



# Asamblea General

Distr. general  
10 de julio de 2020  
Español  
Original: inglés

## Consejo de Derechos Humanos

### 45º período de sesiones

14 de septiembre a 2 de octubre de 2020

Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo**

## Visita al Congo

### Informe de la Relatora Especial sobre los derechos de los pueblos indígenas\*

#### Resumen

La Relatora Especial sobre los derechos de los pueblos indígenas, Victoria Tauli-Corpuz, visitó el Congo del 14 al 24 de octubre de 2019.

Desde la visita del anterior Relator Especial en 2010, el Gobierno del Congo ha adoptado un sólido marco jurídico y ha designado una serie de mecanismos dentro del Gobierno para proteger y promover los derechos de los pueblos indígenas. Los pueblos indígenas del Congo están ganando lentamente reconocimiento en la sociedad, y en algunos casos la discriminación directa está disminuyendo, aunque siguen sufriendo una grave discriminación indirecta y sistémica. Los pueblos indígenas viven en un estado de pobreza y desempoderamiento notablemente peor que el de la población bantú. El acceso a la atención sanitaria, la educación y el empleo fueron las principales preocupaciones planteadas por los pueblos indígenas durante la visita, así como la falta de seguridad de la tenencia y las restricciones impuestas a su modo de vida debido a la invasión de sus tierras tradicionales por parte de agentes privados, incluso sin su consentimiento informado. La Relatora Especial no observó ninguna mejora significativa en el derecho de los pueblos indígenas a participar en la vida pública. A pesar de que la cuenca del río Congo está considerada como una de las zonas más ricas en términos de biodiversidad, el cambio climático afecta al modo de vida de aquellas personas que todavía dependen del bosque para sobrevivir.

En el presente informe, la Relatora Especial evalúa los progresos realizados en la aplicación de las recomendaciones formuladas tras la visita de 2010 y señala otros problemas que afectan a los pueblos indígenas, en particular en lo relativo a la conservación y el cambio climático.

\* El resumen del informe se distribuye en todos los idiomas oficiales. El informe completo, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó y en francés.



## Annex

### Report of the Special Rapporteur on the rights of indigenous peoples on her visit to the Congo

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## I. Introduction

1. In the present report, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, presents the findings of her visit to the Congo from 14 to 24 October 2019. She thanks the Government for the invitation and for its excellent cooperation during the visit.

2. The visit follows up on a visit by her predecessor, James Anaya, in 2010. The Special Rapporteur examines how the Government has addressed the recommendations contained in the previous visit report and identifies continuing and new issues.

3. Since the previous visit, the country has faced political, security, financial and economic challenges. After the Constitution was revised in 2015 to allow for the re-election of the President in 2016, an armed rebellion arose in Pool Department, disrupting the functioning of the country until a ceasefire agreement was signed on 23 November 2017. The decline in world oil prices between 2014 and 2017 caused severe financial constraints. Although national efforts are ongoing to diversify the economy with international support, important sectors, including the construction, public works and telecommunications sectors,<sup>1</sup> remain affected, contributing to an increase in extreme poverty. The country has qualified to receive assistance through the International Monetary Fund Heavily Indebted Poor Countries Initiative<sup>2</sup> and is negotiating a restructuring of the national debt.<sup>3</sup>

4. In Brazzaville, the Special Rapporteur met the Prime Minister, the Minister for Foreign Affairs, Cooperation and the Congolese Abroad, the Minister for Justice, Human Rights and the Promotion of Indigenous Peoples, the Minister for Primary and Secondary Education and Literacy, the Minister for Health and Population, the Minister for the Promotion of Women and the Integration of Women in Development, the Minister for Forest Economics, the Minister for Social Affairs and Humanitarian Action, the President of the Senate, the President of the National Assembly, the President of the National Human Rights Commission, the Executive Secretary of the Advisory Council on Women and representatives of the Ministry of Land and Public Domain Affairs.

5. The Special Rapporteur thanks the Resident Coordinator ad interim and the Resident Representative of the United Nations Development Programme (UNDP) and their offices for providing advice and logistical support. She met with and received information from the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA) and the World Food Programme (WFP). She met with representatives of the European Union and of indigenous and human rights civil society organizations, including the National Network of Indigenous Peoples of the Congo (*Réseau national des populations autochtones du Congo*, RENAPAC) and networks of non-governmental organizations active in sustainable forestry. She met with representatives of the Network of Indigenous and Local Peoples for the Sustainable Management of the Forests and Ecosystems of Central Africa (*Réseau des populations autochtones et locales pour la gestion durable des écosystèmes forestiers d'Afrique Centrale*, REPALÉAC). She also met with representatives of *Congolaise industrielle des bois* (CIB), a logging company owned by the international food and agribusiness group Olam, and with the Wildlife Conservation Society, a conservation organization based in the United States of America. Both CIB and the Wildlife Conservation Society operate in the Congo, including in Sangha Department.

6. The Special Rapporteur travelled 800 km north from Brazzaville to Sangha, one of the 12 departments constituting the Congo. Sangha borders Cameroon, Gabon and the Central African Republic and is the densely forested home of the Mbendjele, Mikaya and Baaka indigenous populations, whose representatives met with the Special Rapporteur. She

<sup>1</sup> See the World Bank economic profile of the Congo available at [www.worldbank.org/en/country/congo/overview](http://www.worldbank.org/en/country/congo/overview).

<sup>2</sup> See [www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative](http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/11/Debt-Relief-Under-the-Heavily-Indebted-Poor-Countries-Initiative).

<sup>3</sup> **Error! Referencia de hipervínculo no válida.** See [www.reuters.com/article/us-congorepublic-imf/imf-approves-congo-republic-bailout-after-china-debt-deal-idUSKCN1U62NR](http://www.reuters.com/article/us-congorepublic-imf/imf-approves-congo-republic-bailout-after-china-debt-deal-idUSKCN1U62NR).

was welcomed by the local authorities, including the Prefect of Sangha, in the departmental capital of Ouesso, the Mayor of Pokola and the Sub-prefect of Kabo district. She visited three indigenous communities and met with indigenous peoples from another four communities and local civil society representatives. She met separately with indigenous women to discuss issues specifically affecting them and young girls.

7. The indigenous peoples of the Congo, which constitute 1.2 per cent<sup>4</sup> of the population, are traditional hunter-gathers living a semi-nomadic lifestyle, moving camps over vast territories in the forest to access its resources, including by harvesting caterpillars, honey, fruits and vegetables and by hunting game. Long-standing discrimination, exploitation and continuing attempts to integrate them into the sedentary majority population have led many communities to leave the forest and settle in Bantu villages or urban areas where they often face further discrimination and insecurity. The Mbendjele (in Kabo and Pokola) and the Mikaya (in Ouesso) that the Special Rapporteur met in Sangha typically spent the dry season in the forest and returned to villages for a few months during the rainy season. Some communities reportedly still live exclusively in the forest.

