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Violence Against Women in the Democratic Republic of Congo (DRC)

*Alternative report prepared for the
Committee on the Elimination of Discrimination Against Women*

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I. Preliminary Remarks: Relevant International Legal Background of the DRC

I.1. International Signatures and Ratifications by the DRC of Human Rights Treaties

The DRC is a party to several international human rights treaties that address women's rights, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and both of its Optional Protocols, the Rome Statute of the International Criminal Court, and the Convention on the Elimination of All Forms of Discrimination against Women.

At the regional level, the DRC is a State party to the African Charter of Human and People's Rights, which insists also on the elimination of all forms of discrimination against women. We regret the fact that the DRC has not yet ratified the protocol to the African Charter of Human and People's Rights concerning women's rights in Africa despite the fact that the State contributed to its development.

Signatures / Ratifications by the Democratic Republic of Congo of human rights treaties

	Ratification date	Date of entry into force
CERD¹	21/04/1976	21/05/1976
ICESCR²	01/11/1976	01/02/1977
ICCPR³	01/11/1976	01/02/1977
ICCPR - OP1⁴	01/11/1976	01/02/1977
CAT⁵	18/03/1996	17/04/1996
CEDAW⁶	17/10/1986	16/11/1986
CRC^{12bis}	20/03/1990	27/09/1990
CRC OP- AC⁷	11/11/2001	12/02/2002
CRC OP -SC⁸	11/11/2001	18/01/2002

¹ International Convention on the Elimination of All Forms of Racial Discrimination

² International Covenant on Economic, Social and Cultural Rights

³ International Covenant on Civil and Political Rights

⁴ Optional Protocol to the International Covenant on Civil and Political Rights

⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁶ Convention on the Elimination of All Forms of Discrimination against Women

^{12bis} Convention on the Rights of the Child

⁷ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

⁸ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Convention on apartheid⁹	11/07/1978 (accession)	
Rome Statute¹⁰	30/03/2002	
African Charter on Human and People's Rights	20/07/1987	

I.2. The Convention on the Elimination of All Forms of Discrimination against Women

Status of initial and periodic reports, received and awaited by the Committee on the Elimination of Discrimination against Women

CEDAW	Report deadline	Date of receipt	Date of examination	Overdue reports
Oral report	-	16/01/1997	16/01/1997	-
Initial report	16/11/1987	01/03/1994	25/01/2000	-
Second periodic report	16/11/1991	24/10/1996	25/01/2000	-
Third periodic report	16/11/1995	18/06/1999	25/01/2000	-
Fourth and fifth periodic reports	16/11/1999	11/08/2004		-

Latest concluding observations of the CEDAW concerning the DRC: 01/02/2000. A/55/38, paragraphs. 194-238.

I.3. Status of International Treaties in Domestic Law

The DRC is a monist state¹¹. According to article 215 of the Third Republic's Constitution, "*regularly concluded international treaties and agreements have, when published, greater authority than the law, provided that each treaty or agreement is implemented by the other party.*"

In practice, however, courts and tribunals do not apply the principle of superiority of international law over domestic law. In an almost instinctive manner, they apply national law, generally out of ignorance of the international instruments related to human rights, which stems largely from the fact that the Official Journals in which these

⁹ International Convention on the Suppression and Punishment of the Crime of Apartheid

¹⁰ Rome Statute of the International Criminal Court

¹¹ A legal doctrinal concept according to which domestic and international law are manifestations of the same legal order. Monist systems that give primacy to domestic law undermine the obligatory nature of international law and thereby reduce it to a status of external public law which the State can unilaterally modify. Definition from : Raymond Guillien and Jean Vincent, *Termes juridiques*, Dalloz, Paris 10th Edition, 1995, p.365

international texts are published are not published regularly nor are they distributed widely. Further, Congolese courts and tribunals are not equipped with libraries, and judges' salaries do not permit them personally to acquire all necessary documents.

In addition, the Congolese authorities do not uphold any policies aiming to promote the principle of the superiority of international treaties in national law, nor do they conduct any training in this respect. Some trainings were undertaken with the financial support of bilateral and multilateral partners.

II. The Status of Women and Girls in the DRC

II.1. Provisions and Institutions Concerning the Status of Women¹²

- The Third Republic's Constitution

Article 14 of the Third Republic's Constitution, promulgated on 18 February 2006, provides that "the State shall have the duty to ensure the elimination of all forms of discrimination with regard to women and to ensure the respect and promotion of their rights." It must "take measures to fight against all forms of violence against women in public and private life", and assure the "full participation of women in the development of the nation" particularly guaranteeing the "right to significant representation in national, provincial and local institutions". The State must guarantee the application of the principle of parity between women and men in these institutions, by regulating the application of these rights.

Unfortunately, these provisions are not implemented, since the State does not further its legal texts, and does not establish effective mechanisms assuring the effectiveness of these provisions. The State must concretise these provisions with implementing legislation without further delay.

- The National Council of Women

Ministerial order n°CAB/V.M/AFF.SO.F/015/98 provides for the creation and the organisation of the National Council of Women (*Conseil National de la Femme - CNF*). The CNF is a consultative organ of the government regarding the promotion of women, under the mandate of the Minister concerned with the status of women (currently, the Minister on the Status of Women and the Family). The CNF has the tasks of :

- promoting equality of rights and responsibilities of men and women in all domains,
- proposing actions to be undertaken towards promoting the status of women in accordance with international recommendations,
- encouraging women to become aware of their responsibility within society, to prepare them for public life on a local, national and international scale,
- reinforcing relations and solidarity among women from Congo, elsewhere in Africa and other continents,

¹² Source: <http://www.cabemery.org/publications/juricongo/>, Rubrique « Codes et Lois », Sous-rubrique « Condition féminine ».

- giving necessary guidance regarding actions to be taken in order to carry out the national programme on the promotion and protection of Congolese women (launched in 1999)

Currently, several NGOs specialised in women's rights have consultative status with the CNF, along with ministers' delegates, public and private institutions, public and private companies, religious organisations, trade unions, persons working on gender, representatives of international organisations and donors. The ministerial order is in the process of being amended in order to open up the CNF to other women's organisations grouped by theme.

The CEDAW Committee underlined upon its examination of the DRC's initial, second and third reports that this Ministry did not have available enough resources for executing the plan of action¹³. The insufficiency of State resources can be explained by its lack of interest in questions concerning the situation of Congolese women.

II.2. Discriminatory Provisions in Relation to Women

Despite the provisions contained in article 51 of the 2006 Constitution, Congolese legislation remains discriminatory towards women on many different levels.¹⁴ The following overview of discriminatory clauses contained in national laws is not exhaustive.¹⁵

However, the CEDAW Committee underlined this situation in the concluding report of the 22nd session of the Committee (17th January-4th February 2000). Despite some positive legislative developments, the Committee was concerned by the Family Code, the Penal Code and the Labour Code, which continue to contain discriminatory provisions¹⁶.

The Committee recommended that the Congolese Government give the highest priority to the adoption and implementation of legislation guaranteeing *de jure* and *de facto* gender equality¹⁷. As of now, very few measures have been adopted to abolish the discriminatory provisions of these laws.

¹³ cf. item 6 of the CEDAW list of issues during its examination of the periodic reports, CEDAW/C/COD/Q/5.

