

**Persistent and Pervasive Racial Discrimination against Indigenous Peoples in the
Democratic Republic of Congo**

**Second Submission Concerning the
Formal Request to Initiate an Urgent Action
and Early Warning Procedure**

**Supplementary information on the
Democratic Republic of Congo's
State Party Report
(CERD/C/COD/15)**

Submitted to the Committee on the Elimination of Racial Discrimination

by

**Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables
Association Pour le Regroupement et l'Autopromotion des Pygmées
Collectif pour les Peuples Autochtones au Kivu
Action Pour la Promotion des Droits des Minorités Autochtones en Afrique Centrale
Solidarité pour les Initiatives des Peuples Autochtones
Union Pour l'Emancipation de la Femme Autochtones
Forest Peoples Programme**

21 January 2007

Contents	Page
Submitting organisations	3
Executive Summary	5
I. Introduction	7
II. Violations of Indigenous Peoples' Rights in DRC	8
A. Indigenous Peoples' Rights to Lands, Territories and Resources	8
B. Natural Resource Exploitation	10
C. Indigenous Peoples' Right to Free, Prior and Informed Consent	11
III. Comments on the State Party report	11
A. Recognition of Indigenous Peoples in DRC	11
B. Cultural Rights of Indigenous Peoples	12
C. Indigenous Peoples in DRC suffer extreme and pervasive discrimination that denies them the right to life with dignity	12
III. Conclusion and request	13

Submitting organisations

The Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV) is an indigenous not-for-profit organisation established on 2 February 1995 in Bukavu, DRC, that aims to protect and defend the rights of indigenous 'Pygmy' peoples. CAMV was legally registered on 26 September 1997 by provincial act number 112/S-KV/608/97 and has consultative status with the UN ECOSOC. Address: 2 boulevard du Lac, La Botte, Bukavu, DRC / PO Box 157, Cyangugu, Rwanda. Tel: +243 997 706 371; Fax: +250 538334; Email: camvorg@yahoo.fr.

The Association Pour le Regroupement et l'Autopromotion des Pygmées (ARAP) is a national organisation created in 1999 by indigenous 'Pygmy' peoples living on and around the Kahuzi mountain. ARAP was legally registered on 13 February 2001 by provincial act number JUST.GS.112/S-KV/971/2001. The goal of ARAP is to unite indigenous 'Pygmy' peoples to create a spirit of mutual aid to assist their economic, cultural and social emancipation. Address: avenue Patrice Emery Lumumba No. 167, Pavillon 7, Bukavu, DRC / PO Box 127, Cyangugu, Rwanda. Tel: +243 0810 848586; Email: enamiruwa@yahoo.fr.

The Collectif pour les Peuples Autochtones au Kivu (CPAKI/RDC) is an indigenous 'Pygmy' not-for-profit organisation, created on 12 May 1998 and legally registered on 17 February 2001 by provincial act number JUST.GS.112/S-KV/962/2001, and registered as an NGO by act number 31.IMINIPLAN/D.PP/SKNK/KAM2004 on 9 August 2004. CPAKI's principle mission is to defend the rights of indigenous 'Pygmy' peoples and support community development. Address: No. 156 du bâtiment de l'Hotel Canadien, Pavillon No.7, Bukavu, DRC. Tel: +243 9977 40167 / 0811 627 499 / 0811 833423; Email: cpaki1@yahoo.fr.

Action Pour la Promotion des Droits des Minorités Autochtones en Afrique Centrale (APDMAC) is an indigenous 'Pygmy' not-for-profit organisation created on 2 July 1996 in Bukavu. APDMAC is apolitical and non-religious, and was registered by provincial act number JUST.GS.112/S-K/740/99 and registered as an NGO on 18 June 1999 by act number 11/MPD/DPPD/SK/NK/bb/99. Address: Bâtiment de l'Hotel des Postes, Bukavu, DRC / PO Box 127, Cyangugu, Rwanda; Tel: +250 0853 8152 / 0844 7180 / +243 9977 06362 / 9986 11352 / 9977 02596; Fax: +250 538334; Email: apdmac2000@yahoo.fr.

