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FRAMEWORK AGREEMENT BETWEEN THE HOLY SEE AND THE REPUBLIC OF THE CONGO ON THE RELATIONS BETWEEN THE ROMAN CATHOLIC CHURCH AND THE STATE OF 3 FEBRUARY 2017

The Republic of the Congo is among African states that have entered into an agreement with the Holy See.¹ The relevant Framework Agreement (*Accordo Quadro*) was concluded on 3 February 2017 in Brazzaville (in two counterparts in Italian and French), and the signatories were Cardinal Secretary of State Pietro Parolin (on behalf of the Holy See) and Prime Minister Clément Mouamba of the Republic of the Congo (on behalf of the state).²

The Republic of the Congo is a Central African state bordering on Gabon, Cameroon, the Central African Republic, Angola, and the Democratic Republic of the Congo (former Zaire). The country is inhabited mainly by the tribes of Bakongo, Bateke and Bosi. It became a French colony in 1885 and between 1910 and 1958 formed part of French Equatorial Africa. It achieved independence in 1960. The name of Congo Brazzaville adopted at that time was changed to the People's Republic of the Congo in 1969 and to the Repu-

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¹ The following African countries concluded agreements with the Holy See: Angola: 2019 (general), Benin: 2016 (general), Burkina-Faso: 2019 (general), Burundi: 2012 (general), Cameroon: 1989 and 1995 (special), Cape Verde: 2013 (general), Republic of Chad: 2013 (general), Democratic Republic of the Congo: 2016 (general), Côte d'Ivoire: 1989 and 1992 (special), Gabon: 2001 (general), Equatorial Guinea: 2012 (general), Morocco: 1983-1984 (general), Mozambique: 2011 (general), Central African Republic: 2016 (general), Republic of Congo: 2017 (general), Tunisia: 1964 (general). See *Accordi bilaterali vigenti della Santa Sede*, https://www.iuscanreg.it/accordi_senta_sede.pkp [accessed: 6.04.2020].

² *Accordo Quadro tra la Santa Sede e la Repubblica del Congo sulle Relazioni tra la Chiesa e lo stato* (3.02.2017), "Communications" 51 (2019), no. 2, p. 401-11.

blic of the Congo in 1991. Among the country's population of 5.2 million (2017), Roman Catholics account for nearly 53%. The administrative structure of the Roman Catholic Church was established in 1955 as the culmination of the missionary effort starting back at the turn of the fifteenth century. The chief ecclesiastical province is Brazzaville. It is composed of the Archdiocese of Brazzaville and eight dioceses [Dziura 2002, 601-602].

The Framework Agreement of the Republic of the Congo with the Holy See was ratified on 2 July 2019 along with the exchange of ratification instruments. On the same day, pursuant to Art. 18 of the agreement, it entered into force. As the title of the agreement indicates, it concerns mutual relations between the Catholic Church and the Republic of the Congo.

The following thematic segments can be distinguished in the structure of the bilateral agreement, which is made up of the preamble and 18 articles: general terms (Art. 1-5), the exercise by the Church of her apostolic mission and the inviolability of places of worship, cemeteries and ecclesiastical sites (Art. 6), the filling of ecclesiastical offices (Art. 7), penal cases involving the clergy and the religious and the seal of confession and professional secrecy (Art. 8-9), the property of ecclesiastical juridical persons and foundations (Art. 10), Church's publishing activity and the use of the mass-media (Art. 11), association of the faithful (Art. 12), the Church's educational activity (Art. 13), the pastoral ministry of chaplains provided to members of the Congolese public and armed forces and to the faithful staying or working in penitentiary and hospital facilities, as well as in medical and social care institutes (Art. 14), the establishment by the Church of charitable, educational and social and health care institutions and the financial participation of the State in the activities of the Church for the common good in the area of health, education, and social and medical assistance (Art. 15), final provisions (Art. 16-18).

1. Preamble

In the Preamble, containing four paragraphs, the contracting parties set out the conditions for concluding a framework agreement.

The first condition specified in the first paragraph is “the desire to establish the legal framework for relations between the Catholic Church and the Congolese State.”³

The legal conditions for the conclusion of the agreement are listed in the second paragraph, “Taking into account the constitutional norms of the Republic of the Congo, the acts of the Second Vatican Council, the norms of canon law and internationally recognised principles of freedom, belief, and religion.”⁴

Although the text does not indicate verbatim which conditions apply to which of the parties, it naturally follows that the constitutional norms bind the republic and the final documents of the Second Vatican Council and the norms of canon law bind the Holy See. However, the principles of international law apply to both parties.