¹⁴ Forth and fifth periodic reports of DRC (CEDAW/C/COD/4-5) examine methodically each text and law regarding its conformity with the CEDAW.

¹⁵ Me Odyia Kalinda, Présidente, Droits de la Femme et Internet (DFNET). Websites : www.societecivile.cd/membre ; <http://rencontreweb.com/odyia>

¹⁶ Paragraph 211, report A/55/38.

¹⁷ Paragraph 212, report A/55/38.

II.2.1. The Family Code¹⁸

The **Family Code**, promulgated in 1987 and renewed in 1999, contains several discriminatory clauses¹⁹. Many provisions are incompatible with the Convention on the Elimination of All Forms of Discrimination against Women, as is underlined in the CEDAW report CEDAW/C/COD/4-5. Moreover, the discriminatory aspect of several articles had already been emphasised by the CEDAW during its 22nd session²⁰.

Article 330 of the Family Code concerning marriage contracts sets forth the principle of equality between spouses. This law designates both spouses' reciprocal rights and obligations: obligations related to living together, obligations regarding mutual care and assistance, the obligation of fidelity, mutual respect and affection, etc. However, flagrant contradictions which violate the basic principle of equality between spouses persist.

- **Article 148.1** provides the delivery of the family registry booklet (*livret de famille*) only to the husband during the celebration or the registration of the marriage. This is in contravention of article 16.1.c of CEDAW, which requires that both spouses enjoy the same rights and responsibilities during the marriage or during its dissolution. Concerning the replacement of a lost family registry booklet, the Family Code allows only the husband to request another.

- **Article 165** stipulates that the wife must live at the domicile of her husband, instead of establishing that the married couple chooses together its home. However, articles 15.4 and 16.1 of CEDAW require member States to accord to men and women the same rights under laws relating to the movement of persons and the freedom to choose their residence and domicile.

- **Article 215** limits the abilities of the wife, which contradicts CEDAW article 15.1, which requires States Parties to grant to women equality with men before the law.

- **Articles 444 - 448** of the code place married women in a position of dependence and submission to their husbands, to the extent that they cannot effect any legal act without their husband's agreement. These articles are flagrant contradictions of CEDAW article 16.1.c, which grants the same rights and responsibilities to spouses during marriage and its dissolution (its equivalent in Congolese domestic law is article 330 of the family code). In practice, these provisions pass the married woman from the guardianship of her parents to that of her husband. Ultimately, a considerable disparity is established between the spouses. Violation of the principles of equality before the law and respect for human dignity obstruct women's full participation in social, economic and political life.

Indeed, **article 444** stipulates that "the husband is the head of the household. He must protect his wife; the wife must obey her husband". **Article 445** provides that "Under the direction of the husband, the spouses work together, in the interest of the

¹⁸ cf. pages 15 to 18, forth and fifth periodic reports of the DRC to CEDAW, CEDAW/C/COD/4-5

¹⁹ cf. items 24, 25, 26 of the CEDAW list of issues during the examination of the last periodic reports, CEDAW/C/COD/Q/5.

²⁰ Paragraph 197, report A/55/38.

marriage, to guarantee the moral and material responsibility of their marriage". **Article 448** provides that "the wife must obtain her husband's authorisation to effect legal acts for which she must present herself in person". However when the person accused is the husband himself, the husband consent is no longer required, in conformity with article 451.1 of the Family Code.

- **Articles 490.2 and 497.2, 515, 524 and 531** state that regardless of the type of legal agreement under which the marriage was concluded, the management of all property is entrusted to the husband. This is in contradiction of articles 15.3 and 16.1.f of CEDAW, which stipulate that States Parties agree that all contracts and all other private instruments of any kind with the legal effect of restricting women's legal capacity shall be deemed null and void, and that the same rights and responsibilities apply to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the child shall be paramount.

- **Articles 361, 367, 382, 388, 426, 543 and 579**, which address the dowry, insist on the symbolic and compulsory nature of this practice. Without the dowry, a marriage would be impossible. One or several donations must be offered to the woman's family as a validation, a proof of the union. The dowry could be used as a pretext by the husband to mistreat his wife.

According to the State's report, the President of the Congolese Republic must, in consultation with the provincial councils, determine the value of the dowry, in order to avoid abuses. The Minister on the Status of Women (*Ministère de la Condition Feminine*) regrets that the value of the dowry has not been fixed since the entry into force of the Family Code in August 1988.

However, the fact that the husband pays a dowry encourages the Congolese legislator to institute the husband as the head of the family with all the consequences which can follow. The practice of paying a dowry in order to contract a marriage is discriminatory toward women. Thus, the CEDAW General Recommendation No 19²¹, in articles 2.f, 5, and 10.c, establishes that "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities".

²¹ General Recommendation No 19 on violence against women (11th session, 1992)

To regulate such a discriminatory practice through legislation instead of abolishing it symbolically preserves its discriminatory nature by perpetuating the idea of male domination over women. This practice contradicts many CEDAW articles as well as the Congolese Constitution of 2006. Moreover, we can consider that this practice enables situations of forced marriage, since the dowry constitutes an agreement between the future spouses' families. A law prohibiting this practice should be adopted.

The DRC should immediately undertake to reform its legislation, which must conform to its own Constitution and to its international obligations.

Toward a Reform of the Family Code²²

The struggle to reform the Family Code in order to change the legal status of women recently made significant strides. A memorandum was presented in 2002 to Congolese legislators, and was defended in 2004 before the Commission for the Revision of Congolese Laws. In March 2006, the RAF (*Réseau Action Femmes*) took part in a workshop on proposed reform of the Family Code organised by the Studies and Research Service of the Ministry of Justice, in order to guarantee women's and children's rights. Currently, a proposed amendment to the Family Code is pending. **It is essential that this proposed legislation be a priority for the future parliament, which will be installed after the July 2006 elections.**

It is important to remember that the revision of the Family Code encompasses the four books, on nationality, the person, the family, and succession and liberality. This reform would revise the discriminatory provisions regarding women in the book on the person, namely those concerning parental authority and the legal capacity of married women, and in the book on the family notably the principle of marital authority and the rights of women after the death of their husbands.

Concerning acquisition of Congolese nationality, decree-law (*décret-loi*) 197 of 29 January 1999, which modifies and complements Act 81-002 of 29 June 1981, recognises that Congolese women can transmit Congolese nationality to their children, just as Congolese men can. However, in practice, the Congolese population disregards this provision: usually, children born of a foreign father and of a Congolese mother are considered foreigners, notably in the cases of children born during wartime to a father from an enemy country of the DRC. These children are often rejected, which is why it is important that the State be attentive to the full implementation of this recommendation.

²² cf. question 5. of the CEDAW questions, CEDAW/C/COD/Q/5.

II.2.2. The Penal Code

Article 3 of the complementary provisions of the **Penal Code**, which summarises article 467 of Book IV of the Family Code, does not place spouses on equal footing in terms of the definition of the crime of adultery. Adultery committed by a woman is punishable in all cases, whereas that committed by a man is only punishable if it is induced. This seems to indicate that where a man's will is altered or inhibited by a married woman, for example through the use of alcohol, followed by the commission of a sexual act with her, the man is not at fault. Inequality also exists in the sanctions imposed for adulterous acts: article 467 of the Family Code prescribes a punishment of imprisonment for six months to one year as well as a fine for married women who commit adultery, whereas a married man may receive this punishment only if his act is judged to have an 'injurious quality' (article 467.2).

