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Immigration and
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Democratic Republic of the Congo: Requirements and procedures for filing a criminal complaint, including documents received by the complainant; whether the complaint file is accessible to the complainant, including the procedure to obtain a copy of the file in the country and from abroad; whether the DRC has a standard complaint form (2015-July 2017)

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Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Procedure for Filing a Criminal Complaint

In correspondence with the Research Directorate, a lawyer (Lawyer A) working at a law office in Kinshasa specializing in criminal law explained that [translation] "Congolese law does not set out the form of a complaint or a denunciation" (Lawyer A 2 June 2017). According to the same source, a complaint can be filed with the police in person, by an authorized representative, or by

filing a written complaint (Lawyer A 2 June 2017). Lawyer A explained that the plaintiff [translation] "must personally confirm his or her complaint in a report prepared by the judicial police officer seized of the matter" (Lawyer A 2 June 2017). In a telephone interview with the Research Directorate, a lawyer (Lawyer B) from another law office in Kinshasa that also specializes in criminal law similarly stated that, in the case of a verbal complaint, the police officer prepares [translation] "a verbal complaint report" (Lawyer B 12 June 2017). Similarly, the Practical Guide for Access to Justice in D.R. Congo (*Guide pratique d'accès à la justice en R.D. Congo*), published by ProJustice, a project dedicated to developing and supporting the Congolese judicial system funded by the United States Agency for International Development (US 22 Jan. 2014), states that [translation] "the victim of the crime makes a written or verbal complaint to a judicial police officer or a public prosecutor" (ProJustice 19 Oct. 2010, 55). The same source provides the following information:

[translation]

The role of the public prosecutor is to discover crimes, document them, collect evidence of these crimes, identify the perpetrators, and refer them, that is, bring them before the courts or tribunals for prosecution. Members of the public prosecutor's office are called *magistrats du parquet*, *magistrats debout* or *magistrats du ministère public*. (ProJustice, Oct. 19, 2010, 14)

In a document released on 6 March 2015, entitled "Secure Insecurity" ("*L'insécurité sécurisée*"), Oxfam reports that it was told by people living in eastern Democratic Republic of the Congo (DRC) that local police were charging fees to perform their duties, for example US\$5 to report a crime (Oxfam 6 March 2015, 4). A summary report entitled *Making Justice Work for Women. Democratic Republic of Congo Country Report* and written by two university researchers [1] similarly points out that the "high costs" of certain legal processes, such as initiating a proceeding, are a barrier to accessing justice and can be compounded by "substantial" additional costs borne of corruption (Shackel and Fiske Aug. 2016, 100). In its report, Oxfam also quotes a man who participated in a discussion group and stated that tradition dictates that women cannot file reports with the authorities or follow up on them (Oxfam 6 Mar. 2015, 23). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Form of the Complaint

Lawyer A stated that [translation] "there is no standard form or format for the complaint" (Lawyer A 2 June 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Article 2 of the Criminal Procedure Code of the DRC (*Code de procédure pénale*), adopted in 1959, reads as follows:

[translation]

Art. 2. - Judicial police officers record the offences that they are mandated to investigate, and receive denunciations, complaints and reports pertaining to these offences.

In their reports, they note the nature and circumstances of these offences, when and where they were committed, the evidence or clues with respect to the presumed perpetrators, and the depositions of alleged witnesses or those who may have information to report.

They interview the presumed perpetrators of the offences and compile their explanations.

The reports conclude with the following written declaration: "I swear that the information contained in this report is true."

The reports are forwarded directly to the authority with jurisdiction. (DRC 1959)

Lawyer B explained that, when a verbal complaint is received by a police officer and recorded in writing in a report, this report is made on paper bearing the police department's letterhead (Lawyer B 12 June 2017).

1.2 Documents Received by the Complainant

According to lawyer A, complainants do not receive a copy of the statement or the report when they file a complaint (Lawyer A 2 June 2017). The same source stated that an acknowledgement of receipt may be provided in the case of a written complaint (Lawyer A 2 June 2017). Lawyer B explained that when a written complaint is filed, the original is kept at the police station and a copy with a stamp noting it was received is given to the complainant (Lawyer B 12 June 2017).

Lawyer A pointed out the following with respect to access to complaint statements or reports:

[translation]

- when the case is before the court, [each] party has the right to see and receive a copy of the prosecution file;
- [during] the pretrial investigations, and given that this process is secret, no investigation or procedural documents can be made available (Lawyer A 2 June 2017).

