<sup>21</sup> <http://www.survivalinternational.org/tribes/pygmies> accessed on 12/12/2016

<sup>22</sup> <http://globalforestcoalition.org/wp-content/uploads/2014/04/RAPPORT-ALTERNATIF-UPR-ONG-PEUPLES-AUTOCHTONES-RDC- ANGLAIS.pdf> accessed on 12/12/2016

constitution of the DRC prohibits any type of slavery, it is still a living practice affecting Indigenous Peoples. This affects the experience of Indigenous children in a variety of ways including but not limited to the enslavement of minors, sexual exploitation particularly of girls, displaced families, and a lack of access to health care and education. Additionally this slavery ruptures the fabric of Indigenous culture and perpetuates violent notions of Batwa and other Indigenous Peoples as being subhuman.

#### **IV. CRC Concluding Observations**

On March 7th, 2012 the Committee noted in Concluding Observations;

“4. The Committee reiterates its concern expressed since 2001 (CRC/C/15/Add.153, para. 6) about the responsibilities of several other States and certain other actors, including non-State armed groups and private companies, for the negative impact of the armed conflict upon children and for violations of some provisions of the Convention on the Rights of the Child, its Optional Protocol on the involvement of children in armed conflict, as well as provisions of international humanitarian law, within areas of the State party, the Committee reminds however that the State party is primarily responsible to ensure the protection of all children within its territory.

15. The Committee urges the State party to adopt as a matter of priority a comprehensive time-bound plan of action to halt the recruitment and use of children in armed conflict in conformity with Security Council resolutions 1539 (2004), 1612, (2005) and 1882 (2009) and 1998 (2011). The State party should consult with the Office of the Special Representative of the Secretary General on Children and Armed Conflict as well as international and national child protection actors and ensure that the necessary human, technical and financial resources are allocated for a prompt and effective implementation of the plan.

24. While noting the efforts of the National Implementation Unit for the National Disarmament, Demobilization and Reintegration Programme (UEPN - DDR) to collect data on children involved in armed conflict, the Committee is however concerned that the information collected remains partial and inaccurate and that State authorities rely almost exclusively on international partners’ funding for data collection and analysis on all areas covered by the Optional Protocol.

31. The Committee urges the State party to show greater political commitment at the highest levels to stop the recruitment and use of children within the FARDC.

47. The Committee urges the State party to ensure that:

- (a) Children are not arbitrarily arrested, detained and prosecuted by military courts for their membership in armed groups or for military offences such as desertion;
- (b) Captured child soldiers are always treated in accordance with international human rights and humanitarian law and promptly handed over to child protection actors;
- (c) Detention of children is only used as a measure of last resort and for the shortest possible period of time;
- (d) Children deprived of their liberty as a consequence of their involvement in hostilities are treated with humanity and with respect for their inherent dignity;
- (e) If criminal charges are brought against children, trials must be held before civilian courts and in compliance with international standards on juvenile justice, including the standards enshrined in the

Convention on the Rights of the Child and illustrated in the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice;  
(f) No child should be sentenced to death or to life imprisonment.

## **V. State Report**

*State Report on the Convention on the Rights of the Child from the 22nd of June, 2016*

The report acknowledges the changes that have been made, and recommends future possible actions to secure the rights of children in the DRC. The report does not specifically name Indigenous children. There is no mention if any of the discussed education projects and campaigns concerning the rights of children are culturally appropriate and sufficient for Indigenous Peoples. When the report addresses issues of foster care and adoption the particular cultural and linguistic rights of Indigenous children are also not mentioned.

*State Report on the First Optional Protocol on the Involvement of Children in Armed Conflict, from the 7th of March, 2012*

Although the DRC has made progress in its commitment to demobilize child soldiers and combat other forms of military involvement, the report does not specifically address Indigenous Peoples except for recognizing the gravity of the alleged war crimes and crimes against humanity committed against Bambuti children and their families.

*State Report on the Second Optional Protocol on the Prohibition on the Sale of Children, Child Prostitution, and Child Pornography, from 28th of June, 2016*

Although the report records the different steps taken by the DRC in regards to the rights of children and the prohibition of the sale of children, child prostitution, and child pornography, it does not specify the experiences of Indigenous children. The report addresses the disproportionate experiences of displacement, assault, and rape by local, governmental, and international parties, which is particularly concentrated in the provinces of North and South Kivu, but aside from a brief mention concerning the existence of Pygmies, the report is silent on the experiences of Indigenous children.

## **VI. The CRC General Comments**

In 2009 CRC issued the following general comments on the rights of Indigenous children, and the following articles pertain to the situation of Indigenous Peoples in the DRC. Many of these recommendations have not been implemented.

“19. The presence of Indigenous peoples is established by self-identification as the fundamental criterion for determining their existence. There is no requirement for States parties to officially recognize Indigenous peoples in order for them to exercise their rights.

49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-Indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties' reports, that this applies both to developing and developed countries.

56. Article 29 of the Convention sets out that the aims of education for all children should be directed to, among other objectives, the development of respect for the child's cultural identity, language and values and for civilizations different from his or her own. Further objectives include the preparation of the child for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of Indigenous origin. The aims of education apply to education for all children and States should ensure these are adequately reflected in the curricula, content of materials, teaching methods and policies.

64. Through its periodic reviews of States parties' reports, the Committee has concluded that Indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal unrest. Indigenous communities often reside in areas which are coveted for their natural resources or that, because of remoteness, serve as a base for non-State armed groups. In other situations, Indigenous communities reside in the vicinity of borders or frontiers which are disputed by States.