## II. Legal and institutional framework since 2010

### A. Law No. 5-2011, on the promotion and protection of the rights of indigenous peoples, and its implementation decrees

8. The Special Rapporteur congratulates the Government for adopting a solid legal framework, while emphasizing that significant work remains to be done to ensure it is implemented in practice. Law No. 5-2011, on the promotion and protection of the rights of indigenous peoples, was adopted shortly after the visit of her predecessor and sets out a sound legal foundation for indigenous peoples to claim their rights, protect their culture and livelihood, gain access to basic social services and protect their civil and political rights. In 2015, the need to promote and protect indigenous peoples' rights was given constitutional recognition in article 16 of the new Constitution.<sup>5</sup> In July 2019, six of the eight proposed draft decrees were adopted to implement Law No. 5-2011 by providing special measures to facilitate civil registration and access to basic social services and education. The decrees also provided guidance on holding consultations with a view to obtaining the free, prior and informed consent of indigenous peoples in the context of socioeconomic projects and development programmes and to protecting indigenous cultural, intellectual, spiritual and religious property and knowledge. They established an interministerial committee to guide the Government's actions for indigenous peoples, in particular its implementation of national action plans to improve the quality of life of indigenous peoples.

9. By Decree No. 2017-260 of 25 July 2017, the lead role for the promotion of the rights of indigenous peoples was transferred from the Ministry of Social Affairs and Humanitarian Action to the Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples, which has, since then, had a dedicated directorate-general for the promotion of indigenous populations. The directors of that directorate-general's local offices, present in all 12 departments, had been in post a few months as at the time of the visit.

10. The above-mentioned directorate-general is composed of four divisions, each staffed by a director, two chiefs and an administrative staff. The directorate-general is tasked with the practical implementation of the Government's policies on the promotion of indigenous peoples' rights and will act as a permanent secretariat for the interministerial committee when it is in place. The directorate-general's annual budget is approximately US\$ 250,000. The departmental directors, who each have an annual budget of US\$ 4,000, had been tasked at the time of the visit with following up on the civil registration process, preparing for the census of indigenous peoples and responding to individual cases.

<sup>4</sup> See [www.cnsee.org/pdf/rgph2007pd.pdf](http://www.cnsee.org/pdf/rgph2007pd.pdf) (in French).

<sup>5</sup> The Constitution was adopted by referendum on 25 October 2015.

11. Two of the proposed draft decrees – one for the administrative recognition of indigenous villages and the other regarding the modalities for sharing the benefits arising from the use and exploitation of indigenous traditional knowledge – are still pending adoption. The Special Rapporteur welcomes the fact that an additional decree, on recognition of traditional and customary lands for indigenous peoples, is being studied.

12. The indigenous peoples consulted during the visit lacked awareness of their rights under international law, the Constitution and national legislation. In at least three communities visited, no one knew about the existence of Law No. 5-2011. Apart from sporadic initiatives by civil society organizations, there was no evidence of any comprehensive, nationwide, government-led campaign to raise indigenous peoples' awareness about their rights, how to exercise them and how to seek remedies in case of interference or denial.

13. RENAPAC, which is based in Brazzaville, is well-placed to assist in the dissemination of information about Law No. 5-2011 throughout the country but suffers from paralysing internal leadership conflicts and chronic underfunding. Non-governmental organizations have individually translated and disseminated the Law into languages understood by indigenous peoples.

## **B. National action plans**

### **1. National action plans to improve the well-being of indigenous peoples**

14. Since 2009, the Government has designed and implemented two consecutive national action plans to improve the well-being of indigenous peoples in the Congo, one for 2009–2013 and one for 2014–2017. A third plan, for 2020–2023, has been at the drafting stage for several years. The draft plan covers areas such as participation, civil registration, access to health-care and education services, water and employment, the promotion of indigenous culture and the mapping of indigenous peoples' locations.

15. National action plans guide the Government's action and bring together different ministries and United Nations agencies to work on common objectives. The Special Rapporteur notes that the collective rights related to self-determination and land rights set out in articles 4 and 25 of the United Nations Declaration on the Rights of Indigenous Peoples are not yet covered by the current draft plan. Moreover, planned action on education and economic development may lack the necessary safeguards against assimilation since it does not emphasize the necessity for culturally appropriate solutions for those indigenous peoples who wish to maintain their distinct identity.

16. In a national assessment realized in 2015<sup>6</sup> it was noted that progress had been made after the implementation of the first two action plans but also that poverty and discrimination against indigenous peoples, especially against indigenous women, was still a daily reality and that the lack of systematic collection of data had prevented a proper, full assessment. Furthermore, government action for indigenous peoples was not part of a cross-sectoral strategy and indigenous peoples themselves were not sufficiently involved in the design and implementation of the action plans. In the assessment it was stressed that the living conditions of indigenous populations could not be sustainably improved by means of ad hoc interventions.

17. The Special Rapporteur welcomes the existence of such action plans and strongly encourages the Government to seek greater participation by indigenous peoples in their preparation and implementation, to ensure that the action taken responds, in a culturally appropriate manner, to the actual needs of the populations. The Special Rapporteur also recommends that disaggregated data be systematically collected in order to measure the impact of all general social governmental initiatives and ensure that their positive results also reach indigenous peoples, including indigenous women and girls.

<sup>6</sup> See [https://pcpacongo.files.wordpress.com/2016/04/rapport\\_evaluation\\_autochtones-2015.pdf](https://pcpacongo.files.wordpress.com/2016/04/rapport_evaluation_autochtones-2015.pdf) (in French).

18. The lack of coordination of national interventions within various ministries remains a challenge. The implementation of Decree No. 2019-203 of 12 July 2019 establishing the interministerial committee should hopefully help various ministries to work together to implement Law No. 5-2011. The committee's inaugural meeting, due to take place during the first half of 2020, was postponed because of the coronavirus disease (COVID-19) pandemic.

## 2. National Development Plan for 2018–2022

19. The National Development Plan for 2018–2022<sup>7</sup> emphasizes inclusive development and recognizes the specific challenges facing indigenous peoples. It provides guidance for improving governance, reforming the educational and vocational training systems and diversifying the economy by focusing on growth sectors.

20. Through the Plan, the Government pledges to work towards the achievement of the Sustainable Development Goals and the goals of Agenda 2063 of the African Union, leaving no one behind. The two main challenges to improving indigenous peoples' conditions identified in the Plan are discrimination and poverty.<sup>8</sup> The Plan sets out a series of actions, some of which do not appear in the draft national action plan for indigenous peoples, for addressing those challenges. For instance, the Plan includes a proposal for a campaign to reduce discriminatory attitudes among the Bantu population, which was recommended by the Special Rapporteur in 2010 but has not yet been fully delivered (see paras. 27–29 below).

21. In the National Development Plan, the Government also sets out a strategy that includes the adoption of a law for the protection of indigenous and other human rights defenders working on the rights of indigenous peoples and a strategy for promoting access to lands and resources and increasing the participation of indigenous peoples in the sustainable management of forests. The Plan does not, however, provide any detail on how these strategies will be concretely developed and implemented. Moreover, these promising proposals are not covered in the draft national action plan for improving the well-being of indigenous peoples for 2020-2023.

