



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 44 OF THE CONVENTION**

**Initial reports of States parties due in 1999**

**CONGO\*\***

[12 February 2006]

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## Summary

Although the Congo underwent a period of armed conflict and political tensions from 1993 to 2000, successive Governments nevertheless committed themselves to implementing the Convention on the Rights of the Child. The advances made during those years have been preserved, and the current context, with the restoration of peace assured, is conducive to renewed action under better circumstances that should improve the implementation of the Convention.

The measures taken essentially involve the establishment, organization and reorganization of bodies whose work contributes to the implementation of the Convention. They relate to the periods before and after ratification of the Convention.

Women and children in the Congo constitute distinct social groups that enjoy very special government attention. An institutional framework, established for the benefit of women and children, is based on carefully devised strategies, a sound protection programme for women and children, and a major effort to integrate children's issues into the various development plans. The following is a list of bodies established, organized and reorganized before and since ratification of the Convention:

- The Ministry of Social Affairs, which, alongside traditional tasks, is responsible for relaunching, reorienting and vitalizing activities aimed at child protection and the advancement of women;
- Social Action Communities (CAS) in both urban and rural areas;
- A Department of Legal Protection for Children at the Ministry of Justice;
- A Department for the Integration of Women into Development at the Ministry of Planning;
- A Ministry for the Advancement of Women and the Integration of Women into Development;
- A National Action Plan for Children;
- An Inter-Ministerial Committee to Monitor Implementation of the Convention on the Rights of the Child;
- An intersectoral planning and follow-up unit responsible for gathering, analysing and publishing data on the situation of children.

A law on the status, protection and advancement of disabled persons was promulgated in 1992 (Act No. 9/92 of 22 April 1992).

Child protection in the Congo is assured through the protection of human rights, which include children's rights, and by means of the treaties that the country has signed. Furthermore, child protection is mentioned in the country's basic laws, such as the various Congolese Constitutions (1961, 1963, 1969, 1973, 1979, 1990, 1992 and 2002), the laws establishing the Nationality Code, the Labour Code, the Code of Criminal Procedure, the Social Security Code,

the Family Code, the Civil Service Statute and the Criminal Code, and the National Charter of Rights and Freedoms adopted by the Sovereign National Conference of 20 May 1991.

The social life of Congolese children is governed by traditional law and contemporary law, which recognize their right to life, survival and development.

In spite of the legal provisions governing the administration of juvenile justice, some obstacles still impede the proper conduct of judicial proceedings; conditions in police custody and in places of detention are not always up to standard.

Congolese children have access to a three-level graded health-care system consisting of a general operational structure, specific programmes and support structures.

To implement the system, a National Health-Care Development Plan (PNDS) based on health-care districts and integrated health-care centres (CSI) has been elaborated.

Yet child health continues to be a matter of concern. The mortality rate for children under the age of 5 is still high: 81 deaths per 1,000 live births in 2001.

With the support of international partners such as the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and Rotary International, the Congo organizes regular vaccination campaigns aimed at eradicating endemic diseases such as poliomyelitis.

The vaccination coverage rate was 80 per cent in 1990 and 29 per cent in 1999 (impact of recurring armed conflicts from 1993 to 2000) and 2004.

To help improve the focus and boost the coordination of action on behalf of vulnerable children, a strategy document on vulnerable children was adopted in 2003.

The health status of women continues to be a source of concern. Maternal mortality and morbidity rates are identical to those in African countries south of the Sahara. The maternal mortality rate is 1,100 per 100,000 live births. However, the rate of prenatal care is 75 per cent; tetanus vaccination coverage is 75 per cent; more than 80 per cent of deliveries take place in hospitals; and the Caesarean section rate is low, at 2.6 per cent.

Some progress has been made in the water sanitation sector, but it still falls far short of the targets set.

With regard to child nutrition, especially in rural areas, high rates of underweight children (14 per cent) and growth retardation (19 per cent) were recorded during the period 1995-2003. Given the low level of food security and the inadequate access of households throughout the country to a healthy food supply, this phenomenon may be expected to persist and become worse.

The structure of the education system has been formally defined in Education Act No. 25/95 of 17 November 1995. There are two educational subsystems: the very small-scale informal (unregulated) system and the more developed formal or established system, which is more widely attended and which is organized in accordance with the Education Act.

Schooling in the Congo is free, although parents help to defray some school running expenses.

Basic education has achieved its quantitative target, with an enrolment ratio of over 90 per cent of Congolese children.

There has been a marked deterioration, on the other hand, in the quality of education, discernible in high repetition and drop-out rates.

There are many reasons for this, including:

- Overcrowded classrooms: 60 to 200 pupils per class seated on the ground; the practice of multigrading;
- Low morale in the teaching profession; teachers lack motivation because they are poorly paid or sometimes poorly trained;
- Insufficient teaching aids;
- Inadequacy of budget appropriations;
- Unsuitable and constantly changing curricula and learning methods with no effort to assess the desirability of adjustments, readjustments or corrections.

There are few preschool education facilities. However, thanks to private-sector involvement, it has been possible to maintain a coverage ratio of 3 per cent of children in the 3 to 5 age group.

There are several categories of children in difficult circumstances, including abandoned children, street children, working children, ill-treated children, child soldiers and children in conflict with the law.

Specialized institutions such as refuge centres and orphanages cater for these children, but they are mainly operated by local and international non-governmental organizations (NGOs) and religious groups. There are virtually no State-run facilities. Providing effective care for this category of children presents enormous challenges.

The resurgence of the phenomenon of street children, war orphans and other children in distress led to the development of new guidelines for non-formal education.

The social life of Congolese children is governed by traditional law and contemporary law, which recognize their right to life, survival and development.

Awareness of these rights and of human rights in general is promoted by various national institutions and by the domestic media.

Although the Congo has undergone a period of armed conflict and socio-political tensions, it has nonetheless taken viable action on behalf of children, thereby contributing to the implementation of the provisions of the Convention.

This action has been financed both from domestic sources and through substantial assistance from bilateral and multilateral cooperation agencies, United Nations bodies and NGOs. However, more widespread and intensive action must be taken in the future.

## Introduction

1. On 20 November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child. At the World Summit for Children held in New York in 1990, Heads of State and Government adopted the World Declaration on the Survival, Protection and Development of Children, which reaffirms the General Assembly's support for the Convention.
2. The Congo ratified the Convention in 1993, thereby committing itself to the implementation of all its provisions, one of which is the regular submission of progress reports on its implementation.
3. Article 44 stipulates in this regard:
  - “1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
    - (a) Within two years of the entry into force of the Convention for the State Party concerned;
    - (b) Thereafter every five years.
  2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
  3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
  4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
  5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
  6. States Parties shall make their reports widely available to the public in their own countries.”
4. More than 10 years after ratifying the Convention, the Congo has still not published a report on its implementation. Yet in 1997 the country appointed two consultants to prepare the initial report. However, the resulting document, which was approved under the procedures established at the national level, could not be published. Successive Governments were doubtless overwhelmed by the need to find solutions to the socio-political crises. To bridge the gap created by this delay, the various Congolese bodies involved in producing reports on the implementation of the Convention felt it was necessary to review the 1997 initial report and to update it in the light of information available for the period from 1995 to 2005.

5. This report has therefore been prepared in accordance with the general recommendations of the Committee on the Rights of the Child on the “exceptional submission of combined reports”.
6. Taking into account the general guidelines for the preparation of initial reports on implementation of the Convention proposed by the United Nations Secretariat, the Congo began gathering information in the country’s different departments. The information thus gathered has been used to create a databank covering areas pertaining to the rights of the child.
7. The Government drew on the expertise of Congolese consultants who attended a training course before drafting the report.
8. The UNICEF Office in the Congo provided financial assistance for the preparation of the report. On completion, the report was submitted for an assessment first to a 10-member technical panel and then to the Inter-Ministerial Committee to Monitor Implementation of the Convention on the Rights of the Child, following which it was transmitted to the Government for adoption.
9. The report assesses the commitment of the Government and civil society to the process of implementing the Convention. It undertakes a critical analysis of the situation, identifies difficulties encountered by the various parties and proposes a series of options with the potential to bring about improvements in activities aimed at implementing the Convention.
10. It consists of two parts, subdivided into chapters.
11. Part I consists of five chapters. Chapter 1 introduces the land and its people; chapter 2 describes the political, judicial, administrative and economic structure; chapter 3 outlines the general legal framework within which human rights are protected; and chapter 5 describes the role of the media in promoting the Convention.
12. Part II consists of four chapters. Chapter 6 deals with the public freedoms and civil rights of the child; chapter 7 examines the health sector and the well-being of the child; chapter 8 reviews action in the areas of education, culture, arts, sport and leisure; and chapter 9 describes special protection measures for the child.

## **PART I. OVERVIEW OF THE CONGO**

### **Chapter 1: Land and people**

#### **1.1 Physical features**

13. Located in Central Africa astride the Equator, the Congo has an area of 342,000 km<sup>2</sup> and extends from 5 degrees south latitude to 4 degrees north latitude. It is bounded by the Central African Republic and Cameroon to the north and north-west, the Cabinda enclave to the south, the Democratic Republic of the Congo to the east and Gabon to the west.
14. The country’s general north-east/south-west orientation gives it a 160-km shoreline on the Atlantic Ocean. The Congo measures some 1,200 km at its longest point and 425 km at its broadest point.

15. From west to east, the country can be divided into five major geographical regions:
- An alluvial and occasionally marshy coastal plain along the Atlantic Ocean with sand dunes producing lagoons. Towards the south the shore becomes steeper and indented with reef formations;
  - A mountainous area, Mayombe and Chaillu, parallel to the coast, with a succession of sharp peaks rising to between 500 and 800 metres, alternating with deep gorges, the best known of which is Kouilou where there are plans to build a dam bearing the same name. The verdant cover of the great equatorial forest extends throughout the region;
  - A vast depression forming the north-west/south-east savannah known as the Niari valley;
  - In the south-east, the Pool basin lies in a hilly and largely deforested region, but most of it runs through the territory of the neighbouring Democratic Republic of the Congo;
  - Lastly, the Congolese basin in the north of the country was produced by large-scale land subsidence.

## **1.2 Vegetation**

16. The territory of the Congo is divided between equatorial forest (60 per cent of the territory) and savannah interspersed with gallery forests. There are three forest blocs:
- The Mayombe forest running down to the coastal plain;
  - The Chaillu massif;
  - The northern forest, covering the largest expanse of 13 million hectares, including almost 7 million that are flooded or liable to flooding.

## **1.3 Climate**

17. The whole territory of the Congo has a humid tropical climate with the following characteristics: high temperatures throughout the year with variable thermal amplitudes. Applying pluviometric criteria, two regions may be distinguished:
- The southern part of the Congo has a hot season from October to May, with an average temperature of 25°, and a dry season from June to September with temperatures of below 23°. The annual average amplitude declines from the Atlantic to the Congo Basin. The plateaux record the lowest temperatures during the dry season;
  - In the Congo Basin, the thermal amplitude is low - between 1.5° and 2°.



#### **1.4 Hydrography**

18. The Republic of the Congo has a large hydrographic network, with numerous watercourses forming two major basins: the Congo Basin consisting of the Congo River and its tributaries, and the Kouilou-Niari basin.

#### **1.5 Demography**

19. The population was estimated at 2,854,600 in 2000. Women account for 51 per cent and men for 49 per cent of the total. A majority live in urban areas (66 per cent) and the country's population is concentrated in the south (more than 80 per cent). The average population density for the country as a whole is 8.4 inhabitants per km<sup>2</sup>. The annual growth rate during the decade 1990-2000 was 3.2 per cent. Young people account for a high proportion of the population (roughly 56 per cent).

20. The family, the clan and the tribe are the basic units from which different groupings are built. The Congo falls almost entirely within the Bantu language zone but there has been some infiltration of Bayas and Bandas, Sudanese-type peoples from central Africa who live in the north of the country. There are also nomad pygmies in the forests of the north (Likouala, Sangha) and the south-west (Chaillu).

21. There are 7 major ethnic groups - the Sangha, Mbochi, Téké, Boubangui, Kongo, Echira and Kota - and some 55 subgroups. Each ethnic group has its own language, but only two of these many languages which serve as a lingua franca - Munukutuba and Lingala - have the status of national languages. The official language for administrative and educational purposes is French.

#### **1.6 Religions**

22. In pre-colonial times, the Congo was animist. Christianity was introduced by the colonizers and became the Congo's first religion. It was followed by Islam and Buddhism. The process of enculturation led to the creation of numerous local churches drawing inspiration from Christianity. They differ from the traditional churches (Catholic, Protestant, etc.) in terms of ritual, vestments, sacraments and access to membership of the hierarchy.

### **Chapter 2: Political, judicial and administrative structure and economic situation**

#### **2.1 Historical overview**

23. The history of the Congo was shaped by the series of Bantu migrations and the emergence in the tenth century of the Christian era of the first great sub-Saharan kingdoms, the forest kingdoms. The great river played a key role through the trade that rapidly began to flourish along its entire course.

24. A migration of Bantu peoples from what is now Nigeria during the first century of the Christian era led to the establishment in the Congo Basin of the Kongo Kingdom and the Téké (or Anziko) Kingdom.

25. The Kongo Kingdom began to become known in the fifteenth century when the first Portuguese caravans led by Diego Cao reached the coasts of the present-day Congo in 1482.

26. There were other kingdoms on the Atlantic coast, the most important being the Loango Kingdom, a vassal of the Kongo.

27. The Kongo Kingdom and the Loango Kingdom extended across the two contemporary Congo States, Angola and Gabon. The Loango Kingdom spread across the whole southern part of the Congo, Gabon and Cabinda. It seceded from the Kongo Kingdom in the late sixteenth century and became independent.

28. The Téké Kingdom, founded in the thirteenth century, established its first capital in Ngombéla in the sixteenth century. It remained on the banks of the Pool for more than three centuries before moving further north to its new capital at Mbé in the nineteenth century. It was there that the explorer Savorgnan de Brazza signed a treaty on 10 September 1880 with King Makoko. The Kingdom became a French protectorate.

29. In 1883 the King of Loango signed a treaty and his Kingdom became a French protectorate.

30. The Berlin Conference of 1884-1885 endorsed the division of Africa, with each explorer recognizing the future European colonial empires. The whole northern part of the Congo River (Gabon, Congo, Cameroon, Central African Republic) was recognized by De Brazza and his companions as belonging to France, the whole west bank (Democratic Republic of the Congo) by Stanley as belonging to the King of the Belgians.

31. In 1910, the structure of the French Congo was changed, with each territory becoming a colony belonging to French Equatorial Africa.

32. The first steps towards decolonization were taken at the Brazzaville Conference of 30 June 1944. The 1946 Constitution gave rise to the French Union within which the colonies, now known as overseas territories, were run by territorial assemblies.

33. In 1956, Gaston Deferre's framework law took a further step towards granting independence to the colonies. Following a successful referendum on 28 September 1958, the overseas territories and French Equatorial Africa were abolished. Gabon, the Congo, Chad and Ubangui (now the Central African Republic) became republics.

34. The proclamation of the republic in the Congo took place at Pointe-Noire, which was then the capital of the Middle Congo. On 21 November 1959, Fulbert Youlou was elected President of the Republic. On 15 August 1960, the Congo became independent and Fulbert Youlou took office as President of the newly independent State. In 1963, he was succeeded by Alphonse Massamba-Debat. In 1968, Marien Ngouabi assumed power. In 1977, Jacques Joachim Yhomby-Opango became President, followed in 1979 by Denis Sassou-Nguesso. From 1963 to 1991, the Congo was run by a one-party regime following a socialist line. In February 1991, a Sovereign National Conference was held, following which the Congo embarked on an era of multi-party democracy. In 1992, Pascal Lissouba was elected President. In 1997, Denis Sassou Nguesso resumed power. In 2002, the Congo adopted a new Constitution and Sassou Nguesso was elected President.

## **2.2 Political structure**

35. The Constitution of the Congo of 20 January 2002 reflects the fundamental principles proclaimed and guaranteed by:

- The Charter of the United Nations of 24 October 1945;
- The Universal Declaration of Human Rights of 10 December 1948;
- The African Charter of Human and Peoples' Rights of 26 June 1981;
- All relevant duly ratified international human rights instruments;
- The Charter of National Unity and the Charter of Rights and Freedoms adopted by the Sovereign National Conference on 29 May 1991.

36. Under the Constitution, the Congo has an executive, a legislature and a judiciary and other institutions such as the Constitutional Court, the High Court of Justice, the Economic and Social Council, the High Council on Freedom of Communication, the Mediator of the Republic (Ombudsman) and the National Human Rights Commission.

## **2.3 The executive**

37. Executive power lies with the President of the Republic and the members of the Government. The President of the Republic is the head of State and Government and the President of the Council of Ministers. The incumbent appoints and dismisses the members of the Government, establishes the broad lines of national policy and decides on basic courses of action. The President of the Republic exercises regulatory authority and the prerogative of clemency. The incumbent is the commander-in-chief of the armed forces; legislates by order on economic and financial matters and in the area of defence and security; makes appointments to high-level civilian and military offices in the Council of Ministers, and to high-level civilian and military posts in accordance with the relevant legal provisions; accredits ambassadors and special envoys to foreign Powers, and receives the accreditations of ambassadors and special envoys; negotiates, signs and ratifies treaties; and promulgates laws within 15 days of their adoption by the National Assembly. The decisions of the President of the Republic, except for those appointing members of the Government, are countersigned by the ministers responsible for their implementation.

38. The Government implements general national policy in accordance with the broad lines and options established by the President of the Republic. It is responsible for the civil service and the law enforcement agencies. The members of the Government are accountable to the President of the Republic.

39. The National Assembly exercises oversight over the Government:

- By putting parliamentary questions to members of the Government:
  - Written questions;
  - Oral questions;
- By hearings of members of the Government in committee.

40. The National Assembly may not, however, pass motions of no confidence in the Government, nor may the Assembly be dissolved.

41. The President of the Republic is elected for seven years by direct universal suffrage and may be re-elected for one term. The Constitution empowers the President to initiate legislation, concurrently with the members of Parliament. He or she is President of the Judicial Service Commission.

#### **2.4 The legislature**

42. Legislative power is exercised by a bicameral Parliament composed of the National Assembly (Chamber of Deputies) and the Senate (Chamber of Senators). It enacts laws and oversees executive action in the different ways already mentioned.

43. The President of the Republic may not dissolve the National Assembly, nor may the National Assembly dismiss the President of the Republic.

#### **2.5 The judiciary**

44. Act No. 22/92 of 20 August 1992 on the organization of the judiciary, as amended and supplemented by Act No. 19/99 of 15 August 1999, establishes a single court system composed of:

- The Supreme Court;
- The Court of Audit and Budgetary Discipline;
- The appeal courts;
- The regional courts;
- The administrative courts;
- The commercial courts;
- The courts of minor jurisdiction;
- The labour courts;
- The military courts.

