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## مجلس حقوق الإنسان

الدورة الثامنة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقرر الخاص المعني بحقوق الشعوب الأصلية، جيمس آنايا

إضافة

### حالة الشعوب الأصلية في جمهورية الكونغو الديمقراطية\*

موجز

يتناول المقرر الخاص المعني بحقوق الشعوب الأصلية، في هذا التقرير، حالة الشعوب الأصلية المهمشة في جمهورية الكونغو الديمقراطية، مستنداً إلى معلومات جمعها خلال زيارته إلى البلد في الفترة من ٢ إلى ١٢ تشرين الثاني/نوفمبر ٢٠١٠ وإلى بحوث مستقلة أُجريت لاحقاً. ويهدف التقرير إلى النظر في حالة هذه الفئات في الكونغو وكانت تُعرف سابقاً باسم "البيغمي" وتعتبرها الجهات الفاعلة الحكومية وغير الحكومية عموماً شعوب البلد الأصلية. ويناقش المقرر الخاص شدة الحرمان الاجتماعي والاقتصادي الذي تعاني منه هذه الشعوب، والتمييز ضدها وتهميشها بالمقارنة مع سائر شرائح المجتمع الكونغولي، لا سيما في علاقات العمل والسكن والتعليم والحصول على الخدمات الصحية والحرمان من التسجيل في الأحوال المدنية والمشاركة في الحياة العامة والاستفادة من الأراضي والموارد الطبيعية.

\* يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعمّم باللغة التي قدم بها وباللغة الفرنسية فقط.

ويشير المقرر الخاص إلى المبادرات الأخيرة المتخذة من أجل النهوض بحقوق الشعوب الأصلية المهمشة، ويعلق على القانون الجديد الخاص بتعزيز وحماية حقوق الشعوب الأصلية الذي أصدره الرئيس في الآونة الأخيرة. ويعتبر أن القانون المذكور ممارسة سليمة في القارة الأفريقية، ويرى أنه يتماشى تقريباً مع المعايير الدولية. ويستعرض المقرر الخاص أيضاً مبادرات أخرى اتخذتها الحكومة واتخذتها منظمات غير حكومية ومنظمات دولية موجودة في الكونغو. كما يبين ويحلل بعض التحديات التي يجب التغلب عليها من أجل تنفيذ القانون الجديد والمبادرات الأخرى تنفيذاً فعالاً، ويذكر بالحاجة إلى إجراء مشاورات مع الشعوب الأصلية المعنية، لا سيما فيما يتعلق بالمشاريع التي تؤثر على أراضيها أو مواردها أو أساليب معيشتها.

وأخيراً، يقدم المقرر الخاص عدداً من التوصيات من أجل المساعدة في الجهود المستمرة لحماية حقوق الشعوب الأصلية في الكونغو والتمتع بها.

## Annex

### Report of the Special Rapporteur on the rights of indigenous peoples on the situation of indigenous peoples in the Republic of the Congo

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## I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples, James Anaya, visited the Republic of the Congo from 2 to 12 November 2010, following an invitation from the Government with the support of the indigenous peoples' organizations of the country. Prior to, during and following the visit, the Special Rapporteur engaged in an exchange of information with the Government, indigenous peoples and others, as well as carried out independent research. This report examines the human rights situation of indigenous peoples in Congo in light of international standards, in order to assist the Government of Congo, indigenous communities, United Nations agencies and other actors in ongoing efforts to implement those standards.

2. During his visit to the Republic of the Congo, the Special Rapporteur met and consulted with Government officials, members of the Senate and the National Assembly, indigenous peoples and their organizations, representatives of United Nations specialized agencies, and members of civil society.

3. In Brazzaville, the Special Rapporteur met with the Minister of Civil Service and State Reformation; the Minister of Planning, Economy, Land Reform and Integration; the Secretary-General of the President's Cabinet; the National Commission on Human Rights, the President of the National Assembly; the President of the Senate; the Director of the Cabinet of the Minister for Social Affairs, Humanitarian Action and Solidarity; the Minister of Justice and Human Rights; the Minister of Primary and Secondary Education in Charge of Literacy; the Director of the Cabinet of the Minister of Sustainable Development, Forestry Economy and Environment; the Minister for Promotion of Women and the Integration of Women in Development; and the Minister of Interior and Decentralization.

4. The Special Rapporteur also met with representatives of a number of indigenous and civil society organizations in Brazzaville, including the National Network of Indigenous Peoples of Congo (*Réseau National des Peuples Autochtones du Congo - RENAPAC*), some of its constituent organizations, and the non-governmental organization, Congolese Human Rights Observatory (*Observatoire Congolais de Droits de l'Homme - OCDH*).

5. The Special Rapporteur conducted visits to the departments of Likouala and Lékoumou where he consulted with indigenous communities, local authorities and representatives of indigenous and non-governmental organizations. Additionally, he held consultations with the United Nations Resident Coordinator and representatives of United Nations agencies with offices in the Republic of the Congo.

6. The Special Rapporteur wishes to acknowledge the support of the Government of the Republic of the Congo for its assistance and cooperation in preparing and coordinating his visit. He is especially grateful for the assistance provided by the Director General of the Department of Human Rights and Fundamental Liberties of the Ministry of Justice and Human Rights and his staff. He would also like to thank the various agencies of the United Nations in Brazzaville, particularly UNICEF and UNDP, for their instrumental help in all phases of the visit.

## **II. Indigenous peoples of Congo and their situation of extreme disadvantage**

### **A. Groups identified as “indigenous” (*autochtone*) in Congo**

7. The Government of the Republic of the Congo and non-governmental organizations (NGOs) regard as the country’s indigenous peoples (*peuples autochtones*) those diverse ethnically and culturally distinct groups that throughout the Congo Basin in Africa have been known collectively as Pygmies. In the the Republic of the Congo, these groups include the Baaka (northern Likouala and Sangha departments); Mbendjele (southern Likouala and Sangha departments); Mikaya (Sangha Department); Gyeli (north-western West Cuvette Department); Luma (Sangha, Cuvette and Likouala departments); Twa (Plateaux department to border with Democratic Republic of Congo) and Babongo (Lékoumou, Niari, and Kouilou departments). The total population of these indigenous peoples in Congo is unclear and, as there is no reliable census data, estimates of their contribution to the country’s total population vary widely from 1.4 per cent to 10 per cent.

8. The groups identified as indigenous peoples are distinct from the majority Bantu ethnic groups, which are estimated to constitute between 90 and 97 per cent of the country’s population. The four largest Bantu ethnic groups are the Kongo or Bacongo (48 per cent), Sangha (20 per cent), Teke or Bateke (17 per cent) and M’Bochi (12 per cent). It is estimated that Bantu groups began to migrate into the area now known as the Republic of the Congo sometime after A.D. 1400. Since independence from France in 1960, the Bantu have enjoyed effective political and economic control over Congo.

