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**PROGRAMME D’ASSISTANCE JURIDIQUE ET JUDICIAIRE**

**QUESTIONNAIRE ON CRIMINALIZATION AND PROSECUTION OF RAPE**

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**PS: My submission can be made public**

1. **Definition and scope of criminal law provisions**
2. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

* **The decree of 30 January 1940 on the Congolese Criminal Code as amended and supplemented by Act No. 06/018 of 20 July 2006 on sexual violence:**
* **indecent assault (art.167-168):** is any act contrary to morality committed intentionally and directly against a person without that person's valid consent.
* **rape (art.170-171):** has committed rape, either by means of violence or serious threats or by coercion against a person, directly or through the intermediary of a third party, or by surprise, by psychological pressure, or in a coercive environment, or by abusing a person who, by reason of illness, impairment of faculties or any other accidental cause, has lost the use of his senses or has been deprived of them by some other means: (a) Any man, whatever his age, who has inserted his sexual organ, even superficially, into the sexual organ of a woman, or any woman, whatever her age, who has forced a man to insert his sexual organ, even superficially, into her sexual organ; (b) Any man who has penetrated, even superficially, the anus, mouth or any other orifice of the body of a woman or a man by a sexual organ, by any other part of the body or by any object whatsoever; (c) Any person who has introduced, even superficially, any other part of the body or any object whatsoever into the vagina; (d) Any person who compels a man or woman to "enter, even superficially, his or her anus, mouth or any orifice of his or her body through any sexual organ, through any other part of the body or through any object.

Rape by means of violence shall be deemed to have been committed solely by the carnal bonding of the sexes on the persons designated in Article 167(2).