45. The judiciary adjudicates disputes arising from the application of the law and of regulations. It is independent of the executive and legislative branches. In the performance of their duties, judges are subject only to the authority of the law.

##### **2.5.1 The Supreme Court**

46. This is the highest court in the land and has its seat in Brazzaville. It has jurisdiction over the whole of the national territory and supervisory authority over all other courts in the country. It renders judgements and issues opinions on international obligations and on general regulations when such matters are referred to it. It adjudicates on: (i) applications for judicial review of

decisions by various administrative authorities on grounds of misuse of authority; (ii) appeals to set aside last-instance decisions on any matter by all courts and by quasi-judicial administrative bodies on grounds of incompetence, errors of law, or breaches of custom or legal principles. It also has authority to set aside enforceable decisions or recommendations made by arbitration boards or recommendation commissions, and arbitral awards pertaining to the settlement of disputes pursuant to arbitration clauses.

47. The Supreme Court also hears applications for review, for settlement of conflicts of jurisdiction, and for transfer from one court to another in cases involving major or minor criminal offences on grounds of bias, public safety or interruption of the course of justice, or to ensure the sound administration of justice:

- Applications for damages against a court or an individual judge;
- Crimes and offences committed by judges;
- Investigation proceedings against judges subject to the jurisdiction of the High Court of Justice;
- Appeals on points of law, with authority to make transfer orders, against decisions rendered by the criminal courts.

48. It may be consulted by the Government on draft regulations and on all matters in respect of which its authority to intervene is recognized by the Constitution or by law. It issues opinions on all matters submitted to it by the President of the Republic, the members of the Government and the members of the parliamentary bureau.

49. The constitutional prerogatives of the Supreme Court have been transferred to the Constitutional Court.

### **2.5.2 The Court of Audit and Budgetary Discipline**

50. This court has its seat in Brazzaville. It has jurisdiction in matters relating to management of the finances and accounts of the State, local authorities, all kinds of public establishments, public corporations, semi-public corporations, social insurance and social security agencies, subsidized bodies and, in general, all bodies, with or without legal personality, that the law has placed under its jurisdiction and control. Appeals against its final judgements on points of law may be filed with the Supreme Court and applications for review with the Court of Audit itself.

### **2.5.3 The appeal courts**

51. These courts have their seat in the main town of each administrative department or commune. They hear last-instance appeals against judgements handed down at first instance by courts of minor jurisdiction, regional courts, labour courts and juvenile courts and, in general, first-instance judgements handed down by any competent court in respect of which no special appeal court is designated by law, by order of the investigating judges.

52. They also hear disputes concerning elections to administrative assemblies, councils or other bodies, but not concerning parliamentary or presidential elections, disputes concerning tax assessment, levied rates of direct taxation, assimilated taxes, levies of all kinds in respect of direct taxes and, in particular, taxpayers' applications for remission or reduction and applications to set aside orders of attachment or to review administrative proceedings.

53. Appeals against their judgements on points of law may be filed with the Supreme Court.

#### **2.5.4 The regional courts**

54. A regional court may be established to serve a particular district or locality. Its jurisdiction may comprise one or more districts or several localities.

55. Regional courts are ordinary courts of first instance that are authorized to hear any matter within their jurisdiction except for matters in respect of which jurisdiction has been assigned by the law to other courts.

56. Their structure is as follows:

- One or more civil chambers;
- One or more criminal chambers;
- A juvenile court;
- One or more investigation offices.

57. Pursuant to part IX of Act No. 1/63 of 13 January 1963 (Code of Criminal Procedure), juvenile courts are composed of:

- The juvenile court judge;
- The juvenile court;
- The juvenile criminal court.

#### *The juvenile court judge*

58. Juvenile court judges are appointed on the basis of their abilities and their interest in matters pertaining to children. They have jurisdiction to adjudicate only the least serious cases and order for the most part measures of protection, assistance and education on behalf of juveniles accused of committing minor offences.

59. These measures include:

- A social inquiry;
- A warning;
- Return to parents or guardian;
- Probation;
- Placement in an institution.

60. The juvenile court judge also has jurisdiction to order educational assistance measures (see part 10, section 2, of the Congolese Family Code) on behalf of minors at risk, that is to say minors whose health, safety, morality or education are jeopardized or inadequately protected.

61. Educational assistance measures include:

- A social inquiry;
- Provision for non-formal education;
- Placement with a foster family;
- Placement in an institution.

#### *The juvenile court*

62. This court adjudicates cases of a certain gravity. Thus, only the juvenile court can pass sentence in criminal proceedings against minors charged with a serious offence.

63. It also has jurisdiction to adjudicate crimes committed by minors under 16 years of age.

64. The juvenile court is composed of the juvenile court judge, the president and two other judges.

65. The two non-presiding judges and two alternate judges are appointed for two years by order of the Minister of Justice. They are chosen from men and women over 30 years of age who are known for their interest in issues affecting children and are of recognized competence.

66. The juvenile court may take the following decisions:

- Return to parents;
- Probation;
- Placement in an institution;
- Incarceration in a prison facility with a special block.

#### *The juvenile criminal court*

67. This court has jurisdiction to adjudicate cases involving minors of at least 16 years of age who are charged with a crime. It is composed of the president of the appeal court or a judge appointed by him or her to preside over the special juvenile division, two other judges, one of whom is a juvenile court judge, and a six-member jury.

68. Jury members are selected on the basis of the same criteria as are used to appoint non-presiding judges of the juvenile court.

### **2.5.5 The administrative courts**

69. An administrative court may be established to serve a particular district or locality. Its jurisdiction may comprise one or more districts or several localities. The administrative courts are ordinary courts of first instance for administrative matters.

### **2.5.6 The commercial courts**

70. A commercial court may be established to serve a particular district or locality. Its jurisdiction may comprise one or more districts or several localities. The commercial courts are ordinary courts of first instance for commercial matters.

### **2.5.7 The courts of minor jurisdiction**

71. A court of minor jurisdiction may be established to serve a particular district or locality. Its jurisdiction may comprise one or more districts or several localities. The courts of minor jurisdiction adjudicate all non-contentious civil proceedings and contentious actions to enforce rights in personam and to recover movable property, at first instance and on appeal, involving sums of up to 1 million CFA francs in capital assets and 3 million CFA francs in income, annuities or rent.

72. In criminal matters, these courts have jurisdiction to hear cases involving minor and more serious offences carrying a penalty of up to one year's imprisonment.

### **2.5.8 The labour courts**

73. Labour courts may be established in any department, commune, locality or district where their presence is warranted by the scale of economic activity.

74. They are ordinary courts that deal with social matters. They adjudicate individual or collective disputes regarding employment or apprenticeship contracts between the employee or apprentice and his or her employer.

75. The labour court is composed of a presiding judge and two other judges. The non-presiding judges (two incumbents and two alternates) are selected from among members of trade unions and employers' associations.

### **2.5.9 The military courts**

76. These courts may be established in a military region or a garrison. They adjudicate cases involving military offences entailing penalties and related minor offences.

77. The military courts are composed of:

- A criminal division;
- A police division;



- A criminal division for juveniles with jurisdiction to adjudicate cases involving students at military training schools;
- One or more investigation offices.

## **2.6 The Constitutional Court**

78. The Constitutional Court has nine members who are appointed for a renewable nine-year term. One third of its members are renewed every three years.

79. Three members of the Constitutional Court are appointed by the President of the Republic.

80. The other members are appointed by the President of the Republic as follows: two members on the basis of a proposal by the Speakers of each Chamber of Parliament and two members on the basis of a proposal by the Bureau of the Supreme Court nominating two members of the Court.

81. The President of the Constitutional Court is appointed by the President of the Republic from among its members. In the event of a tie, the President has a casting vote.

82. The duties of a member of the Constitutional Court are incompatible with those of a member of the Government, Parliament or the Supreme Court.

83. Persons convicted of malfeasance, high treason, perjury, economic crimes, war crimes or genocide or any other crime against humanity may not be members of the Constitutional Court.

84. Other grounds of incompatibility are determined by law.

85. The Constitutional Court is responsible for determining the constitutionality of laws, treaties and international agreements.

86. It sees to it that the process of election of the President of the Republic is properly conducted. It examines complaints and announces the results of the election.

87. With the exception of local elections and preparatory steps leading up to elections, the Constitutional Court rules on any dispute regarding the proper conduct of elections to the upper and lower houses of Parliament.

88. It sees to it that referendums are properly conducted and announces the results.

89. Questions are referred to the Constitutional Court by the President of the Republic, the Speaker of the National Assembly, the Speaker of the Senate or a third of the members of each Chamber of Parliament.

90. The Constitutional Court's seal of approval is required for the promulgation of institutional acts or the entry into force of the rules of procedure of either Chamber of Parliament.

91. In such cases, the Constitutional Court is required to make a determination within one month.
92. However, this period may be reduced to 10 days in an emergency, at the express request of the applicant.
93. Referral to the Constitutional Court has a suspensive effect on the period fixed for promulgation of the law or entry into force of the rules of procedure.
94. Any individual may apply to the Constitutional Court for a ruling on the constitutionality of legislation, either directly or by raising an objection of unconstitutionality before a court in proceedings in which he or she is involved.
95. In the event of an objection of unconstitutionality, the court concerned stays the proceedings and accords the applicant a time-limit of one month from the date of notification of the decision.

## **2.7 The High Court of Justice**

96. The High Court of Justice is composed of members of the National Assembly and the Senate elected in equal numbers by their peers, and of members of the Supreme Court, also elected by their peers.
97. Under the presidency of the First President of the Supreme Court, it has jurisdiction to try the President of the Republic in the event of high treason.
98. Members of the National Assembly and the Senate, ministers, members of the Supreme Court and members of the Constitutional Court may be tried by the High Court of Justice for acts characterized as crimes or offences committed in the performance of their duties. They may be indicted only on the basis of a decision by secret ballot of a two-thirds majority of the members of the two houses of Parliament meeting jointly.
99. The principals and accomplices of persons referred to in articles 153 and 154 may also be tried by the High Court of Justice, in which case the indictment does not have to be preferred by Parliament.

## **2.8 The Economic and Social Council**

100. The Economic and Social Council is an assembly that serves the authorities in an advisory capacity.
101. It may, on its own motion, take up any economic or social issue of relevance to the Republic of the Congo.
102. Matters may also be referred to it by the President of the Republic, the Speaker of the National Assembly or the Speaker of the Senate.

103. The Economic and Social Council may also be consulted on draft international treaties or agreements, Government bills, private members' bills, and draft decrees with an economic and social dimension.

104. All economic or social development bills, programmes and plans, except for the national budget, are also referred to the Economic and Social Council.

105. The office of member of the Economic and Social Council is incompatible with that of member of Parliament, minister, member of the Constitutional Court, prefect, mayor, sub-prefect or local councillor.

## **2.9 The High Council on Freedom of Communication**

106. The High Council on Freedom of Communication oversees compliance with the principles of freedom of information and communication.

107. It also delivers technical opinions and makes recommendations on matters of relevance to the field of information and communication.

## **2.10 The Mediator of the Republic (Ombudsman)**

108. The Mediator of the Republic is an independent authority whose job is to simplify and impart a more human dimension to relations between the administration and the general public.

109. Any natural or legal person who considers that a public body failed to act, in a matter concerning that person, in a manner consistent with its public-service vocation, may refer the matter to the Mediator of the Republic in the form of an individual complaint.

## **2.11 The National Human Rights Commission**

110. The National Human Rights Commission is a body that monitors the promotion and protection of human rights.

## **2.12 Administrative structure**

111. The territory of the Congo is divided into 11 departments, including that of Brazzaville. The departments are divided into sub-prefectures. The departments and sub-prefectures are headed by prefects and sub-prefects. The cities are headed by mayors.

## **2.13 Economic situation**

112. The country's economy is dominated by the oil sector, whose share in gross domestic product (GDP) rose from 33 per cent in 1980 to 53.6 per cent in 2002. The sector's share in exports of goods and services and its contribution to public revenue amounted to 87 per cent and 69 per cent respectively during the same period.

113. Forestry, the country's second generator of exports, accounted for only 1 per cent of GDP in 2002, compared with 5.1 per cent for agriculture, livestock rearing, hunting and fishing combined, 5.2 per cent for manufacturing industries and 27 per cent for services.

114. Between 1990 and 2000, the average annual performance of GDP was -0.2 per cent, in contrast to the previous decade when an annual average growth rate of 3.3 per cent was recorded. This downturn was due to the instability of the macroeconomic environment, which was in turn due to the socio-political upheavals that marked the end of the single-party system from the early years of the decade.

115. Thus, the Congolese economy was affected during the 1990s by major financial imbalances, especially in public finances, with a current-account deficit, as a percentage of GDP, of 14 per cent in 1990 and 8.6 per cent in 1998. However, there has been a slight improvement since 2000 thanks to the rise in oil prices and the appreciation of the dollar, leading to an increase in oil revenues. The debt service burden also remained heavy, representing 21.4 per cent of export earnings and 23.6 per cent of total public revenue in 2000.

116. Another trend recorded during the period was the decline in per capita income (at an average annual rate of 3.4 per cent between 1990 and 2000) and in household consumption, and the increase in human poverty. Thus, the Human Development Index (HDI) dropped from 0.538 in 1990 to 0.502 in 2001, life expectancy at birth from 52.1 to 48.5, the net primary enrolment ratio from 81.6 per cent to 77.4 per cent and the Human Poverty Index (HPI-1) from 31.1 to 34.5.

**Table 1**

**Main development indicators**

Indicator	Value	Year
Population (inhabitants)	2 854 000	2000
Annual population growth rate	3.2%	2001
Urbanization rate	66%	2001
Life expectancy at birth	48.5 years	2001
Per capita gross national income (United States dollars)	700	2001
Annual growth in gross national product per capita	-3.4%	1990-2000
Foreign debt as a percentage of GDP	180.7%	2002
Persons suffering from malnutrition as a percentage of the population	32%	2000
Net primary enrolment ratio	77.9%	2002
Adult literacy ratio	81.8%	2001
HIV/AIDS prevalence rate	7.2%*	2003
Malaria-related mortality rate (per 100,000 inhabitants)	78	2000
Under-5 mortality rate	108%	2001
Maternal mortality rate (per 100,000 live births)	1 100	2002
Human Development Index	0.502	2001

*Source: National report on Millennium Development Goals, Congo, United Nations system, August 2004.*

\* The 2003 survey by the Permanent Executive Secretariat of the National Anti-AIDS Council (SEP-CNLS) gives a seroprevalence rate of 4.2 per cent.

### **Chapter 3: General legal framework within which human rights are protected**

117. The general legal framework is taken here to mean the principal legal instruments drawn up by the United Nations to protect human rights in general, followed by the instruments to which the Congo is a party.

#### **3.1 Principal international legal instruments**

118. Universal instruments:

- The Charter of the United Nations (1945), which reaffirms faith in the dignity and worth of the human person and in the equal rights of men and women;
- The Universal Declaration of Human Rights (1948), proclaimed as a common standard of achievement for all peoples and all nations in order to guarantee fundamental freedoms and political, social, economic and cultural rights;
- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction;
- The Convention relating to the Status of Refugees;
- The 1967 Protocol relating to the Status of Refugees;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The Single Convention on Narcotic Drugs, 1954;
- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- The 1971 Convention on Psychotropic Substances.

119. Directly relevant instruments:

- The Convention on the Rights of the Child;

- The International Labour Organization (ILO) Convention concerning the Night Work of Young Persons Employed in Industry (No. 6), 1919;
- The ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), 1999;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- The 1973 Hague Convention on the law applicable to maintenance obligations;
- The 1980 Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children;
- The 1980 Convention on the Civil Aspects of International Child Abduction;
- The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, May 1993;
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

120. Regional instruments:

- The African Charter on Human and Peoples' Rights;
- The African Charter on the Rights and Welfare of the Child.

### **3.2 Instruments to which the Congo is a party**

121. In addition to the Convention on the Rights of the Child, the Congo has ratified several international human rights instruments, such as:

- The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (1993);
- The International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the International Covenant on Civil and Political Rights.

### 3.3 Incorporation of human rights into domestic law

122. All the above-mentioned treaties, universal instruments and conventions specifically relating to children form part of international law and it is for each State to incorporate them into its own law.

123. The Congo has consistently included references to human rights in each of its Constitutions. Thus the Constitutions of 1961, 1963 and 1979, as amended in 1990, and the Constitutions of 1992 and 20 January 2002, all proclaim their continued commitment to the fundamental rights defined in the relevant and duly ratified international human rights instruments.

124. Children are first mentioned in the Congolese Constitution in 1963, when their right to instruction and education was established as an obligation on the family and the State (part II, art. 12). The 1979 Constitution, as amended in 1990, ensures equal treatment by establishing that the obligation on parents extends to all their children, whether born within or outside marriage (art. 6).

125. The 1992 Constitution is fully in line with its predecessor but goes into more detail on the duties towards children of family, State and society (arts. 38 and 41-45). The Constitution of 20 January 2002 holds to the same course and adopts the same approach.

126. As can be seen, in the Congo children exist, have a place and are recognized as subjects of law.

127. And what of the law? The Constitution, as the nation's basic text, makes it possible for ordinary law and decrees, orders and directives to regulate particular areas of responsibility. Thus the following items of legislation enact various codes, decrees and laws:

- Act No. 18/60 of 16 January 1960, on moral protection for Congolese youth;
- Act No. 35/61 of 20 June 1961 (Congolese Nationality Code);
- Act No. 1/63 of 13 January 1963 (Code of Criminal Procedure);
- Act No. 18/64 of 13 July 1964, on prevention of the unlawful removal from the Congo of a child born to a Congolese mother and a foreign father;
- Act No. 15/66 of 22 June 1966, amending Act No. 19/64 of 13 July 1964 on protection of minor schoolchildren;
- Act No. 45/75 of 15 March 1975 (Labour Code), as amended and supplemented by Act No. 6/96 of 6 March 1996;
- Act No. 73/84 of 17 October 1984 (Family Code);
- Act No. 1/84 of 20 January 1984, on reorganization of legal aid;
- Act No. 4/86 of 25 February 1986 (Social Security Code);
- Decree of 15 January 1910, on the Criminal Code in French Equatorial Africa;

- Decree No. 60/93 of 3 March 1960, prohibiting children aged under 16 from frequenting or visiting public places between 8 p.m. and 5 a.m.;
- Decree No. 60/94 of 3 March 1960, regulating the admission of minors aged under 16 to cinemas and theatres;
- Decree No. 60/95 of 3 March 1960, regulating admission of minors aged under 16 to dance halls and places selling alcoholic beverages.