9. Although they speak different languages and inhabit different regions of Congo, the groups that have been known as Pygmies share a number of defining features. Unlike the Bantu, who have long been largely sedentary and village-based, until recently, the groups known as Pygmies maintained a semi-nomadic way of life, and some still do, their subsistence based on hunting and gathering forest products. They have been characterized by their mobility over vast territories, moving to access resources according to their needs. They traditionally do not amass material assets or consolidate exclusive control over large areas of land. Their social structure is typically egalitarian, without a highly defined leadership hierarchy.

### **B. Discrimination and marginalization**

10. An overarching defining feature of these groups is their exclusion and marginalization from mainstream social and economic patterns and political power. All of these groups find themselves in non-dominant positions in Congolese society, and have suffered and continue to suffer threats to their distinct identities and basic human rights in ways not experienced by the Bantu majority.

11. While the term Pygmy continues to be used in other States of Central Africa, in the Republic of the Congo, the term carries negative connotations due to its association with an assumption of inferior status and its connection to marginalization, exclusion and oppression. For this reason, the Government has a policy against calling people Pygmies, and now officially designates such groups as simply indigenous peoples or populations (*populations autochtones*).

12. The Special Rapporteur observes that the Government and others aptly identify these groups as indigenous peoples or populations deserving of special attention. Notably, with

the urging of representatives of these groups, NGOs and eventually the Government, the Senate and National Assembly of Congo adopted in December 2010, and the President of the Republic of the Congo promulgated in February 2011, Law No. 5-2011 on the Promotion and protection of the rights of indigenous populations,<sup>1</sup> which is discussed further in section III below. Article 1 of the law specifies that it addresses the concerns of “indigenous populations... who are distinguished from other groups of the national population by their cultural identity, their way of life and their extreme vulnerability.” The same article prohibits the use of the term “pygmy”.

13. The groups addressed in this law are undoubtedly indigenous peoples within the scope of the Special Rapporteur’s mandate, given their particular characteristics, including their distinct cultural and ethnic identities, historical connections to the territories in which they live, and their non-dominant positions following a history of subjugation. They face human rights problems that are similar to those faced by indigenous peoples throughout the world, and that are matters of special concern to the Special Rapporteur.

14. Therefore, throughout this report the Special Rapporteur follows the policy and practice adopted by the Congolese Government of using the term “indigenous peoples” to refer to those groups that had previously been designated as Pygmies. By doing so, it is not the Special Rapporteur’s intention to suggest that the majority Bantu groups are not also, in a literal sense, indigenous to Congo or the African continent. Rather, he considers that the use of the term “indigenous peoples” aptly lends itself to focusing attention on the concerns of the particularly vulnerable groups in the country, concerns that are related to their distinct identity and non-dominant positions in society.

15. As with indigenous peoples elsewhere in the world, the vulnerable situation of indigenous peoples in Congo is inextricably linked to historical and ongoing patterns of discrimination. These peoples have long been treated as a sub-class, their nomadic hunter-gatherer ways seen as uncivilized, and their cultural habits deemed inferior. For centuries such discrimination has been reinforced by stereotypes and myths about the so-called Pygmies, which has entrenched discriminatory attitudes and led to social relationships that perpetrate exclusion and acute marginalization of indigenous peoples.

### C. Labour exploitation

16. In the area of labour relations, inequitable social arrangements between the Bantu majority and the indigenous peoples manifest themselves as relationships of domination and exploitation, in many instances amounting to forms of serfdom or involuntary servitude. Bantu “masters” may control a number of indigenous people, with the so-called masters seeing themselves as “owning” the members of particular indigenous families from birth, and consequently having the right to the labour and loyalty of those indigenous people. This practice has been documented by a number of international organizations, including the African Commission on Human and Peoples Rights (ACHPR),<sup>2</sup> UNICEF,<sup>3</sup>

<sup>1</sup> Loi no. 5-2011 du 25 février 2011 portant promotion et protection des droits des populations autochtones.

<sup>2</sup> ACHPR, *Report of the African Commission’s Working Group on Indigenous Populations/Communities: Research and information visit to the Republic of Congo*, September 2005.

<sup>3</sup> UNICEF, *Rapport d’analyse diagnostique sur les normes et pratiques sociales vis-à-vis des populations autochtones en République du Congo*, Brazzaville, 2009; UNICEF, *Analyse de la situation des enfants et des femmes autochtones au Congo*, Brazzaville, 2008.

the Committee on the Elimination of Racial Discrimination,<sup>4</sup> and acknowledged as a significant problem by the Congolese Government itself.<sup>5</sup>

17. The Special Rapporteur was informed by a number of Government officials that this practice is not tolerated, and has been combated. Nevertheless, the Special Rapporteur heard reports of ongoing domination of indigenous people by Bantu individuals, and directly heard a Bantu village chief refer to the indigenous people working for him as “my pygmies”. Several indigenous people report that they are forced to carry out backbreaking agricultural work for their Bantu masters, and that the going wage for a day’s such work was a meagre 500 CFA (less than US\$1).

18. Many indigenous people explained that working in the fields of a Bantu precludes them gathering the resources necessary to feed and sustain themselves and their families. Furthermore, because of their superior hunting skills, indigenous people are expected to hunt for their Bantu masters as part of their work commitments. Because indigenous people often do not have the necessary tools or weapons for hunting, they must borrow those of the Bantus. Indigenous persons also reported that if they do capture game, they are expected to hand it over to the Bantu master, and are given the less desirable animal parts as compensation.

19. The Special Rapporteur learned that Bantu masters often exploit their positions of power with violence. Indigenous persons reported that if they refuse to participate in work ordered by their masters or are unable to repay debts or return from hunting empty handed, they are violently beaten. It was also reported that if Bantu masters are displeased with the results of a hunt or agricultural work done, they might, simply at whim, confiscate the possessions of the indigenous servants, such as their cooking implements or mosquito nets, then require that the possessions be repurchased through additional work. Furthermore, because of their extreme poverty, indigenous persons sometimes “borrow” food, clothes or other material items from Bantus, which leads to a form of debt servitude, in which indigenous workers are bound perpetually to work for their employer in an ultimately futile attempt to repay their debts.

#### **D. Poverty**

20. Indigenous peoples typically live in relatively small settlements or *campements* (camps), made up of rudimentary, mostly single-room wood-plank shelters that are highly vulnerable to the frequent torrential rains and other natural elements. Having been encouraged by the Government and development aid workers to abandon their semi-nomadic way of life, indigenous peoples now mostly live in camps in fixed locations, often on the periphery of Bantu villages. Although chronic underdevelopment and poverty is pervasive throughout the country, the Special Rapporteur observed markedly worse conditions among the indigenous communities. Community members expressed their frustration about being deprived of basic necessities, such as housing, and limited access to social services, including education and health care. The Special Rapporteur perceives that discrimination also contributes significantly to limiting indigenous opportunities for social development.

