

Causes and Consequences of Youth Delinquency in Minority Twa Communities
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ABSTRACT

Your Excellency

Today's presentation gives me the opportunity to speak to you about juvenile delinquency in the minority community of Batwa in the Democratic Republic of the Congo.

The specific legislation relating to the rights of children (C.D.E. Convention of the Rights of Children 1989) will furnish the basis for this presentation. This international legislative mechanism is to some degree a consolidation of the rights of children that could be found in various legal instruments based on the United Nations charter of human rights or of the rights of all individual human beings. This mechanism is found in all places where traditional customs and laws are based upon the idea of justice. It is universally recognized that all human beings are born free and equal in rights under the law and in human dignity; that they are naturally given both reason and a sense of conscience and that they ought to act in dealings with their fellow human beings in a spirit of universal brotherhood.

My presentation will consider the following points:

1. Special protection of the rights of Pygmy Children,
2. The beneficiaries of the rights of Pygmy Children,
3. The survival and social development of Pygmy Children,
4. The protection and the social participation of Pygmy Children,
5. The protection of Pygmy Children as seen from an economic perspective,
6. The protection of Pygmy Children against the deleterious effects of war,
7. The protection of Pygmy Children from the harmful effects of smoking, alcohol abuse, and drug addiction,
8. The protection of Pygmy Children before they become juvenile delinquents and after they have become juvenile delinquents,
9. A summary Overview

1. Special protection of the rights of Pygmy Children

As a human being, all pygmy children are entitled to benefit from the same rights as those recognized for any other child. Nevertheless, the pygmy children's physical and psychological immaturity makes them a vulnerable being whose individual needs require that their specific rights be recognized by all. Given that pygmy children must reach legal adulthood before being able to exercise all their rights, it would appear self evident that in light of this fact, the African Congress of Pygmies be invested with the authority to deal with these additional needs when actively defending the rights of pygmy children.

2. The beneficiaries of the rights of Pygmy Children

The beneficiaries of the rights of pygmy children are of course the pygmy children themselves. But exactly who are these children? The specific legislation relative to the rights of children defines children as any human being under eighteen years of age. The only exception to this definition is if adulthood is attained at an earlier age by virtue of specific legislation which is applicable to specific children (see article 1 C.D.E.)

In reaction to this exception, Mr. Grégoire BOKUNGU, defender of the rights of the Batwa people, asked himself the following theoretical question: what would happen if national legislation were passed which granted adulthood to children 12, 13, or 14 years of age? To avoid any infringement upon the norms, the African Charter for the rights and well-being of children defines children as “all persons who have not yet attained eighteen years of age.” We are able to say that pygmy children are specifically those persons whom the African Congress of Pygmies will have to lead progressively to mature adulthood, which is to be understood as the exercise of personal rights and freedom by an individual while respecting the rights of others and maintaining public order.

3. The survival and social development of Pygmy Children

This topic covers those conditions and contexts adjudicated as necessary to insure survival, harmonious social development and life itself for all pygmy children. The right to life is a sacred right and the country's obligation is both to respect and to protect this right. The legislation contained in the Congolese “Code de la Famille” makes it clear in Article 211 that, other than those cases covered by specific and duly recognized legal exceptions, all persons are under the protection of civil laws from the moment of conception onward, provided that they are born alive.

For harmonious personal and social development, pygmy children need to live in a context of secure physical well-being concerning family, social, political economic and cultural considerations. Pygmy children have the right to know who their parents are and to live with them. In the case of separation of parents caused by: divorce, death of one spouse, imprisonment, or vocational obligations, the African Congress of Pygmies will marshal all of its forces to facilitate the reunification of family members. If this familial reunification is not possible, the African Congress of Pygmies will find a replacement family setting for all pygmy children: by placing them into a foster family, by adoption, by legal guardianship or by placement within an appropriate institution. The African Congress of Pygmies will make sure that both familial and social solidarity are furnished to all pygmy children in case there is any failure to provide a secure family environment on the part of a pygmy child's parents.