During the examination of the DRC's initial, second and third periodic reports, the CEDAW Committee underlined this point²³. These provisions have to date not been corrected.

II.2.3. The Labour Code

- Marital authorisation

The CEDAW Committee was concerned during its examination of the DRC's last reports by the *de jure* and *de facto* discrimination against women reflected by the obligation to obtain marital authorisation before accepting a salaried job, and the reduction of mothers' wages during maternity leave²⁴. The Committee persistently invited the government to revise its discriminatory labour laws in accordance with article 11 of the Convention²⁵.

Thus, Act No 015/2002 of 16 October 2002, regarding the Labour Code, included language to reinforce anti-discrimination measures for female workers. Article 1 removed the husband's ability to oppose his wife's hiring. However, article 6 of this law, which treats the "ability to contract" creates a certain confusion. This provision states that one's ability to offer his/her services is determined by the laws of his/her native country, or if that country is unknown, by Congolese law. By referring the ability to contract back to common Congolese Law, the Family Code is effectively enforced; article 215 of the Family Code limits the married woman's ability to exercise her independent decision to take a salaried job. Moreover, article 448 states that a woman must obtain her husband's authorisation for all activity of a legal nature. Additional efforts must be made in order to render all laws consistent. The proposed revision of the Family Code,²⁶ elaborated by the Ministry of Justice, would remove these discriminatory provisions.

²³ Paragraph 197 of report A/55/38.

²⁴ Paragraph 225 of report A/55/38.

²⁵ Paragraph 226 of report A/55/38.

²⁶ cf. page 10.

- Sexual and moral harassment²⁷

Articles 73 and 74 of the 16 October 2002 law relating to the Labour Code consider sexual harassment serious enough to justify the breach of a labour contract without advance notice.

According to information gathered, most women who work, look for a job, or are students are victims of sexual harassment. The offenders are very seldom prosecuted.

However, this significant step lacks precision. Any such behaviour simply justifies the cancellation of the contract and the perpetrator is not criminally at risk. As for the amount of the indemnity to be granted to the victim as provisioned in article 75, it is subject to evaluation by the judge (under the conditions set in article 63 of the code).

The provisional law against sexual violence (see Chapter III) amending the Penal Code sets forth in article 174.d a precise definition of harassment:

"paragraph 4. Sexual Harassment:

"Anyone who would adopt a persistent behaviour toward others, with words, gesture, by giving to him or her orders or by uttering threats, or by imposing constraints, or by exercising grave pressures, or by abusing of the authority given by his/her function in order to obtain of the person sexual favour, will be punished of a penal servitude comprised between one and twelve years and a fine comprised between 50.000 and 100.000 Congolese unchanging Francs or only of one of these penalties."

- Night-work of women²⁸ in public and private industries is forbidden by **article 124** of the new Labour Code. This is discriminatory because it focuses only on women. Women should have the same right as men to decide themselves if they do or do not wish to accept such work.

Moreover, the work of women is extremely dependent on the question of child care. Urging women to work cannot be effective without child care solutions. The State must address that issue in order to effect change.

II.2.4. The Department of Public Services²⁹

The State report admits a problem in **article 25** of the Labour Code, which does not recognise the social function of motherhood by depriving a woman of her right to annual holidays if she has already taken maternity leave in the same year.

Yet, **articles 41, 85, and 88** of law No 81 - 003 of 17 July 1981, concerning the status of civil servants, also note that the husband of a female public servant is deprived of family benefits, survival and survivor benefits.

Entire legal texts must be reviewed in order to achieve equality between women and men in all measures³⁰.

²⁷ cf. item 11 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

²⁸ cf. item 23 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

²⁹ cf. p. 19 of the report of the DRC CEDAW/C/COD/4-5.

II.3. Discrimination Toward Women in Education and Politics

The CEDAW Committee noted in 2000, during its examination of the initial, second and third periodic reports, that prejudices and stereotypes concerning the place of women and men in the family and in society persist. The idea of male superiority and female subordination is incompatible with the Convention.

II.3.1. Education³¹

Insufficiency of education for Congolese women contributes to their absence in the decision-making processes. The female illiteracy rate is very high, and for this reason many non-governmental organisations have set up centres for the elimination of illiteracy of Congolese women, without State support.

The political, economic and social systems do not favour children's education, especially for girls. Sometimes children must themselves finance their studies, due to their parents' lack of means. Girls can be forced to exploit their bodies.

To increase the level of girls' education, the government together with UNICEF began a campaign entitled "all girls at school". This campaign did not reach its stated objectives. It failed to consider that the State could finance the studies of girls. Effectively, primary education which must be free, according to international texts, continues to cost money.

The State report presents quite honestly the situation of its impaired educational system. The State does not allot enough money and does not pay teachers' wages every month. A new State strategy must be designed in order to make available children's education³².

This strategy must be based on several considerations, such as:

- Child labour, which seems to occupy an important role in certain parts of the country, especially in the mining provinces of the two Kasai, Bandundu and Lubumbashi, where mining work prevents children from attending school.

In the same way, in the province of Equateur, fishing is also massively based on the exploitation of child labour. The DRC ratified the *Convention on the Rights of the Child* on 27 September 1990 and must respect its responsibilities concerning the right to education and the regulation of child labour.

³⁰ cf. item 4 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

³¹ cf. p. 31 of DRC report CEDAW/C/COD/4-5.

³² cf. item 18 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

- Due to the failure of the school system, parents trust less and less in the benefits of schooling, which is no longer a source of social progress. A campaign targeted to parents, in addition to education reform, should improve the situation. Particular attention must be focused on girls' education since they are more greatly affected by the decline in rates of education³³.

II.3.2. Access to politics or to positions of responsibility

In spite of the fact that equality is established in the 2006 Constitution, inequalities and disparities between women and men remain.³⁴

The CEDAW Committee noted in 2000 the under representation of women in political life and in leadership positions, such as in the judicial system³⁵.

When transitional institutions were installed in June 2003, after an inter-Congolese dialogue, resolutions insisted on the representation of women in all political institutions. At the presidential level, of 5 presidents, there was no woman; at the ministerial level, there were 7 women among 61 ministers or vice-ministers; at the parliamentary level, 60 women out of 500 deputies; in the desk of the General Assembly 2 women among 8 officials; in the Senate 3 women among 120 senators and no woman among the 8 officials at the senatorial desk.

The situation was better at the territorial level, in public enterprises, and in diplomatic positions. Unfortunately, few women occupied high level positions in these institutions.

Finally, when electoral lists were established, political parties did not respect the principle of parity. During the development of the electoral law, which entered in force on 9 March 2006, the Congolese legislature developed a contradictory provision by making it possible for political parties not to ensure the representation of women in their lists. Article 13.3 of the electoral law stipulates that "each political party's list is established in consideration of the equal representation between women and men, and of the promotion of handicapped persons". In article 13.4 it is added that "the non-realisation of the equality between men and women during the upcoming elections does not make the list inadmissible ". This last annotation insidiously allows parties not to apply the principle of parity. This reveals a lack of political will among the political leadership to promote the respect for parity as established in the Constitution.