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<sup>4</sup> CERD/C/COG/CO/9, para. 15.

<sup>5</sup> CERD/C/COG/9, paras. 152–155.

## E. Education

21. Levels of indigenous school enrolment are low and indigenous children rarely complete primary school. A study funded by UNICEF found that 65 per cent of indigenous teenagers aged 12-15 years did not have access to education, compared to 39 per cent of the general population.<sup>6</sup> The African Commission on Human and Peoples Rights noted in 2007 that only 2.9 per cent of school children were indigenous, much lower than the estimated 10 per cent of the school-age population that is indigenous.<sup>7</sup>

22. Remote settlements, exclusion and conditions of extreme poverty impede indigenous children's access to education. Schools are sometimes located far from indigenous villages, requiring indigenous students to travel long distances to get to school. Even though primary education is officially free,<sup>8</sup> due to the lack of sufficient teachers in remote areas, indigenous families are often expected to contribute to teachers' wages, and often cannot afford to buy basic supplies such as pens, books, chalk, slates, or even adequate clothing to enable their children to attend schools. In addition, enrolment fees are often required for post-primary education, which constitutes a severe block to indigenous access to higher levels of education. There are also reports of outright discrimination in schools against indigenous children by other students and teachers.

23. Other important factors that impede indigenous education are the school curriculum and calendar. The Special Rapporteur learned that indigenous children rarely have access to education in their own language or about their own culture. Also, schools rarely adapt to the seasonal patterns of hunting and gathering of indigenous peoples. For example, during the important periods of honey or caterpillar gathering, on which many indigenous people rely for their survival, indigenous children are unable to accompany their families into the forests for weeks at a time without missing school and falling behind in school work. Furthermore, given that indigenous families often depend on each family member to gather food for their survival, sending children to school often means a choice between education and subsistence.

24. However, the Special Rapporteur did learn about programs that adapt education to the needs of indigenous communities, including certain church schools or privately initiated programmes like the ORA<sup>9</sup> schools, a joint initiative of UNICEF and local organizations. Taking the indigenous calendar into account in designing curriculum, ORA schools use a non-formal teaching method based on the ways of life of indigenous peoples. Both indigenous languages and French are used in the three-year integration phase, which prepares indigenous students for integration into mainstream schools. Eighteen pilot ORA schools have been set up in the departments of Likouala and Sangha, through which 1,600 indigenous students have gained access to basic education. The Government informed the Special Rapporteur about the incorporation of a line item in the 2011 budget to evaluate the ORA system with a view to its inclusion in the national educational system.

25. The Special Rapporteur also learned about an education program in Sibiti that trains indigenous youth in basic engineering skills, which according to reports, is adapted to the needs of the local people in several respects, including providing training in indigenous languages.

<sup>6</sup> UNICEF, *Rapport d'analyse diagnostique sur les normes et pratiques sociales vis-à-vis des populations autochtones en République du Congo* (Brazzaville, 2009), p. 27.

<sup>7</sup> ACHPR, *Report of the African Commission's Working Group on Indigenous Populations/Communities: Research and information visit to the Republic of Congo* (September 2005), p. 34; U.S. Department of State, *2009 Human Rights Report – Republic of the Congo*.

<sup>8</sup> Law No. 4-2010 of June 2010 on Child protection in the Republic of the Congo, art. 27.

<sup>9</sup> *Observer, Réfléchir, Agir* (Observe, Reflect, Act).



## **F. Health services**

26. Indigenous people expressed frustration at their poor health conditions and limited access to health services. The Special Rapporteur heard repeatedly from community members that they are often only welcomed at hospitals if they show that they have financial means. Even where free medical services are provided (children are entitled to free medical services under the new child protection law), payment for prescription drugs and obstetric services is almost always required. This reality is compounded by the absence of a public health infrastructure in indigenous villages; indigenous people must seek treatment at health facilities located in Bantu villages with Bantu personnel, where they are often subjected to discrimination or unequal treatment by health-care professionals or other patients.

27. The lack of financial resources to access government health services heightens reliance on traditional remedies to address illness. Indigenous knowledge of traditional medicine and therapeutic plants is renowned and has been the source of trade with Bantu villagers. However, traditional medicine appears to be powerless against certain modern illness to which indigenous peoples are now exposed. Reports indicate, for example, that yaws, hernias and appendicitis have become fatal conditions for these populations, also, maternal and infant death rates remain very high.

## **G. Civil status**

28. Access to all social services, which is often contingent on civil status – as is the case with primary school enrolment –, is difficult due to the low birth registration rate among indigenous people. Since birth registrations are ordinarily conducted in the main population centres of each department, which are often long distances from indigenous communities, many indigenous children do not have a birth or civil status certificate. Discrimination also plays a role in this lack of documentation, as, according to reports, indigenous peoples are often asked to pay for certification, despite it being officially free of charge. The Special Rapporteur notes the initiative of the Ministry of the Interior to address this issue through the adoption of a special procedure to register indigenous babies and ensure that they are given birth certificates.

## **H. Participation**

29. Indigenous people in Congo are limited in their ability to advocate for improvement to their conditions due to their lack of opportunities to participate in decision-making about matters affecting them, from the most basic village level to the national level.

30. The Republic of the Congo has no indigenous representative in national decision-making bodies, including parliament, nor are there indigenous members of departmental or district level administrative bodies. Indeed, not one single indigenous person is among the deputies and senators who constitute the National Assembly. Likewise, there are no mechanisms to facilitate or ensure indigenous political representation.<sup>10</sup>

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<sup>10</sup> ILO and ACHPR, *Overview report of the research project on the constitutional and legislative protection of the rights of indigenous peoples in 24 African Countries*, 2009, pp. 42-43 and 51.

31. At the village level, Bantu chiefs invariably have had de jure and de facto authority over the villages in which indigenous people live alongside the Bantu majority, and also over the indigenous camps in proximity to Bantu villages. The authority of the Bantu village chiefs is, in practice, superior to that of any indigenous authority, due to the status of indigenous settlements under Congolese law, according to which the village is the lowest administrative entity in the country.<sup>11</sup> A village is recognized by order of the prefect (*arrêté préfectoral*), who is the head of the department in which the village is located.<sup>12</sup> The prefect (*préfet*) designates the village chief and defines his functions. Under this system, indigenous communities typically have not attained village status, and thus have only been recognized as camps attached to neighbouring villages with a Bantu majority. This situation has prevented indigenous peoples from appointing their own chiefs or participating in administrative decisions at the national level. However it should be noted that article 12 of the newly adopted Law No. 5-2011 on indigenous peoples provides for recognition of “indigenous villages within the process of creating local administrative entities.”