The condition contained in the third paragraph reads, “Considering the importance of the Roman Catholic Church and its faithful in Congo’s national life, the role of the Roman Catholic Church in the spiritual, socio-cultural and educational development of the Congolese people, as well as the richness of the religious traditions of the African continent.”⁵

Finally, in paragraph four, the contracting parties state that they “reiterate respect for the principles of the sacredness of life and human dignity, as well as human rights and fundamental freedoms.”⁶

³ “La Santa Sede e la Repubblica del Congo: Desiderose di fissare il quadro giuridico delle relazioni fra la Chiesa cattolica e lo Stato congolese.”

⁴ “Tenendo conto delle norme costituzionali della Repubblica del Congo, degli Atti del Concilio Ecumenico Vaticano II, delle norme del diritto canonico e dei principi internazionalmente riconosciuti in materia di libertà, di credo e di religione.”

⁵ “Considerando l’importanza della Chiesa cattolica e dei suoi fedeli nella vita nazionale del Congo, il ruolo della Chiesa cattolica nello sviluppo spirituale, socio-culturale e pedagogico del Popolo congolese, come anche la ricchezza delle tradizioni religiose del Continente africano.”

⁶ “Reiterando il rispetto dei principi della sacralità della vita e della dignità umana, nonché dei diritti dell’uomo e delle libertà fondamentali.”

2. General terms (Art. 1-5)

As regards the general terms set out in the agreement, there are five articles devoted to some fundamental matters regulated in greater detail in subsequent articles.

Art. 1 reads, “The Holy See and the Republic of the Congo define, with this Framework Agreement, the principles and rules governing the relations and procedures of collaboration between the Catholic Church and the Congolese State.”⁷ This provision defines the nature of the principles and norms included in the framework agreement: they underlie bilateral relations and the methods of collaboration between the parties.

Art. 2 lays down a fundamental principle that “the Roman Catholic Church and the Congolese State shall be sovereign, independent and autonomous, each within its own domain. These principles shall be the basis of their relations and of any activity they may undertake jointly for the spiritual and material well-being of the person or for the common good and with respect for the dignity and rights of the person.”⁸

The principle of independence and autonomy of state and the Roman Catholic Church derived from the constitution *Gaudium et spes* of the Second Vatican Council⁹ is a commonly used provision in contemporary agreements between the Holy See and other states. When it comes to “sovereignty” of both parties, this concept does not seem to add any new meaning to “independence and autonomy.” The article speaks about the “principles” of mutual relations and collaboration, yet, as a matter of fact, only the principle of independence and autonomy is meant there.

⁷ “La Santa Sede e la Repubblica del Congo definiscono, con il presente Accordo Quadro, i principi e le norme che reggono le relazioni e le modalità di collaborazione tra la Chiesa cattolica e lo Stato congolese.”

⁸ “La Chiesa cattolica e lo Stato congolese sono, ciascuno nel proprio ordine, sovrani, indipendenti e autonomi. Questi principi sono alla base delle loro relazioni e di qualsiasi attività che essi possono compiere congiuntamente per il benessere spirituale e materiale dell’uomo o a favore del bene comune, nel rispetto della dignità e dei diritti della persona umana.” See Góralski 2015, 81.

⁹ Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (7.12.1965), AAS 58 (1966), p. 1025-115, no. 76.

This principle, as worded in the article, is not only the basis for mutual relations between the Roman Catholic Church and the Congolese State, but it also applies to entities whose cooperation (for the purposes specified in the article) should respect human rights and dignity.

In Art. 3(1), “The Republic of Congo shall recognise the public juridical personality of the Roman Catholic Church that she possesses by nature.”¹⁰

In the science of public ecclesiastical law, it is assumed that the Roman Catholic Church is a subject under international public law. As such, she performs acts at law through her highest authority, i.e. the Holy See [Krukowski 2000, 149-50; Krukowski and Warchałowski 2000, 104-107].

Next, para. 3 of the cited article reads, “The Republic of Congo recognises the juridical personality of all the institutions of the Roman Catholic Church, which are constituted as juridical persons of a public or private nature by the Code of Canon Law and which are governed by their own rules; in particular, the Episcopal Conference of Congo and all the ecclesiastical entities.”¹¹

Thus, all institutions having juridical personality under canonical regulations automatically acquire legal personality before the state, and there is no obligation to notify the state authorities about establishing such institutions [with the exception of ecclesiastical entities established by the Holy See, as mentioned in Art. 4(2)].