An initiative aimed at basic and higher education would enhance the capabilities of more numerous women to attain positions of responsibility. Incentives if not compulsory measures dictated by the State should encourage such access to education and institutions for women.

³³ cf. item 19 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

³⁴ cf. item 21 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

³⁵ Paragraph 221 report A/55/38.

II.4. Women's Right to Health³⁶

II.4.1. Maternal mortality

During the last consideration of the Congolese report, the CEDAW Committee was worried by the high maternal mortality and infant death rate, by the low rate of contraceptive use, especially in rural areas, and by the deterioration of health services. Some efforts are being made with the help of partners in order to reduce maternal mortality rates. In 1999, there was a decrease in the maternal mortality rate, from 1,837/100,000 living births to 1,289. However, most women who die during labour are persons of few resources, who did not have money to pay for prenatal consultations.

All maternity hospitals must have the material and financial means in order to assume the payment of wages. Such requirements would allow the provision of care prior to payment.

Moreover, in 2000 the CEDAW Committee encouraged the government to improve the utilisation of contraceptive methods, to abrogate **article 178 of the Penal Code** which forbids the distribution of contraception and sex education to young people³⁷. This recommendation has not yet been implemented, and this article still exists. Nevertheless, the latter is not applied, in part due to the fact that president Mobutu by an ordinance has created a committee for the planning of births. This ordinance is still effective but constitutes a legal problem which must be reformed.

II.4.2. Sexually transmitted diseases

The protection of women from sexually transmitted diseases, principally HIV/AIDS, is rarely guaranteed. Most women infected by AIDS were infected by their husbands, and they do not receive free treatment. Indeed, women often have difficulties in convincing their husbands to wear condoms, and their husbands often have several sexual partners. Women who dare protest against their husbands' refusal to wear condoms risk being punished.

The State must initiate an information and sensitisation health campaign that focuses on AIDS and contraception. The national multisectorial programme fighting against HIV/AIDS (PNMLS) should make available free antiretrovirals to persons living with HIV. Sensitisation of the population regarding the virus and the necessity to wear condoms should also be undertaken by the programme.

³⁶ cf. items 14, 15, 16 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

³⁷ Paragraph 228 of the report A/55/38.

We deplore the fact that the government has simply adopted a wait-and-see policy toward donors and does not directly assist persons living with HIV.

The State must also promote equality and justice between the sexes in terms of reproduction and sexuality. These actions must be aimed at both women and men since women often need their husband's agreement to use a contraceptive. These actions must also be conducted throughout the country, even in remote parts.

Numbers³⁸ :

46% of Congolese women know that condoms can prevent HIV.

31% of Congolese women used contraceptives between 1996 and 2004 .

According to the United Nations Special Rapporteur on Violence Against Women³⁹, generalised and systematic sexual violence affects the uncontrolled transmission of HIV and other sexually transmitted diseases. It was reported that health centres, clinics, and hospitals, especially in rural areas, cannot care for infected persons because they do not have sufficient financial, material and human resources. At the same time, victims do not have access to these centres due to instability inside the country and the lack of means of transportation.

To fight against the stigmatisation of persons living with HIV, a legislative proposal was made by the Réseau Action Femmes (RAF) in November 2005, linked with its plan of action financed by the PNMLS. This document was completed in March 2006 during a workshop organised by UN/AIDS with the participation of members of Parliament.

Currently there exists a proposed law condemning discriminatory behaviour toward persons living with the virus, as well as acts committed with the intention to contaminate another person.

Moreover, we note that the provisional law on the elimination of sexual violence amending the Penal Code condemns in paragraph 9, article 174.i the intentional transmission of incurable sexually transmitted diseases.

II.5. Rural women

To focus our attention on the situation of rural women⁴⁰, who constitute the majority of the female population, we emphasise that discriminatory traditions and beliefs are widely accepted and followed.

³⁸ cf. http://www.unicef.org/french/infobycountry/drcongo_statistics.html

³⁹ Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Yakin Ertürk, 27 March 2006, E/CN.4/2006/61/Add.1, page 22, paragraph 46.

⁴⁰ cf. item 27 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

In 2002, the CEDAW Committee urged the government to pay attention to the needs of rural women and to assure their benefits provided by policy and public programmes such as the recognition of farm workers' labour rights. It was recommended that the State assure to rural women the equal right to participate in decision-making and their access to the health system and to credit. More studies with statistical information were mandated for the shaping of new policies⁴¹. It seems that there is no specific policy supporting rural women's rights. Rural women simply benefit sometimes from governmental actions linked to general programmes for decreasing poverty in the least developed and most indebted countries.

⁴¹ Paragraph 231 of the report A/55/38.

III. Violence against Women

Violence against women in DRC occurs in different forms and in a context widely influenced by socio-cultural factors, discriminatory laws, ethnic conflicts, wars, bad governance, etc. Violence against women is perceptible at various levels, in the family, in society and at the State level. Several important cases of violence against children in the form of sexual violence are perpetrated by private persons such as parents or other relatives, neighbours, etc. The following examples show that in such cases few offences are reported. Offenders are rarely arrested by the police even when there is a report. When they are arrested, the offenders are rarely processed. When impunity is so widespread, the State must be considered responsible.

Recently, the fight against violence against women has been inscribed in constitutional texts. It could be physical, psychological, social, cultural, economic, institutional or political violence. Physical violence is the most visible form of violence. Psychological violence is generally based on prejudices concerning Congolese women, regardless of their level of instruction or their social position, and which can strangle their personal fulfilment. These prejudices place women in a secondary position in society. Consequently, women are often insulted, denigrated, rejected, and abandoned, which causes damage to their self-esteem. At the same time, several retrograde traditions and customs that shame women continue to occur.

In 2000, the CEDAW Committee was worried by the persistence of customs and practices which represent a violation of fundamental women's rights, such as dowry, inheritance, polygamy, forced marriage, and female genital mutilation⁴². The Committee recommended that the government adopt legislation forbidding these practices, and that it work with non-governmental organisations and media to change the mentality by linking information and sensitisation campaigns⁴³.

In June 2006, the National Assembly voted to enact the proposed law on the repression of sexual violence, encouraged by organisations of Congolese civil society. In spite of the fact that this represents a great step, much needs to be done in order to assure the implementation of these new measures.

Initiatives fighting against sexual violence

At the legal level

The common Congolese law was for a long time lacking concerning sexual violence. The new law should modify these provisions, but is awaiting presidential approval. However, for the moment, the Penal Code does not recognise rape as an offence and gives a

⁴² Paragraph 215 of the report A/55/38.

⁴³ Paragraph 216 of the report A/55/38.

partial definition of rape in the context of local realities and international norms. The only other existing offences concern sexual violence in terms of sexual molestation, attack on good morals, and public moral outrage (*attentat à la pudeur*), which are inadequate and insufficient: victims of rape are necessarily women, excluding men. Moreover, a victim of rape must show that she was sexually penetrated. All sexual violence without such penetration is qualified as an attack on good morals, which is considered less grave than a rape.