32. Marginalization from decision-making is further reflected in the State’s justice sector, which has developed without formal recognition of the indigenous justice systems. Although many indigenous communities maintained their own customary law systems and ways of resolving conflicts, these were not formally recognized by the State or incorporated into the administration of justice, until the adoption of the new law on indigenous peoples, which recognizes indigenous customary law (art. 11).

## I. Land and resource rights

33. Finally, the Special Rapporteur observes that indigenous peoples rarely hold any formal title or guaranteed rights to the lands and natural resources that they have traditionally used or occupied. The Congolese land administration law instructs the relevant authority to use its legal and financial means to eradicate “unproductive” lands and considers any lands that are not “visibly” occupied and used as vacant and under State ownership. Such “vacant” lands can be allocated following a vacant land survey.<sup>13</sup> These provisions pose potential problems for indigenous peoples who use and access their lands according to traditional practices, yet may still find their lands designated as vacant or unproductive.

34. The Land Law recognizes some collective and customary property rights, insofar as they are not incompatible with registered title deeds, and provides for title to lands recognized as customarily owned or occupied to be delivered to persons acting on behalf of their communities.<sup>14</sup> However, determination of customary rights falls to an “ad hoc organ established at the local level and registered with the tax authority”;<sup>15</sup> there does not appear to be a provision in the Land Law to involve affected indigenous peoples in the process of determining collective and customary property rights. Apart from the Land Law, the Government reports that it is developing special procedures to consider applications by indigenous peoples or persons of their customary land rights, on the basis of provisions of

<sup>11</sup> Law No. 3-2003 of 17 January 2003.

<sup>12</sup> Decree No. 2003-20 of 6 February 2003.

<sup>13</sup> Law No. 10-2004 of 26 March 2004 on the General principles applicable to State lands and land tenure (“Land Law”), art. 51. See also art. 6, which identifies the State as the sole owner of the soil and sub-soil, which it can allocate to different uses as it sees fit.

<sup>14</sup> *Ibid.*, arts. 9, 23-34.

<sup>15</sup> *Ibid.*, art. 35.

the newly enacted law on indigenous peoples and two pre-existing decrees that provide a basis for all Congolese to claim their customary land rights.<sup>16</sup>

35. The existence of large-scale forestry in many places has contributed to deforestation, and depleted the natural resources on which indigenous peoples depend. The Forestry Code distinguishes between State and private forests, but makes no references to rights based on customary practices.<sup>17</sup> However, like the Land Law, the Forestry Code provides for some form of collective private ownership, albeit in limited form. Forests belonging to communities (*communes*) and other local collectives (*collectivités locales*) must be so classified by Government decree, planted by the community on land belonging to the community or transferred from the State to the collective.<sup>18</sup>

36. Regarding the procedure for classifying forests for particular uses or protection, the Forestry Code provides for some level of local participation. While the final decision about forest classification is handed down through a decree of the Council of Ministers, any reclassification of forest lands requires that the Minister hold a hearing with the regional or local administrative authority and representatives of local communities before developing a draft demarcation and usage plan. Within 60 days of the draft, the Minister must convene another meeting with a range of stakeholders, including representatives of each village concerned. While it is possible that indigenous peoples were intended to benefit from these broad consultation provisions, given that indigenous peoples are often not represented at the village or regional level, they risk exclusion from this process.<sup>19</sup>

37. With regard to protected forests, article 40 of the Forestry Code provides for certain use rights over a limited number of non-marketable forest products. For example, the law states that local populations can use forest products for the maintenance of their homes, furniture, household utensils and tools, as well as for cultural, food or medicinal purposes. It also allows local populations to hunt, reap and gather the product, and establish crops or hives/apiaries and graze their livestock or harvest forage. However, the same article enables the Minister of Forests to regulate the exercise of these rights. Moreover, these rights are limited to personal use and the products cannot be sold. Any business based on forest products requires a special permit<sup>20</sup> that indigenous people cannot readily obtain, in practice, which constrains their ability to pursue economic activities such as harvesting honey, edible caterpillars and raffia.

38. Hunting is governed by the laws on conservation and exploitation of wild fauna, protected animals and hunting seasons.<sup>21</sup> These laws fail to accommodate indigenous peoples' traditional subsistence hunting patterns and needs, and prevent them from carrying out certain rituals involving species that are banned from being hunted.

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<sup>16</sup> Decree No. 2006-255 of 28 June 2006 on the Institution, attribution, composition and functioning of an ad hoc body on recognizing customary land rights; Decree No. 2006-256 of 28 June 2006 on the Institution, attribution, composition and functioning of an ad hoc body on recording customary land rights.

<sup>17</sup> Law No. 16-2000 of 20 November 2000 ("Forestry Code"), art. 3.

<sup>18</sup> *Ibid.*, art.11.

<sup>19</sup> *Ibid.*, art. 14-23.

<sup>20</sup> *Ibid.*, arts. 42 and 70.

<sup>21</sup> Law No 48/83 of 21 April 1983; Decree 3863 of 18 May 1984; Decree 3072 of 12 August 1972.

### III. Major initiatives to advance the rights of indigenous peoples

39. The conditions described above stand in stark contrast to the guarantees of equality,<sup>22</sup> civil and political rights,<sup>23</sup> fair labour conditions,<sup>24</sup> access to education<sup>25</sup> and health services<sup>26</sup> for all citizens that are enshrined in the Constitution and laws of the Republic of the Congo. Additionally, the Republic of the Congo is a party to a number of United Nations human rights treaties as well as to the African Charter on Human and Peoples Rights. However, these broadly applicable guarantees under domestic and international laws have not been adequately implemented, especially in respect of indigenous peoples, and they have quite clearly not proven sufficient to address the particular vulnerabilities of indigenous peoples or protect their specific rights. In what can be seen as acknowledgment of the need to focus special attention on indigenous issues, in 2007 the Republic of the Congo voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

#### A. Indigenous Rights Law

40. In line with its endorsement of the Declaration on the Rights of Indigenous Peoples, the Republic of the Congo has put in place a series of initiatives, the primary one being its new Law No. 5-2011 on the Promotion and protection of the rights of indigenous peoples (“Indigenous Rights Law”). The Indigenous Rights Law was passed by both the Senate and the National Assembly in December 2010, and promulgated by the President on 25 February 2011. The Special Rapporteur looks forward to the adoption of the necessary implementing decree (*décret d’application*) as soon as possible.

