

Act No. 5-2011 of 25 February 2011

On the Promotion and Protection of Indigenous Populations

The National Assembly and the Senate have deliberated and adopted:

The President of the Republic promulgates the Act the content of which is as follows:

#### TITLE 1: GENERAL PROVISIONS

**Article 1:** For the Purpose of this Act and without any prejudice to any prior occupation of the national territory, the term indigenous populations mean populations who are different from the national population by their cultural identity, lifestyle and extreme vulnerability.

The use of the term pygmy is prohibited. Its use shall amount to the offence of insult as provided and punishable under the Penal Code.

**Article 2:** The indigenous populations, in groups or as individuals, are free, equal before the law and dignity as all other citizens of the country.

All forms of discriminations against the indigenous populations based on their social origin or indigenous identity are prohibited in conformity with laws in force.

**Article 3:** The State ensures that the indigenous populations are consulted in a suitable manner and implements culturally appropriate mechanisms for those consultations before any consideration, formulation or implementation of legislative or administrative measures, or development programmes and/or projects which are likely to affect them directly or indirectly.

The consultations with the indigenous populations must be conducted:

1. Through institutions representing the indigenous populations or by representatives they have chosen
2. By appropriate procedures taking into account their modes of decision making
3. By ensuring the participation of indigenous men and women.
4. In a language understood by the indigenous populations
5. By ensuring that all information about the proposed measures be provided to the indigenous populations, in terms that are understandable to them.
6. In good faith, without pressure and threat with the aim of obtaining free, prior and informed consent.

A decree of the Cabinet shall set the procedures for consultation and participation of the indigenous populations.

## TITLE 2: CIVIL AND POLITICAL RIGHTS

**Article 4:** The State guarantees the right to citizenship of the indigenous populations.

**Article 5:** The State establishes mechanisms for the granting of civil status documents to the indigenous populations.

**Article 6:** The matrimonial and succession rights of the indigenous populations are guaranteed taking into account their cultural identity and distinct characteristics in conformity with other general provisions in force.

**Article 7:** All acts of torture, cruel, inhumane or degrading treatments or punishments affecting the right to life and physical and moral integrity of the indigenous populations are prohibited.

All acts of torture, cruel, inhumane or degrading treatments or punishments against the indigenous populations will be punishable under article 309 of the Penal Code subject to the reparation of the damage caused.

Attempts to the right to life and physical and moral integrity of the indigenous populations will be punishable in conformity with the provisions of the Penal Code as murder and wounds and blows excluding the death penalty.

**Article 8:** The State guarantees the right to movement, expression, association, freedom of conscience, culture and religion to the indigenous populations.

**Article 9:** Trafficking and sexual exploitation of children and women of the indigenous populations are prohibited in all forms.

Trafficking and sexual exploitation of children and women of the indigenous populations will be punishable under the provisions of articles 334 and 335 bis of the Penal Code.

**Article 10:** Access to justice is guaranteed for the indigenous populations.

**Article 11:** The State guarantees the right to the indigenous populations to administer their internal affairs and to have recourse to their customs to resolve internal conflicts in conformity to the law.

**Article 12:** The State recognizes indigenous villages which are in the process of creating local administrative entities.

## TITLE 3: CULTURAL RIGHTS

**Article 13:** The customs and traditional institutions of the indigenous populations which are in conformity with fundamental rights defined by the Constitution and international standards related to human rights are guaranteed.

**Article 14:** All forms of forced assimilation and integration of the indigenous populations are prohibited.

Any person found guilty of forced assimilation and integration of the indigenous populations will be punished with a term of imprisonment from one to twenty years and a fine of five hundred thousand to five million CFA Franc.

**Article 15:** Collective and individual rights to intellectual property concerning traditional knowledge of the indigenous populations are guaranteed in conformity with legal provisions in force.

The State guarantees the right of the indigenous populations to participate in the benefits resulting from the utilization and exploitation of their traditional knowledge and cultural heritage based on defined conditions after consultation with the populations concerned.

**Article 16:** The cultural, intellectual, religious and spiritual properties of the indigenous populations are protected.

The State protects the integrity of sacred or spiritual sites of indigenous populations and guarantees free access to the indigenous populations.

#### TITLE 4: THE RIGHT TO EDUCATION

**Article 17:** The State guarantees the right to access to education at all levels falling under the national educational system to all indigenous children without discrimination.

The States takes special measures to facilitate the enjoyment of such rights.

**Article 18:** All forms of education, information and manifestations which have adverse effects on the cultural identity, traditions, history and aspirations of the indigenous populations are prohibited.

Any person found guilty of the above acts will be punished with a term of imprisonment from 6 months to 5 years and a fine from 50 000 to 1 million CFA Francs.

**Article 19:** The State develops and put in place educational programmes and appropriate structures corresponding to the needs and lifestyle of indigenous populations.

**Article 20:** A system of literacy is established for indigenous adults which is adapted to their cultures and languages.

The modalities of application of this provision are fixed by decree of the Cabinet.

**Article 21:** The State undertakes special measures so that indigenous children benefit from financial assistance at all levels of the educational system.

## TITLE 5: RIGHT TO HEALTH

**Article 22:** Access to all social services and health services to the indigenous populations is guaranteed without any discrimination.