The new law against sexual violence

The draft passed on 22nd June 2006 by Congolese members of Parliament and now awaiting presidential approval, corrects the deficiency of the Congolese Penal Code, in terms of:

- definition of rape;
- expansion of the definition of rape beyond sexual penetration only;
- extension of the crime of rape to male victims;
- acknowledgment of sexual slavery, sexual harassment, forced pregnancy, pedophilia, forced zoophilia, and other sexual crimes in the Penal Code;
- inclusion of unambiguous language;
- correlation of the penalty with the gravity of sexual violence crimes;
- prohibition of the compromise fine;
- swiftness in the investigation of the causes of sexual violence;
- judicial in camera hearing (*huis clos*) to protect victims' confidentiality;
- waiver of court costs for victims of sexual violence ;
- psycho-medical assistance for victims ;
- strengthening of the protection of children ;
- legal assistance to victims during all phases of the procedure

Therefore, the proposed law takes into account the gravity of sexual violence. It recognises new sentences by reforming penalties and reinforcing victims' protection, including children.

▪ Concerted initiative on sexual violence⁴⁴

A concerted initiative on sexual violence brings together the United Nations, the Congolese Government and NGOs which help victims of sexual violence. This initiative is composed in part by legal and psycho-medical assistance, and in part by advocacy. The limited means, the limited restoration of the State's authority on the whole territory, the lack of independence and efficiency of the courts, the high number of cases of sexual violence in certain parts of the country where residual armed conflicts continue, make considerably relative the impact of this initiative.

This initiative is not limited to a proposition of law but also proposes health, legal, economic, psychosocial and security assistance to victims of sexual violence. Indeed,

⁴⁴ cf. item 8 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

when victims register complaints, a mechanism of protection must be assured in order to encourage them to break the silence and to fight for their rights.

▪ Consciousness-raising actions⁴⁵

Such actions have begun with the solidarity of women from eastern parts of the country and have focused on the fight against impunity. In spite of this, the number of victims continues to grow, and offenders need not worry even if they have been reported.

During March 2005, an awareness raising campaign against impunity for rape was initiated by the Human Rights Ministry. According to Mrs. Madeleine Kalala, the Human Rights Minister, the campaign especially targets civil and military magistrates. This campaign continues.

We wish to compliment the Congolese Government's engagement in the fight against sexual violence and the assistance of some UN agencies and other bilateral partners for the assistance of victims. The implementation of the new law and of the Military Code concerning sexual violence is attentively awaited.

III.1. Violence occurring within the Family

III.1.1. Domestic violence

Physical violence in the family often is committed by a husband against his wife. The fact that some husbands believe they have correctional power over their wives allows them to be violent with their wives. In such cases, the perpetrators often remain unpunished. Indeed, unfortunately, women do not report them fearing to be repudiated.

The Penal Code does not punish violence more severely when it occurs between spouses. There is no aggravating circumstance in the case of murder or of intentional bodily harm toward her/his spouse. Moreover, the new law on sexual violence makes no specific mention of sexual violence within marriage. The State must devote attention to this phenomenon, and could integrate into the legislation an aggravating circumstance linked to the situation of inequality between spouses, which can lead to the practice of sexual violence.

III.1.2. Incest

Concerning the situation of younger girls, they often are victims of sexual violence by the male members of their family living in the same home. These acts of violence

⁴⁵ cf. item 9 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

generally remain cloaked in silence. No one reports this terrible situation, which is extremely destructive for girls' development and fulfilment.

Many such cases have been registered. For example, Ch. B., a 15 year old girl, in December 2003 was raped by her brother-in-law with whom she lived. Taking advantage of the absence of his wife, the brother-in-law of Ch. B. had called her into the house to speak with her. Once inside, he ripped off her clothes and raped her. Her family submitted a complaint to the OCDH (Congolese Observatory of Human Rights) in July 2004, only to finally withdraw it once they were faced with the prospect of a criminal trial initiated against Ch.B.'s brother-in-law.

Article 319.3 of the Family Code removes the parental authority of a person who puts in peril the security, health or morality of a child by committing mistreatment, abuse of authority or grave neglect. The Penal Code provides in its article 174 on the attack on morals that if the attempt was committed by the father or the mother, the guilty party will be deprived of his/her rights or advantages as to the child's person and goods.

Moreover, the new law against sexual violence adds in article 171bis that the minimum penalty under articles 167.2, 168 and 170.2 of the current Penal Code will be doubled if the guilty parties are parents or descendents of the victim.

However, in practice such cases are rarely reported. The State's action must also assure real access to justice to all its citizens, by first beginning to inform them of their rights.

III.1.3. Forced marriage

By authorising girls to get married at the age of 15 years old, the legislation in article 352 of the Family Code facilitates situations of forced or premature marriage. Moreover, the parental authority over children as well as poverty encourage parents to arrange the marriage of their daughters according to their own wishes, and to ignore the principle of free consent of the future spouses. The practice of levirate and sororate also persists and violates the principle of the free consent of women.

This situation seems more frequent in villages in certain provinces, such as the Yansi in Bantundu. However, no studies exist on forced marriage. Fearing familial sanctions, reports of these practices are very rare.

The State must be engaged in the fight against these practices, especially by supporting information campaigns aimed at girls regarding their rights. A system of checks and restrictions should also be established for girls, in order to give them the possibility of recourse to a venue in which exercise their right to a marriage of consent. Families must be concerned about penalties for perpetrating such practices. A check during the ceremony could be considered to be sure that the future spouses really want to be married.

The new Penal Code reform concerning sexual violence includes in its article 174.6.f. on forced marriage, that "a person exercising the parental authority on a person and who would give her or obligate her to contract a marriage, will be punished from one to twelve years of penal servitude and with an amend of minimum 100.000 Congolese Francs . This penalty is doubled when the victim of forced marriage is aged of less than 18 years old."

III.2. Violence against Women in the Armed Conflict Situation

The CEDAW Committee recognised during its last consideration of the Congolese State report in 2000 that one of the principal obstacles to the full implementation of the Convention was the context of war, which has negative repercussions on the population, and more specifically on women and girls, who are often victims of rape and other sexual violence.

The rape of women has been used as a war crime during the different armed conflicts of the DRC. Nowadays, in certain parts of the country, women and children continue to undergo rapes, which generally go unpunished due to the weakness of the legal system and the inefficiency of the justice system.

Despite the insufficiency of statistics on the subject, it is possible to affirm that most women who were raped during the war were often detained by their aggressors, who could regularly abuse them. Such cases were principally noted in the East of the country, in the provinces of North and South Kivu, of eastern Maniema and of Kalémie (Katanga).

In the province of North Kivu, sexual violence has become the new weapon of war. Women remain the individuals most affected by this crime, and there are numerous consequences for women victims and the entire community. *On 12 April 2005, a 28 year-old married woman, mother of six children, residing at Kitchanga in the suburb of Remblaie, was raped when returning from the fields by two armed men in military uniform. This woman was eight months pregnant. The armed men took her by force and first subjected her to acts of torture before raping her and then left her unconscious*⁴⁶.

According to information from the Health Professionals' Association for Human Rights (APESKI), in the context of an identification project and medical and psycho-social assistance provided to women victims of sexual violence in the territory of Uvira

⁴⁶ Cf. Solidarity for Social Promotion and Peace (SOPROP), *Rapport sur la situation des droits de l'homme dans la province du Nord Kivu à l'est de la République démocratique du Congo*, February-June 2005.