* **the excitement of underage debauchery (Art.172-173):** Art172: Anyone who has offended against morals by exciting, facilitating or favouring the debauchery or corruption of persons of either sex under the age of 18 years in order to satisfy the passions of others, shall be punished by penal servitude of three months to five years and a fine of fifty thousand to one hundred thousand constant Congolese francs. Art173: The act set out in the preceding article shall be punishable by penal servitude for ten to twenty years and a fine of one hundred thousand to two hundred thousand Congolese francs, if it was committed against a child under the age of ten.
* **Pimping and procuring:** Article 174 b: Shall be punished by penal servitude for three months to five years and a fine of fifty thousand to one hundred thousand Congolese francs constant:1. 1. Anyone who, in order to satisfy the passions of others, has hired, trained or diverted, with a view to debauchery or prostitution, even with his consent, a person over eighteen years of age; the age of the person may be determined by medical examination, in the absence of a civil status. 2. Anyone who has kept a bawdy house or house of prostitution; 3. Pimp: a pimp is a person who lives, in whole or in part, at the expense of a person whose prostitution he exploits; 4. Anyone who habitually exploits in any other way the debauchery or prostitution of others shall be punished by the same penalty as in the preceding paragraph: 1. Anyone who publicly disseminates a pornographic document or film to children under eighteen years of age; 2. Anyone who shows on television dances or obscene clothing that offend public morals, when the victim is a child under the age of eighteen, shall be punished by a term of five to twenty years.
* **Forced prostitution: Article 174 c** Whoever induces one or more persons to perform an act or acts of a sexual nature, by force, threat of force or coercion or by taking advantage of the inability of such persons to give their free consent with a view to obtaining a pecuniary or other benefit, shall be punished by three months to five years of penal servitude.
* **Sexual harassment: Article 174d** Anyone who engages in persistent behaviour towards another person, whether in the form of words, gestures, orders, threats or coercion, or by exerting serious pressure, or by abusing the authority conferred on him or her by his or her position with a view to obtaining favours of a sexual nature, shall be punished by penal servitude for one to twelve years and a fine of fifty to one hundred thousand constant Congolese francs, or by one of these penalties only. Prosecution shall be subject to the victim's complaint.
* **Sexual slavery: Article 174 e** Shall be punished by a sentence of five to twenty years of penal servitude and a fine of two hundred thousand Congolese francs constant, Anyone who has exercised any or all of the powers associated with the right of ownership over a person, including by holding or imposing a similar deprivation of liberty or by buying, selling or lending, bartering for sexual purposes, and compelling that person to perform one or more acts of a sexual nature.
* **Forced marriage: Article 174 f** Without prejudice to article 336 of the Family Code, anyone who, exercising parental or guardianship authority over a minor or adult, gives him or her in marriage, or with a view to marriage, or forces him or her to marry, shall be punished by a penalty of between one and 12 years' penal servitude and a fine of not less than 100,000 constant Congolese francs. The minimum penalty provided for in paragraph 1 shall be doubled in the case of a person under eighteen years of age.
* **Sexual mutilation: Article 174 g** Anyone who commits an act that violates the physical or functional integrity of the genital organs of a person shall be punished by a term of imprisonment of two to five years and a fine of two hundred thousand Congolese francs constant. Where mutilation has resulted in death, the penalty is penal servitude for life.
* **Of zoophilia: Article 174 h** Shall be punished by five to ten years of penal servitude and a fine of two hundred thousand Congolese francs constant, anyone who, by trickery, violence, threats or any form of coercion or artifice, forces another person to have sexual relations with an animal. Anyone who deliberately has sexual relations with an animal shall be punished by the same penalties as those provided for in paragraph 1 of this article.
* **Deliberate transmission of incurable sexually transmitted infections: Article 174 i** Anyone who deliberately infects a person with an incurable sexually transmitted infection shall be punished by life imprisonment and a fine of two hundred thousand Congolese francs.
* **Trafficking and exploitation of children for sexual purposes Article 174 (j)** Any act or transaction relating to the trafficking or exploitation of children or any person for sexual purposes in return for remuneration or any other benefit shall be punishable by 10 to 20 years' penal servitude.
* **Forced pregnancy: Article 174 k** Whoever detains one or more women who have become pregnant by force or deception shall be punished by imprisonment for ten to twenty years in penal servitude.
* **Forced sterilization Article 174 l** Whoever commits an act that deprives a person of his or her biological and organic reproductive capacity without a justified medical decision and the free consent of the victim, shall be punished by imprisonment for five to fifteen years in penal servitude.
* **Child pornography Article 174:** Anyone who makes any representation by any means whatsoever of a child engaged in real or simulated explicit sexual activities or any representation of the sexual organs of a child for primarily sexual purposes shall be punished by five to ten years of penal servitude and a fine of one hundred and fifty thousand Congolese francs constant. Anyone who has made any representation, by whatever means, of a child engaged in real or simulated explicit sexual activity or any representation of the sexual organs of a child for primarily sexual purposes;
* **Child prostitution Article 174**: Anyone who uses a child under the age of eighteen years for the purpose of sexual activities for remuneration or any other form of benefit shall be punished by penal servitude from five to twenty years and a fine of two hundred thousand Congolese francs constant. If the offence was committed by a person exercising parental or guardianship authority, the guilty party shall, in addition, be deprived of the exercise of parental or guardianship authority, in accordance with article 319 of the Family Code.
* **Act No. 06/019 of 20 July 2006 amending and supplementing the Decree of 6 August 1959 on the Congolese Code of Criminal Procedure:**
* **Article 7a** Without prejudice to the legal provisions relating to the flagrante delicto procedure, the preliminary investigation in cases of sexual violence shall be carried out within a maximum of one month from the date of referral to the judicial authority. The investigation and judgement shall be conducted within a maximum of three months from the date of referral to the judicial authority. The investigation by the Judicial Police Officer shall be immediate. It shall be conducted without delay so as to provide the Public Prosecutor's Office with the main elements of assessment. The Judicial Police Officer, having been informed of an offence relating to sexual violence, shall notify the officer of the Public Prosecutor's Office to whom he reports within 24 hours. At all stages of the procedure, the victim is assisted by counsel.
* **Article 9 (bis)** The transactional fine provided for in article 9 above shall not apply to offences of sexual violence.
* **Article 14 (bis)** In accordance with articles 48 and 49 below, the Public Prosecutor's Office or the judge shall, ex officio, request a doctor and a psychologist to assess the condition of the victim of sexual violence and to determine the appropriate treatment, as well as to evaluate the extent of the damage suffered by the victim and its subsequent aggravation.
* **Article 14 (ter)** By way of derogation, in the case of offences relating to sexual violence, the following rules shall apply for the taking of evidence: 1. Consent may in no case be inferred from the words or conduct of a victim where the victim's ability to give freely given valid consent has been impaired by the use of force, trickery, drugs, threat or coercion or by the use of a coercive environment; 2. 2. Consent shall in no case be inferred from the silence or lack of resistance of the victim of the alleged sexual violence; 3. The credibility, honour or sexual availability of a victim or witness can in no way be inferred from their previous sexual behaviour; 4. Evidence relating to the prior sexual behaviour of a victim of sexual violence shall not exonerate the accused from criminal responsibility.
* **Article 74 (bis)** The Public Prosecutor's Office or the judge hearing a case of sexual violence shall take the necessary measures to safeguard the safety, physical and psychological well-being, dignity and privacy of the victims or any other person involved. To this end, the case shall be heard in camera at the request of the victim or the Public Prosecutor's Office.
* **Article 10** The Judicial Police Officer or the Magistrate of the Public Prosecutor's Office who receives a complaint or a denunciation or who notes an offence against a magistrate, a senior official of the public or judicial administration, a senior official of a parastatal company, a district commissioner, of a burgomaster, a head of sector or a person replacing them, may, except in cases of flagrant offences or offences relating to sexual violence, arrest the person being prosecuted only after first informing the hierarchical authority to which he or she reports
* **Article 16** The Public Prosecutor's Office may summon before it any person whose appearance it deems necessary. The person duly summoned shall be required to appear and comply with the summons. Persons who, by virtue of their status or profession, are custodians of secrets entrusted to them shall be exempt from giving evidence.
* **Act No. 09/001 of 10 January 2009 on the protection of children**
* Article 61: In particular, the following are prohibited: 1. The incitement, encouragement or coercion of a child to engage in sexual activity; 2. The use, procuring or offering of a child for paedophilia; 3. Dissemination of pornographic films aimed at children; 4. the exposure of a child to obscene songs and performances.