41. This law, the development of which commenced in 2006, advances a wide range of protections for the rights of indigenous peoples, which, to a large extent, are consistent with those contained in the United Nations Declaration. By all accounts, the law was developed in a participatory manner, including consultations with indigenous peoples themselves, Congolese and international NGOs, United Nations agencies and relevant Congolese public

<sup>22</sup> The Constitution prohibits discrimination based on racial or ethnic lines (art. 8), criminalizes incitement to ethnic hatred (art. 11), and places on individuals the duty to promote mutual tolerance (art. 44). The Charter of National Unity of the Republic of the Congo stipulates that institutional arrangements must be made to fight against the hegemony of one ethnic community over another (art. 4(5)), and that the State must assure the protection and defence of ethnic minorities (art. 4(6)).

<sup>23</sup> Through the doctrine of *jus sanguinis*, all indigenous Congolese are citizens of Congo, and thus equal before the law (art. 8). All citizens have the right to file a legal complaint before the appropriate organ of the State (art. 40), and the Electoral Law guarantees the right of all Congolese to participate in elections or to stand for office.

<sup>24</sup> The Labor Code (Law No. 45 of 15 March 1975) forbids, in an “absolute manner,” forced or obligatory work (art. 4), recognizes the principle of equal salary for equal work (art. 80), and guarantees the regular payment of salary (art. 88) in legal currency (art. 87). It imposes both a fine and imprisonment for violations of the equal salary provision (art. 255.2).

<sup>25</sup> The Constitution and the Charter of Rights and Liberties of the Republic of the Congo guarantee the right to education for all Congolese children (art. 23). Law No. 4-2010 of 14 June 2010 on Protection of the child identifies indigenous children as vulnerable, and notes that they have the right to education and social integration (art. 44).

<sup>26</sup> The Constitution protects the right to health of every citizen, including vulnerable persons. The Charter of Rights and Liberties calls on the State “to create the proper conditions to ensure every citizen access to medical services and medical help in case of illness” (art. 32(d)). Similarly, Law No. 009-88 of 23 May 1998 prohibits discrimination in the provision of health services (art. 5).

institutions. It is the first of its kind on the African continent, and it constitutes an important good practice in the region for the recognition and protection of the rights of indigenous peoples.

42. The law specifically targets the disadvantaged conditions of indigenous peoples, and promotes their collective and individual rights. In brief, it prohibits discrimination against indigenous persons (art. 2) and guarantees them a range of civil and political rights, including equal access to justice (art. 10). It also affirms, as already noted (paras. 31 and 32), the right of indigenous peoples to recourse to their own customs for the resolution of conflicts (art. 11) and provides for recognition of indigenous villages as administrative entities (art. 12).

43. A wide range of economic, social and cultural rights specific to indigenous peoples are guaranteed. Title Six of the law addresses labour rights and provides for a framework for the protection of the right to work and a number of positive measures to ensure the enjoyment of those rights. Article 27 forbids any form of discrimination against indigenous people, in respect of access to employment, labour conditions, training opportunities, remuneration or social security. The forced labour or enslavement of indigenous peoples is expressly forbidden, and punitive measures are imposed for those found in breach of this prohibition (art. 29).

44. Title Three of the law recognizes the right of indigenous peoples to maintain their own culture (arts. 13 and 14), guarantees their intellectual property rights in respect of traditional knowledge, including the right to benefit from the use thereof (art. 15), and provides protection for cultural and spiritual objects and sacred sites (art. 16). Indigenous traditional pharmacopoeias are also protected (art. 24), and any attempt to limit the ability of indigenous peoples to practice their traditional medicine is forbidden, with punitive measures established for breach of this prohibition (art. 25).

45. Title Four of the law addresses education and guarantees discrimination-free access to education (art. 17). The State commits to implementing educational programs that are appropriate to the specific needs and lifestyles of indigenous peoples (art. 19). Furthermore, article 18 forbids any form of instruction or information that disparages the cultural identities, traditions, history or aspirations of indigenous people. Article 21 makes clear that the State must take special measures to ensure that indigenous children benefit from financial assistance at all levels within the educational system.

46. Also guaranteed is access on a non-discriminatory basis to health care and all other social services (art. 22). The law stipulates that the centres delivering these services must be adapted to indigenous peoples' needs in the areas in which they live (art. 23.1); it provides for the participation of indigenous health-care workers in integrated primary health-care services, and the organization by the State of vaccination programmes and reproductive health-awareness campaigns (art. 23.2). The law further provides for the specific health needs of indigenous women and children to be taken into account (art. 23.3).

47. Importantly, the law also provides protection for the rights of indigenous peoples to lands and resources. Specifically, it states that indigenous peoples, collectively and individually, have a right to own, possess, access and use the lands and natural resources that they have traditionally used or occupied for their subsistence, pharmacopeia and work (art. 31). The State is obliged to facilitate delimitation of these lands on the basis of indigenous customary rights, and has a duty to ensure legal recognition of the title according to customary rights, even in cases where indigenous peoples do not previously possess any kind of formal title (art. 32).

48. Furthermore, the law provides for consultations regarding measures that affect indigenous lands or resources or that entail the creation of protected areas that affect indigenous peoples' ways of life (art. 39)<sup>27</sup>. This provision complements article 3 of the law, which prescribes consultation with indigenous people before "consideration, formulation or implementation of any legislative, administrative or development programmes or projects that may affect them directly or indirectly." Article 3 also outlines the basic characteristics of the required consultations in terms that generally comport with international standards, and further provides for the procedures for consultation and participation of indigenous peoples to be established by a Council of Ministers decree. Article 3.6 specifically states that the consultations must be carried out in good faith, without pressure or threat, and with a view to obtaining the free, prior and informed consent of the concerned indigenous peoples.

## B. National Action Plan

49. A second significant initiative regarding the rights of indigenous peoples is the National Action Plan on the Improvement of the Quality of Life of Indigenous Peoples, 2009-2013. Developed jointly by the Ministry of Health, Social Affairs and Family, UNICEF and RENAPAC, the plan sets out significant outcomes (*effets*), as well as specific ways in which these outcomes can be realized, for the target period 2009-2013.

50. The plan also establishes significant targets and goals that would directly improve the lives of indigenous peoples. Priority area 1 encompasses education, including improving access of school-age indigenous children to good-quality primary education. The goals of the second area, which focuses on health, include improved access for indigenous persons to good-quality health and nutrition services, preventive HIV/AIDS care, potable water, and sanitation and hygiene services. The third thematic area, which deals with citizenship and legal protection, seeks to ensure that all indigenous infants and their parents acquire civil identity documents and that laws are reinforced to protect indigenous peoples and reduce discrimination and impunity. The fourth priority area, concerning cultural identity and access to lands and resources, targets negative national attitudes towards the cultures of indigenous peoples and aims to increase their participation in conservation and sustainable development activities, as well as improve their access to revenue-generating programmes designed to reduce extreme poverty. The final two thematic areas are dedicated to building the capacity of indigenous advocacy organizations.