(South-Kivu) in 2003 and 2004, 463 cases of rape were recorded in the centre of Uvira; 784 in the Ruzizi plain and 179 cases in middle highlands of Uvira.

See the communications of the UN Special Rapporteur on Violence Against Women, Yakin Ertürk, in her report of 27 March 2006: E/CN.4/2006/61/Add.1

The Congolese State must control its justice system in order to systematise the application of laws and corresponding penalties against perpetrators of sexual violence. Such measures against impunity are indispensable to the pacification of the DRC, which is why we ask the Government to engage itself seriously in the fight against impunity.

The legal framework allowing for the prosecution of perpetrators of violence against women within the context of the war

The military Penal Code is relatively adapted to this issue since it invokes international humanitarian law principles. Sexually violent acts in the Code correspond to those enunciated in the Rome Statute for the International Criminal Court. Article 169 § 7 of the military Penal Code states that rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation and all other forms of sexual violence of a comparable gravity are considered crimes against humanity punishable by the death penalty.

However, this article only applies to acts perpetrated in the context of a systematic or generalised attack against the DRC or the civilian population. This signifies that individual cases of rape or isolated instances of forced slavery are not covered by this legal text, which unfortunately excludes a considerable number of victims of such acts.

The new law on sexual violence amends some provisions of the Penal Code and addresses the above deficiencies. For example, article 42 bis and 42 ter specify that regardless of the offender's rank, hierarchical order or the command of a legitimate civil or military authority cannot exonerate his penal responsibilities.

Finally, article 15 of the Constitution condemns as crimes against humanity all sexual violence on all persons with the intention to destabilise, to dislocate a family and to eliminate an entire people. The Constitution recalls the State's responsibility to eliminate sexual violence. Most jurisdictions have already sanctioned authors of sexual violence on these bases. For example, in the affair Songo Mboyo, the High Military Court took a decision the 12 May 2006 on the basis of the Rome Statute.

Rapes committed by MONUC agents⁴⁷

At the same time, Congolese women were also victims of rapes committed by MONUC agents. More than 75 allegations were gathered in 2004, and around twenty cases were verified. The authors of these rapes had to leave the DRC to return to their country. However, we do not know whether these agents were pursued for their acts. Victims must have compensation. We regret that the Congolese State does not follow-up on these issues. The situation allowed MONUC, however, to establish a disciplinary and ethical group in order to prevent exploitation or other bad behaviour by MONUC agents.

III.3. Violence against Women within the Community

III.3.1. Sexual violence

According to recent information from the NGO LIZADEEL, numerous acts of sexual violence have taken place mainly in Kinshasa separate from the armed conflict. This phenomenon principally affects young girls and women, and the majority are under 18 years old⁴⁸; young boys and men are equally subjected to sexual abuse. The perpetrators of these acts are generally military personnel, police officers, prison guards, care staff, teachers, parents, pastors, neighbours and even young delinquents living on the streets. Very often the act is not even reported. When it is, the process usually concludes with an arrangement between the family of the victim (if a child, his/her interest is rarely taken into consideration) and the author of the act.

Concerning women victims of rape, judges often tend to display a discriminatory attitude regarding their complaints. The question of evidence is aggravated by the fact that for cultural reasons, women abstain from complaining, or they submit a complaint some time after the facts, rendering it difficult for forensic doctors to collect evidence of the offence. The right of women to submit a complaint for acts of torture or ill-treatment or any other offence is subject to the authorisation of their husband (in cases involving married women). Indeed, article 448 of the Family Code expressly provides that "a woman must obtain the authorisation of her husband to effect all legal acts for which she must present herself in person". However, when the author of violence is her husband, the woman is not obliged to seek his permission in order to take action against her husband, in accordance with article 451 of the Family Code.

Here are some cases illustrating the current phenomenon of sexual violence against girls and the impunity which follows these acts.

⁴⁷ cf. question 10 of the CEDAW questions list, CEDAW/C/COD/Q/5

⁴⁸ About 79.1% according to the figures given by NGO LIZADEEL

- 1) *A., a girl of 7 years, was raped on 22 August 2003 by Trésor Kayembe, aged 16 years, in Bumby, a commune located in Kinshasa. The aggressor and victim lived in the same suburb. Although the Prosecutor had placed Mr Kayembe in detention at the Penitentiary and Re-education Centre of Kinshasa, the family of the aggressor reached an arrangement with the parents of the victim in order to obtain the liberation of their son. He left the penitentiary centre on 22 October 2003.*
- 2) *A.M., 17 years old, student at the Salvation Army Institute in Kasangulu in the province of Lower Congo, was raped on 1 February 2004 at the Marbre Hotel⁴⁹ by an unidentified police officer who had previously drugged her. As compensation, the aggressor offered the victim a can of corned beef.*
- 3) *In June 2004, Ab. E, a 3 year old girl, was raped by a 16 year old man by the name of Francis. The parents of Ab. E and those of Francis were tenants of the same building in the commune of Lingwala. A court file was opened by the Public Prosecutor's Department of the district tribunal of Gombe. Placed in preventive detention, the young man managed to escape thanks to the help of the magistrate in charge of examining his file.*
- 4) *L. ND., a 15 year old girl, was raped on 15 March 2005 at Mpsa, in the Eastern suburbs of Kinshasa, by members of the Special Guard for Presidential Security (Garde Spéciale et de Sécurité Présidentielle - GSSP), on her way to her parents' home from Kingasani, a popular municipality of Kinshasa.*
- 5) *On 13 June 2005, the Centre of Legal and Psychosocial Assistance for Mothers and Children (CAJEM/LIZADEEL) made public a case of sexual violence by three boys against a girl of 16 years in the Mont Ngafula commune. Ms FNM, aged 16 years, resident of the suburb of Mama Yemo in the Mont Ngafula commune, met two boys one evening, Rigo and Matthieu. Matthieu questioned the girl asking her "do you know you're pregnant?" to which the young girl replied that she was not. The two boys continued to try and convince her that she was pregnant. After hearing the underhanded arguments of the boys, the young girl ended up being convinced that she was pregnant. Feeling that they reached their goal, the two youth proposed to her a solution "so that you don't have a problem with your parents, you should better have an abortion..." The young girl asked how and they told her that they knew a Marabou who, by simple prayers, could make pregnancies disappear, leaving only blood. The young girl finally accepted the proposition and she was lead to the Marabou, who was none other than the boys' accomplice. When they arrived, the three boys gave her a large dose of drugs causing her to lose consciousness, and they took turns raping her. While the girl was still drugged, the juveniles put pomangranate in a little basin with water so that when she would awaken they could show her the blood and foetus which came out of her stomach after the prayers of the Marabou. This was done, and the young girl kept it her secret. She remained unaware that she had been brutally raped by three persons, though she felt strong pain in her lower stomach which caused her to walk hunched over and gave her great difficulty. She also had haemorrhaging which did not stop. Her parents took her to a medical centre to receive care. It was during this time that Rigo had confided in another boy in the same suburb and had told him what had really happened to the young girl. The boy could not keep this to himself and he relayed this information to the parents of the young girl.*

⁴⁹ What is commonly called a "hotel" in the DRC is often a brothel.