Pygmy children have the right to access funds available through the Social Security System, specifically family welfare funding, health care funding, and funding in case of accidents etc. The specific monetary level of this welfare funding will have to take into account the cost of living of families and furnish them with an acceptable lifestyle in order to allow them to fulfill their parental duties and obligations with dignity, specifically regarding the care of their pygmy children.

Pygmy families as well as members of the general pygmy population should be assured the possibility of finding gainful employment in addition to having provided for them sufficient and adequate social infrastructures. Several causes of child abuse of pygmy children are due to a certain ignorance on the part of parents concerning modern methods of education, modern healthcare, and levels of personal well-being for pygmy children.

The social conditions necessary to insure the potential success of all measures required for the survival and the harmonious social development of pygmy children are: political stability, respect for the rights of pygmy children, good governmental policies concerning social services, social peace and tranquility and the guarantee of a significant level of social well-being for the entire population of the pygmy peoples.

4. The protection and the social participation of Pygmy Children

The United Nations' Convention concerning the rights of children prescribe the duties and obligations for the protection of children by the National Government which must make sure that no children are exposed to situations which might compromise their health, their moral well-being, or their education (Art. 13 through 16, 31 through 40). In addition to the right of protection of a child's physical well-being, the Convention of the Rights of Children specifically states the necessary participation of the child in this process which generally means that there will be a willing and active participatory effort on the part of each child. In order to respect the long-term interests of pygmy children they must not grow up in a context which allows individual irresponsibility for one's moral conduct. Pygmy children must be taught to exercise the rights: of expression of their own opinions, of religion, of free association without compromising either the rights of others or the maintenance of public order. Pygmy children must be allowed to participate in the renovation of the country's social structures in a world in constant evolution.

Pygmy children have the right to a life of individual existence in regards to: family and home. Public social life must not become a stultifying arena of repressive authoritarian control and arbitrary interference in the social development of pygmy children. Pygmy children need a haven of security and intimate relationships which strengthen them in terms of social, psychological, and affective personal development. This right to personal protection also includes those pygmy children without access to a family group, pygmy children of the streets, those who have been gathered up, orphans, abandoned or displaced pygmy children, pygmy child mothers and those pygmy children roaming about the country etc.

5. The protection of Pygmy Children as seen from an economic perspective

A consideration of the economic protection of pygmy children will concern the specifics of child labor, the minimum age for obtaining a job, the type of work appropriate for pygmy children, and both the length of a child's work day and the amount of free time granted. More specifically in the Democratic Republic of the Congo, a developing nation, one must emphasize the problematic nature of how child labor laws are to be applied in a context of severe poverty among the pygmy peoples and pygmy families. The development of unofficial economic areas has further complicated the situation.

6. The protection of Pygmy Children against the deleterious effects of war

The age limit for participation in armed conflict designated by the 1949 Geneva Convention as well as by the Convention of the Rights of Children must be re-examined in order to be brought into conformity with the expressed will of the United Nations General Assembly (Document 5 – A/15/305 of August, 26 1996 concerning armed conflict at proposing 18 years of age as the minimum age for recruitment into and participation in armed hostile activities).

More specifically in Africa where wars and ethnic and tribal conflicts are both frequent and widespread, the practice of creating and utilization of the “child-soldier” has developed. Pygmy children 12, 13 or 14 years old are being used for participation in armed conflicts. Let us say that the best way to obviate the practice of creating child militia soldiers as well as orphans, displaced children, abandoned children, unaccompanied children, and children being raped, etc. is to eliminate armed conflicts by the search for and establishment of social justice and well-being of all pygmy peoples. The problem still remains to organize the reinsertion of pygmy children, who have been the victims of armed conflict, into an acceptable familial and social context.