#### **Chapter 4: Maintenance and promotion of human rights**

##### **4.1 Bodies responsible for the maintenance and promotion of human rights**

- The Ministry of Justice and Human Rights

Work at this level is carried out by three departments:

- The Department of Human Rights and Fundamental Freedoms, which is responsible for ensuring the protection and promotion of citizens' rights and monitoring national legislation and international conventions on individuals' and peoples' rights;
  - The Department of Legal Protection for Children, which is responsible, inter alia, for implementing child-protection legislation; rehabilitating child offenders or children at moral risk in public or private schools; bringing national legislation into line with international conventions on the protection of children and child offenders or children at moral risk; and executing juvenile court judgements;
  - The Department of Prison Administration, which is responsible for the custody and treatment of detainees with a view to social rehabilitation.
- The Ministry of Technical and Vocational Education;
  - The Ministry of Primary and Secondary Education with responsibility for literacy;
  - The Ministry of Sport and Youth Redeployment;
  - The Ministry of Health and Population;
  - The Ministry for the Advancement of Women and the Integration of Women into Development;
  - The Ministry of Social Affairs, Solidarity, Humanitarian Action and the Family;
  - The Mediator of the Republic (Ombudsman);
  - The Inter-Ministerial Committee for Action against Drugs;
  - The High Council on Freedom of Communication.



## **4.2 Organizations for the defence of human rights in the Congo**

### **4.2.1 Governmental organizations**

- The National Human Rights Commission;
- The Mediator of the Republic (Ombudsman).

### **4.2.2 NGOs**

- Association des Femmes Juristes du Congo;
- Forum Panafricain des Droits de l’Homme;
- Observatoire Congolais des Droits de l’Homme;
- Association Congolaise pour les Nations Unies;
- Association Congolaise de Lutte contre la Violence à l’Egard des Femmes;
- Association des Droits dans l’Univers Carcéral;
- Convention Nationale des Droits de l’Homme;
- Association Panafricaine Thomas Sankara;
- Comptoir Juridique Junior;
- Fédération des Enfants et Femmes du Congo;
- ONG Sueco;
- Centre Congolais pour la Promotion et la Défense des Droits de l’Enfant.

## **Chapter 5: Information and advertising**

128. Under article 13 of the Convention, children have the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice. The Constitution guarantees the freedom of the press and of information. Censorship is prohibited and there is free access to sources of information. Every citizen has the right to information and communication. Activities related to these areas may be carried out in complete independence under the law.

129. These provisions have been incorporated into the Constitution of 20 January 2002 (art. 19).

130. Information on human rights is disseminated in the Congo through the media and newsletters from human rights organizations and associations.

131. The exercise of the right to information is guaranteed in the Congo by radio and television broadcasts, publishing and printing houses, newspapers and news agencies, picture and photograph agencies, documentation and archive services, polling organizations, posters and other media. The Congolese State thereby ensures that children have access to information and material from a range of sources.

132. In addition, the Congo has reorganized the Ministry of Communication to enable it to regulate the right to information, the freedom of expression, the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, or in the form of art. The vehicles for such communication are National Radio and Television, the written press and publishing, cyber-journalism and the Internet; all are supervised by the High Council on Freedom of Communication.

133. Act No. 8/2001 of 12 November 2001, on freedom of information and communication, provides in article 2 that information and communication operate under a free-enterprise regime. Article 3 provides that the right to freedom of information and communication may be limited only by considerations of respect for human dignity, the freedom and property of others, pluralism in the expression of thought and opinion, the maintenance of public order, the technical limitations of the media themselves and the need to promote peace and the national culture. Under article 4, access to sources of information is unlimited and censorship prohibited. No one need fear for their ideas or opinions. The right to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any medium whatsoever, within the limits established by the Act, is guaranteed.

## 5.1 National Radio

134. National Radio is a medium for the reception and broadcasting of information, accessible to the general public and operating 20 hours a day, basically in three languages, French, Lingala and Kituba, and now with nationwide coverage. Broadcasting in the national languages gives the vast majority of citizens access to information.

135. Congolese Radio broadcasts information on human rights through its coverage of national and international days of the child or of the rights of the child, and related meetings, lectures and seminars.

136. Radio Brazzaville, which is a station of Radio Congo, devotes nearly an hour every Friday afternoon to a special programme entitled “*Enfants de tout bord*”, in which children may freely voice their opinions on any social problems of direct concern to them.

137. There are also a number of private radio stations (Radio Liberté, Radio DRTV) and several closed-circuit radio services.

## 5.2 National Television

138. National Television has regular broadcast coverage of events and sectoral developments. Congolese Television was one of the first to be established in French-speaking black Africa but does not find it easy to produce programmes about children. From time to time a programme may be put together and presented by a non-professional, a non-specialist journalist or an education specialist. Only Télé Pointe-Noire, a National Television station in Pointe-Noire, airs a programme on children’s right to health, *Acti-Santé*, three times a week.

139. Although there are no journalists whose primary focus is on children's problems and rights, there is some provision for children with disabilities, notably the hearing-impaired, for whom there is a special programme, *Les Sourds*, which is a news broadcast in sign language.

140. The private television stations Digital Radio et Télévision (DRTV) and Télé Pour Tous have no programmes on children's rights.

### **5.3 The printed press**

141. Congo has had a printed press since 1952. Its development has reflected political developments in the country. There have always been two types of newspaper, State-owned and private, a duality which, in practical terms, embodies the concept of "freedom of expression". Media liberalization has spawned around 30 newspapers, thereby highlighting the importance of freedom of the press and freedom of expression.

142. Yet there is no part of the press exclusively or specifically devoted to the rights of the child. Pluralism has focused more on economic considerations and making the paper pay. Nevertheless, all major developments in this area that are brought to the papers' notice are popularized, distributed and published.

143. The printed press has been regulated since 2001 by Act No. 8/2001 of 12 November 2001, on freedom of the press and of communication. There is a children's newspaper.

144. Sueco, an NGO in Pointe-Noire, runs publicity campaigns on children's rights. There is also a Congolese children's rights centre (Centre Congolais pour la Promotion et la Défense des Droits de l'Enfant).

145. It must be said that the Congolese Government does not contribute enough to efforts to publicize children's rights.

### **5.4 Advertising**

146. It is no longer possible to conceive of a press without advertising, and advertising is ubiquitous: in the daily paper and the special-interest magazine, in fashion weeklies and philosophical journals; it is a presence in the cinemas, a constant presence on radio, an invasive presence on television; and it has turned buses, walls, tree trunks, lifts and public phone booths into advertising media.

147. Act No. 8/2001 of 12 November 2001, on freedom of the press and of communication, gives a detailed definition of advertising media: billboards for artistic posters, neon and electronic hoardings, fences, walls and roofs, station and airport concourses, building facades, sports grounds, cars, the radio, periodicals, books, sandwich boards, etc.

148. Beyond publicizing the product itself, which is its primary objective, advertising depicts an ideal world, a fairytale existence. To children it brings the delights of entertainment and dreams, the escape they so often need; but it in no way helps promote implementation of the Convention on the Rights of the Child.

149. Lastly, the Congo still lags behind in the field of information and communications technology, as statistics show: 15,000 telephone lines, 550 GSM subscribers, 6,000 desktop computers, 1 television station and 3 private channels, and fewer than 100 Internet cafés, for a population of 2.8 million. Measures to publicize the Convention do not go far enough.

## **PART II. IMPLEMENTATION OF THE CONVENTION IN THE CONGO**

### **Chapter 6: Public freedoms and civil rights of the child**

#### **6.1 Definition of the child and importance of the Convention**

150. The Convention on the Rights of the Child is an instrument of great importance, having been accepted by a large number of countries. Governments have made an official commitment to the protection, defence and realization of the rights of the child. The conceptual approach is new, making it clear that protection and care are not provided to children simply because they require social services, i.e., merely in response to a need, but must be seen as rights: the right to life, the right to health, the right to education, etc.

151. Thus many of those countries which have ratified the Convention have begun amending their domestic legislation in order to promote children's rights by incorporating the principles of the Convention. The Republic of the Congo is one of those, and it introduced several articles on children's rights into its 1992 Constitution, in accordance with the Convention.

152. According to article 1 of the Convention, "the child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

153. To the Congolese a child, as traditionally perceived and according to the most widespread beliefs, is a social being, a human being in miniature, and a gift from God.

154. Children are much wanted in the Congo. They bring security and honour to parents, family and clan. They are a sign that we are growing up or have grown up, become adults. They are a form of life insurance for people and their families; they are a guarantee of the continuity of the family. They symbolize the esteem and social recognition accorded to a person or a family. Childhood ends upon becoming *kuluntu* or *mokolo* ("old head"); then one joins adult society and will have to work - a sign of having taken one's expected and longed-for place. From now on a person has the right to become, if possible, the head of the family.

155. In modern law, the child is the human being who exists from the moment of conception until the age of majority or adolescence. Under article 318 of the Family Code, "anyone of either sex who has not reached the age of 18 is a minor".

#### **6.2 General principles**

156. The Convention establishes four main general principles: non-discrimination, the best interests of the child, the right to life, survival and development, and children's right to express their views freely.

### **6.2.1 Non-discrimination**

157. Under the Convention and under Congolese law, the child is a subject of rights. Article 2 of the Convention establishes the principle that all rights should be ensured to each child without exception and that States parties have an obligation to take all appropriate measures to ensure that children are protected against all forms of discrimination and to avoid violating any of their rights for any reason whatsoever.

158. Like all the Congo's earlier Constitutions, the Constitution of 20 January 2002 recognizes that all citizens are equal before the law. Thus, under article 8, "All citizens shall be equal before the law. Any discrimination on the basis of origin, social or material status, racial, ethnic or departmental origin, sex, education, language, religion, philosophy or place of residence is prohibited, subject to the provisions of articles 58 and 96. Women shall have the same rights as men ...". Under article 32 "All children, whether born within or outside marriage, shall have the same rights and duties in respect of their parents. They shall enjoy the same protection under the law. Parents have obligations and duties towards their children, whether born within or outside marriage."

159. In the preamble to items 6, 7 and 8, the Family Code includes the same provisions, which are in line with article 2 of the Convention.

160. The texts cited above guarantee the right to life, survival and development in accordance with article 6 of the Convention. Practice and principle do not always match, however. For example, few HIV-positive children have access to antiretroviral drugs. The State has an obligation to provide accredited health centres with antiretroviral drugs in syrup form. The Congolese Government should fulfil the undertakings it made at the seminar to launch the anti-AIDS project in August 2004.

### **6.2.2 The best interests of the child**

161. Under article 3 of the Convention, in all actions concerning children, the best interests of the child shall be a primary consideration.

162. This is the case in the Congo in such matters concerning children as placement, adoption, care and imprisonment. The court is required to take account of the best interests of the child in ordering the measures to be taken. Under article 194 of the Family Code, on parents' divorce, for example, "parental care and authority in respect of the children of the marriage shall be awarded by the court in the interests of the children regardless of their age".

163. Children also have the right to counsel of their own in legal disputes which affect them. Under article 696, paragraphs 2 and 3, of the Code of Criminal Procedure:

"(2) When one or more minors aged under 18 are involved in the same proceedings as one or more persons of full age, civil action may be brought against all those liable in the criminal courts competent in respect of the persons of full age;

“(3) In such cases, the minors shall not appear at the hearings, only their legal guardians. In the absence of a defence counsel appointed by the minors or their legal guardians, defence counsel shall be appointed by the court ...”.

Similarly, under article 710, paragraphs 1 and 2, “(1) The juvenile court shall rule after having heard the child, any witnesses, the parents or guardian, the public prosecutor and the defence counsel. Joint principals and accessories of full age may be heard as privileged witnesses.

(2) The President of the juvenile court may excuse the child from appearing if it is in the child’s best interests. In that case minors shall be represented by their defence counsel or their father, mother or guardian; the decision shall be deemed to have been handed down on the basis of a hearing.”

### **6.2.3 The right to life, survival and development**

164. Under article 6 of the Convention, “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

165. In the context of the right to life and survival, the State should take measures enabling children to live a joyful life in a peaceful world where they can play, learn and grow. It should also take measures to improve children’s health, promote prenatal care, vaccination and breastfeeding and reduce the infant mortality rate. The State should also provide the communities in which children live with supplies of drinking water and better access to sanitation. In order to ensure the child’s harmonious development, the State should take steps to eliminate hunger, malnutrition and famine.

166. Under article 7 of the Congolese Constitution, “The human person is sacred and has the right to life. The State has an absolute obligation to respect and protect the human person. Every citizen has the right to develop his or her personality freely while respecting the rights of others and public order.”

166. In the preamble to items 6, 7 and 8, the Family Code guarantees the right to life, survival and development.

### **6.2.4 Children’s right to express their views freely**

167. Article 12 of the Convention calls upon States to assure children who are capable of forming their own views the right to express those views freely in all matters affecting them, and to give those views due weight. To that end, the article recommends that children should be provided the opportunity to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative.

168. In that context, the first Forum for the Children of the Congo was held from 23 to 25 September 2003 and culminated in the establishment of the Congo’s first Children’s Parliament. The Parliament, which is a genuine forum for free expression and consensus, is made up of 36 members democratically elected by their peers: 2 per department in the interior, 4 for Pointe-Noire and 2 per arrondissement in Brazzaville.

### **6.3 Children's civil rights and freedoms**

#### **6.3.1 Name, nationality and preservation of identity**

169. Under article 7, paragraph 1, of the Convention, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

170. The Congo has adopted legislation in this regard. Notification of births and deaths is compulsory and, under article 24 of the Family Code, "Births and deaths must be registered. Failure to register within the specified time and by the persons listed in articles 45, 60 and 63 shall be punishable by a fine of between 2,500 and 10,000 CFA francs."

171. The same article places the obligation for ensuring compliance with these formalities upon the Presidents of the village or district committees. They may be fined between 2,000 and 5,000 CFA francs if, having been informed of a failure to register within the specified time by the persons specified by law, they omit to report that fact to the registrar.

172. Under article 45 of the Family Code, "All births must be notified to the registrar within one clear month. If this period expires on a public holiday, the birth may be validly registered on the working day immediately following ...".

173. The persons who may register a birth are the father, mother, grandparents or close relative, the doctor, midwife or birth attendant, or any other person present at the birth.

174. The law provides for late registration within three months of the expiry of the specified period by order of the public prosecutor. The public prosecutor may at any time and regardless of the periods specified register a birth of which he has knowledge and which has not yet been notified to the registrar.

175. Upon registration, the child receives a name. Under article 92 of the Family Code, everyone must have a family name, which may be single or compound, or associated with another surname. This name should be the father's name, the name of the parent who has recognized the child, the name of the adoptive parent or, where the parents are not named, a name given by the registrar. Forenames are optional.

176. Article 100 provides for protection of the name against any wrongful use by another party; article 101 provides for imprescriptibility of the name and declares void the conventions on names.

177. To improve monitoring of birth registration, a system has been instituted by law whereby civil status registration is supervised by the President of a regional court or court of minor jurisdiction and by the public prosecutor.

178. In order to preserve children's identity in accordance with article 8 of the Convention, Congolese law provides for penalties to be imposed on anyone falsely registering a birth by making inaccurate statements concerning the child's sex or family or given names, the time and place of birth, or the parents' names and address. The penalty is a prison term of between two months and one year and a fine of between 20,000 and 100,000 CFA francs, without prejudice to liability for damages.

179. Despite these obligations, however, there are many children who have no birth certificate, a problem exacerbated by the conflict situation. A survey<sup>1</sup> was carried out in Brazzaville in 2001 with the support of the United Nations Population Fund (UNFPA) and UNICEF with a view to improving the rate of registration and restoring children's rights, where impaired.

180. The survey was conducted in the arrondissement of Ouenzé in Brazzaville and covered unregistered resident children born between 1 January 1996 and 31 December 2000. The results showed how widespread the problem is. The breakdown by year of birth showed high rates in 1997 for children aged 4 (23.9 per cent) and in 1999 for children aged 2 (22.7 per cent). These periods correspond to years of armed conflict. Unregistered children do not find it easy to get into school: indeed, 87.3 per cent of them do not attend school. Women in the 20-24 and 25-29 age groups were very much less likely to have registered their children, a problem affecting single mothers more than anyone else.

181. The State is keenly aware of this problem and has launched a civil status reform with a view to improving registration and coverage of births and deaths.

182. The theme of the thirteenth Day of the African Child, (16 June 2003) was *L'enregistrement universel des naissances: un droit pour commencer* ("Birth registration for all: a first right for all").

183. Special events were organized at which, exceptionally, birth certificates were issued to 307 children, 101 in Brazzaville and 206 in Pointe-Noire.

184. Nevertheless, the issue of the ever-growing number of children born over the past 10 years and others yet to be born, with no guarantee of obtaining a birth certificate, still remains.

185. Faced with this situation, the Congo undertook to work with UNICEF to prepare a country report on the problem, followed in November 2003 by a seminar-workshop on promoting birth registration, in partnership with UNICEF.

186. This seminar-workshop had four aims:

- To adopt the country report on registration of births prepared by the Ministry of Social Affairs;
- To identify the obstacles to registration of births;
- To establish mechanisms to remove those obstacles;
- To enable all actors to define their role in the implementation of those mechanisms.

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<sup>1</sup> UNICEF-funded survey of unregistered resident children born between 1 January 1996 and 31 December 2000; analytical report, Brazzaville, July 2002.



187. The State officials and representatives of civil society who attended the workshop identified the principal factors which prevent registration of births and which are blatant violations of the Family Code and Decree No. 2001-529 of 31 October 2001, on the issuance free of charge of civil status certificates:

- The cost of obtaining a birth certificate, which parents find prohibitive:
  - The attestation of birth issued by the health centre costs up to 4,000 CFA francs;
  - The personal detail form to be completed at the town hall costs between 1,000 and 2,500 CFA francs;
  - Failure to register the birth within the specified time (one clear month) is punishable by a fine of between 2,500 and 10,000 CFA francs (Family Code, art. 24);
  - Late registration within three months requires applicants to request action by the public prosecutor in order to obtain an order for late birth registration, which costs 10,000 CFA francs in accordance with Order No. 3088/MJDH/MEFB of 9 July 2003, on fees for certificates and court formalities in respect of civil and commercial matters;
  - A birth ruling (birth certificate issued by judicial decision and upon the authority of the President of the court) costs 15,000 CFA francs, again in accordance with Order No. 3088.
- Breakdowns in the civil registry system:
  - Lack or shortage of registers;
  - Uneven distribution of staff;
  - Closure or destruction of a number of registry offices.

188. In order to remove these obstacles it was decided:

- To launch a campaign of retroactive registration of unregistered children;
- To draft legislation ensuring the issuance free of charge of birth certificates, personal detail forms and late birth registration orders in respect of children up to the age of 18;
- To boost the resources of the Department of Civil Status, in particular with regard to registers.