The parents of the young girl approached CAJEM on 16 May 2005 with their daughter's case. According to investigations led by CAJEM, Rigo was the child of a colonel and known for this kind of misconduct. Rigo had been incarcerated at the police station several times but owing to the status of his father, he was always released. On 10 June 2005, the Rapid Police Intervention Division (PIR) apprehended Matthieu, and Rigo was put in custody 48 hours later. Since Rigo's arrest, his parents employed all means (money, intervention, etc.) with the PIR to obtain his liberty. Nevertheless, the file was sent to the Public Prosecutor of Matete with the hope that the rapists would finally be transferred to the CPRK. Since the file was transmitted to the Public Prosecutor of Matete, an official of the Minister of Public Affairs (magistrate) summoned the victim verbally upon request of the parents of the accused. Once he arrived, the magistrate intimidated the girl, who refused to speak without the presence of her lawyer who had been provided by the CAJEM / LIZADEEL. Irritated at this, the magistrate placed the girl in a cell for twenty minutes in order to persuade her to testify before the court. After the forced hearing of the victim, in the absence of her lawyer and members of her family, the magistrate decided that each accused should pay the sum of USD 150 and that the victim herself pay USD 50. As soon as the parents of the accused paid the required amount, they were immediately released, while the victim remained in custody until late while awaiting the payment of her required sum.

- 6) On 15 January 2006 around 7 p.m., returning from a visit to the tailor in the municipality of Makala, **a young girl of 13 years** was approached by a young man in his twenties who had tried before to approach her in the street near the school.⁵⁰ At the intersection of the road to Kimwenza and By-pass (an uninhabited place), they were joined by six friends of the young man. After they had gagged the young girl with a scarf to prevent her from screaming, the seven men all raped the young girl from 7 p.m. until 5 a.m. She was found the following day by passers-by, bathing in her own blood. After they had found their daughter, the parents alerted police officers at the station close to Ngaba Circle in the district of Mont Amba. The police officers knew the identity of the men who raped the young girl. Nevertheless, according to the police, because of insufficient financial means, they are unable to undertake the necessary actions, and the authors remain free and unpunished. The young girl has since been looked after by the Bomoto health centre of Matonge, which offers medical assistance to victims of sexual violence. She has suffered since her rape severe physical and psychological injuries. She can no longer walk properly and is at risk of no longer being able to have children, according to doctors. Traumatized, she no longer speaks, since the rape, and no longer attends school.
- 7) Moreover, on 18 February 2006, **another young girl, aged 17**, was approached by five men when she went to night prayers with her friend at around 8 p.m. in the municipality of Kalamu.⁵¹ When she tried to react, "Dunga", who appeared to be the leader of the group, ordered his accomplices to burn the young girl with a cigarette. While three men of the group abducted the other girl, the two others overpowered the young girl and pulled her by her arms. Despite her calls for help, none of the present passers-by came to help. At one moment, she called out to an acquaintance who tried to intervene to help her but was beaten by the two men. Furthermore, when they dragged her to the ground, two plainclothes policemen, who were not on duty and lived in the neighbourhood, challenged the two men. Apparently recognising the persons, they did not offer any help

⁵⁰See OMCT Urgent Appeal COD 300306.EE.VCF.

⁵¹ See OMCT Urgent Appeals COD 300306.EE.VCF and 300306.1.EE.VCF.

to the young girl, nor did they warn their colleagues at the station. The young girl benefited from the exchange and managed to escape and look for refuge in the nearest house. They immediately started to chase her and threw a brick at her, which caused a large bruise. When the two men found her again, they hit her violently. They forcibly brought her to a small room behind an outlet for drinks where she was held and raped by the two men. Furthermore, Dunga inserted a bottle of soda into the vagina of the young girl and moved it in such a way as to hurt her severely. Following the rape of the girl, while the two men were having a discussion, she managed to escape on her hands and feet because she could not walk normally, and she asked a passer-by for help and was guided to her house.

Dunga was arrested two days later by the police following a complaint of the victim at the headquarters station in the Funa District. During his interrogation, the police officer realised the authors were an organised gang which regularly commits the same kind of acts. After threatening the mayor of the municipality of Kalamu and out of fear that he might flee, Dunga has been transferred to the Provincial Inspection and then to a penitentiary and re-education institution in Kinshasa in order to break up the rapists' network. The young girl, suffering from suicidal tendencies, is being treated at the Bomoto centre of Matonge and is seen regularly by a psychologist.

Two days after the rape, following the victim's complaint, Dunga was arrested by the police and transferred to the Penitentiary and Re-education Centre in Kinshasa (Centre pénitentiaire et de rééducation de Kinshasa - CPRK) to pursue the investigation. As allowed by Congolese criminal procedure, Dunga was temporarily released on bail by the magistrate in charge of the investigation. Once released, Dunga threatened his victim with death. He was arrested a second time thanks to pressure from local NGOs (especially LIZADEEL) and transferred to the CPRK in the beginning of May, but was released on bail again by the same magistrate. In this time frame he raped yet another young girl (see below).

Although Dunga is currently again in pre-trial detention and the magistrate who twice ordered his release is now discharged from the case, the co-perpetrators have not been arrested or pursued as of yet. The authorities' intervention is all the more necessary because the police of Kinshasa know the identity of the perpetrators.

- 8) On 29 May 2006, around 7 p.m., a group of ten men having as leader "Dunga" raped a **17 year-old girl** in a classroom.⁵² The young girl went into a coma and was taken to the police hospital at the Lufungula camp, commune of Lufungula. She woke up four days later and was still in the hospital at the end of June.

III.3.2. Forced prostitution⁵³

The prostitution phenomenon is principally caused by poverty. Brothels have appeared. Sometimes they are run by aged women who oblige young girls to follow men. These men pay the aged woman, the manager of the house. Most prostituted girls are children abandoned by their parents or children who have run away from their control. However,

⁵² See OMCT Urgent Appeal OMCT COD 200606.EE.VCF.

⁵³ cf. question 12 et 13 de la liste des questions du CEDEF dans le cadre de l'examen des rapports périodiques, CEDAW/C/COD/Q/5.

it is difficult to find statistics on this phenomenon. Few studies exist. The main reason for this lack of information is the silence kept by prostituted women and girls.

Article 174bis of the second book of the Penal Code forbids pimping. Concerning children, article 44.2 of the Constitution provides that the State must protect children against prostitution, pimping, homosexuality, incest, pedophilia, sexual harassment and all other forms of sexual perversion.

The CEDAW Committee made known its concern about the extent of prostitution and especially the prostitution of girls. The Committee encouraged the government to adopt and to implement laws forbidding girls' prostitution⁵⁴. The State must adopt and enforce measures to give prostitutes the possibility to find new places in society and to assure them psychological and educational assistance. Also, in considering the pandemic of HIV/AIDS in the DRC, the Committee recommended that the government devote more attention to health services targeting prostitutes⁵⁵.

The new law against sexual violence, in article 174.3.c., condemns forced prostitution. Article 174.5.e. also condemns sexual slavery.