51. The Special Rapporteur applauds these ambitious targets, and notes that the Indigenous Rights Law and the National Action Plan have the potential to be mutually reinforcing expressions of the Government's strategic priorities for its relationship with and support of the country's indigenous peoples.

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<sup>27</sup> The Special Rapporteur notes with concern that a provision contained in article 39 of the version of the law that was adopted by parliament was omitted in the final version of the law that was promulgated by the President of the Republic. The omitted phrase, which addressed the situation of already established protected areas, stated as follows: "In the case where protected areas are created on lands occupied or traditionally utilized by indigenous peoples, the State has the obligation to consult them and take measures to guarantee their access to those areas for traditional activities or subsistence needs, and include them in the management of the resources." The Special Rapporteur hopes that the law, as it now stands, will be interpreted as implying this guarantee.

### C. Inter-ministerial committee

52. The Special Rapporteur has learned that an inter-ministerial committee is to be established with responsibility for coordinating the implementation of the Indigenous Rights Law and other initiatives relevant to indigenous peoples, including the National Action Plan. The new law itself provides for the creation of the committee, and stipulates that it should be an “inter-ministerial committee to follow up and evaluate the promotion and protection of indigenous peoples, with the participation of their representatives and civil society” (art. 45). With the Human Rights Department of the Ministry of Justice as its focal point, the committee will serve as a permanent mechanism at the national level to assist the various ministries and relevant Government bodies to coordinate efforts and implement programmes concerning indigenous peoples. To ensure its operation, the inter-ministerial committee will have both permanent staff allocated to it and rotating temporary staff from the various ministries.

### D. National Human Rights Commission

53. The National Human Rights Commission, a relatively new body instituted in 2003 following the adoption of the new Constitution, is an independent State institution that operates autonomously. Its general objectives are to contribute to the promotion and consolidation of the rule of law in Congo; contribute to the widespread acceptance and understanding of human rights; assist with conceptualizing and realizing educational campaigns that promote the protection of vulnerable peoples, including indigenous peoples; promote and assist the Government of Congo with the signing and ratification of international human rights instruments; and strengthen relationships with the relevant agencies of the United Nations and with foreign diplomats.

### E. Other

54. The Special Rapporteur is pleased to learn of other initiatives that indicate an overall strengthening of indigenous rights within the Republic of the Congo. First, the Government has helped establish the International forum on indigenous peoples of Central Africa (*Forum international sur les populations autochtones d’Afrique centrale* - FIPAC), an inter-governmental initiative that allows States, civil society and indigenous peoples from Central Africa, the private sector, international NGOs and agencies of the United Nations to come together to discuss indigenous issues.

55. One key aim of the forum is to strengthen the Network of indigenous peoples of Central Africa (RENAPAC). The Special Rapporteur emphasizes that, while it is important to strengthen national and international networks in order to encourage shared learning and experience, it is essential that indigenous peoples’ organizations at the local level are not excluded from such initiatives in favour of nationalized representation that may not necessarily or fully represent local indigenous peoples’ interests.

56. The Republic of the Congo has also been actively involved in negotiations regarding a pilot project of UN-REDD (United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries), the multifaceted international program to combat climate change, which has important implications for conserving traditional indigenous lands, territories and resources.<sup>28</sup>

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<sup>28</sup> See The Forest Carbon Partnership Facility at <http://forestcarbonpartnership.org/fcp/node/81>.

However, the Special Rapporteur heard concerns about the inadequate consultation and participation of local communities, indigenous peoples and civil society in the development of the Congo Readiness Preparation Plan (RPP), the document that establishes the implementation strategy of the REDD project. Further concerns with the plan include a lack of specific provisions concerning the rights of indigenous peoples under the plan, which may lead to inadequate benefit-sharing of REDD revenues. The Government of Congo insists that civil society organizations have taken an active part in the implementation of the REDD process.

#### **IV. Implementation challenges**

57. The Special Rapporteur recognizes that the Government of Congo has manifested a commitment to advance the rights of indigenous peoples in light of relevant international standards by adopting important legislative, policy and administrative measures. In particular, the development of both the law on indigenous peoples and the National Action Plan are significant landmarks in this regard.

58. However, the Special Rapporteur is concerned that a great deal remains to be done to advance implementation of these initiatives, beginning with ensuring that all relevant Government officials and agencies are aware of the implications of these initiatives for their respective portfolios. With regard to the National Action Plan, despite its stated timeframe of 2009 to 2013, the Special Rapporteur observed during his visit in late 2010 – the plan's second year of operation – that a number of high-level Government officials of ministries directly related to the development, success and implementation of the plan were not aware of its existence. Also, the Special Rapporteur did not hear of any specific activities directly focused on implementing any aspect of the plan, and very few, if any, ministries had specific budgets allocated to initiatives that would be essential to turn the plan into action.

59. The Special Rapporteur also observes that UNICEF is the only United Nations agency that has been involved in supporting the National Action Plan. Given the broad goals of the plan, particularly in relation to education and health care, it is important that all United Nations agencies with a presence in Congo engage directly with the National Action Plan in connection with their relevant development and human rights promotion activities.

60. In a similar vein, although the Indigenous Rights Law had not yet been adopted at the time of his visit, consideration of the law in the National Assembly was in its final stages, and the Special Rapporteur observed that few, if any, Government ministries or departments had started contemplating specific initiatives or reforms directly in response to the requirements of the law.

61. The Special Rapporteur acknowledges that the challenge of implementation is considerable; the goals of the initiatives are significant, and the disadvantage of indigenous peoples with regard to the full spectrum of their rights is severe. For this very reason, the Special Rapporteur urges that concerted effort be made at every level of Government, in conjunction with the support of the international community, to ensure that these initiatives are realized. He further emphasizes that this concerted effort should be realized with full appreciation of indigenous cultural patterns and their own aspirations for the future.

62. The Special Rapporteur is pleased to note that many Government officials have voiced their broad commitment to quashing discriminatory attitudes against indigenous peoples. In this context, however, the Special Rapporteur repeatedly heard the term "emancipation" lauded as the goal for the indigenous peoples of Congo. While emancipation may be an appropriate goal regarding the rights of indigenous peoples to be free from conditions of forced labour or to enjoy a life free from discrimination, the term



also seemed to be used by Government officials in a way that advocated for indigenous peoples to abandon their traditional ways of life, including moving away from their hunter-gather lifestyles and becoming integrated into the dominant social, economic and cultural patterns. Used in this sense, emancipation appeared to strongly suggest assimilation and loss of robust distinct indigenous identity.