Art. 4(1) first offers a guarantee that, “the Roman Catholic Church freely establishes the legal norms within its sphere of competence,” and recognises “the right to erect, modify or suppress ecclesiastical institutions.”¹²

It seems that the content of this paragraph reiterates the principle of independence and autonomy of the two communities (religious and political), as provided in Art. 2, and, therefore, this paragraph is might be left out.

¹⁰ “La Repubblica del Congo riconosce la personalità giuridica a carattere pubblico che la Chiesa cattolica possiede per natura.”

¹¹ “La Repubblica del Congo riconosce la personalità giuridica di tutte le istituzioni della Chiesa cattolica, che sono costituite come persona giuridica di carattere pubblico o privato dal Codice di Diritto Canonico e che sono rette dalle loro norme proprie; in particolare, la Conferenza Episcopale del Congo e tutte le circoscrizioni ecclesiastiche.”

¹² “La Chiesa cattolica stabilisce liberamente le norme giuridiche nel suo ambito di competenza. Essa ha il diritto di erigere, di modificare o di sopprimere le istituzioni ecclesiastiche.”

Next, para. 2 of the same article says that, “When the Holy See erects, modifies or sovereignly suppresses ecclesiastical entities, it shall immediately inform the competent Congolese authorities under this Framework Agreement.”¹³

Judging by this provision, the obligation to inform the state authorities about the erection, modification or suppression of ecclesiastical entities occurs only when the Holy See does so and not a diocesan bishop.

In Art. 5, “The Republic of the Congo shall guarantee the Roman Catholic Church, her faithful and those in charge of her institutions, the freedom to communicate and maintain contact with the Holy See, the Episcopal Conferences of other countries, as well as with particular Churches, bodies and people inside or outside the Republic of the Congo.”¹⁴

It would be more advantageous if the wording, “[...] her faithful and those in charge of her institutions,” were replaced by “and her juridical and natural persons.”¹⁵

3. The exercise by the Church of her apostolic mission and the inviolability of places of worship, cemeteries, and ecclesiastical sites (Art. 6)

Art. 6 contains three paragraphs covering the free exercise by the Church of her mission (para. 1) and the inviolability of places of worship and cemeteries (para. 2-3).

In para. 1, “The Republic of the Congo shall recognise and guarantee the Roman Catholic Church the free exercise of her apostolic mission, in particular with regard to worship, the leadership of its faithful, and teaching in all

¹³ “Quando la Santa Sede erige, modifica o sopprime sovranamente le circoscrizioni ecclesiastiche, ne informa immediatamente le Autorità congolese competenti nel quadro del presente Accordo Quadro.”

¹⁴ “La Repubblica del Congo garantisce alla Chiesa cattolica, ai suoi fedeli e ai responsabili delle sue istituzioni, la libertà di comunicare e di mantenersi in contatto con la Santa Sede, con le Conferenze Episcopali di altri Paesi, come anche con le Chiese particolari, gli organismi e le persone che si trovano all’interno o all’esterno della Repubblica del Congo.”

¹⁵ See Góralski and Adamczewski 1994, 31-34.

its forms, as well as charitable work, the operation of associations, and the work of her own institutions.”¹⁶

This provision apparently gives the Roman Catholic Church a comprehensive guarantee to execute her apostolic mission. The phrase “in particular” is used to indicate that the areas of the Church’s apostolic mission listed afterwards (worship, leadership, teaching, charity, associations, and the work of the Church’s institutions) are merely examples and should not be considered an exhaustive set.

Para. 2 reads, “In accordance with its own legislation, the Republic of the Congo shall ensure the inviolability of places of worship, churches, chapels, cemeteries and their immediate vicinity, in particular episcopal seats, presbyteries, convents, ecclesiastical tribunals and archives. The public force may enter such places either at the request of the competent ecclesiastical authority or, after notification to the same, to execute a court order concerning persons accused of a crime committed on the territory of the state.”¹⁷

The expression “in particular” may raise some doubts as it may imply that inviolability should be ensured to some other places too (apart from episcopal seats, presbyteries, convents, ecclesiastical tribunals and archives), which may lead to interpretation uncertainties in such significant matters (e.g. when considering ecclesiastical museums).

Besides this editorial flaw, also the comma use, as in “places of worship, churches,” etc., might suggest that churches, etc., are not places of worship. Consequently, instead of a comma, a colon should be put after the words “places of worship.”

¹⁶ “La Repubblica del Congo riconosce e garantisce alla Chiesa cattolica il libero esercizio della sua missione apostolica, in particolare per quanto riguarda il culto, il governo dei propri fedeli e l’insegnamento in tutte le sue forme, le opere caritative, le attività delle associazioni e le opere dei suoi istituti.”