Solidarité pour les Initiatives des Peuples Autochtones (SIPA) is a nongovernmental organisation created in 1999. SIPA works for and with indigenous 'Pygmy' peoples living in eastern DRC, specifically in the province of South Kivu. SIPA works mainly in the areas of Kalehe, Bunyakiri and Kalere, but works elsewhere if means permit. Address: No. 156 Avenue Patrice E Lumumba, Commune d'Ibanda, Bukavu / PO Box 127, Cyangugu, Rwanda. Tel: +243 9977 57992; Email: amwanuka@yahoo.fr.

The Union Pour l'Emancipation de la Femme Autochtones (UEFA) is a not-for-profit, apolitical, non partisan, indigenous organisation created in 1998 and registered under act number JUST.GS.112/S-KV/954/2001 and act number 626/CAB/MIN/J/2004 on 14 July 2004. UEFA's main areas of intervention are the protection and promotion of human rights in general and indigenous peoples in particular; and social action including environmental protection,

agriculture and improving household incomes. Address: avenue de l'Athénée 3, Bukavu, DRC; Tel: +243 9986 23642/9976 01819 /9986 11352/ 9977 06221; Email uefa@yahoo.fr.

The Forest Peoples Programme (FPP) is an international NGO established in 1999. FPP works in partnership with indigenous, tribal and forest peoples throughout the world to help them secure their individual and collective rights and maintain control of their lands and natural resources. FPP has worked with indigenous peoples in central Africa since 1991 and in DRC since 1998, and has published several reports on the situation of indigenous peoples in this region and elsewhere.¹ Address: 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893; Fax: (44) 01608 652878; Email: info@forestpeoples.org.

¹ For example: Mulvagh, L and Nelson, J, *Central Africa: Great Lakes region and Cameroon*, for The Indigenous World 2005, IWGIA; FPP and CED, *Protecting and encouraging traditional sustainable use in Cameroon: Customary use of biological resources by local and indigenous peoples in Western Dja Reserve, Cameroon*, Moreton-in-Marsh, August 2005; Caruso, E, *The Global Environment Facility in Central Africa: A desk-based review of the treatment of indigenous peoples' and social issues in a sample of 14 biodiversity projects*, Moreton-in-Marsh, March 2005; Jackson, D, *Implementation of International Commitments on Traditional Forest-Related knowledge: Indigenous Peoples' experiences in Central Africa*, Moreton-in-Marsh, December 2004; Nelson, J and Hossack, L (Editors), *Indigenous Peoples and Protected Areas in Africa – From principles to practice*, Moreton-in-Marsh, 2003.

Executive Summary

This report provides supplementary information on the Democratic Republic of Congo's State Party report on the Convention on the Elimination of All Forms of Racial Discrimination, and respectfully reiterates an earlier request submitted in June 2006 that the Committee on the Elimination of Racial Discrimination initiate an Early Warning and Urgent Action procedure with regard to the situation of indigenous peoples in DRC.

Both this and the first report presented by the submitting organisations highlight the widespread, persistent and systematic violations of the Convention against indigenous peoples in DRC. Entrenched and pervasive racial discrimination is particularly marked with regard to indigenous peoples' land and resources rights, which are neither recognized nor guaranteed in Congolese law, and are routinely violated in practice. The failure to recognize and guarantee these rights has led to gross violations of indigenous peoples' human rights, undermining their means of subsistence and severely compromising their physical, cultural and economic integrity. Their survival as distinct peoples is threatened, and international oversight and intervention are urgently required to avoid further irreparable harm.

At its last session, the Committee addressed a letter to the DRC under its Early Warning and Urgent Action procedure, noting its concern at the information contained within the first report and requesting that the State Party provide information on the situation of indigenous peoples. The State Party report however makes no reference to the rights and situation of indigenous peoples, and the State has thus far failed to respond to the Committee's requests for information either in its report or otherwise.