**Article 23:** The State guarantees the access of indigenous populations to primary healthcares through:

1. The creation of community health centres adapted to the needs of the indigenous populations in the areas where they live;
2. The participation of health workers from the indigenous populations in integrated primary healthcares and the organisation of vaccination and sensitization campaigns in the fields of health and reproduction.
3. Medical and social assistance in the areas where the indigenous populations live taking into account specific situations of women and children.

**Article 24:** The State protects the pharmacopoeia of the indigenous populations.

**Article 25:** All practices and measures which are likely to affect the exercise of the traditional medical practice of the indigenous populations are prohibited provided that those practices do not endanger the health of the populations or of the patients having recourse to them.

Any person found guilty of the above acts will be punished with a term of imprisonment from 6 months to 5 years and a fine from 50 000 to 1.5 million of CFA Francs.

## TITLE 6: RIGHT TO WORK

**Article 26:** The indigenous populations enjoy the right to work and social security.

The State undertakes special measures for the enjoyment of those rights.

**Article 27:** All forms of discrimination against indigenous populations are prohibited in relation to access to work, conditions of work, vocational training, remuneration and social security.

Any person found guilty of the above acts will be punished with a term of imprisonment from 6 months to 5 years and a fine from 50 000 to 1 million of CFA Francs.

**Article 28:** The State establishes special training programmes adapted to the economic, social and cultural situation and specific needs of the indigenous populations in particular in the fields of education and health.

**Article 29:** Sentences of forced labour for indigenous populations in any form, including servitude for debts, are prohibited except if provided by the law.

The indigenous populations cannot be subject to any form of slavery.

Sentences of forced labour in any form, servitude for debt and all forms of slavery of the indigenous populations will be punishable by imprisonment from two to 30 years and a fine from 200 000 to 5 million CFA Francs without prejudice to reparation of prejudices caused.

**Article 30:** Indigenous workers are free to create trade union organisations or join one, to participate fully in those organisations, to freely choose their representatives and to be elected themselves.

## TITLE 7: RIGHT TO PROPERTY

**Article 31:** The indigenous populations have a collective and individual right to property, possession, access and utilization of the lands and natural resources that they occupy or use traditionally for their subsistence, medical use and work.

**Article 32:** The State facilitates the delimitation of the lands on the basis of customary tenure with the aim of guaranteeing the recognition.

In the absence of land titles, the indigenous populations preserve their pre existing land tenure.

The land rights of the indigenous populations are indefeasible and inalienable except in cases of expropriation for public interest.

**Article 33:** The indigenous populations cannot be displaced from the lands they possess except for public interest.

**Article 34:** In case of expropriation for public interest, the indigenous populations enjoy the benefits provided by law.

**Article 35:** Every exploration, exploitation or conservation projects of natural resources on the lands occupied or utilized by the indigenous populations has to be prior subject to socio economic and environmental impact assessment.

**Article 36:** The indigenous populations have the rights to define the priorities and strategies for development, utilization and control of their lands and other resources within the limits of the law.

**Article 37:** The indigenous populations have the right to preserve and develop their economic and social systems and to enjoy without fear their own methods of subsistence.

**Article 38:** The indigenous populations are consulted before the formulation or establishment of any project having effect on the lands and resources which they possess and use traditionally.

**Article 39:** The indigenous populations are consulted every time the State considers the creation of protected areas likely to affect directly or indirectly their lifestyles.

**Article 40:** The State ensures the amelioration of the living conditions and the level of education, instruction, work and health of the indigenous populations as a priority in the notebooks of private or public companies which exploit the resources existing on the lands traditionally occupied and utilized by the indigenous populations.

**Article 41:** The indigenous populations have a right on the profit resulting from the commercial exploitation and utilization of their lands and their natural resources.

**Article 42:** Only indigenous populations can rely on their custom and claim reparation for all prejudices caused in the violation of their land rights and natural resources.

#### TITLE 8: RIGHT TO ENVIRONMENT

**Article 43:** The State guarantees the indigenous populations the right to a healthy, satisfying and sustainable environment.

The storage or dumping of toxic wastes or any other dangerous substances on the lands occupied or utilized by the indigenous populations is prohibited.

Any person found guilty of the above acts will be punished with a term of imprisonment from 2 years to 30 years and a fine from 500 000 to 2 million of CFA Francs subject to reparation of prejudices caused.

#### TITLE 9: FINAL AND MISCELLANEOUS PROVISIONS

**Article 44:** The State envisages programmes on socio economic and cultural developments and sensitization campaigns to the benefit of the indigenous populations.

**Article 45:** An inter ministerial Committee shall be created by the Ministry in charge of human rights for the follow up and evaluation of the promotion and protection of indigenous populations with the participation of their representatives and the civil society.

A Cabinet decree shall fix the composition and modality of the functioning of the above committee.

**Article 46:** No provisions of the present Act can be interpreted by a community or an individual to give a right to accomplish an act or activity which is contrary to the Constitution.

The present Act cannot be interpreted as authorizing or encouraging any act which will destroy or affect totally or partially the territorial integrity or national unity.

**Article 47:** Cabinet decrees shall fix the modality of the application of the Act.

**Article 48:** The present law will be published in the Government Gazette and enforced as law of the State.

Enacted in Brazaville, 25 February 2011