65. Indigenous children in such circumstances have been, and continue to face risks of being, victims of attacks against their communities, resulting in death, rape and torture, displacement, enforced disappearances, the witnessing of atrocities and the separation from parents and community. Targeting of schools by armed forces and groups has denied Indigenous children access to education. Furthermore, Indigenous children have been recruited by armed forces and groups and forced to commit atrocities, sometimes even against their own communities.

67. Indigenous children who have been victims of recruitment in armed conflict should be provided with the necessary support services for reintegration into their families and communities. Consistent with article 39 of the Convention, States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. In the case of Indigenous children, this should be done giving due consideration to the child's cultural and linguistic background.

69. Article 32 of the Convention provides that all children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

72. Articles 34 and 35 of the Convention with consideration to the provisions of article 20, call on States to ensure that children are protected against sexual exploitation and abuse as well as the abduction, sale or traffic of children for any purposes. The Committee is concerned that Indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming victims of sexual exploitation and trafficking."

## **VII. Other UN Body Recommendations**

### **Human Rights Council**

On the 28th of September, 2016, during the 33rd session of the Human Rights Council, the member states adopted a draft of a resolution concerning technical assistance and capacity-building in the DRC.

Although this document does not explicitly name Indigenous Peoples, it does urge the DRC to ensure the rights of assembly, freedom of speech, and political participation for all. Additionally the resolution acknowledges and condemns the recent flares of violence in South Kivu, amongst others, which is an area where many Indigenous Peoples live.

### **Universal Periodic Review**

The following are updates on the implementation of recommendations from the first cycle of the UPR process.

“The Democratic Republic of the Congo has taken effective measures to protect children from accusations of witchcraft through article 160 of the Child Protection Act No. 09/001 of 10 January 2009, which provides that: “Anyone who maliciously and publicly ascribes an act to a child that would offend the child’s honour and dignity shall be liable to a penalty ranging from 2 to 12 months’ imprisonment and a fine ranging from 200,000 to 600,000 Congolese francs (CGF). Anyone who accuses a child of witchcraft shall be liable to a penalty ranging from 1 to 3 years’ imprisonment and a fine ranging from 200,000 to 1,000,000 CGF.””

“The Democratic Republic of the Congo continues to combat human trafficking and violence against women and children, in particular through legislative and structural reforms, namely: the Child Protection Act No. 09/001 of 10 January 2009 (arts. 162, 169–175, 177–184), which prescribes a penalty for trafficking in children ranging from 10 to 20 years’ imprisonment and a fine ranging from 500,000 to 1,000,000 CGF; the National Agency to Combat Violence against Women and Girls, established by Decree No. 09/38 of 10 October 2009, and the National Fund for the Promotion of Women and the Protection of Children.”

“The Government has established special police units for the protection of women and children, which are operational in the east of the country and will cover the entire country, in order to strengthen the protection of the civilian population, particularly women and children, from violence.”

(<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/107/16/PDF/G1410716.pdf?OpenElement>)

The following were recommended in the second cycle of the UPR process, and have yet to be implemented.

*Ensure that primary education is free and of quality and contains special programmes for the local population, including Pygmies - Mexico*

*Pay particular attention to Indigenous Pygmy peoples, in order to guarantee their access to land and natural resources - Benin*

*Continue working towards the recognition of Indigenous peoples at the national level - Guatemala*

*Ensure land rights of Indigenous communities within protected natural parks, in particular Pygmies. Likewise harmonize projects of greenhouse gas reduction, deforestation reduction and forest degradation in line with the United Nations Declaration on the Rights of Indigenous Peoples - Mexico*

### **VIII. Questions**

1. What steps is the DRC going to take to ensure the basic human rights of Indigenous children?
2. How will the DRC incorporate Indigenous children's rights in large scale national projects aimed at securing general children's rights?

### **IX. Recommendations**

Cultural Survival urges the government of the Democratic Republic of Congo:

1. *To enact legislation and initiate national programs that specifically recognize, address and include the experiences of Indigenous Peoples.*
2. *To explicitly incorporate Indigenous rights when providing services to former child soldiers.*
3. *To provide updated information on the status and implementation of proposed legislation specific to the rights of children including National Child Protection Policy and Child Protection Code.*
4. *To ensure the freedom of expression and the right of assembly of Indigenous Peoples and children.*
5. *To provide and disaggregate data and statistics on Indigenous children and ensure that all children are registered at birth and attain Congolese citizenship.*
6. *To ensure the access to quality and affordable education, particularly for girls and children from vulnerable communities, across the country in both urban and rural settings.*
7. *To provide quality and accessible health facilities in all parts of the countries, including rural places.*
8. *To ensure justice and resources in conflict areas increase in frequency to protect Indigenous children.*
9. *To ensure the right to free, prior, and informed consent in all matters of extractive industries and conservation efforts taking place on Indigenous lands.*
10. *To evaluate its conservation policies to ensure the mutually beneficial relationship between Indigenous rights and conservation efforts, and to provide reparations to Indigenous Peoples who have experienced human rights violations as a result of conservation, such as the Batwa of Kahuzi-Biega National Park and Mambuti of Virunga National Park.*
11. *To investigate and hold fair trials when Indigenous communities are attacked by armed groups, whether they be governmental, local, or foreign, as for example happened in the communities of Kagula and Luella.*
12. *To ensure culturally and linguistically appropriate resources are available for children exiting exploitative labor.*
13. *To enforce and implement the commitment the DRC made to end child labor.*
14. *To ratify and implement ILO Convention 169.*
15. *To invite the United Nations Special Rapporteur on the Rights of Indigenous Peoples to visit the DRC.*