## 3. Reducing emissions from deforestation and forest degradation (REDD-plus)

22. The Special Rapporteur welcomes the adoption in 2016 by the Government of a national strategy for the implementation of the REDD-plus mechanism that was later supplemented by a planning framework to support indigenous peoples potentially affected by related activities. Through a 2015 environmental and social assessment<sup>9</sup> conducted prior to the adoption of the strategy, the Ministry of Forest Economics identified the most pressing social issues affecting indigenous peoples: difficult access to education, health, water and sanitation, as well as the economic and cultural subjection of indigenous peoples to Bantu populations. It also recognized the importance of allocating lands for indigenous peoples. The Special Rapporteur regrets that, in its report, the Ministry seems to support an approach that encourages indigenous peoples to abandon their traditional semi-nomadic lifestyle in favour of settling down in villages to pursue income-generating activities. In the planning framework, published in November 2018, the Government proposes creating a fund to compensate for the loss of crops destroyed by wildlife, developing a plan to safeguard indigenous sacred sites and cultural heritage, establishing a mechanism to seek the free, prior and informed consent of indigenous peoples and identifying a process for land demarcation and the distribution of land titles. The plan has been allocated approximately US\$ 1.5 million and includes a complaints mechanism related to the implementation of REDD-plus.<sup>10</sup>

<sup>7</sup> See [https://pnd.plan.gouv.cg/wp-content/uploads/2018/10/PPAP\\_Final.pdf](https://pnd.plan.gouv.cg/wp-content/uploads/2018/10/PPAP_Final.pdf) (in French).

<sup>8</sup> See <https://dgp.plan.gouv.cg/images/PND-2018-2022---Cadre-stratgique-de-dveloppement.pdf> (in French).

<sup>9</sup> See [www.forestcarbonpartnership.org/sites/fcp/files/fcp-docs/2016/Aug/ESMF%20IP%20Framework%20Draft%2025.08.15.pdf](http://www.forestcarbonpartnership.org/sites/fcp/files/fcp-docs/2016/Aug/ESMF%20IP%20Framework%20Draft%2025.08.15.pdf) (in French).

<sup>10</sup> See <http://documentos.bancomundial.org/curated/es/256731559039112296/pdf/Cadre-de-Planification-en-Faveur-des-Peuples-Autochtones.pdf> (in French).

### **C. Disaggregation of data**

23. The Special Rapporteur welcomes the statistical data shared with her during her visit, in particular the statistics contained in the REDD-plus assessments for indigenous peoples. She notes, however, that government representatives were rarely in a position to provide comparative data regarding indigenous peoples for their area of responsibility.

24. The Special Rapporteur stresses that without information on the situation of specific groups of the population with regards to achieving goals, including the Sustainable Development Goals, inequality and indirect discrimination are bound to continue unabated and indigenous peoples will remain invisible in the overall statistics for the achievement of the Goals. The Special Rapporteur encourages the Government to strengthen its efforts to collect reliable comparative data on education, health, employment, access to justice, public participation and other indicators, to support the design and implementation of policies that seek to meet actual needs or remedy disparities.

### **D. National Human Rights Commission**

25. The National Human Rights Commission began its mandate in January 2019 and, at the time of the visit, was establishing its rules of procedure and defining the scope of its activities.<sup>11</sup> The Commission did not have any departmental representation and its staff lacked resources to travel outside Brazzaville. The President of the Commission informed the Rapporteur that, as of October 2019, no complaint had been filed by indigenous peoples and that the Commission was not yet in a position to undertake activities to promote Law No. 5-2011 nor to design a strategy to promote the implementation of the recommendations arising from the Special Rapporteur's 2010 visit.

## **III. Indigenous peoples' rights: progress made and challenges remaining**

### **A. Countering discrimination and indigenous identity**

#### **1. Countering discrimination**

26. According to the Government, discrimination against indigenous peoples is declining: it may not have been conceivable 10 years ago for indigenous peoples and Bantu populations to be living in the same neighbourhood. Equality and non-discrimination against indigenous peoples is now inscribed in Law No. 5-2011 (arts. 2 and 27), which also forbids the use of the derogatory term "pygmy" (art. 1). The Special Rapporteur acknowledges this progress but observes that indigenous peoples continue to be subjugated and marginalized in Congolese society and that their distinct identities and basic human rights are threatened in ways not experienced by the Bantu majority.

27. The previous Special Rapporteur recommended carrying out a comprehensive national campaign to combat discriminatory attitudes and foster understanding between indigenous and Bantu populations. He proposed that the campaign use a broad educational and media strategy promoting the culture and identity of indigenous peoples as a dynamic, contemporary element of Congolese society.

28. The Special Rapporteur welcomes the annual celebration of the International Day of Indigenous Peoples on 9 August but regrets the lack of a more comprehensive, participative, long-term and nationwide initiative to change attitudes towards the indigenous peoples of the Congo.

29. On 9 August 2019, a high-level national caravan travelled from Brazzaville to Pokola and distributed 200 school kits to indigenous children, raised local authorities' awareness of the newly adopted decrees and distributed a symbolic example of birth

<sup>11</sup> Law No. 30-2018 of 7 August 2018.

certificates. Unfortunately, these efforts had an extremely limited reach, with no sustainable effect: they represented an isolated event of a mainly humanitarian character and failed to promote a comprehensive human rights-based approach. The national caravan, which was organized with the support of RENAPAC and other civil society organizations, did not provide an opportunity for the visited indigenous communities to express their concerns or shape the agenda of the celebrations.

30. The lack of coordination within the Government to implement activities planned in the national action plan for indigenous peoples, the heavy reliance on international donors and implementers, the weakness of State structures, in particular outside Brazzaville, and continuing discriminatory attitudes towards indigenous peoples, all prevent substantial progress to be made in the fight against discrimination and the promotion of indigenous peoples' rights.

## **2. Integration and indigenous identity**

31. A significant number of indigenous persons met during the visit said they wished to settle down and be integrated without discrimination in wider Congolese society. Most of them saw their desire for a better life blocked by discriminatory attitudes that prevented them from being successful at school, obtaining employment or participating in public life. This desire to integrate and find a better life may act as an incentive for relinquishing their indigenous identity.

32. A number of indigenous men and women in Sangha reported that their desire to integrate was fuelled by the fact that they had been actively driven away from the forest and forbidden from hunting, and therefore saw no other viable option for ensuring their own survival. Members of the younger generation too may believe that living off the forest, as taught in their culture, is stigmatizing and perpetuates the image of indigenous peoples as inferior.<sup>12</sup>

33. While the wider picture shows a slow but clear shift of mentality in the majority population and a decline in direct discrimination, further progress is needed to eliminate structural discrimination against indigenous peoples and to acknowledge the importance of preserving the indigenous cultural practices, traditional knowledge and semi-nomadic lifestyle that are inherently linked to indigenous peoples' spiritual connection to the forest.

## **3. Discrimination against indigenous women**

34. Indigenous women and girls continue to lack access to reproductive health care, and to be subjected to gender-based violence including rape, and early marriages, high rates of maternal and infant mortality and food insecurity. Communities usually lack facilities for drinking water and sanitation, and the burden to look for water and to take care of children who get sick because of lack of such facilities disproportionately falls to women and girls. Women have accordingly requested that the Government drill more wells. The Rapporteur was told that certain Bantu men impregnate young indigenous girls and then abandon them without support. Health care services for women and girls should be made more accessible and designed to be more gender and culturally-sensitive.

## **B. Access to health care and education**

### **1. Access to health care**

35. The recommendations made by the previous Special Rapporteur in 2010 included the following: increasing access of indigenous people to basic health services; increasing the cultural appropriateness of services; training indigenous health workers; incorporating indigenous traditional medicine in mainstream health services; and involving indigenous peoples in the design of health services that respond to their needs. Furthermore, it was recommended that the Ministry of Health and Population support health-care initiatives

<sup>12</sup> Jerome Lewis, "Our life has turned upside down! And nobody cares.," in *Hunter-Gatherer Research*, vol. 2, No. 3 (2016), pp. 375–384.



developed by indigenous peoples and train all medical staff to better understand indigenous peoples.