¹⁷ “In conformità alla sua legislazione, Essa assicura l’invulnerabilità dei luoghi di culto, delle chiese, delle cappelle, dei cimiteri e le loro dipendenze, in particolare i vescovadi, le canoniche, i conventi, i tribunali e gli archivi ecclesiastici. La forza pubblica può accedere a tali luoghi o su richiesta dell’ Autorità ecclesiastica competente oppure, previa notifica alla medesima Autorità, per eseguire un mandato giudiziario concernente persone accusate di delitti commessi sul territorio dello Stato.”

Moreover, episcopal seats, presbyteries, convents, ecclesiastical tribunals and archives were classified as situated within the premises of churches, chapels and cemeteries, which is not always the case.

Finally, the wording of the paragraph does not distinguish between worship structures (sacred; churches, chapels) and ecclesiastical facilities (episcopal seats, presbyteries, etc.).

As it seems, the first part of para. 2 could read as follows, “In accordance with its own legislation, the Republic of the Congo shall ensure the inviolability of places of worship and cemeteries, along with their immediate vicinity, as well as ecclesiastical facilities, in particular episcopal seats, presbyteries, convents, archbishop and episcopal curias, ecclesiastical tribunals, ecclesiastical archives and museums.”

In para. 3, the contracting parties agreed that, “In the event of serious and ascertained risks to the safety of persons or property, the competent Congolese authorities may take all necessary protective measures, subject to prior notification to the competent ecclesiastical authorities, i.e. the diocesan bishop and the person responsible for the structure in question.”¹⁸

This is a standard provision in concordat agreements, although some do not impose the obligation to notify ecclesiastical authorities (under certain circumstances).¹⁹

¹⁸ “Nel caso di rischi gravi e accertati per la sicurezza delle persone o dei beni, le Autorità congolesi competenti possono prendere tutte le necessarie misure di protezione, con riserva di avvertirne previamente le Autorità ecclesiastiche competenti, cioè il Vescovo diocesano e la persona responsabile dell’edificio in questione.”

¹⁹ Cf. Concordat between the Holy See and the Republic of Poland, signed at Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, item 318 [henceforth cited as: Concordat], Art. 8(5): “Civil authorities may take precautionary measures necessary in the places referred to in paragraph 3 [places of worship and cemeteries], even without advance reference to ecclesiastical authorities, if it is necessary for the protection of life, well-being, or property.”

4. The filling of ecclesiastical offices (Art. 7)

Art. 7 contains a comprehensive guarantee that “appointments, as well as the assignment of ecclesiastical offices, shall be reserved exclusively to the Roman Catholic Church, in accordance with the rules of canon law.”²⁰

It may be assumed that the mention of “assignment of ecclesiastical offices” is unnecessary because, in point of fact, it is done through appointment. Moreover, rather than stressing that such appointments should be reserved “to the Roman Catholic Church,” it would be more appropriate to say, “competent authorities of the Roman Catholic Church.”

Para. 2 applies to bishops, specifically their “appointment, transfer, dismissal, and acceptance of resignation,” these being “the exclusive responsibility of the Holy See.”²¹

Para. 3 resolves that, “before the publication of appointment of a diocesan bishop, the Holy See, by way of courtesy, shall advise the Congolese government of the name of the elected person in confidence.”²²

In the most recent agreements between the Holy See and other states, this kind of provisions has become commonplace.²³

5. Penal cases involving the clergy and the religious and the seal of confession and professional secrecy (Art. 8-9)

Art. 8(1) reads that, “In the event of any complaint, investigation or legal action concerning a cleric or a religious (male or female), the judicial authorities shall inform the bishop of the place of residence of the person concerned in advance and in confidence of the reasons for instituting such mea-

²⁰ “Le nomine, come anche l’attribuzione delle cariche ecclesiastiche, sono riservate esclusivamente alla Chiesa cattolica, in conformità alle norme del diritto canonico.”

²¹ “La nomina, il trasferimento, la destituzione e l’accettazione della rinuncia dei Vescovi spetta esclusivamente alla Santa Sede.” The equivalent (yet more simplified) provision of the Polish Concordat reads, “The appointment and removal of bishops shall reside exclusively with the Holy See” [Concordat, Art. 7(2)].

²² “Prima della pubblicazione della nomina di un Vescovo diocesano, la Santa Sede, a titolo di cortesia, farà conoscere confidenzialmente al Governo congolese il nome dell’eletto.”