189. How have these decisions been implemented? How many children are affected and in which departments?

### 6.3.2 Retroactive birth registration campaign

190. The following action has been taken:

- Decision by the Council of Ministers, at a meeting held on 14 July 2004, to the effect that 2005 would be the “Year of universal free registration of unregistered children”; the issue was made a national priority.
- Provision of services required for birth registration:
  - 2,000 booklets of personal detail forms for birth registration;
  - 2,500 booklets of birth attestations (50 sheets each);
  - 2,000 registers of birth (50 double sheets each);
  - Booklets of preprinted late registration orders (50 sheets).
- Establishment of an intersectoral committee for the promotion of birth registration. The committee is a forum for consultation and coordination in support of the decision to remove all obstacles and encourage universal registration in 2005, including by: standardizing and simplifying procedures and basic services; ensuring that registration is in fact free of charge; amendment of the law in respect of time limits; establishment of local registry offices; substantial budget allocations; and proper supply of documents such as birth registers and registration forms, and personal detail forms.
- Training seminar-workshop for officials working with families on pre-registration of births not notified to the civil registry. In this regard, a documentary film was produced with the technical assistance of Congolese Television. The film was conceived as a forum for dialogue among all concerned parties, with a view to promoting children’s interests in the question of birth registration.
- Holding of discussions and broadcasts in the domestic and foreign media (RFI, TV5 Afrique, Africa No. 1).
- Event organized in conjunction with national polio vaccination days, from 16 to 18 November 2004, entitled “Universal free registration of unregistered children”. Supported by national and international NGOs, the event was basically a promotion campaign and did not achieve nationwide coverage, partly for logistical reasons. It took place simultaneously in Brazzaville, Pointe-Noire and the departments of Niari, Cuvette, Sangha and Lékoumou, and resulted in the identification and registration of 22,913 unregistered children. The majority (72.4 per cent) were registered in Brazzaville, followed by Pointe-Noire (8.1 per cent), Niari (6.5 per cent), Cuvette (5.3 per cent), Sangha (2.1 per cent) and Lékoumou (5.6 per cent).

**Table 2**  
**Outcome of pre-registration drive for children  
not notified to the civil registry**

Locality/Department	Pre-registered children	
	Number	Percentage
Brazzaville	16 582	72.4
Pointe-Noire	1 862	8.1
Niari	1 488	6.5
Cuvette	1 214	5.3
Sangha	477	2.1
Lékoumou	1 290	5.6
Total	22 913	100.0

### 6.3.3 Acquiring nationality

- According to the provisions of Act No. 35/61 of 20 June 1961 (Congolese Nationality Code), nationality is acquired:
  - By assumption of the parents’ nationality: thus, a child born to a Congolese father and mother is Congolese;
  - By virtue of the law;
  - By marriage (arts. 18-19);
  - By virtue of birth and residence in the Congo (arts. 20-21);
  - By decision of the authorities following naturalization (arts. 26-35);
  - By decision of the authorities as a result of reintegration (children born in the Congo who subsequently leave the country may acquire Congolese nationality if they return and live in the Congo from the age of 16).

191. Under article 8, “Any child born in the Congo shall be Congolese if born:

1. To a Congolese father and a mother born in the Congo; or
2. To a father born in the Congo and a Congolese mother; or
3. To a father and mother both born in the Congo.”

192. Under article 9, “Any child shall be Congolese, subject to the right to renounce that nationality under the conditions laid down in articles 14 and 15 in the event that filiation to a foreigner is established:

1. If born to a Congolese father or mother;
2. If born in the Congo to parents one of whom was also born in the Congo;
3. If born in the Congo to parents unknown.”

193. Under article 10, “Any newborn child found in the Congo shall be presumed to have been born in the Congo, failing proof to the contrary.”

194. Congolese legislation on nationality is very flexible and does not permit any child born and resident in the Congo to have the status of stateless person. In this regard it is in line with article 7 of the Convention.

#### **6.3.4 Protection of children’s privacy and respect for their freedom**

195. Under article 16, paragraph 1, of the Convention, “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”

196. Children’s privacy is guaranteed at all stages of judicial proceedings. Under article 711 of the Code of Criminal Procedure, “(1) Each case shall be tried separately with no other accused present; (2) Hearings shall be closed to all but the witnesses, the minor’s close relatives, and legal guardian, the defence counsel, representatives of youth associations and of services or institutions for children, and probation officers; (3) The President may at any time require the minor to withdraw for all or part of the proceedings. He may also require witnesses to withdraw after having been heard; (4) The record of court hearings in respect of minors may not be published in books or the press, on radio or film or through any other medium. Publication in such media of any text or illustration relating to the identity or personality of juvenile offenders is also prohibited. Any violation of these provisions is punishable by a fine of between 36,000 and 3 million CFA francs.”

197. The freedoms recognized to children under the Convention are freedom of expression (art. 13), freedom of thought, conscience and religion (art. 14), freedom of access to information (art. 17) and freedom of association and peaceful assembly (art. 15).

198. These freedoms are established and regulated in the Congo by the Constitution, in articles 18 (freedom of belief and conscience), 19 (freedom of opinion, information and communication and freedom of access to sources of information), 20 (confidentiality of correspondence, telecommunications and all other forms of communication except where provided by law), and 21 (freedom of movement, association, assembly, procession and demonstration).

### **6.4 The child’s family environment**

#### **6.4.1 Parental guidance and responsibility**

199. Article 5 of the Convention calls upon States Parties to respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention.

200. Congolese tradition strongly encourages the care of children by a large number of people. In law, articles 320 and 321 of the Family Code place an obligation on parents to support and

raise their children up to the age of majority or until their emancipation through marriage. Children are placed under parental authority, which includes the obligation to ensure the care of children and in particular to establish an abode and see to their instruction and education.

201. The State is expected to support parents in this task (Convention, art. 18, paras. 2 and 3) by rendering appropriate assistance and ensuring the development of institutions, facilities and services for the care of children; and by taking all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

202. The Convention requires the Congolese State to provide all Congolese children with the means to live a decent life, through the award of grants and benefits which will enhance their income and their standard of living and, in case of need and within their means, to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (art. 27).

203. The economic situation of many Congolese households is one of deprivation and dire poverty. A look at Congolese law reveals an alarming picture of State aid to parents, which in most cases is negligible; indeed, certain sectors of the population - peasants, craftsmen, the unemployed and other vulnerable groups - receive no help from the State in defraying the costs of supporting and bringing up their children. They receive no family allowances or other family benefits such as maternity allowances, and no education or housing allowances because there is no general social security system. Social security is provided only to wage earners. Thus only wage earners and their families are entitled to sick pay from their employers under the relevant collective agreements.

204. The family allowances paid to civil servants are a pittance: 1,200 CFA francs per child per month, and that amount is considerably reduced from the birth of the third child, falling to 600 CFA francs. Where both parents are wage earners, they are paid only 1,800 CFA francs and not 3,600 CFA francs; and for more than five children the allowance is 3,000 CFA francs.

205. These allowances have not changed for 40 years, lagging way behind in the current social context of soaring consumer costs. By way of illustration, *chikwange*, a staple food preparation which cost 25 CFA francs in the 1970s, now costs 300 CFA francs, while its weight and volume have been forced down. Rents have followed the same trajectory, while access to health care has become a luxury. Parents working in the informal sector receive no help, they simply have to get by. The first casualty in all these situations is the child.

#### **6.4.2 Separation from parents (Convention, art. 9)**

206. Congolese law guarantees children's contact with their parents for the good of the children and their harmonious development. It allows separation of children from their parents, or from one parent, only in quite specific cases and when it is in the child's interests, for example where children are abandoned or subjected to ill-treatment, under article 328 of the Family Code, or where the parents are separated, divorced or deceased, or in the event of adoption or withdrawal of parental authority.

207. In such cases the court decision takes account of the best interests of the child. Visiting rights are established in cases of parental divorce or separation. Under article 325 of the Family Code, “the court decision granting or recognizing divorce or separation shall also rule on custody of each of the children, who, in their best interests, shall be placed with one or other of the parents or, if necessary, a third person. The parent responsible for custody of a child shall exercise the various rights associated with parental authority over the person and property of the child. The court shall establish the conditions under which the parent denied custody may exercise visiting rights. Regardless of which parent the children are placed with, both father and mother shall contribute to their maintenance and education within their means”.

208. In the event of the death of both parents, the legal guardian has parental authority over the child and is responsible for care, education and maintenance (Family Code, art. 324).

209. For children born outside marriage, both parents have parental authority but custody belongs to the mother. The juvenile court may take educational support measures such as regular visits from a social worker or placement on probation (Family Code, art. 328); or, until such time as the child reaches the age of majority, placement:

- With another relative or person of confidence;
- In a school or vocational training establishment;
- With the child support service;
- In care or in a medical-educational institution;
- In a rehabilitation institution (Family Code, art. 329).

210. These measures may be revoked or modified (Family Code, art. 330).

211. Under articles 331 and 332 of the Family Code, in the event that the parents are relieved of their authority for ill-treatment of a child and where some or all of the associated rights are withdrawn, the court of minor jurisdiction or district court, sitting as a criminal court, or the juvenile judge, shall award guardianship of the child to any person requesting it by application to the court. Failing that, guardianship may also be exercised as for wards of the State, by placing the child in other establishments or even with private individuals, who after three years may apply to the court to be appointed the child’s legal guardians.

212. Guardianship is not applicable in the event of partial withdrawal of parents’ rights in respect of one or more of their children.

213. Withdrawn rights are transferred to minors’ relatives, charitable organizations directed to the public benefit or organizations nominated by the departmental authorities, or to the child support service.

214. These measures may, however, be modified by the originating court, either *proprio motu* or at the request of the public prosecutor, or at the request of the child him or herself, the legal guardian, the supervisory guardian or the persons or institutions with whom the child has been placed.

215. Where one or both parents are in detention or serving a prison sentence, children have visiting rights. Visiting permits are issued by the public prosecutor, the examining judge responsible for the case, or the President of the indictment division.

#### **6.4.3 Family reunification**

216. Under article 10 of the Convention, children and their parents have the right to enter or leave a State party for the purpose of family reunification. Children whose parents reside in different States have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents.

217. The Congolese Constitution (art. 16) is in line with this provision: “All citizens have the right to move freely within the national territory; they have the right freely to leave the national territory if they are not the subject of criminal proceedings, and to return.” This provision is, however, subject to Act No. 18/64 of 13 July 1964 prohibiting the unlawful removal from the Congo of a child of a Congolese mother and a foreign father.

#### **6.4.4 Recovery of maintenance**

218. Article 27 of the Convention recognizes the child’s right to an adequate standard of living, the primary responsibility of parents or others responsible for the child to secure such a standard of living, and the State’s obligation to take all appropriate measures to help them fulfil that responsibility including, if necessary, by securing the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State party and from abroad.

219. In the Congo, the court sets the amount of child maintenance having regard to the liable relative’s monthly income. To break down any resistance on the debtor’s part, an order of attachment of earnings is issued and recovery and repayment are carried out by the Treasury or the accounts department of the company or firm once the order has been served by a process server.

220. If the debtor lives in another State which has signed a judicial agreement with the Congo, recovery will be made following execution of the court ruling granting child maintenance.

#### **6.4.5 Adoption**

221. Under article 21 of the Convention, in countries that recognize and/or permit adoption, it will be authorized only in the best interests of the child, after the parents, relatives and legal guardians have given their informed consent, and provided all necessary safeguards are in place.

222. The child concerned by intercountry adoption should enjoy safeguards and standards equivalent to those existing in the case of national adoption.

223. The State should ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved.

224. The Congolese Family Code regulates adoption in articles 276-298.

225. Under article 276, “Adoption may take place only for good reason and if it is beneficial to the adopted person.”
226. Under article 283, children aged over 15 must give their personal consent to the adoption and under article 284 the family of origin must also give its consent.
227. The court may rule only after any inquiry that may be necessary and after having verified that all the legal requirements have been met.
228. The legislative measures put in place in the Congo in respect of the adoption of children have been taken solely in the interests of the child.
229. Adoption is very rare in rural areas, where the spirit of family solidarity still survives. The Congolese do not yet have a culture of adoption because the family extends to the eighth degree of kinship according to the Family Code. Adoption is thus addressed more to outsiders.
230. However, in the urban centres of Brazzaville and Pointe-Noire, adoption seems to have become quite widespread since 1997. For example, the Brazzaville District Court heard 31 adoption cases in 1998, 62 in 1999 and 103 in 2000. In more than half these cases the adoptions were granted to foreigners, and particularly Europeans.

## **Chapter 7: Health, social protection and well-being of the child**

### **7.1 Health**

231. Article 24 of the Convention on the Rights of the Child recognizes children’s right to the enjoyment of the highest attainable standard of health and their right of access to health-care services. The Government places particular emphasis on primary and preventive health care, on providing information to the population and on reducing infant mortality.
232. Article 30 of the Constitution provides: “The State is the guarantor of public health. Elderly and disabled persons have the right to measures of protection in accordance with their physical, moral or other needs ...” with a view to their personal development.

#### **7.1.1 The benefits of the Congolese health system**

##### *7.1.1.1 Legal framework*

233. Within this framework, there are a number of health-related legal provisions that codify the implementation of plans and programmes, set standards for the structure and functioning of health units, and regulate the functioning of public health care. The provisions include:
- Act No. 9/88 of 28 May 1988 establishing a code of professional conduct for health and social workers;
  - Act No. 14/92 of 29 April 1992 instituting the National Health-Care Development Plan;



- Act No. 9/92 of 22 April 1992 on the status, protection and advancement of disabled persons;
- Act No. 6/97 of 21 April 1997 on the establishment and organization of the National Medical Association;
- Act No. 12/97 of 21 April 1997 on the establishment and organization of the National Pharmacists Association;
- Act No. 5/97 of 21 April 1997 on the establishment and organization of the National Midwives Association;
- Act No. 21/89 of 14 November 1989 amending the general civil service regulations refers in article 211 to “all officials, their spouse or spouses, the person or persons with whom they live in a premarital relationship”.

234. Accordingly, under-age dependent children have the right to free medical consultations and free examinations in public health clinics and hospitals.

235. Eighty per cent of hospitalization costs for persons mentioned in the preceding paragraph are paid by the relevant employer.

236. Funeral expenses of officials who die while in active employment are paid by their employer; the conditions for payment are established by decree of the Council of Ministers, at the joint proposal of the civil service and finance ministers.

237. The cost of transferring the mortal remains of officials’ spouses or children is borne by their employer. The conditions for payment are established by decree of the Council of Ministers, and article 212 provides that: “All officials have the right to social security coverage, which will be specified in subsequent legislation. All officials have the right to a retirement pension, which is specified in State pension legislation concerning civilians.”

238. It should be noted that this Act, which grants privileges to public officials and their children, is not applied in practice:

- Decree No. 86/392 of 24 March 1986 establishing primary health-care facilities and the regulations governing the implementation of this decree;
- Decree No. 89/526 of 21 July 1989 on the establishment, organization and functioning of associations of health-care professionals;
- Decree No. 2000/309 of 3 November 2000 on the functioning of the National Pharmacists Association;
- Decree No. 88/430 of 6 June 1988 liberalizing medicine in the People’s Republic of the Congo;

- Decree No. 98/258 of 16 July 1998 on the responsibilities and organization of the General Health Inspectorate;
- Decree No. 84/290 of 26 March 1984 establishing the National Council for Health and Social Development;
- Decree No. 82/228 of 28 March 1982 on the organization of the Ministry of Health and Social Affairs, which was amended by Decree No. 91/144 of 14 May 1991, Decree No. 91/953 of 18 December 1991 and the decree of January 1998;
- Order No. 4790 of 15 September 1974 regulating the price of pharmaceuticals;
- Decree No. 694 of 6 November 1998 classifying public health units for hospitalization;
- Order No. 6731 of 23 October 2001 classifying public health units for hospitalization;
- Decree No. 95/3 of 4 January 1995 on the establishment, responsibilities and organization of the National Health-Care Development Plan's technical committee;
- Inter-ministerial Order No. 4370 of 26 August 1994 defining the conditions for access to, and content and duration of, the special diploma course (CES) in paediatrics;
- Inter-ministerial Order No. 4371 of 26 August 1994 defining the conditions for access to the special diploma course in general surgery;
- Inter-ministerial Order No. 4372 of 26 August 1994 defining the conditions for access to the special diploma course in cardiology;
- Inter-ministerial Order No. 4373 of 26 August 1994 defining the conditions for access to the special diploma course in hepatogastroenterology.

#### *7.1.1.2 General framework*

239. The Congolese health system is composed of an administrative structure, an operational structure, specific programmes and support structures.

The administrative structure comprises three levels, namely:

- The central level, which plays a strategic role in planning and normative evaluation, supervision and the mobilization and allocation of resources;
- The intermediary level, which provides technical support in the transmission of information; adopts specific national standards and monitors their implementation; and supervises health district (CSS) management teams;
- The peripheral level corresponds to the health district, which is subdivided into health zones. It comprises a network of integrated health-care centres (CSI) and a reference hospital, whose key functions are:

- Health-care provision;
- Organization, planning and coordination of activities;
- Health information system;
- Technical supervision;
- Supply and distribution of essential medicines, materials and other technical products;
- Promotion of community development;
- Operational research and/or action.

240. The coordination and decision-making entities are the health development council or the governing council of the health districts and the integrated health-care centres. The second body is an executive body comprising the following units:

- The health district management team;
- The bureau of the health district management team;
- The health district management committee;
- The integrated health-care centres' health committee;
- The reference hospital team.

241. This national health system is fully consistent with the relevant international norms established by WHO, UNICEF and the French cooperation agency, MFCAC.

### **7.1.2 Health conditions of children**

242. The health conditions of children continue to cause concern. The health system is deficient in many respects and the general situation is characterized by high levels of morbidity and mortality, especially among children under 5 years of age.

243. Between 1990 and 2000, the under-five mortality rate dropped by 2 points only, from 110 to 108 deaths per 1,000 live births in 2000, although the National Health-Care Development Plan had called for a reduction to 70 deaths per 1,000 live births by 2000. Similarly, the infant mortality rate dropped only marginally, from 82 to 81 deaths per 1,000 live births between 1990 and 2000 - far short of the Plan's target of 50 deaths per 1,000 live births by the year 2000.

244. However, these figures conceal the considerable differences between urban and rural areas and in the socio-economic situation of those children's families, especially the mothers' level of education.

245. The main childhood diseases are malaria, which accounts for approximately 50 per cent of in-hospital cases, acute respiratory infections (approximately 12 per cent of cases) and diarrhoeal diseases (approximately 7 per cent of cases).