In light of this situation, the submitting organisations respectfully requests that:

a) the Committee initiate an Early Warning and Urgent Action procedure on the situation of indigenous peoples in DRC in order to give its immediate attention to reversing the acts and omissions of DRC that have given rise to the present massive and persistent pattern of racial discrimination against indigenous peoples. Additionally, we request that the Committee:

i) commences a dialogue with the State to ensure that the rights of indigenous peoples to own their lands, territories and resources traditionally owned or otherwise occupied and used are recognized and respected; that their rights to participate in and consent to activities that may affect them are recognized and respected;

ii) stresses that the preceding requires legislative and administrative measures to ensure that these rights are recognized and guaranteed in law and secured in fact;

b) requests that the Office of the High Commissioner for Human Rights offer to provide technical assistance to give effect to the preceding;

c) recommend to the World Bank that it ensure that its support for forestry reform in the DRC be conducted in a way that fully accounts for and respects the rights of indigenous peoples guaranteed by the Convention;

d) requests that the Chairperson of the United Nations Permanent Forum on Indigenous Issues communicates with the World Bank and other United Nations agencies to ensure that indigenous peoples' rights are fully accounted for and respected in the design and implementation of technical and project assistance in the natural resource management sector in DRC; and

e) recommends that DRC accede to and implement International Labour Organization Convention No. 169.

I. Introduction

1. On 29th June 2006, the submitting organisations presented the Committee on the Elimination of Racial Discrimination (hereinafter ‘the Committee’) with a report (hereinafter ‘the first report’)² that highlights widespread, persistent and systematic violations of the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ‘the Convention’) against indigenous peoples in the Democratic Republic of Congo (hereinafter ‘DRC’). Therein we formally request that the Committee adopt a decision on this situation under its Early Warning and Urgent Action procedure, a request which is reiterated in this present report.
2. Violations of the Convention, which have resulted in and presently threaten to cause further irreparable harm to indigenous peoples, are particularly marked with respect to their land and resource rights. Violations of these rights are typified and greatly exacerbated by the recently operationalized 2002 Forest Code, its implementing laws, and the large number of forestry concessions that have been issued pursuant thereto, many of which are causing or threaten to cause irreparable harm to indigenous peoples. National parks have been created on indigenous peoples’ lands and territories without consultation or consent, causing forced displacement and dispossession of indigenous peoples. The situation has deteriorated to the point that the physical and cultural integrity and survival of indigenous peoples is threatened on a daily basis.
3. Our first report emphasises that indigenous peoples’ land, territorial and resource rights are neither recognised nor guaranteed in domestic law, that domestic remedies are unavailable as a matter of law and fact, and generally applicable legal guarantees do not provide adequate and effective protection for indigenous peoples.³ International oversight and intervention are urgently required to avoid further irreparable harm to indigenous peoples’ rights, dignity and integrity.
4. On 18th August 2006 the Committee addressed a letter to the DRC under its Early Warning and Urgent Action procedure⁴, in which it noted its concern at the information contained in the first report, and requested that the State Party provide supplementary information on the following:
 - (a) Whether the State Party recognises and protects indigenous peoples’ rights to own, enjoy, control and use their communal lands, resources and territories, and what legislative measures have been taken therein.

2 Persistent and Pervasive Racial Discrimination against Indigenous Peoples in the Democratic Republic of Congo: Formal Request to Initiate an Urgent Action Procedure to Avoid Immediate and Irreparable Harm. Presented to the Committee on the Elimination of Racial Discrimination by the Centre d’Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV), the Association Pour le Regroupement et l’Autopromotion des Pygmées (ARAP), the Collectif pour les Peuples Autochtones au Kivu (CPAKI/RDC), Action Pour la Promotion des Droits des Minorités Autochtones en Afrique Centrale (APDMAC), Solidarité pour les Initiatives des Peuples Autochtones (SIPA), the Union Pour l’Emancipation de la Femme Autochtone (UEFA) and the Forest Peoples Programme (FPP).

³ *First Report*, paragraph 3, 16-52.

⁴ Letter dated 18th August 2006 from Mr. Regis de Gouttes, President of the Committee, addressed to Mr. Antoine Mindua Kesia-MBA, Ambassador, DRC Mission to the UN, Geneva (Ref. NP/JF).

