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THE MODEL LEGISLATION ON THE ESTABLISHMENT OF SPECIAL COURTS AND OTHER MECHANISMS TO FAST-TRACK THE TRIAL OF SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN

Preamble

We, Ministers responsible for gender and justice in the member states of the International Conference on the Great Lakes Region;

Recalling that the Protocol on the Prevention and Suppression of Sexual and Gender-Based Violence against Women and Children in the Great Lakes Region was adopted on 30th November, 2006 with an annex on the Model Legislation on the prevention and suppression of Sexual violence against women and children;

Cognizant of article 11 of the Pact on Security, Stability and Development For the Great Lakes Region 2006 as amended in 2012, that requires the Member States to undertake, in accordance with the Protocol on the Prevention and Suppression of Violence against Women and Children, to combat sexual violence against women and children through preventing, criminalizing and punishing acts of sexual violence, both in times of peace and in times of war, in accordance with national laws and international criminal law;

Noting the recommendations of the Goma Declaration on eradicating Sexual Violence and ending impunity in the Great Lakes Region; member states to ensure that during the trial of SGBV cases, criminal procedure guarantees effective prosecution, confidentiality, closed court proceedings and protection of victims and witnesses;

Reaffirming our commitment to establish and strengthen special courts, sessions and procedures in order to fast-track Sexual and Gender Based Violence cases in the police and the judiciary under Commitment 8 of the Declaration of the Heads of State and Government of the Member States of the International Conference on the Great Lakes Region adopted and signed on 15th December, 2011(the Kampala Declaration 2011);

Recalling the commitment of the ministers responsible for Justice and Gender to establish and strengthen special courts and to provide progress reports as contained in the final communique of the High-level Consultation of Ministers responsible for Justice and Gender on the Kampala Declaration on Sexual and Gender based violence held in Kinshasa on 12th July 2012;

Conscious of the need to adopt a model legislation to guide member states in developing the appropriate legal instruments for the establishment and operationalization of special courts to try sexual violence offences in their respective criminal justice systems;

Aware that an effective criminal justice system response to sexual and gender-based violence requires collaboration among the Judiciary, prosecutors, investigators, defence counsel and probation and welfare officials;

Having received and considered the final communique of the High-level consultation of Ministers responsible for Justice and gender on the Kampala Declaration on sexual and gender-based violence held in Brazzaville on 27th November, 2019;

Convinced that the adoption of a model law to establish and strengthen special courts and other mechanism in order to fast track sexual and gender based violence cases in the police and the judiciary is a facilitating tool for improved access to justice and protection of victims and survivors of sexual and gender based violence in line with article 6 of the International Conference on the Great Lakes Region protocol (2006);

Do hereby adopt the Model legislation on the Establishment of Special Courts and other Mechanisms to fast-track Sexual Violence against Women and Children as follows:-

ARRANGEMENT OF SECTIONS

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1. Interpretation

In this Act, unless the context otherwise requires “competent Authority” means an officer responsible for the administration of the Judiciary in the member state;

“intermediary” means a person authorized by a special court, on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counsellor, guardian, children’s officer, probation and welfare officer or social worker;

“investigating Authority” means an agency responsible for investigating criminal cases;

“prosecuting Authority” means an agency responsible for the prosecution of criminal cases in any court with criminal jurisdiction;

“treatment” includes medical diagnosis, counselling and social support services;

“sexual violence” means an act which violates the sexual autonomy and bodily integrity of women and children under international criminal law, including-

- (a) rape;
- (b) sexual assault;
- (c) grievous bodily harm;
- (d) assault or mutilation of female reproductive organs;
- (e) sexual slavery;
- (f) enforced prostitution;
- (g) forced pregnancy;
- (h) enforced sterilization;
- (i) harmful practices;
- (j) sexual exploitation or the coercion of women and children to perform domestic chores or to provide sexual comfort;
- (k) trafficking in, and smuggling of, women and children for sexual slavery or exploitation;

- (l) enslavement by the exercise of any or all of the powers attaching to the right of ownership over women; including the exercise of such power in the course of trafficking in women and children;
- (m) forced abortions or forced pregnancies of women and girl children arising from the unlawful confinement of a woman or girl child forcibly made pregnant, with the intent of affecting the composition of identity of any population or carrying out other grave violations of international law;
- (n) infection of women and children with sexually transmitted diseases, including HIV/AIDS; and
- (o) any other act or form of sexual violence of comparable gravity.;

“gender-based violence” includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty that are directed against a woman because she is a woman or that affects women disproportionately;

“special court” includes divisions, circuits, tribunals and sessions designated by the competent Authority of a member state for purposes of conducting trials of sexual offences;

“victim support services” includes counselling, specialised medical treatment referrals, rehabilitation, testifying in camera or chambers and related services.