#### *7.1.2.1 Causes of infant morbidity and mortality*

246. The main causes of infant morbidity and mortality are:

- Malaria (50 per cent of all in-hospital cases);
- Expanded Programme on Immunization (EPI) target diseases;
- Infectious and parasitic diseases;
- Diarrhoeal diseases resulting from unsanitary conditions and the lack of drinking water;
- Malnutrition-related illnesses; malnutrition among 6- to 29-month-old infants is another factor in child morbidity and mortality;
- Tuberculosis;
- AIDS among children;
- Malaria is the first cause of morbidity and mortality among children under the age of 5. In 1998, 34.4 per cent of patients in the paediatric unit at the National University Hospital in Brazzaville were suffering from malaria. In 1997, the rate had stood at 51 per cent. According to the 10-year review of the World Summit for Children, malaria cases in hospital tripled between 1990 and 1999, increasing from 29,786 to 92,927 cases. The numbers peaked in the wartime years, with 35,957 cases in 1994; 45,738 cases in 1997; 65,562 cases in 1998; and a sharp rise to 92,927 cases in 1999. One third of the cases, and even slightly more in 1999, were children under 4 years of age; over 50 per cent (slightly more in 1999) were children under 4 years of age and 5- to 14-year-olds together;
- In 1997 and 1998, the second most important factor of morbidity and mortality in the hospital of Tié-Tié (Pointe-Noire) were acute respiratory infections. In Brazzaville, the second cause of morbidity and mortality during the same period was severe anaemia and malnutrition, owing to the war and extremely poor living conditions. Even if the fatality rate remained low at 38 per cent for hospitals in Brazzaville, in December 1997 acute respiratory infections accounted for 6 per cent of deaths registered in 10 Brazzaville integrated health-care centres (439 cases recorded).

247. According to the May 2000 report on the situation of children and women, diarrhoeal diseases are the third cause of morbidity and mortality. On average, Congolese children under the age of 5 fall ill with diarrhoea three to four times per year, or nearly once per quarter - this at a time when the practice of oral rehydration therapy in medical facilities is becoming less frequent and only 24 per cent of mothers use oral rehydration solutions at home.

248. Thanks to polychemotherapy treatment introduced in 1990, leprosy is on the wane. The national leprosy records show 964 cases in 1999, of which 5 per cent were children.

#### *7.1.2.2 Maternal morbidity and mortality*

249. In several respects, the situation of Congolese women is as deplorable as that of women in other developing countries. Although the Republic of the Congo has ratified the main international conventions protecting women's rights, they continue to suffer numerous violations. Sexual abuse of women and girls; the financial difficulties arising from the need to provide for the family in the husband's absence; and other factors resulting from the crises in the country exacerbate the problem.

250. Maternal mortality is on the rise; it increased from an estimated 650 deaths per 100,000 live births in the 1980s to 890 deaths per 100,000 live births in the 1990s and to 1,100 deaths per 100,000 live births in 2002.

251. Maternal morbidity and mortality is mainly a result of complications during pregnancy and childbirth:

- Malaria (60 per cent of consultations and hospitalizations);
- Malnutrition, especially resulting from a lack of micronutrients, iron deficiency anaemia (58 per cent of consultations);
- HIV/AIDS; prevalence is estimated at 4.2 per cent nationwide, HIV infection among pregnant women is at between 4 and 11 per cent;
- Intestinal parasites, diabetes mellitus;
- Illegal abortions (41 per cent);
- Infections during caesareans (32 per cent); high blood pressure;
- Haemorrhages caused by, inter alia, uterine rupture, premature placenta detachment, cervical tearing; haemorrhage during delivery (10 per cent); (placenta praevia);
- Eclampsia (8.9 per cent).

252. Neonatal tetanus is under control; there were two cases in 1998 and three in 1999. Women's health, especially the health of pregnant women, is also heavily influenced by culture-related factors, taboos and beliefs that leave them no latitude to decide on issues such as the desired number of children or protection against sexually transmitted diseases. The volume of domestic and farm work, especially in rural areas, also puts pregnant women's health at risk.

253. Given that maternal mortality is on the rise and existing policies have thus far proved ineffective, despite the vigorous efforts of women's organizations seeking to enhance women's status, maternal health in the Republic of the Congo is cause for grave concern.

*7.1.2.3 Health units*

254. There are both public and private health units.

255. The public health-care network comprises:

- The National University Hospital in Brazzaville;
- 5 general hospitals, including the central military hospital in Brazzaville;
- 42 reference hospitals, including 3 military reference hospitals;
- 200 integrated health-care centres, 50 of which have been modernized;
- 46 health stations;
- 14 school-based health stations;
- Leprosy treatment centres;
- AIDS treatment centres;
- 11 epidemiology and pandemics operations sectors;
- Leprosariums;
- 1 national and 3 regional blood transfusion centres (Pointe-Noire, Dolisie and Gamboma);
- 14 general health centres;
- 1 national public health laboratory in Brazzaville;
- 1 food and water hygiene laboratory in Brazzaville.

The private health-care network, which is currently expanding rapidly, comprises:

- 12 clinics;
- 50 medical practices, including 4 dental practices;
- 110 infirmaries;
- 14 pharmaceutical depots;
- 16 socio-medical centres;
- 203 pharmaceutical dispensaries and a number of wholesale distributors.

256. It should be noted that two thirds of private health units are located in Brazzaville and Pointe-Noire.

### **7.1.3 The National Health-Care Development Plan**

257. The Plan was officially launched on 3 May 1992. Activities to implement it are carried out at all levels of the health system, with the assistance of the country's partners in health and development, on the basis of operational plans.

258. The Plan aims at:

- Improving public health by strengthening the health system at the health district level;
- Expanding national coverage with a view to providing quality primary health care for the entire population, with their full participation; and
- Strengthening the national health system management capacity.

259. Fulfilment of these objectives would improve the health of the population in general and reduce maternal mortality rates.

### **7.1.4 Specific programmes and projects**

#### *7.1.4.1 Expanded Programme on Immunization (EPI)*

260. The programme aims at reducing the prevalence of six target diseases: tuberculosis, diphtheria, tetanus, pertussis, poliomyelitis and measles, by vaccinating children under the age of 1.

Thanks to routine activities carried out within the EPI framework, the breakdown of immunization coverage per antigen is as follows:

- Anti-tuberculosis vaccine (BCG), 95 per cent;
- DPT (combined) diphtheria/pertussis/tetanus vaccine, three doses, 80 per cent;
- Anti-measles vaccine, the proportion of 1-year-olds immunized against measles dropped from 75 per cent in 1990 to 36 per cent in 2000; it subsequently increased to 48 per cent in 2001 and 60 per cent in 2002;
- Anti-tetanus vaccine, two doses, 75 per cent.

261. The rate of immunization coverage: 80 per cent in 1990; 29 per cent in 1999 (a precipitous decline caused by the armed conflicts in the country); 90 per cent in 2004.

#### *7.1.4.2 Project to improve family life by promoting low-risk pregnancies*

262. This project was carried out with the support of UNFPA and WHO. Its long-term objectives are:

- Reducing maternal and infant mortality rates and improving family health;

- Training and retraining staff;
- Refurbishing health units and providing them with medicines and contraceptives;
- Promoting family planning;
- Prenatal and high-risk pregnancy care;
- Monitoring of centres for maternal and child health care and family planning.

#### *7.1.4.3 National Anti-AIDS Programme, 1988-2002*

263. Ever since the first AIDS case was diagnosed in 1983, the Congo has had a programme to combat AIDS. Its objectives are the following:

- Promotion of responsible sexual behaviour;
- Treatment of sexually transmitted diseases and AIDS;
- Epidemiological monitoring of HIV infection;
- Promotion of safe blood transfusion methods;
- Medical and psychological care for HIV/AIDS sufferers.

264. The Programme is financed by a number of international cooperation agencies and NGOs, namely the European Union, WHO, the Fund for Aid and Cooperation (FAC), the German Agency for Technical Cooperation (GTZ), the Canadian Cooperation Agency and UNICEF.

265. The Programme is all the more important since AIDS, especially mother-child transmission of HIV, is currently a major public health concern in the Congo, as far as sexually transmitted diseases are concerned.

266. According to the November 2003 provisional report on HIV prevalence prepared by the Permanent Executive Secretariat of the National Anti-AIDS Council (CNLS), the HIV prevalence rate among pregnant women in urban areas, in the three major cities of Brazzaville, Pointe-Noire and Loubomo, stands at 5 to 6 per cent, against 1 per cent in rural areas.

267. The likelihood of mother-child HIV transmission stands at approximately 50 per cent. Most children suffering from AIDS are under 1 year of age; in urban areas, an estimated 25 deaths per 1,000 live births are AIDS-related.

268. Unfortunately, the programme has been unable to prevent the propagation of HIV/AIDS. The Joint United Nations Programme on HIV/AIDS (UNAIDS) estimates that, at the end of 2002, some 110,000 persons in the Congo were infected with HIV, including 59,000 women and 15,000 children. In 2001, an estimated total of 11,000 deaths was attributed to AIDS.



269. According to the UNICEF report on the State of the World's Children 2005, in 2003, 97,000 children, or 36 per cent of all orphans, were AIDS orphans.

*7.1.4.4 Health and anti-AIDS project, 2005-2008*

270. With the assistance of multilateral partners, in 2002 the Congo launched a strategic planning process that led to the formulation of a strategic framework for combating AIDS.

271. In this framework, several weaknesses in the management of the National Anti-AIDS Programme were identified, in particular:

- Insufficient participation of key development sectors and the private sector in the fight against AIDS;
- Insufficient integration of anti-HIV/AIDS activities;
- Extreme scarcity of current data on the epidemiological situation of the fight against AIDS.

272. This analysis was followed by the adoption of Decree No. 2002/360 of 30 November 2002 establishing the National Anti-AIDS Council, with the Permanent Executive Secretariat as its technical body.

273. The Council is presided over by the Head of State. It is a multisectoral, pluridisciplinary body responsible for coordinating and guiding the fight against HIV/AIDS and sexually transmitted diseases.

274. The multisectoral anti-AIDS programme provides a decentralized response to the AIDS pandemic. It is divided into the following components:

- Health component (Ministry of Health and Population);
- Sectoral component (13 ministries);
- Community component (NGOs, associations and private sector);
- “Orphans and other vulnerable children” component (Ministry of Social Welfare).

275. The “orphans and other vulnerable children” category includes:

- Orphans under the age of 18 who have lost one or both parents, for whatever reason;
- HIV-positive children under the age of 18;
- Other vulnerable children: street children, displaced or refugee children, disabled children, albino children and children from extremely poor families.

276. The anti-AIDS programme is financed by the World Bank, the United Nations Development Programme (UNDP) and the State budget.

277. The emergence of AIDS orphans poses serious socio-medical and economic problems. The difficulties include access to education, food, health care and protection. Many of these orphans join the ranks of street children.

278. State contributions remain considerable. In 2002, the Government allocated 33 million CFA francs to the fight against HIV/AIDS; the allotment increased significantly in 2003 and reached 300 million CFA francs in 2004 and 1 billion CFA francs in 2005. These funds were destined for the 2005 multisectoral action plan.

279. With regard to the specific situation of AIDS orphans, the Government recognizes that, in relation to their peers, orphans and children who are separated from their parents are often particularly vulnerable. These children are more likely to be affected by malnutrition, morbidity, lack of access to primary education, and psychological disturbances and all types of abuse, including sexual abuse, which makes them particularly vulnerable to HIV/AIDS.

280. In order to reduce the vulnerability of orphans, irrespective of the cause, the programme to promote health and combat HIV/AIDS includes an “orphans and other vulnerable children” component. This component aims at ensuring the social protection of this category of children through specific assistance in the form of a social services package. However, they continue to encounter difficulties in accessing antiretroviral treatment.

#### *7.1.4.5 Sexual health of women and family planning*

281. A number of projects and programmes have been launched in order to enhance women’s health, including the project to improve family life by promoting low-risk pregnancies and the project to promote family planning and maternal and infant health.

282. In urban areas, some 84.5 per cent of births take place with professional assistance (82.5 per cent in Brazzaville, 86.11 per cent in Pointe-Noire), compared with 50 per cent in rural areas. The situation in rural areas is a result of a shortage in trained and/or qualified staff; the closure of some health units; and rural women’s low education level. Rural women are often unaware of issues relating to reproductive health. Moreover, the fact that contraceptives are used by only 2 to 3 per cent of the total population suggests that this type of protection is entirely unknown in rural areas.

#### *Activities relating to risk-free pregnancies*

283. The Congo attaches particular importance to pregnancy monitoring; hence the large number (146) of maternal and childcare health centres established throughout the country.

284. Pregnancies are monitored so as to identify high-risk pregnancies. The basic prenatal monitoring programme comprises four mandatory consultations in the third, sixth, eighth and ninth months of pregnancy. Additional preventive care services include anti-malaria prophylaxis and anti-tetanus vaccinations for pregnant women.

#### *Anti-malaria protection for pregnant women*

285. The measures are based on prophylaxis; pregnant women are encouraged to take chloroquine 300 mg.

286. However, prophylaxis is hampered by women's lack of awareness of reproductive health issues and the shortage of chloroquine in health-care facilities.

*Anti-tetanus vaccinations for pregnant women*

287. It aims at preventing cases of tetanus.

**7.1.5 Family planning**

288. Family planning activities are mainly oriented towards the distribution of contraceptives, in the context of birth spacing policies. These activities are conducted in the framework of cooperation with international institutions: UNFPA, the International Planned Parenthood Federation (IPPF), the European Photovoltaic Industry Association (EPIA), and specific programmes.

289. In general, contraceptives are little used in the country. The fact that only an estimated 2 per cent of the total population use contraceptives suggests that this method of protection is entirely unknown in rural areas.

290. The highest acceptance rate is found among 20- to 29-year-olds:

- 54 per cent of housewives;
- 14 per cent of students;
- 8 per cent of women employees or professional women.

291. The proportion of multipara women among those using contraceptives is 1.8 per cent.

292. Of women using some form of contraceptive, 61 per cent obtain them from a pharmacy and 17 per cent from a maternal and child health-care centre; 4 per cent use other sources of supply.

293. Oral contraceptives are the most widely used method (45 per cent), followed by the Ogino method (18 per cent); condoms (9 per cent), in combination with spermicidal gels (4 per cent); and injectable contraceptives (9 per cent).

294. Thirty-five per cent of women self-medicate. Prescriptions are issued by doctors (22 per cent), midwives (35 per cent) and health workers (4.5 per cent).

295. Forty-five per cent of women who practise birth control state that they heard about family planning methods at health units and 25 per cent through a friend.

296. Since the self-medication rate is high, few women undergo an examination. There are no regular check-ups. Although family planning is practised, the Act of 31 July 1920 prohibiting abortions and the promotion of birth control remains in force.

### **7.1.6 Medication**

297. Spending on pharmaceuticals accounts for an estimated 30 per cent of health units' budgets.
298. Approximately 3,000 pharmaceutical specialties are on the market in the Congo.
299. National production is very small and limited to six products: aspirin, chloroquine, paracetamol, amodiaquine and quinine syrup. It covers only 3 per cent of total needs.

### **7.1.7 Funding of the health system**

300. Health is funded through the State budget; community participation through initial financial contributions and direct payment by users; bilateral and multilateral cooperation; and contributions made by religious denominations, associations, humanitarian organizations and the social security.

## **7.2 Social and legal protection of children**

301. With regard to the social protection of children, the Government has conducted a nationwide survey on vulnerable children, which has made it possible to classify vulnerable children into 32 categories.

302. With regard to the legal protection of children, a 2003 survey on the punishment of perpetrators of sexual abuse showed rape to be the most widespread form of abuse. It accounts for 78.8 per cent of cases in Brazzaville, 76 per cent in Pointe-Noire, and 65.2 per cent in Owando. The acts committed are mostly individual rapes (84.9 per cent of rapes in Brazzaville, 79 per cent in Pointe-Noire, and 87 per cent in Owando). Many rape victims are minors (158 in Brazzaville, 31 in Pointe-Noire, and 18 in Owando). The victims often know their assailant (65 per cent in Brazzaville, 53 per cent in Pointe-Noire, and 100 per cent in Owando). While during the conflict rapes were perpetrated by combatants, in peacetime most rapists are civilians (79.1 per cent in Brazzaville, 88.2 per cent in Pointe-Noire, and 52.2 per cent in Owando). Drug and aphrodisiac consumption, settling of scores and the behaviour of the victim are contributory factors.

303. However, victims and their families refrain from reporting the incident for fear of retaliation from the abuser, or because they feel ashamed or lack confidence in themselves and in the justice system. The survey showed that 26.6 per cent of rapes are reported in Brazzaville, 11.8 per cent in Pointe-Noire and 17.4 per cent in Owando. Complaints of rape involving minors are generally lodged by the parents on their behalf.

304. As to the outcome of the complaints, the survey reveals that very few sentences were handed down and most of them were rendered by default. In the absence of criminal court hearings, no action has yet been taken on many cases. In some cases amicable settlements are agreed, especially in the case of incest, and no proceedings are ever instituted.

305. The outcome of the survey was used as a basis for a national conference on vulnerable children held in Brazzaville from 25 to 27 September 2003.

306. The conference resulted in the adoption of a strategic framework financed by UNICEF.

307. The framework sets out objectives, strategies and priority actions for the promotion of vulnerable children for the period 2004-2006. It comprises:

- An analysis of the situation of vulnerable children;
- An analysis of institutional responses;
- A national strategic framework and implementation measures;
- The national plan for vulnerable children, 2004-2006.

308. The strategic framework is based on the following principles:

- The best interests of children and their participation in decision-making on issues of direct concern to them must be at the heart of programmes, projects and services developed at the individual, institutional and community level;
- The management of programmes, projects and services must be rights-based and they must result in continuing, lasting achievements for all children;
- The family as the preferred environment for fostering children's personal growth: the family is and remains the preferred environment for fostering children's personal growth. Every effort must therefore be made to enable the child to remain in the family. Placement in an institution must be the exception and should be viewed as a temporary option. Adoption remains the prerogative of the law in conformity with legislation in force; the idea is not to place a child with a family, but rather to provide a welcoming and affectionate family for the child. Should the need arise, government entities and private partners may establish and operate temporary shelters for children in difficulty, especially in large cities such as Brazzaville, Pointe-Noire, Dolisie, Nkayi, Mossendjo and Ouesso. The conditions for the establishment and operation of temporary shelters for children in difficulty are set forth in a ministerial order issued by the Minister of Social Affairs, acting if necessary in cooperation with the minister in charge of minors in moral danger.

#### **7.2.1 Preference to non-institutional rehabilitation**

309. The rule favouring the family environment also applies to disabled children in need of special care (schooling, vocational training, empowerment to enhance their autonomy). They may temporarily be placed in specialized institutions to perform specific activities aimed at enhancing their autonomy; the institutions will do their utmost to guarantee an innovative approach, in particular by favouring non-institutional rehabilitation.

310. The establishment and operation of both public and private rehabilitation facilities in rural areas must be encouraged.

#### **7.2.2 Promotion of children's duties and responsibilities**

311. Children not only have rights (Convention on the Rights of the Child), but also duties. Article 319 of the Family Code stipulates that "a child of any age must honour and respect, help and assist his or her father and mother, and their collateral relatives and ascendants".