36. Title V of Law No. 5-2011 sets out important guarantees for indigenous peoples' access to health care. The Special Rapporteur welcomes the adoption of Decree No. 2019-202 of 12 July 2019 providing for special measures to facilitate access by indigenous peoples to health care and to protect their pharmacopeia. The Decree requires health facilities to provide health care free of charge to members of impoverished indigenous communities and provides for the protection of indigenous peoples' traditional medicine.

37. The draft national action plan for 2020–2023 includes the following activities: vaccination campaigns; campaigns to encourage indigenous peoples to consult local health structures; prevention campaigns against sexual and gender-based violence and certain illnesses such as yaws; training of indigenous health workers; procurement of medication and birthing kits for health centres visited by indigenous peoples; training of health-care professionals against discrimination; mobile clinics to provide access for remote indigenous groups; and construction of wells and sanitary infrastructures in indigenous communities.

38. Indigenous peoples in Sangha Department repeatedly raised lack of access to basic health care as a major concern. In Sangha, the Special Rapporteur directly observed that the health care provided, to indigenous peoples and others, was inadequate. The only fully functioning local medical clinics were run by private companies involved in logging and conservation. For example, the medical clinics in Pokola and Kabo were run by CIB as part of its Forest Stewardship Council certification obligations. The Pokola clinic offered free consultations for both Bantu and indigenous populations. Because State-run clinics are scarce and often ill-equipped, such private clinics are under significant pressure.

39. Indeed, the main State-run hospital in Ouesso was in a state of desolation at the time of the visit: it was flooded and it lacked running water, toilets (except in the maternity ward) and other basic equipment for sterilization.<sup>13</sup> Only a few medical staff, including the Director, were paid on a regular basis. While the Director gave assurances that indigenous peoples came to the hospital and were treated free of charge, this was contradicted by some of the testimonies collected from indigenous peoples living nearby and by UNFPA, which indicated in a study that the legal provision ensuring gratuity of care for indigenous peoples was rarely respected.<sup>14</sup>

40. In addition to lamenting the prohibitive cost of medical consultations and the scarcity of health-care centres, indigenous peoples complained about stigmatization and discrimination in health-care facilities administered by Bantus. Some indigenous women, for example, told the Special Rapporteur that health workers had referred to them as “dirty” when they arrived at the hospital. Most indigenous women gave birth at home, either by choice, because they were deterred by the cost of care in health facilities or by the stigmatization they feared they would encounter or because the distance to the nearest hospital was too great. Several indigenous women interviewed said they had lost a child after giving birth at home due to a tetanus infection caused by the use of dirty instruments by a community midwife. UNFPA reports that 99.8 per cent of indigenous women give birth at home or in the forest and that 65 per cent of them give birth without any prenatal consultation.<sup>15</sup>

41. The Government indicated that it was working to reduce prejudiced attitudes among health personnel and indigenous peoples. It recognized that the low turnout of indigenous women at the hospital could be explained by the fear they may have of being ill-received by medical staff. The Minister for Health and Population spoke of initiatives to recruit indigenous peoples as health personnel, in particular indigenous traditional midwives, to

<sup>13</sup> The Minister for Health and Population indicated that this was unfortunately the case for many hospitals in the country. A joint United Nations and private-sector maternal health-care project in Sangha and Lekoumou Departments was about to result in the refurbishment of the main hospitals, including the one in Ouesso.

<sup>14</sup> UNFPA, *Biomédecine, savoirs et pratiques autochtones autour de la grossesse et de l'accouchement dans le département de la Sangha* (2018), p. 32.

<sup>15</sup> Factsheet shared by UNFPA during the visit.

improve the experience of indigenous women in the health system. Such initiatives remain exceptions, however, and UNFPA has recommended that more efforts be made to train and recruit more indigenous traditional midwives.<sup>16</sup>

42. While indigenous peoples continue to rely on their traditional medicines, their exposure to other population groups has increased their vulnerability to diseases and illnesses that their traditional methods cannot treat effectively. Indigenous persons told the Special Rapporteur that leprosy, tuberculosis, malaria and yaws were common illnesses within their communities. Malnutrition affected indigenous children: 40 per cent of indigenous children under 5 years of age suffered from chronic malnutrition, compared with 26 per cent for the whole population.<sup>17</sup> Indigenous peoples' use of and transmittal of knowledge about traditional medicinal plants should be supported and encouraged. In this respect, it should be noted that traditional indigenous medicine is part of the national health system, including the national strategy for the promotion of traditional medicine based on the identification of nearly 5,000 plants and the promotion of their use in preparing medical compounds. It is essential that indigenous experts be among the drivers of this strategy.

43. The Special Rapporteur regrets the lack of national statistics regarding the experience of indigenous men, women and children within the health system. Health-care centres can play a vital role in redressing the situation of discrimination by collecting data disaggregated by sex, age and ethnicity in a way that respects privacy.

## 2. Access to education

44. Since the early 2000s, a project has provided informal schools for indigenous peoples in Likouala and Sangha Departments. The project was initially created and run by civil society organizations to respond to the daunting levels of illiteracy and poor school attendance in areas densely inhabited by indigenous populations. The so-called "observe, reflect and act" schools deliver a three-year programme to prepare young indigenous children to enter the mainstream school system. UNICEF, WFP, the European Union, CIB and the Government have since supported over 45 schools and more than 7,000 pupils in the two Departments.

45. While the "observe, reflect and act" system has led to an increase in the number of indigenous children attending school, indigenous adolescents still represent only 0.05 per cent of the junior high school population and 0.008 per cent of all high school students, with indigenous girls remaining particularly excluded from education.<sup>18</sup>

46. The previous Special Rapporteur had encouraged the Government to adopt measures to encourage indigenous children to stay in school after the three-year "observe, reflect and act" school programme, including through the incorporation of indigenous people's teaching methods, the development of cross-cultural curricula, the use of bilingual instruction and the scheduling of classes around the indigenous calendar and other cultural patterns.

47. Article 19 of Law No. 5-2011 requires the State to develop and implement education programmes and appropriate structures that correspond to the needs and way of life of indigenous peoples. Education is to be free and mandatory for all children aged 6 to 16 years. The decree implementing Law No. 5-2011 with regard to education provides for special measures to be applied to indigenous children, including their automatic eligibility for scholarship to higher education, the annual distribution of school kits and uniforms and the opening of school restaurants for indigenous children.

48. The national action plans for 2009–2013 and 2014–2017 delivered some results, including the construction and equipment of classrooms, the provision of teaching materials, the opening and provision of school canteens, the sensitization and mobilization of indigenous parents and communities and the promotion of innovative pedagogical

<sup>16</sup> UNFPA, *Biomédecine, savoirs et pratiques autochtones*, p. 32.

<sup>17</sup> Congo, Ministry of Forest Economics, *Cadre de Planification en Faveur des Peuples Autochtones : Rapport Final* (November 2018), p. 24 (in French).

<sup>18</sup> UNICEF, *Analyse de la Situation des Enfants et des Adolescents en République du Congo*, (September 2019) p. 124 (in French).

approaches aimed at attracting and retaining indigenous students. Nevertheless, the current reality on the ground remains starkly inadequate.