- (b) Whether the State Party has demarcated the lands and territories of indigenous peoples.
 - (c) Whether national legislation or regulations require that indigenous peoples be informed, notified or consulted about, and/or whether their prior and informed consent is required, prior to concessions for natural resource exploitation being granted on their lands and territories.
 - (d) Whether there are mechanisms or procedures in place to guarantee that indigenous peoples' rights and interests are taken into account before concessions are granted.
 - (e) To comment on the information provided that forestry exploitation has increased and caused irreparable harm to indigenous peoples, despite the adoption of a forestry exploitation moratorium in May 2002, extended by Presidential decree of November 2005.
 - (f) To indicate whether, and in what way, indigenous peoples have at their disposal recourse against the granting of forestry concessions on their lands and territories.
5. On 14th September 2006, DRC submitted its periodic report.⁵ This report makes no reference to the rights and situation of indigenous peoples. The State has thus far failed to respond to the Committee's requests for information contained in the above-quoted letter, either in its report or otherwise.
6. After reviewing the State Party report, the submitting organisations take this opportunity to provide the Committee with supplementary information relating to the situation of indigenous peoples in DRC. We also respectfully reiterate our previous request that the Committee treat the situation of indigenous peoples in the DRC as an urgent situation and act accordingly to assist the State Party to remove the threats of irreparable harm to the physical and cultural integrity of indigenous peoples posed by the Forest Code, to adequately and effectively guarantee their rights, and to remedy prior – and for the most part ongoing – violations of their rights.

II. Violations of Indigenous Peoples' Rights in DRC

A. Indigenous peoples' rights to lands, territories and resources

7. The Committee has consistently held that the Convention obliges States Parties to recognise and respect the rights of indigenous peoples to own and peacefully use and enjoy their traditional lands and resources.⁶ When doing so, the Committee often refers

⁵ Committee on the Elimination of Racial Discrimination, *Quinzième rapports périodiques que les Etats parties doivent présenter en 2005. Additif. République Démocratique du Congo*, UN Doc. CERD/C/COD/15. 14 September 2006. (Hereinafter 'State Party report').

⁶ See, amongst others, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka* 14/09/2001; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada* 23/08/2002; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Botswana* 3/08/2002; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Costa Rica* 20/03/2002; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Japan* 27/04/2001; and *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Colombia* 20/08/99.

to General Recommendation 23, which calls upon State Parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.⁷

8. The Committee has further urged State Parties to “[e]nsure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage.”⁸
9. Despite these immediate obligations, and in violation of, *inter alia*, articles 2 and 5 of the Convention, DRC has failed to recognize and protect the communal property rights of indigenous peoples and to ensure their effective participation in decisions that affect them. This failure gives rise to an immediate and urgent risk of further alienation of indigenous lands and substantially prejudices the possibility of recovery of lands and territories previously alienated. This is particularly true with regard to the 2002 Forest Code and its implementing regulations and current (and planned) forestry zoning activities and natural resource exploitation operations.⁹
10. The State has not delimited, demarcated or titled indigenous peoples’ lands and territories, and indigenous peoples’ rights to collective ownership in accordance with their traditional land tenure systems are not recognised in Congolese law.¹⁰ Without provision for prior consultation or the consent of indigenous peoples, the 2002 Forest Code determines how the Congolese forest will be zoned, with at least 40% allocated to commercial exploitation and 15% to conservation. The percentage of Congolese forest, if any, that will be regularised as indigenous-owned remains unknown and is not presently being considered by the State.¹¹ Forestry legislation governing use rights violates indigenous peoples’ right to be secure in their means of subsistence and criminalizes the exercise of their subsistence rights and their right to freely use and dispose of their natural wealth and resources.¹²
11. Further, indigenous peoples have not received compensation or other forms of reparations for prior forcible dispossessions of their traditional lands and territories. The vast majority today are denied any access to lands that have been incorporated into national parks; and there are no effective domestic remedies designed to prevent dispossession and to provide them with recourse when dispossessed of their lands.¹³

7 Committee on the Elimination of Racial Discrimination, *General Recommendation 23 on Indigenous Peoples*, 18 August 1997, paragraph 5.

8 Committee on the Elimination of Racial Discrimination, *Decision 1(67) on Suriname*, UN Doc. CERD/C/DEC/SUR/4, 1/11/05, paragraph 4(c).

9 *First Report*, paragraphs 16-46.