In practice, there is no concrete measure of protection nor specific programme in this regard. In spite of the fact that the prostitution of children is often due to the poverty resulting from the economical and structural crises as well as the war, the State must overcome these difficulties and protect its youth from these practices. Its response should consist of restrictive measures toward persons encouraging child prostitution, but also educative measures toward children and prostituted women. The State must assure to these women satisfactory sanitary conditions, and inform them of the risks linked to sexually transmitted diseases. Plans must be established in order to assure to these women the means for a potential change of profession.

III.3.3. Genital mutilation

Certain traditional practices and customs can constitute cruel, inhuman and degrading treatment, such as the genital mutilation of women and girls. Article 174.7.g. of the new law against sexual violence condemns these practices.

The State report (CEDAW/C/COD/4-5) affirms that these practices are rare in the DRC. Actually, the DRC does not appear in the 28 African countries identified by the World Health Organisation, in which FGM is massively practiced. However, even if the phenomenon is minimal, it is essential that the State precisely locate where these practices persist, in order to establish a plan of struggle and prevention. FGM is notably more frequent in the provinces of Equateur and Katanga.

⁵⁴ Paragraphe 219 du rapport A/55/38.

⁵⁵ Paragraphe 220 du rapport A/55/38.

III.3. Women in Detention

At the CPRK, women and men prisoners are separated, and the women are monitored by female guards. They are detained in ward 9, which is strictly reserved for women. Women can consult general medical practitioners, however, no medical specialists are at their disposal, such as gynaecologists.

In police stations, detainees are not separated according to sex, nor are there any rights to medical care as there are no medical professionals available. There exists no organised assistance concerning basic physiological needs.

In July 2004, Ms A.M., placed in detention on remand in ward 9 for theft, was beaten, kicked, whipped and stripped in the main court of the prison centre within the view and earshot of everyone, by Serge, Arthur and Kangala, prisoners delegated to supervise chores. Ms A.M was being punished for having refused to transport 30 buckets of excrement because she was ill. Following the beating, she had pains in her lower stomach for which she received no treatment. Punished for having refused to obey orders, she was confined to a cell, isolated from the other detainees, and during the night, she was sexually harassed by the prisoners who tortured her. She continued to fight off the advances of Serge, Arthur and Kangala, and during the night of 7 December 2004, Ms A.M was raped at the CPRK by police officer Puku Ya Libanga and prison officer Loboto. Medical examinations revealed that Ms A.M had been infected with HIV and had contracted AIDS. Although Ms. A.M has been released, she suffers psychological problems which her parents cannot manage and has no access to the medical care she requires. Following the rape of Ms A.M in 2004, the Human Rights Minister was contacted by a NGO. She commanded an enquiry, which confirmed the facts. However, no proceedings have to date been opened, in spite of the fact that the authors are known.

See the communications of the UN Special Rapporteur on Violence Against Women, Yakin Ertürk, in her report of the 27th March 2006 : E/CN.4/2006/61/Add.1

IV. Conclusions and recommendations

1. Ratification the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The DRC ratified the Convention on the Elimination of All Forms of Discrimination against Women and presents the periodical reports to the CEDAW. However, we regret the fact that the DRC has neither ratified nor signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

2. Reform of the Family Code and of other discriminatory legislation toward women.

In spite of the ratification of the Convention in 1986, the Congolese State did not respect its commitment at the moment of the elaboration of the Family Code in 1987. That Code was supposed to improve the Congolese Civil Code with regard to women. Indeed, the Congolese legislators chose to work on the organisation of the family by abrogating for example the father's authority preferring parental authority instead. The code also affirms the principle of freedom of marriage. The promotion of the status of Congolese women partly constituted the Congolese reform.

However, we note that at the same time the State tried to promote the status of Congolese women, the Family Code has limited the legal capacity of married women by considering them as incapable persons, like children. The Family Code has installed an unequal system between women and men, which is completely in contradiction with the CEDAW. So, the legal age to contract a marriage, the rights of married women, parental authority, lineage, married women's juridical capacity, adultery provisions, and also the presumption of male superiority within discriminatory laws and traditions are various domains where the international texts and the Congolese Constitution are not respected.

We congratulate the Congolese State for its contribution, especially the Ministry of Justice and the Commission for Congolese Law Reform, which received the Memorandum from RAF (*Réseau Action Femmes*) in April 2002. This text provides for change of the legal status of Congolese women by analysing the four books of the Family Code and singling out discriminatory provisions. The RAF formulated an amendment in March 2006. Currently, a proposed law exists and aims to amend the Family Code. The State should proceed with its approval and promulgation as soon as possible.

3. Reinforce the role of the National Council of Women (*Conseil National de la Femme*)

The State must allocate the necessary budget for the effective implementation of the national programme for the promotion and protection of Congolese women. The State's actions are limited to the written word and not enough concrete action. We regret the fact that the national programme for the promotion of Congolese women does not

generally work due to the lack of real commitment by the State, who principally waits for a gesture from donors. Because of the lack of concrete results, these have become more reticent in sustaining the governmental action.

We also regret the thin financial and material support granted to Congolese women who actively contribute to their families' and society's development, by several lucrative activities. This lack of support is contrary to the principle of professional equality between women and men. The Congolese State must foster concrete measures aiming to promote and facilitate women's access to the professional world.

The State's engagement must also be more perceptible concerning the promotion of girls' and women's education. Campaigns of information and awareness raising on women's rights and on the fight against violence against women must be established.

4. Real effectiveness of the new law on the repression of sexual violence

The law against sexual violence, recently adopted by the parliament, shall be quickly promulgated by the President and we hope the authors of violence will be punished, while the victims will be reintegrated into society.

The government must introduce laws in order to pursue the authors of violence, to protect victims and to give them adequate reparation and psychological, social and sanitary assistance.

A plan for helping victims of sexist violence must be set up in order to secure psychological, social and health assistance to women victims of rape, of physical violence, of genital mutilation, etc.

A specific goodwill must be accorded in provinces where women are particularly victims of violence linked to the armed conflict.

5. Consideration of the criteria of gender

The criterion of gender has not been taken into consideration regarding the recruitment of civil and military personnel responsible for law enforcement. In fact, this holds true for every sector of public life in the DRC. Consequently, the number of men is promoted in comparison to women and the training dispensed does not integrate gender-specific aspects to respecting human rights in law enforcement. The impact of culture on a subject as sensitive as rape and sexual violence against women and female children necessitates employing a significant number of women in the police, armed forces, security services, penitentiary administration, judiciary and the bar.

On the base of an entrance exam considering gender dimension, it will be important to recruit police officers, military personnel, policy officers, security services agents and prison administrators.

6. Information, awareness raising regarding HIV and access for infected women to medicine and care

The use of condoms must be encouraged by information actions and by facilitated access to the measures of prevention.

7. Non-sexist education at any age

As well as larger access to education for Congolese girls, it would be opportune to sensitive children from the younger age, in order to prevent future sexist violence in the direction of future victims and authors. Most children have been witnesses or victims of violence. The impact on boys of violence against their mothers or other women risks to influence their perception and representation of women. In the same way girls will internalise fear, suffering and a vision of a masculine domination that it is difficult to change later.

Such education could also be taught as widely as possible, such as in to administrators, police and hospital staff, in order to sensitise adults to the problem of equality between women and men, especially in their familial and intimate relationships.