312. Strategic action is based on the following principles:

- Prevention of situations of vulnerability through the promotion of communication activities to change behaviour patterns within families;
- Economic and social support for families to improve children's living conditions;
- Action to promote solidarity with vulnerable children at the national and international levels with a view to developing a sponsorship system;
- Formulation, review, promotion and/or implementation of existing legislation pertaining to children and legal reforms to bring legislation into line with the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;
- Strengthening or extension of private and public support structures through substantial budget allocations; managerial capacity-building; quantitative and qualitative improvement of staff through ongoing training, retraining and recruitment; provision of adequate equipment and materials; and special emphasis on social reintegration;
- Promotion of partnerships with a view to creating a legal cooperation framework that is both consensual and flexible;
- Identifying relevant indicators and conducting specific surveys and studies with a view to creating and developing a database and information resources on vulnerable children;
- Mobilization of all types of resources by multiplying and diversifying stakeholders: State, civil society, NGOs, associations and grass-roots communities to guarantee the sustainability of activities;
- Use of the results of research and action and mid-term and annual reviews of activities as a basis for seeking support from domestic and foreign donors.

### **7.3 Well-being, environment**

313. The Republic of the Congo lacks an effective system to manage and monitor environmental resources. The current irrational approach to the exploitation of environmental resources will eventually lead to irreversible damage, unless more suitable policies are implemented urgently. The misuse of environmental resources; the haphazard pattern of land use for building or farming; the destruction of the fauna and flora even within protected areas owing to a lack of implementation measures; and the deforestation caused by logging operations, firewood gathering and coal production (67 per cent of Congolese households use wood as the main energy source) are manifestations of this degradation.

314. The causes of this situation are multiple and include:

- The shortage, or even absence, of inventories of the country's natural resources;

- The lack of an adequate institutional framework to ensure the implementation of environmental legislation in force;
- The lack of national expertise in certain areas;
- The inappropriate allocation of financial resources available through different funds (Forest Fund, Fisheries Management Fund, Environmental Protection Fund).

315. However, since the United Nations Conference on Environment and Development (UNCED) and the 1992 Earth Summit held in Rio de Janeiro, Brazil, the concept of sustainable development has been declared an objective within the reach of all countries. The Republic of the Congo has integrated this objective into all plans, programmes and strategies, and in particular has signed the Vienna Convention on the Protection of the Ozone Layer, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Convention to Combat Desertification, and, most recently, the Stockholm Convention on Persistent Organic Pollutants. To substantiate these commitments, reports were prepared on the implementation of these instruments and 10.7 per cent of the land was allocated for biodiversity conservation.

316. The Government has placed particular emphasis on the sustainable management of natural resources. The policy framework is contained in several plans: the National Action Plan for the Environment, the National Forestry Action Plan, the Forest Management Master Plan, the Blueprint for Rural Development, and the new Codes on mining, land use, and water.

### **7.3.1 Water**

317. Article 24, paragraph 2, of the Convention on the Rights of the Child stipulates that States Parties must combat disease and malnutrition, including within the framework of primary health care, in particular through the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water.

318. Water is life. There is no shortage of water in the Congo; it is a well-irrigated country where it rains eight months of the year on average. Given this abundance of water, it could be presumed that the country experiences no water shortages in general, or shortages in drinking water in particular.

319. Despite this potential, most Congolese have no access to drinking water.

320. While 52 per cent of households had access to drinking water in 1990 (89.6 per cent in urban areas and only 12.3 per cent in rural areas), the situation deteriorated in 1999, with only 46.3 per cent of households having access (73.4 per cent of the urban and 10 per cent of the rural population). In 2003, 6 out of 10 households in cities had access to safe water, compared with 2 out of 10 households in rural areas.

321. There is currently a downward trend in drinking water supply, since the country is experiencing serious economic difficulties, the distribution network of the only national water company is antiquated and in disrepair, and most village water programmes have been discontinued.

322. The low level of the Congolese population's drinking water supply is due to:
- The discontinuation of public investment and the inadequate resources of local communities;
  - The dilapidation and deterioration of the water supply network of the national water company (SNDE);
  - Rapid and uncontrolled urbanization and practices that pollute both surface and groundwater resources.
323. Sometimes water supply in urban centres is cut off for days or even weeks. In certain regional capitals that no longer have water supply plants, the water is not necessarily safe to drink. The population is forced to fall back on other sources such as spring water, frequently impure well water, undeveloped springs, and streams and rivers.
324. Poor water quality is at the root of various diseases: diarrhoea, bilharzia, dysentery, amebiasis, cholera and typhoid fever.

**Table 3****State of SNDE infrastructure in urban and rural areas, 1996**

Region	Communities with piped water supply	Production			Storage capacity m <sup>3</sup>	Current condition
		Hourly flow m <sup>3</sup> /h	Source	In service since		
Bouenza	Madingou	60	Niari River	1974	450	M
	Nkayi	225	Niari River	1981	1 000	M
Cuvette	Owando	60	Kouyou River	1975	400	M
	Makoua	60	Likouala River	1985	150	M
	Boundji	45	Alima River	1983	150	M
	Oyo	25	Alima River	1983	50	N
	Etoumbi	32	Kouyou River	1991	150	N
Cuvette-Ouest	Ewo	30	Likouala River	1993	200	N
	Pointe-Noire	1 274	Borehole	1961	7 500	M
Kouilou	Madingou Kayes	9	Lake	1983	150	M
	Dolisie	150	Loubomo River	1954	1 000	A
Plateaux	Mossendjo	45	Lake	1980	400	M
	Djambala	45	Djiri River	1983	400	A
	Gamboma	65	Nkéni River	1983	150	M
Pool	Abala	12	Spring	1983	150	M
	Kinkala	60	River	1984	150	M
Sangha	Ouessou	120	Sangha River	1989	500	N
Brazzaville	Brazzaville	3 750	Djoué River	1954	19 000	M
			Djiri River	1986		A
Total	18	6 067	-	-	26 950	-

Source: Africa Initiative 2000 - drinking water supply and sanitation - 1996.

M = moderate, N = new.



325. However, the 2003 Water Act brings together all provisions pertaining to water management in the Congo in one piece of legislation. The Act clearly states the different rights relating to water, namely the right to use public water facilities, the right to collect water, the right to water supply as a public service, and the right to self-production of water.

### **7.3.2 Housing and sanitation**

326. Article 27, paragraph 3, of the Convention on the Rights of the Child calls upon States Parties to take appropriate measures to assist parents and others responsible for the child and provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

327. The Congo has undergone extremely rapid urban population growth. The new arrivals, generally young families or extremely poor people, are forced to the outskirts of the city where land is cheap, but there is virtually no infrastructure (no running water, electricity or public transport, poor sanitation, erosion, lack of community facilities). They often live in makeshift housing. In addition to frequently inadequate housing, these new neighbourhoods experience massive problems.

328. The impediments to access to adequate housing are:

- Rapid urbanization;
- Lack of housing financing and social housing policies;
- The very high cost of building materials.

329. Taking into account the social indicators developed on the basis of studies and surveys carried out by the UNICEF field office in the Congo, it may be concluded that access to urban housing is becoming increasingly problematic. In 1990, 50 per cent of housing was rented, while in 1994 the figure was nearly 65 per cent; most families wishing to buy land to build a home have been unable to do so.

330. In the absence of a national land allotment policy, there is a growing trend in cities towards uncontrolled occupation of land and do-it-yourself building.

331. Rainwater drainage systems are either non-existent, inadequate or in poor condition. Furthermore, no city in the Republic of the Congo has a wastewater treatment plant. Household refuse collection is either non-existent or inadequate.

332. The sewage system has not been improved. Fifty per cent of the urban population and 76 per cent of the rural population use traditional latrines. Only 15 per cent of households have sealed pit toilets; sanitation is problematic; and there is a high risk of contamination or pollution of ground- and rainwater.

333. However, during the post-war period, many NGOs, such as Oxfam, have started operating in the Congo. Their extensive work in the water and sanitation sector, which is carried out with the backing of the Government, includes the drilling of drinking water wells in areas and neighbourhoods that were particularly hard hit by the war.

### 7.3.3 Nutrition

334. Article 307, paragraphs 2-4, of the Family Code introduce a maintenance obligation for any person legally required to provide child support. The nutritional situation in the Congo has not improved over the past decade, despite the efforts made to promote breastfeeding, weaning foods and gainful activity. Growth retardation affects 14.8 per cent of children between 6 and 9 years of age in urban areas and more than twice that - 38.7 per cent - in rural areas. One out of every five adolescents suffers from chronic malnutrition, particularly in the rural areas in the south of the country affected by the conflict. Some 13 per cent of adults, both men and women, are underweight.

335. Congolese agriculture, which has been declared the "priority of priorities", is unable to produce enough to feed the population. The share of agriculture in GDP has fallen below 10 per cent and, since 1989, has stood at some 9.3 per cent. The average size of farmers' plots has decreased from 0.56 ha to 0.49 ha. Only 40 per cent of the population is able to live off farming, compared with 80 per cent in the 1960s, and techniques remain rudimentary. The Congo is no longer able to meet its own needs. In 1994, the self-sufficiency rate for manioc was 97 per cent, for rice 1.6 per cent, for red meat 6.1 per cent, for fish 39.8 per cent, for eggs 5.4 per cent, for poultry 8.6 per cent, for corn 78 per cent, for peanuts 22.3 per cent, and for fruit and green vegetables 82.9 per cent.

### 7.3.4 Food self-sufficiency (national production/national consumption)

Table 4

#### Food self-sufficiency in the Congo by basic products, 1994

Products	National production in tons, 1994	National consumption in tons, 1994	Degree of food self-sufficiency, 1994
Manioc	7 76 000	7 99 488	97.0
Plantains	69 430	88 724	78.2
Rice	391	23 649	1.6
Red meat	1 157	18 936	6.1
Fish	47 987	1 20 464	39.8
Eggs	135	2 492	5.4
Poultry	1 040	12 105	8.6
Corn	7 050	9 090	78.0
Potatoes	1 236	5 489	22.5
Other tubers	15 140	22 181	68.2
Peanuts	5 230	23 434	22.3
Dry beans	750	4 787	15.6
Fruit	26 240	30 979	84.7
Green vegetables	35 480	42 808	82.9

Source: World Food Summit - Congo country report, 1996.

336. In 1992, the Congo's food imports had an estimated value of 176,886 billion; for 1994 and 1996, this amount had increased to 227,114 billion and 770,773 billion respectively. The situation could change if 25 per cent of that amount was converted into direct investment for farmers. Simply by distributing improved seeds free of charge, the Food and Agriculture Organization of the United Nations (FAO) and the United Nations World Food Programme (WFP) contributed to a considerable increase in the availability of green vegetables at markets in Brazzaville in 1998 and 1999. Despite clear human resource-related limitations (strong rural-urban exodus, aging and mostly female agricultural population), the promise of employment creation, the guarantee of food security and the countryside's appeal to urban wage-earners and to young people create a solid basis for progress.

**Table 5**  
**Agro-food imports**

Products	1992		1994		1996		1998	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Animals and live poultry	2	2	5	14	2	14	3	1
Meat and slaughtered poultry	43 539	10 795	24 311	11 541	22 294	13 316	18 813	13 617
Fish	27 861	7 543	22 988	11 616	22 611	9 232	18 827	8 904
Milk and dairy products	9 291	3 499	5 035	4 792	8 397	8 222	8 993	10 156
Tubers and roots	739	127	446	172	418	241	244	64
Vegetables	4 792	522	1 442	473	2 353	738	7 345	2 555
Fruit	288	125	204	133	205	118	253	179
Stimulants	338	164	302	465	375	436	736	950
Grains and grain products	1 16 735	10 750	83 357	13 188	79 264	19 048	116 558	20 456
Plant products	1 710	542	296	299	476	309	242	121
Oils and fats	20 908	3 244	12 824	6 556	10 547	4 527	15 300	4 735
Sugars and sweets	11 906	1 449	2 659	815	1 299	754	1 331	706
Processed foods	18 841	4 880	13 291	5 987	33 199	7 608	19 007	8 320
Beverages and tobacco	5 278	1 824	5 541	4 758	716	6 414	8 518	4 007
<b>Total</b>	<b>2 62 228</b>	<b>45 466</b>	<b>1 72 701</b>	<b>60 809</b>	<b>1 88 600</b>	<b>71 977</b>	<b>2 16 170</b>	<b>74 771</b>
Agricultural materials and machinery	238	301	183	274	109	119	369	328
Farm inputs	3 610	640	3 144	1 051	3 312	1 596	8 636	2 484
<b>Total imports to the Congo</b>	<b>4 78 235</b>	<b>1 76 886</b>	<b>2 94 126</b>	<b>2 27 856</b>	<b>4 61 114</b>	<b>7 70 773</b>	<b>6 65 787</b>	<b>3 54 375</b>
Percentage of agro-food imports	54.8	25.7	58.7	26.7	40.9	9.3	32.5	21.1

Source: Department of Agricultural and Livestock Statistics (DSAP).

## **Chapter 8: Education, culture, arts, sport and leisure**

### **8.1 Education**

337. Articles 28 and 29 of the Convention provide for the child's right to education and the State's obligation to make free compulsory primary education available for all. School discipline must be administered in a manner consistent with the child's human dignity. In order to secure respect for this right, the emphasis is placed on the need for international cooperation. In the Congo, articles 22 and 23 of the Constitution guarantee the right to culture and to respect for cultural identity and the right to education.

338. Order No. 62/6 of 28 July 1962 prohibiting procedures characterizing a person as belonging to a specific ethnic group is at variance with article 22 of the Constitution.

339. This Order should be harmonized with the highest law of the land.

#### **8.1.1 Situation regarding education**

340. In the early 1980s, the Congo was the only sub-Saharan country in Africa where more than 80 per cent of children attended school, since the various Governments in power after independence had given priority to schooling as a means of fuelling the country's economic and social development. Preschool education was even promoted in order to make the start of the first year of primary school easier, although kindergartens were not always free and conditions in respect of the availability of facilities and trained teachers were not always met.

341. Unfortunately, in the following years, Congolese schools were badly affected by the country's various socio-economic and political crises and the future of Congolese youngsters was therefore placed in jeopardy.

342. Education statistics in the Republic of the Congo suffer from numerous imperfections which make it difficult to accurately monitor developments in the percentage of children receiving schooling. The available data indicate that the proportion of 6-year-olds starting primary school has dropped substantially, since the gross admission rate has fallen from 112.9 per cent in 1983 to 87 per cent in 1990 and to 47.1 per cent in 2002, or less than one in two children.

343. The gross school enrolment rate dropped from 120.1 per cent in 1981, to 114.1 per cent in 1990 to 70.2 per cent in 2000. A slight rise has been observed since then, since the gross enrolment rate in 2002 was 80.7 per cent, mainly thanks to an increase in the number of places available in private schools, community mobilization and a gradual return to peace.

344. The net enrolment rate in primary education is difficult to assess; based on the general population census, it stood at 96.8 per cent in 1980 and 90 per cent in 1990. The downward trend continued until 2002, when this rate was only 77.9 per cent (National report on the Millennium Development Goals, August 2004). These unfavourable developments may be ascribed not only to the civil wars in which schools were destroyed and children dropped out of school, for instance because of their parents' financial plight, but also to deeper underlying factors such as the loss of the work ethic and a lowering of standards which was already

discernible at the beginning of the 1990s. The deterioration in the school system has resulted in a fall in the quality of education, with very low success rates, high drop-out rates and a large percentage of children repeating a year. The deterioration in infrastructure, the inadequacy of school facilities and the poorer qualifications of teachers are all the product of a decaying educational system in the Congo.

345. The cohort survival rate, which is an indicator of the internal efficiency of the system, illustrates the situation described above. Of the 1,000 pupils enrolled in the first form of primary school, 896 move on to the second form and 813 to the third form. The fourth form intake is 594 and that of the fifth form is 418, or a survival rate of 41.8 per cent.

350. Out of these 1,000 children who start school, only 304 complete their primary education, or 1 child out of 3. The drop-out rate in the fifth form is very high - 58.2 per cent.

351. Literacy schemes have been in worrying decline since 1990. The number of centres has tumbled from 320 to 112 in 2002. Whereas in 1990 the number of people attending these centres was 8,382, it was only 4,658 in 2002, yet a total of 353,000 people are illiterate, 239,000, or 67.7 per cent, of whom are women.

352. The figures show that, irrespective of the year, women are always slightly in the majority of the persons attending literacy centres. In 2002, young people under the age of 25 made up 25.1 per cent of the 4,658 students at these centres.

### **8.1.2 The organization of education**

353. In the Congo, the manner in which the school system is organized has been laid down in the six education acts issued since independence:

- Act No. 58/60 of 27 May 1960 which made the supplementary classes set up in 1959 part of primary education;
- Act No. 44/61 of 28 September 1961 laying down the general principles for the organization of education by making schooling compulsory for children between the ages of 6 and 16 and introducing free schooling for a basic cycle of 10 years;
- Act No. 32/65 of 12 August 1965, repealing Act No. 44/61 of 28 September 1961, confirmed all the basic principles established in the previous Act, but differed in that it nationalized private schools;
- The purpose of Act No. 20/80 of 11 September 1980, reorganizing the educational system in the People's Republic of the Congo, was to create a new type of school called the "people's school" incorporating productive labour. This law made literacy training obligatory. Education and training were State prerogatives. It therefore abolished private schools, and the old names for forms (CP and CM) were replaced with F1 to F10;
- Act No. 8/90 of 6 September 1990 reduced the length of basic compulsory schooling to eight years and reintroduced the old names for forms. It also restored private education;

- Act No. 25/95 of 17 November 1995, reorganizing the educational system in the Republic of the Congo, is the most recent statute amending Act No. 8/90 of 6 September 1990. It reiterates the principle that education is free and extends the length of compulsory schooling to 10 years again. It states that all education is placed under the supervision and control of the State, but the right to open private schools is guaranteed. Implementing texts (memoranda and decrees) establish the conditions on which this may be done, regulate the running of such schools and define the standards for them.

354. Two symposiums that have been held have highlighted the weaknesses of the educational system in the Congo. The medium and long-term objective of the Programme of Action for Economic and Social Revival, adopted in 1994, was to revitalize the education system and improve its efficiency. A National Plan of Action on Education for All was formulated and adopted in 2002. At the primary school level, the aim is to achieve within 10 years:

- A gross school enrolment rate of 100 per cent;
- 80 per cent of children moving on to secondary education;
- A zero drop-out rate;
- An equal number of boys and girls at school.

355. The Republic of the Congo has also carried out programmes in partnership with United Nations agencies as part of moves to improve and revitalize the education system. The implementation of these policies and programmes has not, however, produced the expected results owing to the inadequacy of resources and their poor allocation. The management and administration of the system is over-centralized and does not leave enough room for decision-taking and action by departmental authorities and schools.