49. Illiteracy remains widespread among indigenous populations, including in Sangha. UNFPA reported to the Special Rapporteur that 65 per cent of indigenous children between the ages of 12 and 15 years were not in school, compared to 39 per cent in the national population as a whole.<sup>19</sup> During the visit, the Special Rapporteur was told that lack of financial means was the main reason for the interruption of mainstream school attendance. Out of necessity, teachers were often paid through parents' contributions, which most indigenous families could not afford. Indigenous women asked for support to prevent their children dropping out of school. Bullying and discrimination against indigenous children at school, a curriculum that was not adapted to their culture and the wider endemic discrimination that limited prospects for success later in life all contributed to children leaving school.

50. Culturally appropriate educational programmes are needed to encourage indigenous youth to pursue higher education and become leaders able to represent their own communities and defend the rights of their peoples. The learning curriculum could, for example, feature some indigenous traditional knowledge and practices. The Special Rapporteur did not observe any significant progress in this regard.

51. The Minister for Primary Education confirmed that public schools did not have enough paid teachers for the number of students they were supposed to serve but also said that directives had been issued to school directors to ensure that parental contributions were not requested for indigenous children and to allow indigenous children to attend school even without a uniform. He acknowledged that these guidelines might not be followed by some schools.

52. The internationally funded "observe, reflect and act" school programmes are in practice the only existing form of free education in the country. Certain civil society organizations and several Ministers expressed concern that reserving these programmes exclusively for indigenous children might foster a form of segregation. United Nations agencies have also highlighted rising tensions in Likouala between indigenous and impoverished Bantu communities over access to "observe, reflect and act" school programmes. The Special Rapporteur did indeed notice that, in Kabo, only schools offering "observe, reflect and act" programmes were functioning, because of the lack of paid teachers in the mainstream school system.

53. The "observe, reflect and act" school in Kabo was attended by some 140 indigenous children, under the responsibility of three non-indigenous teachers. The teachers said that they tried to adapt the curriculum to indigenous children but that the educational materials were all in French. They also said that they were paid approximately US\$ 100 per month, but that payments were in arrears of over four months; they added that they were not paid during the three months of school holidays.

54. The Government indicated that, in some of their programmes, support to indigenous communities was conditional on indigenous children attending school. While such a conditionality may have been adopted with good intentions, more effort must be made to understand why indigenous children may be reluctant to attend school<sup>20</sup> and to address those reasons by providing positive incentives rather than punitive measures that risk further depriving communities in need.

### C. Economic opportunities

55. The previous Special Rapporteur recommended that development initiatives to provide redress for the chronic poor living conditions of indigenous peoples and enhance their development opportunities should be designed in a culturally appropriate way with the

<sup>19</sup> Information shared by UNFPA.

<sup>20</sup> The draft national action plan for 2020–2023 indeed foresees such a study to identify the obstacles preventing indigenous children from attending school.

goal of advancing indigenous peoples' economic and social rights and of increasing their self-determination.

56. The draft national action plan for 2020–2023 provides that, by 2023, 60 per cent of indigenous communities should have improved living conditions thanks to income-generating activities, including through the distribution of welfare or seed funding for income-generating activities, professional training and the recruitment of indigenous people. The plan does not, however, define any concrete indicators or benchmarks for these activities.

57. Representatives of communities in Sangha all raised the issue of lack of employment or any other source of income to support their families. Indigenous people used to feel confident in their ability to hunt and collect forest produce to sustain their families but now considered hunting too risky due to the repeated arrests and acts of harassment to which they were subjected by “eco-guards”. In addition, the gathering and selling of forest produce did not generate enough income because the Bantu population only bought vegetables and other forest produce at very low prices and indigenous peoples lacked the means to transport their harvest to busy markets.

58. Many indigenous persons specifically expressed the wish to work for the logging company CIB or for the Nouabalé-Ndoki National Park run by the Wildlife Conservation Society in order to gain stable and decent work. Both CIB and the Wildlife Conservation Society cited high levels of illiteracy, lack of qualifications and the semi-nomadic lifestyle as major barriers to the employment of indigenous peoples, and said that they preferred to recruit indigenous peoples for a limited number of roles that specifically drew on their indigenous knowledge, for example as animal trackers, to guide tourists to wildlife, or tree specialists. Indigenous persons are also hired as communicators, to do outreach and carry out consultation and awareness-raising activities involving indigenous communities.

59. Specific professional training and education programmes could be prepared together with indigenous peoples to increase their access to employment in the private and public sectors. Employers should, in consultation with communities and with the support of the Government, be encouraged to adapt workplace environments and conditions to the social, cultural and economic particularities of local indigenous peoples.

60. The serfdom of indigenous peoples by Bantu populations that had been observed during the previous Special Rapporteur's visit reportedly persisted in certain areas of Sangha and Likouala Departments but was not directly observed by the current Special Rapporteur during her visit. Labour and economic exploitation was a reality. Some indigenous women reported working in the fields from the early hours of the day for CFA 500–700 (approximately US\$ 1) per day. The adoption on 17 June 2019 of Law No. 22-2019 criminalizing human trafficking, including for the purposes of labour exploitation and serfdom, was a positive development to tackle the “master and slave” relationship that had historically defined dynamics between certain Bantus and indigenous peoples.

61. As part of efforts to return the benefits of forest exploitation to the local population, CIB is contributing to community social funds managed by advisory committees composed of representatives of local populations and authorities. Local populations, including indigenous peoples, can submit projects aimed at establishing income-generating activities in the community. Local stakeholders reported that the projects proposed by indigenous communities, such as agriculture projects or goat farming, had overall not yielded positive results, while acknowledging that this may be due in part to the fact that agriculture and livestock farming are not activities traditionally performed by indigenous peoples. The advisory committee in Ouesso proposed funding the salary of an expert to provide technical guidance to ensure that indigenous-led projects enjoy a greater success rate.

62. The Special Rapporteur's previous report highlighted that poverty reduction and income-generating activities had often been premised on assisting and encouraging indigenous peoples to adopt sedentary agropastoral lifestyles that may have been disruptive to them. Mindful of this, advisory committees should strive to fund income-generating activities that are more adapted to indigenous peoples' existing way of life, such as the commercialization of honey, wild vegetables or traditional medicinal herbs at sustainable prices. Such activities could also lead to greater recognition by Bantus of indigenous

peoples' special skills and contribution. In this respect, CIB has supported the training of traditional healers among indigenous peoples. Indigenous women's access to decent salaries and conditions of work should be given special attention in these projects so as to foster their social and economic empowerment.

63. The cultural appropriateness of economic activities proposed to indigenous peoples should be given particular consideration in the implementation of nationwide economic projects such as the World Bank-led Lisungi project,<sup>21</sup> which aims to provide safety nets through, among other things, income-generating activities among the poorest segments of the population, including indigenous peoples.

## **D. Rights to representation, participation and self-determination**

### **1. Representation**

64. The previous Special Rapporteur had urged the creation of more opportunities for indigenous peoples to participate in decision-making processes at all levels. Civil society organizations had since reported that their proposal for a draft decree to increase indigenous representation in public institutions had not been upheld by the Government. The Government reported the presence of two indigenous women in the Women's Advisory Council, one woman and one man in the National Human Rights Commission and 12 youths in the Youth Council.