63. The Special Rapporteur notes that the Indigenous Rights Law explicitly prohibits forced assimilation of indigenous peoples (art. 14), as do contemporary international standards. Hence, any initiative to address the situation of indigenous peoples must not have as its goal, in principle or practice, assimilation in the sense of incorporation into the broader society with significant loss of identity. The Special Rapporteur emphasizes that the efforts to overcome discrimination and improve the conditions of indigenous peoples must promote the overarching right of indigenous peoples to self-determination, which means advancing for indigenous peoples every opportunity to participate as full members of society, as well as the ability to maintain the integrity of their distinctive cultures and develop according to their own priorities.

## V. Conclusions and recommendations

64. **The Special Rapporteur commends the Government of the Republic of the Congo for its commitment to reverse the disadvantaged conditions of indigenous peoples - those groups that have been known as Pygmies – and to advance their rights. This commitment is reflected in a number of initiatives, especially the National Action Plan and the new Law on the Promotion and protection of the rights of indigenous peoples.**

65. **The following conclusions and recommendations are aimed at strengthening, and meeting the significant challenge of implementing, the initiatives being taken to advance the rights of indigenous peoples in Congo, within the framework of international standards. The recommendations are directed primarily to the Government, but are also addressed in some respects to other actors, including the United Nations system and indigenous peoples themselves.**

### Combating discrimination

66. **The Special Rapporteur perceives the social inequities faced by the indigenous people in Congo be rooted in historical patterns of social, economic, cultural and political discrimination. These patterns continue, thereby impeding indigenous peoples' effective control over all aspects of their lives, limiting their ability to enjoy basic human rights, and contributing to undermining their cultural identities.**

67. **The Special Rapporteur observes that the master-slave relationships that persist in present day Congo (paras. 16-19) reflect the structural inequities that result from deeply engrained discriminatory attitudes about indigenous peoples. These attitudes appear to have been internalized by both indigenous and non-indigenous segments of society to a significant extent, leading to acquiescence to these destructive power dynamics between the stronger and weaker elements of society.**

68. **The Special Rapporteur acknowledges the important steps taken in both the Indigenous Rights Law and the National Action Plan to redress the situation of discrimination. Still, given the profound systemic and entrenched discrimination against indigenous peoples, the Special Rapporteur emphasizes the need for broad societal engagement in order to erase discriminatory attitudes and foster a sense of**

understanding and respect among all Congolese citizens. The Special Rapporteur considers that overcoming this challenge will require a coordinated and concerted effort, backed by significant resources and a broad range of actors from within the Government, civil society, United Nations agencies and other development partners.

69. This targeted action should be part of a comprehensive national campaign focused on educating both indigenous peoples and Bantus about their rights and obligations towards one another. Such a campaign should have as a primary aim the sensitization of Congolese society as a whole. In practice, this will require a broad educational and media strategy, backed by international partners, that promotes the culture and identity of the indigenous peoples of Congo as dynamic contemporary elements of Congolese society.

70. Another aspect of such a campaign should be integrating, on a widespread basis, a tolerance and anti-discrimination programme into the national curriculum of the public school system. This would require additional educational workshops on tolerance, cooperation and anti-discrimination for adults and other members of society outside the educational system. The National Human Rights Commission can play a key role in disseminating such a programme, and must be provided with adequate financial resources to this end. United Nations agencies, in particular UNICEF, UNESCO, UNDP and others should help facilitate this campaign, providing resources, funds and technical support to execute it. Civil society also has a role to play by assisting in developing workshops and helping to execute the media strategy with parallel advocacy strategies.

### **Development with due regard to culture and identity**

71. As acknowledged by the Government, clear steps must be taken to redress the chronic poor living conditions of indigenous peoples and enhance development opportunities for them. On the one hand, this will require enhanced and specifically dedicated funding, with specific budget lines devoted to the programme objectives outlined in the National Action Plan and the Indigenous Rights Law, as well as building the capacity of responsible Government agencies to diligently, and in coordinated fashion, progress towards these objectives.

72. Additionally, development initiatives must be designed in a culturally appropriate way, with the goal of not only advancing indigenous peoples' social and economic well-being, but also increasing their self-determination and ability to maintain their distinct cultural identities, languages and connections with their traditional lands. It is essential, as part of this process, to include indigenous peoples themselves in the design and delivery of culturally appropriate projects, especially in areas of poverty reduction, health and education.

73. Poverty reduction and income-generating programmes in Congo have often been premised on assisting and encouraging indigenous peoples to adopt sedentary, agro-pastoral lifestyles. This approach is necessarily disruptive of indigenous peoples' traditional hunter-gatherer subsistence way of life, and in tension with related cultural patterns which they may aspire to continue. Any efforts to combat poverty and develop income-generating projects in indigenous communities need to involve indigenous peoples themselves in the development and design of culturally appropriate projects.

74. Inadequate cultural adaptation in the delivery of health services appears to create a barrier to the effective enjoyment of the right to health for indigenous peoples

that goes beyond proximity to a health clinic. More needs to be done to generate trained indigenous health-care workers, to establish specific methods of incorporating traditional medicine in the delivery of health services, and to increase participation of indigenous communities in designing health services that respond to their unique needs. The World Health Organization (WHO) should play a key role in advancing this agenda.

75. While the Government has taken important steps to improve indigenous health, it should strengthen efforts to ensure that indigenous peoples have equal access to primary health care and that the basic health needs of indigenous communities are met, especially in remote areas. Further efforts should be made by the Ministry of Health, in consultation with UNICEF and WHO, to improve the delivery of health services to indigenous peoples in a culturally appropriate manner, with attention to the special health needs of indigenous women and children. Every effort should be made to enhance indigenous peoples' participation in the formation of health policy and delivery of services. The Government should ensure and strengthen support for health-care initiatives by indigenous communities and organizations as a matter of priority. All medical professionals should be provided with comprehensive, culturally appropriate medical training, and health services in the language of the community should always be available.

76. With regard to education, the Special Rapporteur notes the positive impact that the ORA schools (para. 24) have had in providing indigenous students better access to education in certain places, and he encourages building on the ORA model. At the same time, the Special Rapporteur notes that the final goal of the ORA programme is the integration, after a three-year transition period, of indigenous students into the regular national school system. The Special Rapporteur thus observes that while the ORA schools are an important first initiative, similar initiatives that apply after the three-year transition period are required. Further, measures should be taken to increase involvement of indigenous communities in educational programming, and to incorporate indigenous methods of teaching, cross-cultural curricula, bilingual instruction, and due regard for the indigenous calendar of subsistence activities and other cultural patterns.

77. Given the multifaceted needs of indigenous peoples with regard to development, and acknowledging the goal of the United Nations Declaration on the Rights of Indigenous Peoples to mainstream the rights of these peoples in United Nations programming, the Special Rapporteur observes that the United Nations country team in Congo should consider employing an indigenous peoples' rights focal point in order to better incorporate the specific needs of indigenous people into its general programming. This should be done with priority given to including indigenous staff in the United Nations country team.