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Obtaining a Copy of the Complaint

According to lawyer A, [translation] "[i]n order to obtain a copy of the statement or police report, the complainant or his or her authorized representative must request the release of a copy either from the clerk or the public prosecutor of the court with jurisdiction" (lawyer A 2 June 2016). Lawyer B indicated that it is not possible to obtain a copy of just the complaint and that the public prosecutor's authorization is required to obtain a copy of the entire file pertaining to the lodging of the complaint (Lawyer B 12 June 2017). According to lawyer A, [translation] "there is no legal time limit" for obtaining the statement or police report concerning a complaint, but in reality, the time limit is between 0 and 8 days depending on the "diligence" granted to the application (Lawyer A 2 June 2017). Lawyer B wrote that it takes 10 days to obtain the public prosecutor's authorization and a copy of the file (Lawyer B 12 June 2017). According to lawyer A, a fee is charged for a copy of a statement or police report (lawyer A 2 June 2017). Lawyer B indicated that the fee charged for the public prosecutor's authorization is approximately US\$50, and the amount charged for a copy of the file depends on the number of pages in the file (lawyer B 12 June 2017).

2.1 Obtaining a Copy of the Complaint from Outside the Country

According to lawyer A, a person outside the DRC can obtain a copy of the statement by [translation] "appointing a representative" (Lawyer A 2 June 2017). If this representative is a third party, such as a friend or relative, he or she must present a [translation] "letter written by the interested party, certified and notarized at the embassy of the DRC, giving power of attorney to" this person (lawyer A 2 June 2017). The same source stated that "[t]he attorney is a recognized

legal agent" who does not need to present a power of attorney (Lawyer A 2 June 2017). Lawyer B pointed out that the lawyer must have a power of attorney to obtain a copy of the complaint file for a client abroad and that a friend or family member cannot request the copy on behalf of the person who filed the complaint because they cannot prove a personal interest in the matter (Lawyer B 12 June 2017).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] Rita Shackel is an associate professor at Sydney Law School, University of Sydney (University of Sydney 24 June 2013). Her research program is focused on "the evaluation and reform of legal and justice processes, with a specific focus on access to justice for children, women and other marginalised and vulnerable groups" (University of Sydney 24 June 2013). Lucy Fiske is a postdoctoral fellow in the Faculty of Arts and Social Sciences at the Sydney University of Technology (Sydney University of Technology n.d.). Lucy Fiske and Rita Shackel are working on a project exploring women's experiences of transitional justice, particularly in the DRC (Sydney University of Technology n.d.).

References

Democratic Republic of the Congo (DRC). 1959. [Code de procédure pénale](#). [Accessed 28 June 2017]

Lawyer A, Kinshasa. 2 June 2017. Correspondence with the Research Directorate.

Lawyer B, Kinshasa. 12 June 2017. Telephone interview with the Research Directorate.

Oxfam. 6 March 2015. "[L'insécurité sécurisée](#)." [Accessed 20 June 2017]

ProJustice. 19 October 2010. [Guide pratique d'accès à la justice en R.D. Congo](#). [Accessed 21 June 2017]

Shackel, Rita and Lucy Fiske. August 2016. [Making Justice Work for Women. Democratic Republic of Congo Country Report](#). [Accessed 20 June 2016]

University of Sydney. 24 June 2013. "[Associate Professor Rita Shackel](#)." [Accessed 21 June 2017]

University of Technology Sydney. N.d. "[Dr Lucy Fiske](#)." [Accessed 21 June 2017]

United States (US). 22 January 2014. Agency for International Development. [Final Evaluation. ProJustice Program in the Democratic Republic of the Congo](#). [Accessed 21 June 2017]

Additional Sources Consulted

Oral sources: Association africaine pour la défense des droits de l'homme; Association congolaise pour l'accès à la justice; Avocats sans frontières - Bureau de Bruxelles, Bureau de Kinshasa; children's rights researcher in the Democratic Republic of Congo; Democratic Republic of the Congo - ambassade à Ottawa, ministère de la Justice, Police nationale; five criminal lawyers practising in Kinshasa; Groupe d'association de défense des droits de l'homme et de la paix; Voix des sans-voix pour les droits de l'homme.

Internet sites, including: Amnesty International; Association africaine pour la défense des droits de l'homme; Association congolaise pour l'accès à la justice; Avocats sans frontières; Democratic Republic of the Congo - Barreau de Kinshasa/Gombe, Barreau de Lumumbashi, Cabinet du premier ministre, Police nationale; ecoi.net; Fédération internationale des ligues des droits de l'homme; Groupe d'association de défense des droits de l'homme et de la paix; INTERPOL; Leganet.cd; Open Society Initiative for Southern Africa; United Nations - Refworld; United States - Department of State; Voix des sans-voix pour les droits de l'homme.

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