²³ See Concordat, Art. 7(4); *Accord-Cadre entre le Saint-Siège et la République du Burundi sur matières d’intérêt commun* (6.11.2012), AAS 106 (2014), Art. 7(3).

tures. If the person concerned is a member of an institute of consecrated life or a society of apostolic life, his or her direct superior shall also be notified.”²⁴

The wording of the first sentence clearly implies the obligation to notify the bishop of the place of residence of the person concerned – not only a diocesan cleric but also a religious (male or female). As regards the measures listed in the same sentence instituted in relation to a religious (male or female), there is an obligation to notify his or her immediate superior.

It should be noted that it would be more appropriate (for the sake of consistency of this provision) to use the terms “member (male or female) of an institute of consecrated life or of a society of apostolic life” in the cited sentence.

On the other hand, para. 2 refers to measures listed therein and instituted against “a bishop or priest exercising a jurisdiction comparable to that of a diocesan bishop;” should this be the case, “the Holy See shall be informed beforehand of the measures that are to be instituted against him.”²⁵

In the light of can. 381 § 2 and 368 of the 1983 Code of Canon Law,²⁶ those who are equal to a diocesan bishop before the law are: a territorial prelate, a territorial abbot, an apostolic vicar, and an apostolic administrator appointed in a stable manner.

Art. 9 is devoted to the seal of confession and professional confidentiality.

Para. 1 reads, “The secret of sacramental confession is absolute and, therefore, inviolable. It is therefore never permitted to question a cleric on this matter.”²⁷

²⁴ “Per qualsiasi denuncia, indagine o azione giudiziaria riguardante un chierico o un religioso (religiosa), le Autorità giudiziarie faranno conoscere previamente e confidenzialmente al Vescovo del luogo del domicilio dell’interessato i motivi di tali misure. Se si tratta di un membro di un Istituto di vita consacrata o di una Società di vita apostolica, ne sarà informato anche il suo diretto Superiore.”

²⁵ “Se si tratta di un Vescovo o di un sacerdote che esercita una giurisdizione assimilabile a quella di un Vescovo diocesano, la Santa Sede sarà previamente informata sulle misure che si intendono prendere nei suoi confronti.”

²⁶ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317.

²⁷ “Il segreto della confessione sacramentale è assoluto e, pertanto, inviolabile. Non è quindi mai permesso di interrogare un chierico su questa materia.”

Due to the fact that hearing of confessions is reserved to a priest, instead of the phrase “questioning a cleric” (a deacon is also a cleric), the wording “questioning a priest” would be more appropriate here.

Para. 2 is intended to protect the so-called professional secrecy. It says that, “bishops, priests, religious (male and female) shall have the right to have their obligation of secrecy, linked to their ministry or way of life, respected in the same way as members of other professions, whose professional confidentiality is also guaranteed.”²⁸

6. The property of ecclesiastical juridical persons and foundations (Art. 10)

In Art. 10(1), the parties agree that, “ecclesiastical juridical persons may acquire, possess, dispose of and sell movable and immovable property, as well as property rights, in accordance with canon law and the effective legislation of the Republic of the Congo.”²⁹

Next, para. 2 of the same article reads, “They may also establish foundations, whose activities, as far as their civil effects are concerned, shall be subject to Congolese law and regulations.”³⁰

In both these norms, the guarantee of the Congolese state goes hand in hand with the guarantee of the ecclesiastical party (respect of state law).

²⁸ “Vescovi, i sacerdoti, i religiosi (le religiose) hanno diritto al rispetto dell’obbligo al segreto, legato al loro ministero o stato di vita, allo stesso modo che per i membri di altre professioni, ai quali è riconosciuto il rispetto del segreto professionale.” Cf. *Accordo tra la Santa Sede e la Repubblica di Guinea Equatoriale sulle relazioni tra la Chiesa Cattolica e lo Stato – Acordo entre la República de Guinea Ecuatorial y la Santa Sede sobre las relaciones entre la Iglesia Católica y el Estado* (13.10.2012), AAS 105 (2013), Art. 9(1); *Accordo tra la Santa Sede e la Repubblica di Capo Verde sullo statuto giuridico della Chiesa cattolica in Capo Verde – Acordo entre a Santa Sé e a República de Cabo Verde relativo ao estatuto juridico de Igreja católica em Cabo Verde* (10.06.2013), AAS 106 (2014), Art. 9(2).

²⁹ “Le persone giuridiche ecclesiastiche possono acquisire, possedere, disporre e alienare beni mobili e immobili, come anche diritti patrimoniali, in conformità con il diritto canonico e la legislazione in vigore nella Repubblica del Congo.”