7. The protection of Pygmy Children from the harmful effects of smoking, alcohol abuse, and drug addiction

For this topic one must insist upon the potentially positive role of the heightening of public awareness through the distribution of information concerning the physically deleterious effects of these products, above all within the population of pygmy children. Inside the Democratic Republic of the Congo, advertising promoting the sales of tobacco products and beer would be publicly denounced by a coalition of mothers and young people. Existing legislation enacted in 1903 concerning the smoking of hemp (cannabis) will have to be revisited to include other forms of narcotics such as: morphine, opium, cocaine, etc. The legislation concerning the amount of alcoholic beverages that can be served in public must be reinforced. The African Congress of Pygmies must participate in a cooperative effort at the international level in the struggle against drug abuse.

8. The protection of Pygmy Children both before they become juvenile delinquents and after they have become juvenile delinquents

Potential juvenile delinquents are those pygmy children, “at risk” who are living in a context of social risk; this is specifically the case of pygmy “street” children. It is far better to anticipate and eliminate the problem than to punish or to try to salvage those who have already become miscreants. We are interested in the prevention of juvenile delinquency for pygmy children both of the “first level” and especially of that of the “second level”. The prevention of the juvenile delinquency of pygmy children will help us avoid the rubric of “delinquent” as well as avoiding the social deviance of the “second level” which leads directly to participation in criminal activity. The United Nations’ organizing principles for the prevention of juvenile delinquency (The Guidelines of Riyadh... c. f. [Human Rights Index of United Nations Documents](#)) – U. N. General Assembly Resolution 45/112 – insist specifically upon the crucial contributions of family and community support to resolve the problems posed by “pre” delinquent children. The African Congress of Pygmies will oversee the establishment of political solutions for the social, economic, and cultural difficulties concerning the prevention of juvenile delinquency among pygmy children.

Concerning the delinquency of minors, Article 40 of the Convention of the Rights of Children recommends the respect of the following fundamentally guaranteed rights which are most notably: the right to express oneself, the right to legal counsel and aid, the right to be confronted by accusing witnesses, and the right to benefit from the application of multiple legal standards, i.e. the application of national and international rights. The totality of the minimal legal standards of the United Nations concerning the administration of justice in the case of minors (Rules of Beijing c.f. [Human Rights Index of United Nations Documents](#) – Resolution 40/33 of the U.N. General Assembly) determine the rules to follow concerning the establishment of the legal age of

a minor in a case of delinquency and the organization of any legal actions to be taken in regard to the delinquent actions of said minor. These sanctions must be proportionately established in relationship to the age of the minor and in relationship to the specific crimes committed. In regard to the treatment of the minor involved in delinquent activity, the minimal legal standards of the United Nations give priority to those measures of a social or administrative nature; the institutionalization of the delinquent minor must be a measure of last resort and shall be applied in accordance with the United Nations' Rules for the protection of minors whose freedom has been taken away through incarceration (Resolution 45/113 of the U.N. General Assembly concerning justice for minors).

In the Democratic Republic of the Congo, the application of justice for minor offenders is furnished by the decree/law of December 6, 1950 dealing with juvenile delinquency. In this case the intervention of the African Congress of Pygmies is paramount for the familial, professional, and educational reinsertion, etc. of these delinquent pygmy children. The establishment of a team of individuals prepared to intervene actively to help young people in difficulty is equally important.

9. A summary Overview

In conclusion, the government of the Democratic Republic of the Congo must be more actively involved in the promotion of legal rights accorded to pygmy children. It is not sufficient, however, simply to theoretically have legal rights, there must be the physical means to enable pygmy children to profit fully from the application of those rights and laws. If this is not the case, the rights of pygmy children will exist simply in the theoretical realm: "de jure et non de facto." Furthermore, pygmy children do not only have legal rights, but they also have moral obligations in relationship to their families and to their pygmy communities on the national and international levels. Just as the African Charter of the legal rights and well-being of children (adopted in Addis-Abba, Ethiopia on July 2, 1990) indicates it is important insist vehemently on the promotion of children's legal rights in general and on the promotion of the right of pygmy children in particular.

We would like to thank all those near and far who have contributed to the organization of this conference dedicated to "Ota Benga."

Long live the community of Jamestown in Virginia,

Long live the African Congress of Pygmies,

Thank you for your attention....