### **Rights over lands and resources**

78. As with indigenous peoples elsewhere, secure rights to traditional territories are crucial to the cultural and physical survival of indigenous peoples in Congo. The new Indigenous Rights Law affirms indigenous peoples' rights to lands and natural resources on the basis of traditional patterns of use and occupancy (art. 31), and provides for demarcation and specific recognition of the lands that belong to indigenous peoples according to customary tenure (art. 32). The Special Rapporteur emphasizes that the necessary task of implementing these provisions of the law and relevant international standards, will require a significant, coordinated effort.

79. The land and resource rights provisions of the Indigenous Rights Law go well beyond what is provided in the previously existing laws – in particular the land and forestry codes<sup>29</sup> – which together have comprehensively defined property or use rights in land and natural resources.

80. The Government will need to develop and fully implement a new procedure for demarcating and registering lands in accordance with indigenous peoples' customary rights and tenure, and new mechanisms for identifying and securing specific rights in natural resources. These measures, which should be developed in consultation with indigenous peoples, will require substantial funding, technical expertise and dedicated personnel.

81. The Republic of the Congo should look to other countries that have long-standing work on indigenous land rights regimes, and experience in developing laws on indigenous land tenure. The United Nations agencies should provide technical assistance to facilitate this undertaking.

82. Additionally, the Government will need to ensure that all administrative practices and the application of all laws related to lands and natural resources align with the Indigenous Rights Law, interpreted in light of international standards concerning indigenous peoples' rights to lands, territories and resources. To this end, the Government should establish a mechanism to undertake a comprehensive review at the national level of all such laws and relevant institutions and procedures.

### **Enhancing participation in decision making**

83. Essential to implementing all aspects of the initiatives being taken to advance the rights of indigenous peoples in Congo is enhancing indigenous participation in decision-making. This requires, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, building greater opportunities for indigenous peoples to participate in decision-making processes of State institutions at all levels, as well as recognition, strengthening and accommodation of indigenous peoples own decision-making institutions and authority. Indigenous participation in various dimensions is instrumental to the right of self-determination and the empowerment of indigenous peoples to control their own destinies under conditions of equality.

84. The Indigenous Rights Law mandates the Government to establish by decree a procedure for consulting indigenous peoples regarding development projects or other measures that affect them (art. 3). Such a decree should itself be developed in consultation with indigenous peoples, which will require a coordinated effort with indigenous leaders, as well as among interested Government actors.

85. The Special Rapporteur urges the Government to proceed with urgency to develop and adopt the consultation procedure required by the Indigenous Rights Law, in cooperation with indigenous peoples' representatives. Given the complexities involved, the Government will have to secure adequate technical expertise to ensure effectiveness of the procedure, and its concordance with international standards. Care will have to be taken especially to ensure that the consultation procedure is devised to have as its objective – in accordance with article 3.6 of the Indigenous Rights Law and article 19 of the Declaration on the Rights of Indigenous Peoples – the obtainment of free, prior and informed consent.

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<sup>29</sup> Forestry Code (Law No. 16-2000 of 20 November 2006); Land Law (Law No 10-2004 of 26 March 2004).

86. Advancing indigenous participation in decision-making also requires dedicated effort to confronting and overcoming barriers to indigenous peoples and individuals being part of the State's political processes and governing institutions. Measures should be taken to ensure full and adequate opportunities for indigenous participation in legislative processes and Government institutions at all levels. There is no one way to facilitate increased indigenous participation in these arenas, but all efforts to develop programmes appropriate to the Congolese context should be done in consultation with indigenous peoples themselves.

87. Similarly, concerted and targeted attention is required for the development of means to recognize, strengthen and accommodate indigenous peoples' own decision-making authority over their internal affairs and their customary dispute resolution institutions, in accordance with article 11 of the Indigenous Rights Law and international standards. Specific steps will have to be taken to overcome the history of persistent disregard for indigenous authorities and customary law by the dominant legal structures and social forces, including steps to ensure that the legal system of Congo accommodates indigenous autonomy over internal decision-making and acknowledges indigenous traditional dispute resolution as a legitimate form of justice. Again, it is essential to ensure that indigenous peoples are fully consulted and invited to participate in determining the specific relevant arrangements.

88. Given that exclusion often stems from discriminatory attitudes directed towards indigenous peoples, any programme aimed at strengthening indigenous decision-making institutions and increasing their participation in all spheres of social, economic and political life will also necessarily need to form an integrated part of the national campaign to combat discrimination. The national sensitization campaign will in turn need to ensure that dominant ethnic groups who currently control decision-making processes understand, accept and welcome the rights of indigenous peoples to participate in, and have control over, decision-making processes.

89. Education plays a key role in empowering indigenous peoples to take control of decisions affecting their lives. Thus, emphasis must be placed on developing culturally appropriate educational programmes that encourage indigenous peoples in their educational pursuits, and give them the necessary skills to become leaders of their own communities, effectively engage in consultation procedures and participate in State legislative and administrative processes at all levels.

90. Indigenous peoples themselves should endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with government authorities and NGOs with which they chose to work.

91. The Special Rapporteur observes that the final two focus areas of the National Action Plan are geared towards building the capacities of indigenous organizations, and in particular building the capacity of RENAPAC, the national network of indigenous peoples' organizations. While the Special Rapporteur acknowledges the role that such networks can play in strengthening local indigenous organizations, he cautions against Government or international support for RENAPAC that might simply empower individual leaders of the network, without any or adequate direct benefit flowing to indigenous peoples' communities and organizations at the local level. Moreover, it is important that the network be representative of a broad range of indigenous peoples' organizations throughout the Congo, and that RENAPAC and its leadership remain accountable to that network.

92. Thus, the relevant focus areas of the National Action Plan must be engaged with a view to ensuring the broader goals of strengthening all indigenous peoples'

organizations within the Republic of the Congo, and ensuring the representative and democratic nature of RENAPAC.

### **International Cooperation**

93. The Government should build on its international commitment to advance the rights of indigenous peoples and cooperate with international actors in this regard. In particular, the Government should ratify International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and seek the technical advisory assistance of the ILO in the development and execution of its programmes on indigenous peoples.

94. The Special Rapporteur urges the United Nations country team to follow up on the implementation of the recommendations contained in this report, in full cooperation with the Government agencies concerned, and with the active involvement of the indigenous peoples of Congo. Further, the United Nations country team should ensure that awareness about indigenous peoples and their rights is integrated into all planning processes with regard to programmes and initiatives developed by the United Nations system in Congo.

95. International agencies and donors should collaborate with indigenous peoples to design and implement specific programs that include, but are not limited to, projects and training programmes with a human rights-based approach to development for indigenous peoples.

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