³⁰ “Esse possono, inoltre, istituire fondazioni, le cui attività, per quanto attiene ai loro effetti civili, saranno sottoposte alle norme legali e regolamentari congolese.”

7. Church's publishing activity and the use of the mass-media (Art. 11)

Art. 11(1) provides that, "The Roman Catholic Church enjoys the freedom to edit, publish, disseminate and sell books, newspapers, literary or artistic publications, audio-visual media and informative material, as well as the freedom to organise any activities strictly connected to her apostolic mission, subject to respect for public order and the dignity and freedom of the citizens."³¹

Apparently, the other part of this paragraph (the freedom to organise any activities strictly connected to apostolic mission) might be removed because it reiterates the guarantee contained in Art. 6(1) ("The Republic of the Congo shall recognise and guarantee the Roman Catholic Church the free exercise of her apostolic mission").

Para. 2 resolves that, "The Roman Catholic Church shall be guaranteed free access to public means of communication as well as the right to create and directly manage newspapers, radio or television channels, including through computerised means (the Internet), in accordance with the effective Congolese legislation."³²

This final clause is the Roman Catholic Church's guarantee that the relevant provisions of Congolese law will be respected.

8. Association of the faithful (Art. 12)

Art. 12 contains a guarantee that the Republic of the Congo, "recognises and protects, in application of Congolese and canonical legal norms, the right of the Roman Catholic faithful to associate with a view to pursuing specific

³¹ "La Chiesa cattolica gode della libertà di editare, di pubblicare, di divulgare e di vendere libri, giornali, produzioni letterarie o artistiche, mezzi audiovisivi e materiale informatico, nonché della libertà di organizzare ogni attività strettamente connessa con la sua missione apostolica, con riserva del rispetto dell'ordine pubblico e della dignità e libertà dei cittadini."

³² "È garantito alla Chiesa cattolica un libero accesso ai mezzi pubblici di comunicazione così come il diritto di creare e di gestire direttamente giornali, radio o canali di televisione, compreso attraverso mezzi informatici (internet), in conformità con la legislazione congolese vigente."

forms of activity within the Church's mission. Although they are subject to the Congolese legislation in the civil aspects of their activities, these associations, by virtue of the character of their general interest, may nevertheless benefit from special provisions, as provided in their statutes and depending on their legal capacity, provided for in the agreement concluded between the Congolese government and the Episcopal Conference of the Congo, the latter acting with the prior approval of the Holy See."³³

Thus, the Roman Catholic Church was reassured that her faithful would have the right to associate for purposes related to the mission of the Church, in accordance with canon law and Congolese law. At the same time, the state recognised that if an association of the faithful served the general public interest, it would be able to take advantage of special provisions (socially and financially advantageous), in accordance with its statutes and legal capacity, as provided for in a separate agreement between the Congolese government and the local Episcopal Conference empowered by the Holy See (to conclude such an agreement).

9. Church's educational activity (Art. 13)

In Art. 13, the Congolese state finds that, "The Roman Catholic Church shall have the right to establish educational institutions at all levels and to manage them according to canonical norms and in compliance with Congolese law."³⁴

It is the right of the Roman Catholic Church to establish (and manage) all kinds of education establishments (kindergartens, schools, orphanages, etc.), in accordance with the provisions of both canon law and Congolese law. In

³³ "La Repubblica del Congo riconosce e protegge, in applicazione delle norme giuridiche congolese e canoniche, il diritto dei fedeli cattolici di associarsi per perseguire attività specifiche nell'ambito della missione della Chiesa. Pur essendo sottomesse alla legislazione congolese in ciò che attiene agli aspetti civili delle loro attività, queste associazioni, in forza del loro carattere di interesse generale, potranno tuttavia beneficiare di disposizioni particolari relative ai loro statuti e alla loro capacità giuridica, previste da un accordo stipulato fra il Governo congolese e la Conferenza Episcopale del Congo, agendo quest'ultima con la previa approvazione della Santa Sede."

³⁴ "La Chiesa cattolica ha il diritto di creare istituzioni educative di tutti i livelli e di gestirle secondo le norme canoniche e nel rispetto della legislazione congolese."

this point, the Roman Catholic Church assumed the obligation to observe state law.