65. The draft national action plan for 2020–2023 contemplates activities to increase the participation of indigenous peoples in public life and electoral processes through training and awareness-raising but makes no mention of how to increase the number of indigenous peoples on electoral lists or among candidates for election to official positions. It is regrettable that, to date, no indigenous person has ever been elected to fill any of the 151 seats in the National Assembly.

66. The low level of official education common in indigenous communities contributes to making it difficult for indigenous peoples to make their voices heard at every level of society. Even at the local level, indigenous peoples feel that their views and issues are accorded little if any weight. Statistics on the number of indigenous peoples elected to carry out municipal functions are not available.

### **2. Self-administration**

67. The previous Special Rapporteur, following his 2010 visit, recommended granting greater recognition of and strengthening indigenous peoples' own decision-making institutions and authority.

68. The Government reported that adoption of a draft decree for the administrative recognition of indigenous villages had been delayed to allow for further reflection on how to accommodate the nomadic practices of inhabitants in or around certain villages and to clarify details regarding the right to self-determination of indigenous peoples living with Bantus in certain mixed-population villages. These considerations should not, however, delay the recognition of indigenous peoples living in hamlets who no longer lead a semi-nomadic lifestyle. The adoption of the draft decree should help indigenous communities to take control of their own affairs and pave the way to granting land titles for indigenous villagers.

### **3. Free, prior and informed consent**

69. Decree No. 2019-201 of 12 July 2019, prescribing the process for consultation and participation of indigenous peoples in decisions regarding social and economic development programmes, provides some foundation for respecting indigenous peoples' right to free, prior and informed consent. Civil society organizations regret, however, that the Decree limits consultations to only three months and does not provide more concrete

<sup>21</sup> See [www.worldbank.org/en/news/loans-credits/2019/02/07/congo-republic-of-lisungi-safety-nets-system-project-ii](http://www.worldbank.org/en/news/loans-credits/2019/02/07/congo-republic-of-lisungi-safety-nets-system-project-ii).

guidance on how to obtain free, prior and informed consent in a way that respects indigenous peoples' rights.

70. In accordance with the Decree, a consultative commission established by the Minister for Justice, Human Rights and the Promotion of Indigenous Peoples will lead consultations, which, as mentioned above, should not exceed three months. Membership in the commission will be composed of representatives of four ministries, one local administration official, one local elected official, one person representing the proponent of the project and one civil society representative. There is no requirement that any member be indigenous.

71. The commission is to engage with a range of different constituents within the consulted indigenous peoples, through indigenous peoples' own community structures and associations. The Decree includes information on concrete ways to engage with the communities without, however, specifying whether these proposals are culturally appropriate or the most efficient way to communicate with indigenous communities.

72. The Decree provides that the goal of consultations is to get the free, prior and informed consent of populations affected by a development project. It does not, however, provide for a complaints procedure for any indigenous communities that may consider a consultation to have been flawed or where an agreement reached after consultation was not respected.

## **E. Rights and access to land and resources**

### **1. Standstill regarding the land demarcation process**

73. In 2010, the Special Rapporteur recommended that the Government develop a new procedure for demarcating and registering lands in accordance with indigenous peoples' customary rights and tenure. He highlighted the need for funding, technical expertise, participation of indigenous peoples and dedicated personnel. He also advised that a mechanism be established to review all existing laws to ensure consistency with the then-pending Law No. 5-2011.

74. Law No. 5-2011 recognizes 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). It requires the State to facilitate delimitation of those lands on the basis of indigenous customary rights and to ensure legal recognition of titles in accordance with customary rights, even in cases where indigenous peoples did not previously possess any formal title (art. 32).

75. According to both the Government and civil society, land titling is an extremely complex issue in the Congo, in part because of overlapping rights over the forest, particularly where logging concessions have been granted or conservation areas have been established over indigenous lands, but also because of overlapping bodies of law governing the use and ownership of lands, with customary laws applying to both Bantu and indigenous populations and modern laws introducing the notion of land title. Land demarcation is also complex and onerous and there are currently no concrete resources allocated to this process. No procedures for claiming land have yet been defined, there is no national land registry and the Ministry of Land and Public Domain Affairs has reported that it has not received any request for land titling since the adoption of Law No. 5-2011.

76. The Special Rapporteur notes with concern that a law regulating land use and acquisition adopted in 2018 does not mention the specific rights of indigenous peoples set out in Law No. 5-2011.<sup>22</sup>

77. Decree No. 2006-255 of 28 June 2006 facilitates the recognition of customary land ownership where the land has been in use through agriculture, cattle grazing or other productive activities (art. 7). It does not, however, recognize conservation and sustainable

<sup>22</sup> Law No. 21-2018 of 13 June 2018.

forest management as a form of land development that could lead to the issuance of a land title. Indigenous peoples' traditional lands are used for hunting, gathering or religious practices and may be wrongly perceived by non-indigenous populations as being "unoccupied" and consequently subject to designation as forest reserves, national parks or conservation areas or for commercial exploitation.

78. Private property is a concept foreign to most indigenous peoples, including the indigenous peoples of the Congo. Most indigenous peoples forced out of the forest and living in the outskirts of Bantu villages, however, express the wish to obtain land titles in order to protect themselves from forced eviction, as was the case in the expanding logging town of Pokola.

## **2. Forest code and community forestry**

79. A new forest code, which has been in the drafting process since 2012, would set out the rights of local communities and indigenous peoples to forest management. Civil society has criticized the draft, however, for omitting to reflect the special rights of indigenous peoples recognized in Law No. 5-2011. For example, as of March 2019, the draft did not expressly include indigenous peoples' right to free, prior and informed consent regarding decisions affecting their traditional lands.<sup>23</sup>

80. The draft forest code would also provide a legal framework for the burgeoning practice of community forestry, which allows local communities and indigenous peoples to collectively manage forest resources and secure some rights over the resources in their allocated community forest. While the community forestry concept may help mitigate the stalemate regarding collective land titling for indigenous peoples, such measures must remain temporary for indigenous peoples, pending recognition of their full and collective right to their forests based on traditional use and occupation, in accordance with national law and international standards. Collective ownership of land and resources is crucial to improve the sustainability of their livelihood.<sup>24</sup>

81. The draft national action plan for 2020–2023 does not propose any steps to recognize or protect the rights of indigenous peoples to their lands and resources.<sup>25</sup> There is also a need to harmonize laws on land, forests and protected areas to ensure that they are consistent with Law No. 5-2011.

82. Mining activities are also reportedly having an impact on indigenous peoples' access to traditional lands in northern Congo; further research is needed to assess the degree of encroachment on indigenous traditional lands by conservation and private actors.

## **F. Access to justice**

83. The previous Special Rapporteur recommended that the legal system of the Congo be strengthened to accommodate indigenous autonomy and acknowledge indigenous peoples' traditional dispute mechanisms as legitimate forms of justice.

84. Law No. 5-2011 recognizes the right of indigenous peoples to administer their own affairs and to use their customary laws to resolve internal disputes. The Government recognizes that most conflicts between indigenous peoples are resolved within the community with the involvement of a traditional chief or the community president. In accordance with articles 34 and 39 of the United Nations Declaration on the Rights of Indigenous Peoples, the Government should promote and develop indigenous institutional structures such as juridical systems and distinctive customs, spirituality, traditions, procedures and practices.