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only: **NO**
   2. Gender neutral, covering all persons: **YES**
   3. Based on the lack of consent of victim: **NO** but nuanced if the victim is an adult or a minor. If it is a minor the consent is ineffective
   4. Based on the use of force or threat: **YES,** but nuanced whit the commission context
   5. Some combination of the above: **YES**
   6. Does it cover only vaginal rape?  **NO**
   7. Does it cover all forms of penetration? **YES**. If yes, please specify: Article 170.b of law n°06/018 of July 20, 2006 modifying and supplementing the Decree of January 30, 1940 relating to the Congolese penal code: *any man who has penetrated, even superficially "****the anus****,* ***the mouth*** *or* ***any other opening of the body*** *of a woman or" of a man by* ***a sexual organ****, by* ***any other part of the body*** *"or* ***by any object***.
   8. Is marital rape in this provision explicitly included: **NO**
   9. Is the law silent on marital rape? **YES**
   10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **NO**, It only referred by the doctrine
   11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   **YES**
2. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it: **NO**
3. What is the legal age for sexual consent? **18 years’ old**
4. Are there provisions that differentiate for sexual activity between peers? If so, please provide them. **YES**, when rape is committed between two minor children in conflict with the law, the offence is still an offence, but the law is silent on the punishment and the way in which the case can be referred to a judge ex officio.
5. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

**The decree of 30 January 1940 on the Congolese Criminal Code as amended and supplemented by Act No. 06/018 of 20 July 2006 on sexual violence:**

* **Art 167-168** Any indecent assault committed without violence, trickery or threats on the person or with the aid of the person of a child under the age of eighteen shall be punishable by penal servitude from six months to five years. An indecent assault committed with violence, trickery or threats on the person or with the aid of the person of a child under the age of eighteen shall be punishable by penal servitude for a term of five to fifteen years. If the offence was committed against persons or with the help of persons under ten years of age, the penalty shall be from five to twenty years;
* Art 170 : Quiconque sera connu coupable de viol sera puni d’une peine de servitude pénale de cinq à vingt ans et d’une amende ne pouvant être inférieure à cent mille francs congolais constants.
* Article 171 : Si le viol ou l’attentat à la pudeur a causé la mort de la personne sur laquelle il a été commis, le coupable sera puni de la servitude pénale à perpétuité ;
* See the answer to the first question with regard to information on the criminal offences and duration provided for other offences of sexual violence.

1. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

There is no specific reparation for the rape victim after conviction of the perpetrator. In all cases, reparation is made on the basis of a general assessment by the judge of the degree of damage suffered by the victim, in accordance with the provisions of article 258 of the Congolese Criminal Code, which stipulates as follows: ***"Any act by a person who causes damage to another person shall be binding on the person through whose fault it was caused.***

1. **Aggravating and mitigating circumstances**
2. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

Art 171 et 171 bis of 30 January 1940 on the Congolese Criminal Code as amended and supplemented by Act No. 06/018 of 20 July 2006 on sexual violence:

* If the perpetrators are the ascendants or descendants of the "person on whom or with whose aid the attack was committed;
* If they fall into the category of those who have authority over that person;
* if they are his teachers or hired servants or the "servants of the above-mentioned persons;
* if the attack was committed either by public officials or by "ministers of religion who abused their position in order to commit it", or by medical, para-medical or social workers, or by traditional practitioners, against persons entrusted to their care;
* if the perpetrator was assisted in the commission of the offence by "one or more persons;
* If the rape or indecent assault caused the death of the "person on whom it was committed".
* if the offender was assisted in the commission of the offence by "one or more persons;
* if it is committed on captive persons by their "guardians.
* if it is committed in public;
* if it has caused the victim a serious deterioration in his or her health and/or "has left serious physical and/or psychological after-effects;
* if it is committed on a person living with a disability;
* if the rape was committed with the use or threat of a weapon.

1. Is rape by more than one perpetrator an aggravating circumstance?

**NO,** but if the perpetrators fall back into the category of rape as a crime; this constitutes an aggravating circumstance. It is not the number of others that indicates whether the situation is aggravating or not

1. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference): **YES**
2. Is rape by spouse or intimate partner an aggravating circumstance? **NO,**
3. Does the law foresee mitigating circumstances for the purposes of punishment? **NO,** it does not specify for rape offences, so the judge assesses mitigating circumstances based on fairness.
4. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **NO** 
   1. Regardless of the law, is reconciliation permitted in practice? **YES**,
   2. And what is the practice in this regard? it's the pets that do the arresting because it's not formally forbidden by law.
5. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **NO** 
   1. if the perpetrator marries the victim of rape? **NO**
   2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **NO**
6. **Prosecution**
7. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**
8. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES**
9. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **NO**
10. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **NO**
11. Please provide information on the statute of limitations for prosecuting rape:

**10 years** for the rape (art 24 of the Penal Code Book 1) but it is imprescriptible if the rape is prosecuted as a crime against humanity or as a crime of geure and genocide. For the other sexual violence offences provided for and mentioned above the statute of limitations depends on the rate of punishment

1. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   **YES**, (art 24 of the Penal Code Book 1) but he has to take into account the statute of limitations on bringing a lawsuit
2. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  **YES.** If yes, please specify: **Article 14 (bis)** ofAct No. 06/019 of 20 July 2006 amending and supplementing the Decree of 6 August 1959 on the Congolese Code of Criminal Procedure: *the Public Prosecutor's Office or the judge shall, ex officio, request a doctor and a psychologist to assess the condition of the victim of sexual violence and to determine the appropriate treatment, as well as to evaluate the extent of the damage suffered by the victim and its subsequent aggravation.*
3. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?

**YES**, Art 14 (ter) ofAct No. 06/019 of 20 July 2006 amending and supplementing the Decree of 6 August 1959 on the Congolese Code of Criminal Procedure: 3. The credibility, honour or sexual availability of a victim or witness can in no way be inferred from their previous sexual behaviour; 4. Evidence relating to the prior sexual behaviour of a victim of sexual violence shall not exonerate the accused from criminal responsibility.

1. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **NO.**
2. **War and/or conflict**
3. Is rape criminalized as a war crime or crime against humanity? **YES**, Cfr la loi de mise en œuvre du statut de Rome
4. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **NO**
5. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **NO**
6. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **YES, in DRC**
7. **Data**
8. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

From 2015 to August 2019; a total of **914** cases were brought to court but only **271** judgments in favour of victims were obtained.

**Other**