10. Pastoral ministry of chaplains provided to members of the Congolese public and armed forces and to the faithful held or working in penitentiary and hospital facilities, as well as in medical and social care institutes (Art. 14)

Art. 14 of the Framework Agreement contains a guarantee that, “The Republic of Congo shall guarantee the right of the Roman Catholic Church to appoint chaplains to act as spiritual guides to the Catholic faithful, members of the Congolese public force and the armed forces, as well as to the faithful held or working in penitentiary or healthcare facilities and medical and social care institutions.”³⁵

This provision is therefore to ensure pastoral care (through the ministry of chaplains) to Catholics employed in “Congolese public forces” (the Police and other public services), serving in the army, and employed at or held in penitentiary facilities, hospitals and medical and social care institutions.

11. The establishment by the Church of charitable, educational and social and health care institutions and the financial participation of the State in the activities of the Church for the common good in the area of health, education, and social and medical assistance (Art. 15)

Art. 15(1) contains a statement that, “The Roman Catholic Church shall have the right to freely establish institutions to carry out charitable, educational and social- and healthcare activities related to her spiritual mission.”³⁶

³⁵ “La Repubblica del Congo garantisce il diritto della Chiesa cattolica di designare cappellani che assumeranno l’incarico di guida spirituale presso i fedeli cattolici, membri della forza pubblica congolese e delle forze armate, come anche presso i fedeli che dimorano o lavorano nelle strutture penitenziarie od ospedali ere e negli istituti di assistenza medica e sociale.”

³⁶ “La Chiesa cattolica ha il diritto di creare liberamente delle istituzioni per esercitare attività caritative, educative e di assistenza socio-sanitaria connesse con la sua missione spirituale.”

Clearly, the guarantee that the Roman Catholic Church may undertake educational activities is already included, as mentioned above, in Art. 13, so it was not necessarily to repeat it in Art. 15(1).

On the other hand, in para. 2 the contracting parties agreed that, “the competent authorities of the Republic of the Congo and the Episcopal Conference of the Congo, within the economic capabilities of the Congolese state, shall be able to seek arrangements concerning the financial participation of the state in the works of the Roman Catholic Church in the Republic of the Congo that serve the common good in the area of health, education and social and medical assistance.”³⁷

It should, therefore, be considered a promise of the Congolese state to provide financial support to the initiatives of the Roman Catholic Church mentioned in the paragraph and serving the common good. More specific arrangements on this matter are to be agreed in a relevant agreement between the Congolese state and the local Episcopal Conference.”³⁸

12. Final provisions (Art. 16-18)

The last three articles of the Framework Agreement contain final provisions.

In Art. 16(1), the contracting parties agreed that, “The Holy See and the Republic of the Congo shall resolve, through diplomatic channels, any difficulties that may arise from the interpretation and application of this Framework Agreement.”³⁹

This means that any discrepancies, either concerning the interpretation of specific provisions of the agreement or its application, will be resolved by

³⁷ “Le autorità competenti della Repubblica del Congo e la Conferenza Episcopale del Congo, nei limiti delle possibilità economiche dello Stato congolese, potranno trovare degli accordi in vista di una partecipazione finanziaria statale in favore delle opere della Chiesa cattolica nella Repubblica del Congo che sono al servizio del bene comune nel campo della salute, dell’educazione e dell’assistenza sociale e medica.”

³⁸ Cf. *Accord-Cadre entre le Saint-Siège et la République du Burundi*, Art. 17.

³⁹ “La Santa Sede e la Repubblica del Congo risolveranno, per via diplomatica, le eventuali difficoltà che possano sorgere dall’interpretazione e dall’applicazione del presente Accordo Quadro.”

the parties (through the Apostolic Nunciature and the government of the Republic of the Congo).

Para. 2 of the same article applies to possible future cooperation and says that, matters of common interest, requiring new or additional solutions, shall be dealt with jointly by the contracting parties.”⁴⁰

Finally, para. 3 provides that, “The Holy See and the Republic of the Congo shall agree to conclude, on matters of common interest, specific agreements related to this Framework Agreement.”⁴¹

This provision indicates that when it comes to “matters of common interest,” i.e. those of interest to both parties, and, at the same time, related to the provisions of the Framework Agreement, the contracting parties will conclude other complementary agreements. An example of this is the provision under Art. 15(2).

It says that, “This Framework Agreement may be amended, revised, or modified upon request of one of the contracting parties. Any amended, revised, or modified provisions shall enter into force after being approved by the contracting Parties.”⁴²

It should be noted that the parties do not mean arrangements on completely new or complementary matters [they are not contained in the Framework Agreement, see Art. 16(2)] but amendments, revisions or modifications of the terms of the Framework Agreement.

Art. 18 says that, “this Framework Agreement shall be ratified in accordance with the procedures laid down in the constitutional norms of the contracting parties and shall enter into force upon the exchange of ratification instruments.”⁴³

⁴⁰ “Le materie di comune interesse, che richiedano soluzioni nuove o supplementari, saranno trattate comune intesa dalle Parti contraenti.”