10 *Ibid.*, paragraphs 16-19, 46.

11 *Ibid.*, paragraph 24.

12 *Ibid.*, paragraph 46.

13 *Ibid.*

12. Pursuant to the new legal regime imposed by the 2002 Forestry Code, a substantial increase in forest exploitation has already begun and this will continue to deny indigenous peoples access to and meaningful tenure rights over what remains of their ancestral territories and the resources they require to live a life with dignity. These new laws and activities will complete the process of dispossessing indigenous peoples of their traditional territories and convert most, if not all, indigenous peoples into a *de facto* internally displaced population. Further severance of their deep-rooted connections to their ancestral territories will result in the complete destruction of one of the world's oldest cultural traditions.

B. Natural resource exploitation

13. Increased forestry exploitation by logging concessionaires in DRC is substantially exacerbating and intensifying the threat to indigenous peoples' integrity and security, and has already resulted in further dispossession and irreparable harm. Despite a forestry moratorium in place since 2002, which was extended by Presidential decree in October 2005, the State has admitted that logging has continued,¹⁴ and that concessions have been granted on indigenous peoples' lands and territories without prior consultation or consent and with disregard for their internationally guaranteed rights.¹⁵

14. The ongoing process to convert existing forestry concession titles gives rise to an immediate and urgent risk of further alienation and irreversible degradation of indigenous lands and territories.¹⁶ There are no legislative or other provisions to ensure full and effective participation and consent by indigenous peoples in the title conversion process, or that indigenous lands, territories and resources will be adequately identified and protected during the process. There are also no effective remedies which indigenous peoples may invoke to challenge concessions or other imposed uses or dispossessions of their traditional territories.¹⁷

15. Although the World Bank has agreed to fund DRC's forestry and mining sector reforms,¹⁸ indigenous peoples' rights have not been addressed in accordance with World Bank safeguard policies on indigenous peoples. Indigenous peoples' organizations have filed a formal complaint with the World Bank's Inspection Panel, seeking an investigation of the Government and World Bank's activities.¹⁹ After a preliminary investigation concluded that there were sufficient grounds for additional scrutiny of the World Bank's

14 Ibid, paragraphs 5, 20-26 and Annexes 4, 5, and 6. The law states that the moratorium must remain in place until certain conditions have been fulfilled, including that the results of the concession title conversion process are published, and that a three year plan for future concessions is adopted following a consultative procedure. See *Decret No. 05/116 du 24 October 2005 Fixant les Modalités de Conversion des Anciens Titres Forestiers en Contrats de Concession Forestière et Portant Extension du Moratoire en Matière d'Octroi des Titres d'Exploitation Forestière*.

15 Ibid, paragraph 20. See Section II.C for further examples of the State's failure to respect indigenous peoples' right to free, prior and informed consent.

16 Presidential Decree No. 05/116 of 24th October 2005 outlines the modalities of converting old forestry concession titles into new titles following the promulgation of the 2002 Forest Code. It states that all concession titles extant at the time the 2002 Forest Code entered into law are to be considered "ancient", and that these titles must be re-registered and re-titled if they are to be considered legal. The procedure to be followed is outlined in the same decree.

17 See, for example, *Presidential Decree No. 06/141 of 10 November 2006 on the Nomination of Members of the Interministerial Commission on Converting Forest Titles*.

18 *First Report*, paragraph 21.

19 Among others, this complaint alleges serious violations of World Bank safeguard policies relating to indigenous peoples and environmental impact assessment. See *First Report* paragraphs 21-23 and Annexes 3 and 8.

intervention, among others in relation to indigenous peoples' concerns, the Inspection Panel announced that it will conduct a full investigation in February 2007.²⁰ Because the Panel's jurisdiction only extends to violations of World Bank policies, urgent action is still required to address the State's acts and omissions that have led to the current situation of immediate and irreparable harm against indigenous peoples in DRC.

16. We observe that UN treaty bodies have previously directed recommendations to the World Bank – which itself is a specialised agency of the UN – and we hereby request that the Committee do so in the case of indigenous peoples rights in the DRC.²¹ In particular, we request, as an urgent matter, that the Committee recommend to the World Bank that it ensure that its support for forestry reforms in the DRC be conducted in a way that fully accounts for and respects the rights of indigenous peoples guaranteed by the Convention.