85. The Special Rapporteur has observed that many indigenous peoples currently feel they have nowhere to turn to for effective remedy and reparation when their rights are

<sup>23</sup> This draft is the most recent available draft shared with civil society.

<sup>24</sup> See <http://pubs.iied.org/17724IIED>.

<sup>25</sup> It only calls for indigenous peoples to be included in the census and for a mapping of indigenous peoples in the country.

violated. This is particularly true for indigenous women who have been raped by Bantu men or abandoned after giving birth to children by Bantu men. Indigenous communities have reported that the authorities tend to ignore their complaints, leaving the communities to seek to resolve violations of their rights by themselves.

86. Regarding national parks and conservation measures, while indigenous peoples are frequently arrested by “eco-guards” on charges of poaching, they are reportedly rarely compensated when wildlife destroy their crops.

87. No data is reportedly available on how many indigenous individuals have been arrested and detained in the criminal justice system. Civil society organizations, including conservation organizations, do not have data but they have reported that a disproportionate number of detainees in Ouesso prison are indigenous and that some of them were arrested in relation to their traditional hunting and gathering livelihood activities. When meat is found in their huts by “eco-guards”, indigenous individuals are immediately accused of poaching even if when the meat in question comes from animals that are not on the protection list. Most of those accused and imprisoned suffer from beatings and violence but do not have access to lawyers to defend them. The Special Rapporteur was informed that indigenous persons held in detention were particularly malnourished, as, unlike most of the other prisoners, their families do not live in the vicinity and cannot therefore bring them food; the authorities apparently do not provide meals despite the fact that it is the State’s responsibility to do so.

88. For these and other reasons, the overall situation regarding access to justice, as described by local communities and civil society, appears inconsistent with the State’s responsibilities to indigenous peoples under the United Nations Declaration on the Rights of Indigenous Peoples and other international standards, as well as the Constitution and domestic legislation, which should guarantee for indigenous peoples the right to remedy and redress for any violations of their rights.

## **G. Civil registration**

89. The Government has made concrete efforts to make sure that indigenous peoples have registered civil status. The draft national action plan for 2020–2023 provides for the inclusion of indigenous people in the census, a mapping of indigenous populations and the organization of national itinerant campaigns to increase civil registration of indigenous peoples.

### **1. Birth registration**

90. Only 32.1 per cent of indigenous peoples have civil documents compared to 93.3 per cent of the general population.<sup>26</sup> Decree No. 2019-199 of 12 July 2019, providing for special measures to grant indigenous peoples civil documentation, is a welcome step to reduce this gap. The Decree waives the fee for all civil registrations of indigenous peoples and facilitates the late registration of births without any charge or fine.<sup>27</sup>

91. The Government reported that the civil registration of indigenous peoples was made a priority for all prefects deployed in the departments. The Special Rapporteur welcomes the fact that all local authorities interviewed during her visit to Sangha had been actively working on issuing birth registration and late birth registration documents for indigenous peoples.

### **2. National census**

92. The Government reported that a nationwide census including indigenous peoples was under way<sup>28</sup> to update the previous census, which had taken place in 2007. A mapping

<sup>26</sup> Congo, Ministry of Forest Economics, *Cadre de Planification en Faveur des Peuples Autochtones : Rapport Final* (November 2018), p. 21.

<sup>27</sup> Complying with the recommendations contained in CRC/C/COG/CO/2-4, paras. 37 and 73 (d).

<sup>28</sup> See Decree No. 2019-130 of 17 May 2019.



of indigenous peoples across the country, foreseen in the draft national action plan for 2020–2023 was, according to the Government, also under way. In order to ensure that indigenous peoples will be accurately counted, they must be involved in the design of the census and data collection process and strategies must be included to reach remote communities still living in the forest. For instance, one proposal was to conduct the census during the rainy season, when semi-nomadic communities settle in Bantu villages outside the forest.

## H. Conservation

93. Restrictions on indigenous peoples' access to their traditional territories have worsened in recent years, as the commercial exploitation of the forests has increased and as the rich biodiversity of the country's remaining areas has continued to attract conservation projects.

94. At the time of the Special Rapporteur's visit, the Messok Dja conservation project – implemented under the leadership of the Ministry of Forest Economics and with the support of UNDP and its implementing partner, the World Wildlife Fund (WWF) – had been suspended following allegations that “eco-guards” indirectly funded by WWF had subjected indigenous peoples to violence in order to clear the way for the new conservation area.<sup>29</sup> It also appears that the free, prior and informed consent procedure had not been applied by WWF and that the Government was ready to restart a consultation procedure in accordance with national legislation. The Government had not, however, started any investigation into the allegations. The findings of a UNDP investigation are awaited.

95. The Special Rapporteur heard concerns from CIB, some local civil society organizations, government representatives and conservation organizations regarding an alleged incompatibility between indigenous peoples' hunting practices and animal conservation measures. The Special Rapporteur was informed of initiatives aimed at transforming indigenous peoples' hunting practices and meat consumption habits to preserve endangered species and prevent criminal poaching activities.

96. While interviewing populations living near Nouabalé-Ndoki National Park, the Special Rapporteur clearly sensed the pressure that indigenous communities were facing from conservation efforts. She heard stories of violence from “eco-guards” and the police. Several persons alleged that they had been arrested and jailed for poaching while in their opinion they were hunting species not subject to legal protections and considered the arrests to be unjustified. Others claimed that some “eco-guards” had automatically assumed their presence in the forest meant they were hunting protected animals, had forced them to return home and had arbitrarily searched their homes.

97. Conservation initiatives put a disproportionate burden on indigenous peoples. A wider range of issues should be addressed to prevent the rapidly declining numbers of wildlife species, including the fragmentation of natural areas caused by the carving out of logging routes in the forest and the corruption and poor governance that enables criminal poaching activities.<sup>30</sup> Furthermore, seeking to modify indigenous peoples' traditional way of life, without due regard for their views, fails to recognize that indigenous peoples have a deep understanding of wildlife behavioural patterns and life cycles that enables them not

<sup>29</sup> Survival International, *How Will We Survive? The Destruction of Congo Basin Tribes in the Name of Conservation* (2017), p. 95. **Error! Referencia de hipervínculo no válida.** See also John Vidal, “Armed ecoguards funded by WWF ‘beat up Congo tribespeople’”, *The Guardian* (7 February 2020).

<sup>30</sup> United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in Protected Species* (Vienna, 2016). This report provides readers with case studies showing the direct link between poaching and political corruption. Although no specific proof of such corruption was presented to the Special Rapporteur, local interlocutors expressed the view that corruption and impunity among prominent business and political figures fostered the continuation of criminal poaching activities.

only to hunt in a sustainable manner but also to support the thriving of wild animals and other biological and vegetal diversity.<sup>31</sup>

98. Any measures for the conservation of wildlife and the natural environment must, like any economic or development project, be developed and implemented in consultation with the indigenous peoples affected. They must be designed so as not to deprive indigenous peoples of their means of subsistence within the forest and not to interfere with the free exercise of their traditional cultural and spiritual practices.

99. The Wildlife Conservation Society has argued that acts of violence against indigenous people are isolated and principally perpetrated by rogue individuals, and has said that it had a number of internal mechanisms to ensure that any guards abusing their power were held accountable.