⁴¹ “La Santa Sede e la Repubblica del Congo convengono concludere, su materie di comune interesse, atti pattizi specifici e connessi con il presente Accordo Quadro.”

⁴² “Il presente Accordo Quadro può essere emendato, rivisto o modificato su iniziativa di una delle Parti contraenti. Le disposizioni emendate, riviste o modificate entreranno in vigore dopo essere state approvate dalle Parti contraenti.”

⁴³ “Il presente Accordo Quadro sarà ratificato secondo le procedure, previste dalle norme costituzionali proprie delle Alte Parti contraenti, ed entrerà in vigore a partire dallo scambio degli strumenti di ratifica.”

13. Concluding remarks

The discussed Framework Agreement between the Holy See and the Republic of the Congo on the Relations between the Roman Catholic Church and the State dated 3 February 2017 is an important normative act governing the mutual relations of two communities: religious and political. Already in the Preamble, the parties expressed their intent to define, within the existing legal framework, the mutual relations between the Roman Catholic Church and the Republic of the Congo. The underlying cause of concluding such an agreement was undoubtedly the fact that the country is inhabited by a Catholic majority, and the Roman Catholic Church plays an important role in the Congolese state. This is highlighted in the Preamble – it emphasises the significance of the Roman Catholic Church and her faithful in the national life of the country and her role in the spiritual, social, cultural, and educational development of the nation.

The arrangements made by the contracting parties in the Framework Agreement cover numerous areas and essentially follow standards generally adopted in similar instruments in recent years. The basis for specific regulations is the principle worded in Art. 2 of independence and autonomy of the Congolese state and the Church, each in its own field, “supplemented” by a reference to sovereignty. Of significance is also a guarantee given to the Roman Catholic Church [in Art. 6(1)] of the free exercise of her own mission. The content of Art. 16(3) containing an announcement of the conclusion by the parties of special agreements securing their mutual interests should be regarded as unconventional.

As for the wording of the Framework Agreement, is not free from certain flaws, as demonstrated when discussing its individual provisions.

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**Framework Agreement Between the Holy See and the Republic
of the Congo on the Relations Between the Roman Catholic Church
and the State of 3 February 2017**

Summary

Among African countries that have concluded an agreement with the Holy See, there is, among others, Republic of the Congo. The framework agreement (*Accordo Quadro*) was concluded on February 3, 2017 in Brazzaville. In the preamble to the agreement, the parties expressed the desire to define – within the legal framework – the mutual relations between the Catholic Church and the Congolese State.

The arrangements made by the contracting parties in the framework agreement relate to many areas of life and generally do not depart from the accepted standards of such treaties concluded in recent years. The basis for detailed regulations is entered in Art. 2 the principle of independence and autonomy of the state and the Church, each in their own field, "supplemented" with a mention of their sovereignty. The guarantee given to the Catholic Church (in Art. 6 para. 1) of the free exercise of its own mission is also significant.

The editorial board of some articles of the treaty raises some objections.

Key words: framework agreement, Holy See, Republic of Congo, arrangements, independence and autonomy

**Umowa ramowa między Stolicą Apostolską i Republiką Konga
w sprawie relacji między Kościołem katolickim i Państwem
z 3 lutego 2017 roku**

Streszczenie

Wśród państw afrykańskich, które zawarły umowę ze Stolicą Apostolską, znalazła się m.in. Republika Konga. Umowa ramowa (*Accordo Quadro*) została zawarta 3 lutego 2017 r. w Brazzaville. W Preambule umowy strony wyraziły pragnienie określenia – w ramach prawnych – wzajemnych relacji między Kościołem katolickim i Państwem kongijskim.

Uzgodnienia podjęte przez układające się strony w umowie ramowej odnoszą się do wielu dziedzin życia i generalnie nie odbiegają od przyjętych standardów tego rodzaju traktatów zawieranych w ostatnich latach. Podstawą dla regulacji szcze-

gółowych jest wpisana do art. 2 zasada niezależności i autonomii państwa i Kościoła, każdego w swojej dziedzinie, „uzupełniona” wzmianką o ich suwerenności. Znacząca jest również gwarancja dana Kościołowi katolickiemu (w art. 6 ust. 1) swobodnego pełnienia jego własnej misji.

Pewne obiekcje budzi redakcja niektórych artykułów traktatu.

Słowa kluczowe: umowa ramowa, Stolica Apostolska, Republika Kongo, uzgodnienia, niezależność i autonomia

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