C. Indigenous Peoples' Right to Free, Prior and Informed Consent

17. Indigenous peoples' right to give or withhold their free, prior and informed consent to activities that may affect their rights is recognised in a range of international and regional human rights instruments, including the Convention. The Committee has called on State Parties to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”²² However, Congolese law contains no requirements that indigenous peoples be meaningfully consulted about, or participate in decision making, or give their free, prior and informed consent to activities on their traditionally owned lands and territories, particularly with regard to forest zoning, management, gazetting and commercial concessions.²³

III. Comments on the State Party Report

A. Recognition of Indigenous Peoples in DRC

18. The State Party report makes no reference to the rights and situation of indigenous peoples in DRC. In addition to this failure, the State's report does not recognise the existence of indigenous peoples in DRC. The principle of self-identification is well established: for example, the Committee has noted that it is, “of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-

20 The Inspection Panel's preliminary report has noted that the World Bank has recognised that it was not in full compliance with Operational Directive 4.20, its safeguard policy on indigenous peoples. The World Bank has committed to preparing an Indigenous Peoples Plan, and confirmed that “consultation with local populations, especially indigenous peoples, must follow the principle of free, prior and informed consent.” No such plan has thus far been prepared. See First Report paragraphs 21-23 and Annexes 3, 7 and 8.

21 See, among others, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 2*, UN Doc. E/1990/23, paras. 7 & 8(a); and Committee on Economic, Social and Cultural Rights, *Statement on Globalization and economic, social and cultural rights*. May 1998. See, also, *Human Rights as the primary objective of trade, investment and financial policy. Sub-Commission resolution 1998/12*. UN Doc. E/CN.4/Sub.2/RES/1998/12, at para. 2 (which “Urges United Nations agencies, including the International Monetary Fund and the World Bank, to at all times be conscious of and respect the human rights obligations of the countries with which they work”).

22 *General Recommendation 23 on Indigenous Peoples* (1997), op. cit, para. 4(d).

23 *First Report*, paragraphs 9, 17, 20, and 42-44.

identification by the individual concerned.”²⁴ So-called “Pygmy” peoples in DRC identify as – and are widely recognised to be – an indigenous people.²⁵

B. Cultural Rights of Indigenous Peoples

19. The State Party report notes that Article 46 of the Constitution guarantees the right to culture and intellectual property; that Congolese law protects sites of cultural importance; and that “cultural policy...consists of promoting and protecting the cultural identity of each of the tribes and ethnic groups [in DRC] as well as preserving their languages”²⁶. However, in reality, indigenous peoples’ access to the source of their cultural and spiritual sustenance is severely compromised.²⁷ Although it is widely recognised and accepted that the forest plays an essential part in indigenous peoples’ lives, the ongoing denial of access to lands forcibly taken for conservation, and the continuing take-over and destruction of lands for natural resource exploitation, presents an urgent risk of immediate and irreparable harm to the cultural and spiritual well-being of indigenous peoples in DRC and threatens their survival as distinct peoples.

C. Indigenous Peoples in DRC suffer extreme and pervasive discrimination that denies them the right to life with dignity

20. As they have been dispossessed of their traditional lands and territories, indigenous peoples in DRC have experienced increasing prejudice and discrimination from the dominant Bantu society. Discrimination is typically manifested through negative stereotyping, the denial of rights, and social exclusion.²⁸ The Committee has previously noted its concern about racial discrimination against indigenous peoples in DRC. For example, in its 1996 Concluding Observations, the Committee expressed its grave concern about “allegations of large-scale discrimination against the Pygmies (Batwa)”. Numerous intergovernmental and non-governmental agencies have reached the same conclusion.²⁹

21. Although the State Party report notes several anti-discrimination provisions currently in force,³⁰ these have not been effective in ensuring either *de jure* or *de facto* equality for indigenous people, particularly with regard to their property rights and socio-economic situation.³¹ For example, the State Party report notes that the Constitution of DRC guarantees the right to decent housing and work.³² However, indigenous peoples dispossessed of their lands have become indigent, landless squatters living on the edge of society. Many live in sub-standard accommodation and are forced to farm the lands of others in arrangements that are functionally equivalent to bonded labour. While much of

24 Committee on the Elimination of Racial Discrimination, *General Recommendation No. 08: Identification with a particular racial or ethnic group (Art.1, par. 1 & par. 4)*. 22/08/90. UN Doc. A/45/18.