### **8.1.3 The goals of the National Plan of Action on Education**

356. Four main sets of goals have been set for basic education:

- Political goals, the aim being to stabilize society;
- Educational goals - these concern individuals' right to be themselves and to develop;
- Teaching goals - these concern the passing on of educational content. Every child must know how to read, write and do arithmetic;
- Evolving goals, which also have a clearly defined didactic content. They specify the age at which a child must be able to read, have a knowledge of history, etc. This involves the overall assessment of knowledge.

### **8.1.4 Financing of and expenditure on education**

357. The main sources of finance for education are: the State, parents' associations, the promoters of private schools and international financial organizations.

#### 8.1.4.1 Public expenditure on education

358. Government expenditure on education always constitutes a sizeable percentage of national public spending. Recurrent expenditure is, however, far from evenly divided, since teachers' wages account for the bulk of educational expenditure, i.e. 93.9 per cent, as against a mere 6.1 per cent on equipment.

**Table 6**  
**Trends in public spending on education (PSE)**  
**as a percentage of the Government budget**

Year	Total expenditure (in million CFA francs)			Operating expenditure (in million CFA francs)			Investment expenditure (in million CFA francs)		
	Government budget	Expenditure on education		Government budget	Expenditure on education		Government budget	Expenditure on education	
		PSE	As %		PSE	As %		PSE	As %
1995	276 637	52 674	19.04	177 454	51 066	28.78	99 183	1 608	1.62
1996	215 000	42 829	19.92	182 000	39 984	21.97	33 000	2 845	8.62
1997	294 675	53 999	18.32	204 500	48 425	23.68	90 175	5 574	6.18
1998	313 700	55 390	17.66	222 400	52 152	23.45	91 300	3 238	3.55
1999	314 050	54 316	17.30	222 400	50 155	22.55	91 650	4 161	4.54

*Source: Annuaire des statistiques de l'enseignement primaire et secondaire, 1998-1999.*

#### 8.1.4.2 Financing of education by parents

359. Under Act No. 25-95 of 17 November 1995, schooling is free in the Congo. Nevertheless, parents' associations support the functioning of the educational system by contributing to the salaries of "voluntary" teachers, as well as to the operating and investment expenditure of schools (building of classrooms, purchase of tables and chairs, etc).

#### 8.1.4.3 Promoters of private schools

360. Since the liberalization of education in 1990, many schools have been opened by private promoters. The resources for the running of these schools come from the fees paid by the pupils' parents. These fees are decided by the promoters and vary from one school to another.

#### 8.1.4.4 Financing of education by international institutions

361. Funds from international organizations come in the form of either development aid or loans. The funding organizations are the World Bank, UNICEF, the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNDP, the International Committee of the Red Cross (ICRC) and the International Partnership for Human Development. The money is used to pay for textbooks and teaching aids, school canteens, repairing and restoring damaged buildings and strengthening managerial capacity in the education sector.

### 8.1.5 Technical and vocational education

362. This is the next stage after primary education. Schools and colleges provide technical and vocational training at lower and upper secondary level. There are 71 establishments divided into the following categories:

- 32 crafts centres;
- 42 technical colleges;
- 12 technical high schools;
- 1 technical institute;
- 13 vocational schools.

363. These establishments suffer from a lack of proper equipment and specialized classrooms. They have been diverted from their initial purpose. The current trend is to prepare all pupils for higher educational studies. Unfortunately most of the subjects taught are not continued in higher education and pupils following industrial courses cannot obtain a vocational training certificate (*brevet de technicien supérieur - BTS*). Moreover, these establishments are overstaffed.

364. The private sector is making a considerable contribution to this type of education by running several technology schools and technology training institutes.

365. As far as Government policy on education is concerned, the Congo has signed the Jomtien Declaration. At the national level, its basic option is human resources development aimed at meeting the need for a skilled workforce. Notwithstanding the Government's efforts and the contribution made by the private sector, however, school infrastructure is still inadequate. This is reflected in high pupil-to-teacher ratios at all levels of education.

366. Inadequate planning as far as the assignment of teaching staff is concerned results in a poor distribution of teachers with a heavy concentration in towns and a shortage in the countryside. This staff shortage is leading to the closure of schools, the creation of multigrade classes and the recruitment by pupils' parents of volunteers with no teacher training, none of which makes for a good learning environment.

367. In-school performance is very low, with more than 30 per cent of pupils repeating a year. This situation increases costs and restricts the number of places available for other children who have not yet started school. The weak performance of the school system and the deteriorating quality of the services offered mean that schools play a lesser role in human resources training.

### **8.1.6 Specialized education**

#### *8.1.6.1 Non-formal education for children in difficulty*

368. According to article 27 of the Convention, every child has the right to "a standard of living adequate for the child's physical, mental, spiritual, moral and social development".

369. Non-formal education essentially comes under the aegis of the Department of Legal Protection for Children, one of whose responsibilities is to ensure that warrants concerning minors at risk are enforced. Unfortunately, this Department is contending with structural, material and financial difficulties and it faces the thorny problem of a lack of statistics.

370. The Department of Social and Family Welfare, which would normally intervene at an earlier stage, is itself struggling with operational difficulties.



371. The private activities of NGOs do not compensate for the limitations of the public authorities. These NGOs focus their action on the places where children live and on the “listening centres” (*centres d’écoute*) they have opened to promote first the stabilization, then the social integration of youngsters. They prefer to assist children by returning them to their families. Moreover, there are no specific schemes for girls, although surveys show that 7 to 10 per cent of street children are girls. There are therefore many gaps in these activities, hence their slight impact.

#### 8.1.6.2 *Disabled children*

372. Article 23 of the Convention provides for the right of the disabled child to special care and to appropriate education and training so that he or she may enjoy a full and decent life in conditions which ensure dignity and promote the greatest possible self-reliance and social integration.

373. Article 30 of the Congolese Constitution guarantees the rights of all Congolese citizens, including the disabled. It establishes the principle that they may not be discriminated against on account of their physical or mental condition.

374. Act No. 9/92 of 22 April 1992 on the status, protection and advancement of disabled persons defines a disabled person as “anyone suffering from a physical or mental deficiency, congenital or acquired, who experiences difficulty in performing the normal functions of an able-bodied person of the same age”.

375. The Act covers several of the disabled child’s rights, notably:

- Prevention and diagnosis;
- The right to health care;
- Transport;
- Access to the physical environment and to suitable recreation and sports;
- Special assistance and benefits for disabled persons.

376. Other legal texts containing provisions for disabled persons are:

- Act No. 20/80 of 11 September 1980 on the organization of the Congolese educational system, as amended by Act No. 8/90 of 6 September 1990;
- The General Taxation Code, which grants tax relief to the parents or guardians of disabled persons.

377. The Congo has experience of caring for the disabled by both institutional and non-institutional rehabilitation.

#### 8.1.6.3 *Institutional rehabilitation*

378. The Congo has a number of public, private and jointly managed institutions.

379. In the period 1981-2000, a total of 748 blind pupils were enrolled at the National Institute for the Blind - 468 in the school section, 109 in the vocational training section and 171 in a scheme enabling them to attend normal schools.

380. As far as gender equality is concerned, a total of 268 girls, mostly young girls, are enrolled at the Institute. The success rate in examinations has risen from 58.05 per cent to 86.66 per cent, the breakdown being as follows:

- Certificat d'Etudes Primaires Elémentaires (CEPE): 40 passes;
- Baccalauréat: 6 passes;
- Brevet d'Etudes Moyennes Générales, Brevet Elémentaire de Premier Cycle (BEMG/BEPC): 14 passes;
- Philosophy degree: 1 pass.

#### 8.1.6.4 Young deaf people

381. Please see the following table.

**Table 7**

**Primary school results, 1999-2000**

Forms	Sat the examination			Passed		
	G	F	T	G	F	T
D1	10	8	10	7	7	17
D2	3	8	2	7	7	9
CP1	12	3	7	3	3	10
CP2	6	6	6	4	4	10
CE1	5	3	5	1	1	6
CE2	4	2	3	2	2	5
CM1	5	7	0	5	5	5
CM2	12	7	12	7	7	19

*Source:* Institut de Jeunes Sourds de Brazzaville (IJSB).

382. It must, however, be emphasized that almost all of these institutions are facing numerous difficulties which are mainly caused by:

- The irregular flow of budgetary appropriations to specialized institutions, which has virtually halted activities;
- The heavy concentration of rehabilitation treatment in towns and specialized institutions;
- Technical staff are too few in number and insufficiently skilled.

383. A legal vacuum exists as far as the creation and operation of private institutions is concerned.

#### 8.1.6.5 Community-based rehabilitation

384. Community-based rehabilitation, focused on the idea of helping disabled people to look after themselves in the community and to be cared for by the community, was launched as an experiment in 1994 with support from WHO. Without evaluation, it is hard to assess its impact. Even if it is more effective and less expensive, community-based rehabilitation is still at a rudimentary stage in the Republic of the Congo. This experiment supplements a disability prevention and functional rehabilitation project run by a mobile unit, which is financed by the Interchurch Organization for Development Cooperation (ICCO), the Netherlands.

385. Social welfare for the disabled is included every year in the following government budget lines:

- The National Relief Commission (individual assistance consisting of the purchase of orthopaedic prostheses or hearing aids, or in other technical, material or financial support);
- Funds to assist and support rehabilitation;
- Assistance for disabled schoolchildren and students.

386. Measures on behalf of the disabled receive the backing of certain countries, United Nations agencies and development organizations.

387. Despite the action taken by the Government, NGOs and associations, the situation of the disabled in the Republic of the Congo remains worrying. An analysis reveals:

##### As regards rehabilitation policy

- The marginalization and exclusion of the disabled;
- The lack of an effective care strategy for the disabled;
- The low level of community-based care;
- Little cooperation and partnership between the Government and NGOs active in the sphere of rehabilitating the disabled;
- The lack of any texts implementing Act No. 9/92 of 22 April 1992 on the status, protection and advancement of disabled persons;
- The obsolete nature of existing texts;
- The inadequacy of aid and assistance for families with disabled children or disabled dependants;
- The prohibitive cost of rehabilitation equipment;
- The dearth of information about the causes of disability;
- The lack of data about the real number of disabled persons;

- The lack of a data bank on disability;
- The inadequacy of specialized rehabilitation institutions;
- The insufficient number of rehabilitation staff, ageing and exodus of rehabilitation specialists who move to other occupations;
- The inaccessibility of basic services (health, housing, transport, etc.);
- The insufficient number, or complete lack, of certain categories of rehabilitation staff;
- The inadequacy of the financial resources allocated to the running of specialized rehabilitation institutions;
- The fact that the National Centre for the Occupational Rehabilitation of the Disabled is not equipped to deal with certain types of disability;

As regards education

- The lack of a special service at the Ministry of Education which would be in charge of the integration of disabled pupils and students in the education system;
- The insufficient number of remedial schools;

As regards employment

- The absence of incentives for firms which employ or which might employ disabled persons;
- The lack of and/or disregard for quotas in jobs reserved or earmarked for the disabled;
- The inadequacy of vocational training facilities for the disabled;
- The poor quality of vocational training available for the disabled.

## **8.2 Culture, arts, sport and leisure**

388. Article 31, paragraph 1, of the Convention states that the child has the right to engage in play and to participate in cultural life and the arts. Article 28 of the Constitution guarantees this right.

389. In pursuance of the Convention on the one hand and of its responsibilities on the other, the Ministry of Culture, the Arts and Tourism has organized specific activities for children, as follows:

- Pavement artist competition;
- Reading competition in De Gaulle Square;
- Concert at the Poto-Poto art college.

390. The private sector (companies and civil society) arranges some activities for children.

391. There have been no proper cinemas since 1990 and everywhere in towns and villages they have given way to “video cinemas” where children are exposed to the presentation of all kinds of films.
392. Although television broadcasts from neighbouring countries, cybercafés and the Internet open the doors of knowledge for youngsters, at the same time they expose children to ethical problems.
393. There is a dearth of theatres and no cultural policy in the Congo. Few urban centres or departmental capitals have suitable cultural facilities (cultural centre, library or amusement park).
394. The setting up of a Public Libraries Directorate at the Ministry of Culture, the Arts and Tourism, which has an operational budget of 50 million CFA francs, has led to the establishment of departmental libraries in Brazzaville, Owando, Impfondo, Dolisie, Djambala, Madingou and Sibiti.
395. Thanks to technical and financial support from the French Cooperation Agency, 54 branch libraries have been set up throughout the country as part of the public reading project, except in the Cuvette-Ouest department.
396. The Poto-Poto art college in Brazzaville is open to children. The Dramatic Arts Training and Research Centre, the Sony Labou Tansi cultural circle and the “VOG” theatre are all in operation.

## **Chapter 9: Special protection measures for the child**

397. The special protection measures for the categories of children named below are legislative, judicial and administrative in nature.

### **9.1 Children without family ties (street children, abandoned children) and children at risk**

#### **9.1.1 Legislative measures**

398. Legislation on protection for this category of children includes:
- The Constitution, article 33 of which provides that “every child, without discrimination of any kind, has the right to the protection measures required by his or her status, to be provided by family, society and the State”.
  - Act No. 73/84 of 17 October 1984 (Family Code), section IX of which contains provisions on maintenance obligations, and section X of which addresses the scope and exercise of parental authority, as well as educational assistance.
  - The Criminal Code, pursuant to which any act intended to withhold or destroy a child’s civil status, or to jeopardize its existence, is classed as a crime or an offence, depending on its degree of gravity.

- Act No. 9/88 of 23 May 1988, which institutes a code of professional conduct for health and social workers and chapter IX of which, on staff in the social affairs sector, defines the roles of social assistants and specialized educational staff, and their respective spheres of activity.

### **9.1.2 Administrative measures**

399. The Government encourages physical and legal persons to involve themselves in social protection for children without family ties (street children and abandoned children) and children at risk, with strict respect for the regulations in place. Keeping a child within the family (biological or adoptive) or returning the child to it, remains the rule; placing a child in an institution must be the exception, to be considered only as a temporary measure.

400. A number of public structures including the Social Action Communities (CAS), the sociojudicial services, the police, the gendarmerie and local administrative offices are optimum points of initial contact for meeting and listening to children requiring special protection measures. They deal with the following cases:

- Abandoned children;
- Children given up for adoption;
- Ill-treatment of children;
- Maintenance;
- Custody of children;
- Children who have run away from home;
- Theft;
- Inheritance and succession.

401. A single public institution provides care for street children, namely the Centre for Integration and Reintegration of Vulnerable Children, which gives children temporary accommodation before they are reintegrated into a family environment. The Centre offers seven services to the children who are resident there: temporary shelter (listening to children and giving them a feeling of security), schooling or repeat schooling, health care, food, psychological support, vocational training and support for gainful activities. With backing from UNESCO, an experimental project has been carried out, in which 12 children have been reintegrated into their families through resocialization by vocational training.

### **9.1.3 Judicial measures**

402. Judicial action is taken in cases where administrative measures have failed, or when ordered on behalf of or by the juvenile judge. The juvenile judge can order the following judicial measures:

- Social inquiry;

- Non-formal education;
- Placement in a foster family;
- Placement in a public or private accommodation centre (orphanage or refuge centre);
- Legal guardianship granted to one of the child's parents;
- Attachment of earnings for maintenance purposes.

403. Furthermore, persons responsible for negligence, abandonment, violence and ill-treatment in respect of children can be prosecuted. Penalties incurred range from a fine to a prison term.

#### **9.1.4 Action by partners**

404. Owing to a lack of public orphanages, orphans and other abandoned children are taken in by private orphanages, the majority of which are managed by members of religious denominations.

405. The Ministry of Social Affairs has entrusted the NGO Doctors of Africa with the implementation of a care project for orphans and other vulnerable children, with support from UNICEF and the World Bank. All the children covered by this project receive psychological and educational support, maintenance and vocational training.

406. The children covered by the project remain in their respective family environments.

407. In the context of social mediation and judicial support, the community legal services established in Brazzaville and Pointe-Noire are carrying out a legal aid programme approved by the Ministry of Justice and funded by UNDP.

408. The community legal services assist parties in dispute to come to an amicable, out-of-court solution.

409. A private experimental project has resulted in the resocialization of 50 street children through sport.

## **9.2 Refugee children**

### **9.2.1 Legislative measures**

410. Judicial protection for refugees is guaranteed as follows:

- Article 42 of the Constitution provides that, “foreigners on the territory of the Republic of the Congo shall enjoy the same rights and freedoms as nationals on the conditions laid down in treaties and laws, subject to reciprocity”;
- Article 819 of the Family Code provides that, “Foreigners in the Congo shall enjoy the rights deriving from the present Code in the same way as nationals”;

- The enjoyment of a right can be refused by law or made subject to reciprocity, according to the provisions of diplomatic treaties and conventions of establishment;
- Act No. 23/96 of 6 June 1996 lays down the conditions for the entry, residence and departure of foreigners.

### **9.2.2 Administrative measures**

411. The National Committee for Assistance to Refugees, which was established by Decree No. 99/310 of 31 December 1999, is responsible for extending administrative assistance to refugees, which includes providing refugee cards, travel documents, application certificates, and in some cases study grants. The Committee also deals with repatriation operations.

### **9.2.3 Action by partners**

412. The Catholic NGO Commission d'entraide aux immigrants et aux réfugiés (CEMIR), provides support of various kinds for refugees, including the following:

- Physical security;
- Access to housing, food, medical care and education for refugee children;
- Placement of unaccompanied refugee children in foster care.

413. The NGO's principal partners are the Office of the United Nations High Commissioner for Refugees (UNHCR), ICRC, WFP and Caritas. These organizations provide the bulk of the financial, logistic and technical support.

414. The Congolese Red Cross also provides considerable assistance to refugees.

415. The same can be said of the International Rescue Committee (IRC), which manages a refugee camp in the north of the country.

## **9.3 Children affected by armed conflicts**

### **9.3.1 Legislative measures**

416. The phenomenon of children affected by armed conflicts is still recent in the Congo. Specific legislative measures have not yet been taken in this regard. However, on 1 April 2005, the Government adopted, and then transmitted to Parliament, a bill authorizing accession to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

417. The political unrest in the Congo since 1992 has given rise to the phenomenon of private militias in the service of certain politicians, the great majority of whose members are recruited among young people. Hence children of 15 years old were enrolled in private militias and involved in combat between 1993 and 2000.

418. According to UNICEF estimates, nearly 5,000 children have been directly involved in armed conflicts.



### **9.3.2 Administrative measures**

419. The Government has taken measures to redress the situation. These include the disbandment of all private militias, the disarming of their members and the reorganization of the Congolese armed forces.

420. A high commissioner's office has been established to ensure the demobilization, disarmament and social reintegration of former combatants.

421. The demobilization, disarmament and reintegration project, which this office is piloting, receives financial support from the European Union, France, the World Bank, UNDP and the Government of Norway.