100. The continuing allegations against forest guards must be properly investigated, those responsible must be prosecuted and victims must be given remedy. International donors to conservation projects should make sure that their money does not fuel any form of violence against local indigenous communities.

101. Building on her earlier recommendations on this subject,<sup>32</sup> the Special Rapporteur continues to believe that current concepts of conservation need to be rethought to recognize the fact that indigenous peoples, while enjoying the human rights conferred to them by international law, are also an essential part of the ecosystem and that their presence and practices must also be conserved. Indigenous peoples' rights share common goals with conservation imperatives and may reinforce each other to foster healthy communities in thriving ecosystems.

## I. Impact of climate change

102. Climate change appears to be having a significant impact on indigenous communities in the Congo. Although overall information was limited, the Special Rapporteur was told that the fact that seasonal changes had become less pronounced was deeply affecting indigenous peoples' hunting and gathering practices, as ; they were no longer able to use changes in the weather to accurately predict the arrival of different kinds of wild food. Out-of-season rainfall was disrupting the fishing habits of indigenous peoples and negatively affecting the growth of certain nuts, fruits and vegetables.

103. It was also reported that rain patterns had started to change due to rising temperatures in the rainforest, with abnormal periods of dry spells. As a result, foraging and fishing opportunities had changed, affecting livelihoods and food security. A proposal by WFP for building the adaptive capacity to climate change of vulnerable communities living in the Congo Basin<sup>33</sup> was recently approved, with the consent of local communities, by the Government, civil society and the United Nations. The project aims specifically to support local communities in Sangha and Likouala Departments, including indigenous peoples, to adapt to climate change, notably by diversifying their income sources.

## IV. Conclusions and recommendations

### A. Conclusions

**104. The Government of the Congo has established a solid legislative and institutional framework for the protection of indigenous peoples' rights since 2010, and its efforts to put indigenous peoples "on the map" should set an example in the**

<sup>31</sup> For more on indigenous conservation practices, see Jerome Lewis, "Whose forest is it anyway? Mbendjele Yaka Pygmies, the Ndoki forest and the wider world" in *Property and Equality, Volume II: Encapsulation, Commercialization, Discrimination*, Thomas Widlok and Wolde Gossa Tadesse, eds. (Berghahn Books, 2004).

<sup>32</sup> A/71/229.

<sup>33</sup> See [www.adaptation-fund.org/document/proposal-for-congo](http://www.adaptation-fund.org/document/proposal-for-congo).

region and the continent. Much work remains to be done, however, to end the exclusion and marginalization of indigenous peoples and to fully recognize and protect their distinct identities, cultural practices and ways of life.

105. The country still lacks adequate policies to enable the concrete realization of indigenous peoples' right to self-determination, an essential part of which lies both in the demarcation of their traditional collective lands and in State recognition of their autonomous governance structures. Indigenous peoples, whether they live in a more urban setting or on the margin of the forest, continue to experience high levels of discrimination; they are not systematically consulted, nor is their consent systematically sought, in decisions affecting them; and only rarely do they benefit in practice from special measures taken by the Government, for example through the provision of social programmes, mainly in the form of fee waivers to promote participation in the education and health systems. The Government's strategy to improve indigenous peoples' standard of living, although a positive step, would benefit from the meaningful participation of indigenous peoples in its design and implementation, from greater recognition of the need to protect indigenous peoples' distinct identities and ways of life and from a sustained campaign to stop discrimination against indigenous peoples.

106. Indigenous peoples remain in a position of stark disempowerment that can only be reversed through financial and political commitments to fully implement Law No. 5-2011 and its implementing decrees. Additional policies need to be adopted and implemented. The development of a national framework to define and accelerate the demarcation of collective traditional lands of indigenous peoples and protect them from further encroachment by logging, the extractive industries and conservation projects would be a good starting point to restore some sense of pride and leadership to disempowered indigenous communities.

## **B. Recommendations**

107. The Special Rapporteur recalls and reiterates all the recommendations in her predecessor's report on his 2010 visit, including those related to the elaboration of a national campaign against discrimination, economic development that has due regard for indigenous culture, identity, rights over land and resources, and enhanced participation in decision-making and international cooperation. She urges the Government, international donors, the United Nations country team, civil society organizations and indigenous communities to work together towards their full, effective and urgent implementation.

108. The Special Rapporteur makes the following additional recommendations:

(a) The Government must prioritize the effective access to and ownership of lands for indigenous peoples, as this is a foundation for the realization of the other rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The recognition of both collective and individual rights to land ownership for indigenous peoples is inscribed in Law No. 5-2011. All other existing laws should be accordingly harmonized;

(b) The Government should continue its efforts to adopt special measures to help redress the human rights situation of indigenous peoples. Special measures, as described by the Committee for the Elimination of Racial Discrimination in its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, should not be understood to be a form of discrimination. For example, it is important for indigenous children to receive education in their mother tongue. Special measures and policies to redress inequalities can be informed by reliably collected disaggregated data;

(c) RENAPAC should set aside its internal divisions and should be supported, financially and substantively, in its work and in its effort to increase the

representativeness of its network and to reflect the range of interests of indigenous peoples, including by gender, age and whether they live in an urban setting or follow a traditional way of life. The Government should also seek to directly consult indigenous peoples, including, in particular, women, children and people with disabilities, for its action plans and strategies, including through consultations organized jointly with indigenous leaders or communities in the various departments;

(d) The Government's engagement in favour of indigenous peoples, notably through the implementation of Law No. 5-2011, must result in a sustained strategy at all levels of society. National efforts for decentralization are crucial for successful government action for indigenous peoples at the grassroots level. Sporadic, national, high-level government events consisting of the distribution of materials and the delivery of public speeches may be useful for drawing attention to certain issues dear to both Bantu and indigenous communities but will not have a lasting effect unless they are embedded in a more sustained, concrete and coordinated strategy at the national and local levels;

(e) Greater efforts are needed to ensure national and international efforts to alleviate poverty include special measures to make these activities and services culturally appropriate for indigenous peoples, particularly with respect to education, health services (in particular reproductive and maternal health services) and income-generating activities. In addition, all government actions in favour of indigenous peoples should aim at promoting indigenous people's participation in decision-making and autonomy and a strong gender perspective;

(f) Conservationists and international donors concerned with the environment and the preservation of biodiversity should promote and fund indigenous-led conservation initiatives while focusing restrictive measures on threats to ecosystems coming from non-indigenous sources, including criminal poaching networks, corruption and unsustainable forest exploitation;

(g) In this respect, the Special Rapporteur invites the Government, its United Nations supporting partners and conservation organizations in the Congo to consider the recommendations included in her report on conservation.<sup>34</sup> She recommends that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, and that culturally appropriate and independent complaints mechanisms be made available for indigenous peoples to voice their concerns over conservation initiatives and support initiatives for indigenous peoples' right to remedy in cases when conservation activities have negatively affected their rights;

(h) The United Nations should, with guidance from the Office of the United Nations High Commissioner for Human Rights, assist the Government and indigenous peoples to carry out training and peer-to-peer exchanges to promote greater knowledge of international standards and good practices regarding indigenous peoples' rights. The Government should consider inviting other special procedures to visit the Congo and obtain additional concrete advice on how to improve the human rights situation of indigenous peoples and others in the country.

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<sup>34</sup> A/71/229.