25 See, for example, *First Report*, Annex 1.

26 *Ibid.*, paragraphs 102-105. Informal translation by the report authors.

27 *First Report*, paragraphs 8-15.

28 *First Report*, paragraphs 8-15.

29 *Ibid.*, and Annex 1.

30 *Ibid.*

31 *State Party report*, paragraphs 36-58.

32 *State Party report*, paragraphs 80 and 73.

this dispossession occurred prior to DRC's accession to the Convention, the effects and consequences, which amount to violations of the Convention for which the DRC is internationally responsible, are ongoing and continuous.³³

22. The State Party report also notes that in DRC “there are no inequalities amongst the different ethnic groups in relation to education”³⁴ and that various Constitutional provisions guarantee the rights to education, health and food security.³⁵ Again, the reality of indigenous peoples' situation is at odds with this, and they suffer from disproportionately substandard access to health, education and other services compared to the national population.³⁶

III. Conclusion and Request

23. Violations of the Convention have resulted in and presently threaten to cause irreparable harm to indigenous peoples in DRC. Indigenous peoples' rights to own, control, use and peacefully enjoy their lands, territories and resources are neither recognized nor guaranteed in Congolese law, and these rights are frequently violated in practice. Together with continuing natural resource exploitation, these failures have led to gross violations of indigenous peoples' human rights, undermining their means of subsistence and severely compromising their physical, cultural, spiritual and economic integrity.
24. Indigenous peoples in DRC are without adequate and effective remedies to assert and defend their rights in domestic procedures, leaving them no choice but to seek international oversight, intervention and protection. International attention is urgently needed because the violations of indigenous peoples' rights are widespread, systematic and substantial, and the nature and effect of the violations is immediate, ongoing and, in some cases, irreversible. The State Party is internationally responsible for these violations by virtue of both its acts and omissions.
25. The submitting organisations respectfully request that the Committee treat the situation of indigenous peoples in the DRC as urgent, and act to assist the State Party to remove the threat of irreparable harm to the rights and existence of indigenous peoples posed by the Forest Code, to adequately and effectively guarantee the rights of indigenous peoples, and to remedy prior – and for the most part ongoing – violations of their rights.
26. In light of the preceding, this report also respectfully reiterates our request that:
- a) the Committee initiate an Early Warning and Urgent Action Procedure on the situation of indigenous peoples in DRC in order to give its immediate attention to reversing the acts and omissions of DRC that have given rise to the present massive and persistent pattern of racial discrimination against indigenous peoples. Additionally, we request that the Committee:

³³ *First Report*, paragraphs 8-11, 27-32.

³⁴ *State Party report*, paragraph 84. Informal translation by the report authors.

³⁵ *Ibid.*, paragraphs 82, 84, 102 and 105.

³⁶ *First Report*, paragraphs 8-15.

- i) commences a dialogue with the State to ensure that the rights of indigenous peoples to own their lands, territories and resources traditionally owned or otherwise occupied and used are recognized and respected; that their rights to participate in and consent to activities that may affect them are recognized and respected;
 - ii) stresses that the preceding requires legislative and administrative measures to ensure that these rights are recognized and guaranteed in law and secured in fact;
- b) requests that the Office of the High Commissioner for Human Rights offer to provide technical assistance to give effect to the preceding;
- c) recommend to the World Bank that it ensure that its support for forestry reform in the DRC be conducted in a way that fully accounts for and respects the rights of indigenous peoples guaranteed by the Convention;
- d) requests that the Chairperson of the United Nations Permanent Forum on Indigenous Issues communicates with the World Bank and other United Nations agencies to ensure that indigenous peoples' rights are fully accounted for and respected in the design and implementation of technical and project assistance in the natural resource management sector in DRC; and
- e) recommends that DRC accede to and implement International Labour Organization Convention No. 169.