### **9.3.3 Action by partners**

422. ICRC has enabled children to be reunited with their parents and family ties to be re-established. Street children who have been taken in have been registered, and various contacts have been established in order to locate their parents, who in some cases have been displaced. Collaboration with certain partners has enabled many of them to begin training.

423. The ILO and the International Programme on the Elimination of Child Labour (IPEC) in collaboration with the In Focus Programme (IFP)/Crisis, have launched a regional programme for the reintegration of children used in armed conflicts in Central Africa. A specific programme is being developed in the Congo.

## **9.4 Children in conflict with the law**

424. These are children who have committed an offence under criminal law.

### **9.4.1 Legislative measures**

425. Juvenile delinquency is regulated by the following texts:

- Act No. 40/63 of 13 January 1963 (Code of Criminal Procedure) - section IX on juvenile offenders;
- Act No. 19/99 of 15 August 1999, amending and supplementing certain provisions of Act No. 22/92 of 20 August 1992, article 75 of which concerns the organization of the judiciary;
- The Criminal Code.

### **9.4.2 Judicial measures**

426. Judicial measures are administered by courts for minors (the juvenile judge, the juvenile court and the juvenile criminal court). These measures include:

- A social inquiry to assist the juvenile judge, the juvenile court or the juvenile criminal court in coming to a decision that takes account of the personality, background and age of the minor;

- Issue of warnings;
- Release to parent or guardian;
- Probation, involving re-education of the minor in his or her family environment;
- Educational placement (observation or re-education centre, centre for listening to and stabilizing minors, refuge centres, detention centre with a special block for minors).

427. As regards penalties, minors benefit from mitigating circumstances on account of their immaturity.

428. A minor under 13 years of age can be declared guilty. He or she can only be given a formal warning, and released to his or her parents, or placed on probation or in a suitable educational or professional training establishment, or any public or private institution providing care for children, or in an appropriate boarding school for offenders of school age.

429. A minor under 13 years of age can only be held in a remand institution by reasoned order of the juvenile judge and for the purpose of preventing the commission of a crime. In such cases, the minor is held in a special block, or special premises.

430. A minor over 13 years of age can be sentenced to a correctional penalty, which will be half of that which would have been handed down had the offence been committed by a person of full age. He or she can also be subjected to a combination of one or another of these solutions together with probation until reaching the age of majority.

431. For crimes committed by minors under the age of 16 years, the juvenile court cannot set aside the mitigating circumstance of minority, since it is imposed by law (Code of Criminal Procedure, art. 707).

432. In the event that the offence, if committed by a person of full age, would be subject to the death penalty or a life sentence of hard labour, the minor will be sentenced to between 10 and 20 years.

433. If the penalty incurred involves a fixed period of hard labour or rigorous imprisonment, the duration of the sentence shall be half or more of that which could have been imposed if the offender had been of full age.

434. Rape committed by minors under the age of 16 years carries a penalty of 6 to 8 months' imprisonment and a fine.

435. A minor aged between 16 and 18 years who has been convicted of a crime can benefit from the protection measures applicable to all minors. He or she can also be given the same sentence as a person of full age committing the offence would have been, in the event that the mitigating circumstance of minority is not taken into account. If the mitigating circumstance of minority is admitted, however, he or she will incur the same penalty as a minor under the age of 16.

#### **9.4.3 Administrative measures**

436. The Department of Legal Protection for Children is responsible, inter alia, for the education of minors who are the subject of a judicial decision.

437. The Department of Legal Protection for Children carries out the above-mentioned judicial measures through its local service structures (Service for non-formal education, observation or re-education centres, refuge centres, and centres for listening to and stabilizing minors).

438. The local service structures are responsible for re-educating children with a view to their social reintegration.

#### **9.4.4 Action by partners**

439. The Ministry of Justice and Human Rights, through the Department of Legal Protection for Children, and in cooperation with UNICEF, is conducting a five-year programme for the period 2004-2008, which aims to promote juvenile justice in the Congo.

440. The implementation of the programme began in 2004, with an evaluation of juvenile justice in the Congo. The evaluation revealed, inter alia, weak points related to conditions of arrest, remand in custody and detention of minors. All of these weaknesses will be overcome in the context of the implementation of the programme.

#### **9.5 Children involved in drug use**

441. The phenomenon of drug use by children developed considerably as a result of the armed conflicts that took place in the Congo. An investigation carried out at the end of the war in 1997 by the organization "Projet Drogue" among drug users undergoing medical treatment, those in detention and those remanded in custody showed the following trends: drug use is a primarily masculine phenomenon, since 88.9 per cent of drug users were men, as against 11 per cent of women. First experience with drugs takes place between the ages of 8 and 15 years. Young people aged between 15 and 24 years are the most severely affected by the problem (47.5 per cent), since they were the victims of various social crises during adolescence (lack of education, family disruption, identification and unemployment). This young population is primarily unmarried (65.6 per cent) and living with parents or guardians. Cannabis sativa is the most heavily consumed product, accounting for 76.3 per cent of all drugs used. It is produced in large quantities in certain districts.

442. The situation regarding the number and type of drugs consumed is currently evolving. In 2004, the rate of cocaine use among young people was 5.43 per cent. Young people obtain cocaine from adults. Heroin consumption is low.

443. Excessive alcohol consumption among young people can also be observed. They become dependent on alcohol, which in turn leads to drug use.

### **9.5.1 Legislative measures**

444. The Congolese Act of 12 July 1916 on narcotics and its implementing decrees of 30 December 1916 and 5 March 1918 have been used to tackle offences related to the import, trade, and possession of drugs, as poisonous substances. This Act was supplemented by the Decree of 29 August 1926, which broadened its provisions to cover the production of such substances. Furthermore, the Congo has acceded to the following Conventions:

- The 1961 Single Convention on Narcotic Drugs;
- The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- The 1971 Convention on Psychotropic Substances.

445. The Criminal Code penalizes these offences in its articles 274, paragraph 2; 274, paragraphs 1, 2 and 3; and 276, paragraphs 1, 2, 3 and 5, on possession and consumption of Indian hemp.

446. These various legal texts provide insufficient protection for children against drugs. They must be supplemented in order to effectively crack down on the producers who grow these substances, the users, drug traffickers and all the intermediaries involved, by increasing the penalties incurred and broadening the field of application of these texts.

### **9.5.2 Administrative measures**

447. The Interministerial Technical Committee for Combating Drugs, which was established by Decree No. 94/578 of 25 October 1994, has the task of facilitating decision-making. The Committee provides the Government with information on the production, processing, trafficking, transportation and sale of drugs, as well as financial transactions.

448. The objective of this Committee for combating drug use and addiction is to promote prevention, care, social integration, information and research.

## **9.6 Child labour**

449. Article 34 of the Congolese Constitution of 20 January 2002 provides that, “The State shall protect children and adolescents against economic or social exploitation. Children under the age of 16 years shall not be permitted to work.”

450. The Republic of the Congo has ratified ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

451. Although an exhaustive study of child labour has never been carried out in the Congo, a number of day-to-day indicators suggest that the problem does indeed exist, and gives cause for concern. Measures are therefore being taken.

*Legislative measures*

452. Child labour is regulated by Act No. 45/75 (Labour Code). The Code regulates child labour and apprenticeship, and articles 11 and 116 lay down the minimum age at which a child can work or undertake an apprenticeship, and regulate work arrangements.

453. Article 11 states that, “Apprentices must be at least 16 years of age. They are subject to the provisions on child labour and regulations regarding daily rest, protection for workers, working hours, hygiene and safety and compensation for accidents in the workplace.”

454. Article 116 provides that, “Children may not be employed in any enterprise, even as an apprentice, before reaching the age of 16 years, unless an exception is authorized by the Minister for National Education after the Labour Inspector has determined the nature of the work and the legal categories. A decree adopted on the basis of the advisory opinion of the national commission shall set the limits of the prohibition.”

455. Article 117 of the Code lays down the principle that women and children cannot be employed in work beyond their physical strength, or kept in such jobs if the circumstances have been medically certified, and must be given appropriate employment in line with their physical capacity. If no such employment is available, the contract must be terminated with payment of compensation in lieu of notice and, where appropriate, severance pay.

**9.7 Child victims of sexual exploitation and sexual abuse, sale, trafficking, kidnapping and abduction**

456. Sexual exploitation and abuse of children were particularly common in the Congo during the armed conflict. Although trafficking, sale, kidnapping and abduction of children attract public attention, the true extent of these problems has not yet been established. Measures are, however, being taken to try to control them.

457. In this context, on 1 April 2005 the Government adopted, and then transmitted to Parliament, a bill authorizing accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

**9.7.1. Sexual exploitation and sexual abuse**

*9.7.1.1 Legislative measures*

458. A number of legislative texts protect children against sexual exploitation and sexual abuse.

459. These include:

- Article 34 of the Constitution, which guarantees the rights of children in respect of measures to protect them against economic or social exploitation;
- Act No. 16/66 of 22 June 1966, which amended Act No. 19/64 of 13 July 1964 on the protection of minors in school;

- The Criminal Code guarantees protection for children in articles 330, 331, 332, 334, 345, 354, 355, 356 and 357 on indecent behaviour, sexual molestation, rape and debauching, kidnapping and abduction of minors;
- Act No. 8/98 of 31 October 1998, articles 1 to 9 of which define and punish genocide and crimes against humanity;
- Act No. 18/60 of 16 July 1960, which provides for moral protection for the youth of the Congo by prohibiting children under the age of 16 years from going out without parental escort after 8 p.m. and from frequenting bars, cinemas and dance halls.

#### *9.7.1.2 Judicial measures*

460. Act No. 15/66 of 22 June 1966 on minors in school provides for the punishment of anyone who has caused the pregnancy of a schoolgirl under 21 years of age, and who is not recognized as that girl's future husband. The offence is punishable by a prison term of six months to three years or a fine of 50,000 to 200,000 CFA francs. This sentence is doubled if the offence is committed by a person with de jure or de facto authority or responsibility in respect of the girl. This Act is applied to any Congolese citizen responsible for the pregnancy of a female student abroad. The Criminal Code also contains provisions on rape, sexual molestation and debauching minors.

### **9.7.2 Rape**

#### *9.7.2.1 Judicial measures*

461. Article 332 of the Criminal Code, which categorizes and punishes this crime, states that, "Anyone committing rape shall be punished by a term of hard labour." The same penalty applies if the rape has been committed by a legitimate, natural or adoptive relative, or by anyone who has de jure or de facto authority over the victim (such as the victim's father, the second husband or male partner of the victim's mother, teachers or persons in the service of the victim); or when it has been committed by public employees or ministers of religion, or when the perpetrator has been assisted by one or more persons.

462. As well as simple rape, the legislator has provided for the case of rape with aggravating circumstances: rape of a minor under the age of 13 years. In such cases it is considered that consent was not given, owing to the age of the victim. Article 332, paragraph 2, of the Criminal Code states that, "if the crime has been committed against the person of a child under the age of 13 years, the perpetrator shall be subject to the maximum term of hard labour".

### **9.7.3 Sexual molestation**

#### *9.7.3.1 Judicial measures*

463. Articles 331 to 333 of the Criminal Code regulate sexual molestation.

464. There are two types of sexual molestation: sexual molestation with rape or attempted rape against individuals of either sex, and sexual molestation without use of force.

#### **9.7.4 Sexual molestation with use of force**

##### *9.7.4.1 Judicial measures*

465. Article 332, paragraph 3, of the Criminal Codes states that, “Anyone committing or attempting to commit sexual molestation with use of force against individuals of either sex shall be punished by rigorous imprisonment ...”.

466. In the case of sexual molestation committed with use of force, the youth of the victim constitutes an aggravating circumstance, whereas in the case of sexual molestation without use of force it is only a constituent element.

467. “If the crime has been committed against the person of a child over the age of 13 years, the perpetrator shall be sentenced to a term of hard labour.”

468. Article 333 of the Criminal Code provides for two other aggravating circumstances:

- The perpetrator’s particular status either in relation to or independent from the victim;
- When the perpetrator has been assisted in committing the crime by one or more persons.

#### **9.7.5 Sexual molestation committed without use of force**

469. Sexual molestation can be established even in cases where the act was committed without use of force, the determining factor being the age of the victim.

470. Article 331, paragraph 1, of the Criminal Code states that, “Anyone committing or attempting to commit sexual molestation without use of force against the person of a child of either sex, under the age of 13 years, shall be punished by rigorous imprisonment.”

471. No aggravating circumstances are held to exist when the crime has been committed by any ascendant (legitimate, natural or adoptive father or mother) against the person of a child of either sex above the age of 13 years but not emancipated through marriage.

472. The Criminal Code also provides that anyone committing an indecent or unnatural act with an individual of the same sex, under the age of 21 years, shall be punished by a prison term of six months to three years, and a fine of between 4,000 and 1 million CFA francs.

#### **9.7.6 Debauching of minors**

##### *9.7.6.1 Judicial measures*

473. Debauching of minors for purposes of procuring is punishable under article 334 bis, paragraph 6, of the Criminal Code, which states that, “subject to stronger penalties laid down by this article or by other provisions regulating public soliciting, anyone who offends against morals by inciting, promoting or habitually facilitating debauching or corruption of minors of either sex, under the age of 16 years, shall be liable to the penalties laid down in paragraph 1 above”.

474. The penalties consist of imprisonment for a period of two to five years, and a fine of between 1 million and 10 million CFA francs.

### **9.7.7 Sale, trafficking, kidnapping and abduction of children**

#### *9.7.7.1 Judicial measures*

475. Article 345 of the Criminal Code provides that “persons responsible for the kidnapping, concealment or disappearance of a child, the substitution of one child for another or the fraudulent attribution of a child to a woman who has not given birth shall be punished by rigorous imprisonment”.

476. Article 354 penalizes kidnapping of minors and states that “anyone who, by fraud or use of force, kidnaps minors, or causes them to be kidnapped, or removes, abducts or displaces them from the location where they are placed by those to whose authority or direction they were subjected or entrusted, shall be liable to the penalty of rigorous imprisonment”.

477. Article 355 provides that if the minor kidnapped or abducted is under 15 years of age, the penalty shall be hard labour for life.

478. The same sentence shall be applied, irrespective of the age of the minor, in the event that the perpetrator was paid or had the intention of being paid a ransom by those in whose authority or supervision the minor was placed. If the child has been found alive, the sentence shall consist of a term of hard labour. In the event that the kidnapping is followed by the death of the minor, the perpetrator is liable to the death sentence. Article 356 penalizes actual or attempted kidnapping and abduction, without fraud or use of force, of a minor under the age of 18 years, by a prison term of two to five years, and a fine of 20,000 to 200,000 CFA francs.

479. Article 357 penalizes failure to present a child or kidnapping and abduction, even without fraud or use of force, of children from those to whose care they have been entrusted or from the location where the latter have placed them. The perpetrator shall be punished by a prison term of one month to one year and a fine of between 4,000 and 1.2 million CFA francs. The penalty shall be three years’ imprisonment in the event that the perpetrator has been divested of parental authority.

#### *9.7.7.2 Administrative measures*

480. Administrative measures have been taken in respect of child victims of sexual exploitation and sexual molestation, sale, trafficking, kidnapping and abduction.

481. These measures consist of providing medical, psychological and social care to victims of sexual molestation in public health units.

### **9.8 Action by partners**

482. Since March, Médecins Sans Frontières (MSF) France has been conducting a medical and psychological programme in Brazzaville, to provide care for victims of sexual molestation. The programme, which is being implemented in two general hospitals, provides all-round care including:

- Medical care;



- Pregnancy prevention;
- Prevention of sexually transmissible diseases;
- HIV/AIDS prevention measures;
- Psychological support for women who have been raped, and infants born as a result of rape;
- Social assistance in conjunction with local and international partners;
- A permanent service for reception, information and support.

483. From MSF's classification of female rape victims, it can be seen that 60 per cent were under-age girls.

### **Conclusion**

484. Analysis of the implementation of the Convention on the Rights of the Child shows that the majority of the legal texts on children in the Congo reflect the concerns of that Convention.

485. However, certain provisions of the Convention, including article 10 on family reunification, article 34 on the protection of children against sexual exploitation and sexual abuse, and article 38 on the involvement of children in armed conflicts, are not in line with the internal legal order.

486. Notwithstanding the progress made, the situation of children in the Republic of the Congo continues to give cause for concern, since the problem in the area of child protection lies not only with legal texts, but also, and more particularly, with their implementation. The texts are not sufficiently publicized, which results in a lack of information among the population. The lack of financial resources, the erosion of professional ethics, the de-motivation of workers and the lack of enthusiasm for work are all factors impeding implementation.

487. As an illustration, legislation provides that minors perpetrating serious offences shall not escape punishment. In view of their age, however, they are spared ordinary judicial procedures. Owing to a lack of specialized institutions, they are sometimes detained directly in detention centres that do not have sufficient special cells or a block for minors. In some circumstances they are detained with adults who are the perpetrators of extremely serious offences, whereas the Code of Criminal Procedures provides that an offender under the age of 21 years must be held in a separate cell. Furthermore, in such prisons, educational, sociocultural and sports activities are random, if they exist at all, owing to a lack of financial, material and human resources, thus leaving minors idle. Hygiene conditions are, for the most part, deplorable.

488. In addition, the past decade has been marked by profound socio-economic and political crisis, against a backdrop of repeated armed conflicts. These conflicts have considerably altered the social landscape by accentuating the marginalization of many children and young people, including street children, children with drug abuse problems, and children recruited voluntarily or forcibly by armed groups, who have thus committed reprehensible acts during these conflicts (looting, theft, rape, murder and destruction of property).

489. Such phenomena are also the result of dysfunctional family relationships and poverty. In view of the difficulties that the family faces in fulfilling its socialization role, other institutions responsible for the promotion of children's rights (schools, religious institutions, various associations and judicial institutions) face real limitations and therefore do not always fulfil their roles effectively in respect of integrating children into society.

490. The Government is working to provide progressive solutions to these issues, including by raising children's issues to the level of national priorities. In this regard:

- With UNICEF support, the Congo has developed a strategic programme, which is given effect by a framework plan of operations for the period 2004-2008, aimed at improving the situation of children;
- Congolese children now have a vehicle for free expression (the Congolese Children's Parliament), which will assert itself over the years as a mouthpiece for all children's issues;
- The Poverty Reduction Strategy Paper, a guideline document for national development policy, which is currently being drafted, attaches considerable importance to education, survival, protection and development projects for children.

491. In order to meet the challenges of fully and comprehensively implementing the Convention on the Rights of the Child, the Congo proposes:

- To adopt a Child Protection Code;
- To continue its efforts to publicize and disseminate the text of the Convention on the Rights of the Child;
- To bring national legal texts into line with the provisions of the Convention on the Rights of the Child (arts. 10, 34 and 38);
- To amend Act No. 18/60 of 16 January 1960 on moral protection for young people, to include provisions on video clubs and the Internet;
- To amend the Family Code, the Code of Criminal Procedure and the Criminal Code.

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