2. The object of this model law

The object of this model law is to provide a guiding legal framework for member states to enact national legislation to:

- (a) provide a legal framework to operationalize Commitment 8 of the Kampala Declaration 2011 under which the Heads of State and government committed to direct concerned ministries to establish and strengthen special courts, sessions and procedures in order to fast-track sexual and gender based violence cases in the police and the judiciary as a means to end impunity for sexual and gender based violence, among others;

- (b) provide for the designation of special courts to give effect to the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, 2006;
- (c) provide for the procedures and measures for fast-tracking the prosecution and hearing of sexual offences; and
- (d) provide for the development of guidelines for judicial officers, prosecutors, investigating officers and medical personnel in handling sexual offences to ensure proper management of sexual offences.

3. Designation of special courts

- (1) The competent Authority shall designate a special court in every geographical jurisdiction, to fast-track the hearing and disposal of sexual violence cases.

- (2) The special court designated by the competent Authority shall be a competent court with jurisdiction to try sexual offences.
- (3) The competent Authority shall-
 - (a) assign adequate and well-trained personnel who are gender responsive to the special court;
 - (b) provide training, orientation and motivation to equip the personnel assigned to a special court with skills necessary for the proper functioning of the special court;
and
 - (c) equip the special court with adequate and gender responsive special facilities;
- (4) The special facilities referred to in subsection (2)(c) may include-
 - (a) a visual - audio link for vulnerable victims;
 - (b) a room from which the victim will testify, which shall be arranged in a manner that ensures victim safety and prevention of re-traumatization of the victim;
 - (c) a private waiting area for victims and their families;
 - (d) victim support services;
 - (e) specialist interpreters who are gender responsive; and

(f) a child-friendly environment, in the case of child victims.

4. Functions of special courts

(1) The special court shall -

- (a) manage sexual violence offences trials with a consistent and gender responsive approach;
- (b) fast-track sexual offences trials and dispose of the cases in a timely manner;
- (c) issue protective orders or directives in favour of the victim, witness or a family member, as the court deems appropriate;
- (d) advise the victim or survivor of their rights during the hearing; and
- (e) operate in an environment that ensures the safety of the victim and prevents or reduces re-traumatization of the victim or survivor.

(2) The special court shall in the performance of its functions shall adhere to the principles of natural justice.

5. Protective orders

- (1) A special court may, if it considers it appropriate, make protective orders for the victims of sexual violence, families of victims of sexual offences and vulnerable witnesses.
- (2) The protective order may include-
 - (a) an order directing the perpetrator to stay away from the premises or place where the victim resides or any part of the premises, if the prohibition is in the best interest of the victim;
 - (b) an order directing the perpetrator to pay maintenance in respect of the victim's needs or the needs of any child or dependent of the perpetrator in the case of sexual violence in the domestic setting;
 - (c) an order for temporary custody of any child or dependent of the perpetrator to any person or institution and regulate rights of access by the perpetrator to the child or dependent;

- (d) an order directing the perpetrator to afford the victim or any child or dependent of the victim, access to their place of residence and use of the facilities associated with it; or
- (e) make any other order the special court may consider appropriate.

6. Treatment orders.

- (1) A special court may, at any time at the request of a victim of sexual offence or an intermediary, grant an order for the treatment of a victim of sexual offence.
- (2) Notwithstanding the provisions of sub-section (1), a special court, may upon conviction of a person having committed a sexual offence and if satisfied that the convicted person is dependent on or has the propensity to misuse alcohol, any drug or is suffering from any other disorder including the mindset that treats women as sex objects, make an order for treatment of the convicted person, in addition to any sentence, including a sentence of imprisonment which is not suspended.

- (3) A treatment order issued under this section shall specify a public hospital or institution where the treatment shall take place.
- (4) The expenses incurred for the treatment of any person convicted of an offence under this section or a victim of a sexual offence, as the case may be, shall be borne by the State.
- (5) All medical records relating to treatment under this section may be used as evidence before any court with regard to any offence under this Act.

7. Sexual violence offender register

- (1) The special courts shall establish and maintain a sexual violence offender Register.
- (2) The Register shall consist of-
 - (a) the particulars of the offender;
 - (b) passport photograph and a set of fingerprints of the offender;

- (c) physical address of the place of residence and the place of work;
 - (d) the offence with which the offender was convicted;
 - (e) the date of conviction and the sentence imposed;
 - (f) the sentence entered on appeal if applicable;
 - (g) the age of the victim of the sexual offence;
 - (h) the relationship between the convict and the victim, if any, including information as to whether there was a position of trust;
 - (i) brief particulars of the circumstances under which the offences were committed; and
 - (j) any other information, which, in the opinion of the special court, requires to be kept.
- (3) Where a convicted offender changes the physical address referred to in section (2) (c), the offender shall notify the special court that convicted him or her of the change of address within fourteen days after the change of address.

8. Access to the register

- (1) A person who wishes to access the Register shall apply in writing to the special court for permission to access the register.
- (2) The register shall be accessed during working days and hours or any other day as the special court may determine.
- (3) Notwithstanding subsection (1) the court shall at all times ensure access of the register by the following—
 - (a) judicial officers;
 - (b) advocates involved in criminal proceedings to which information kept in the Register has a bearing;
 - (c) probation and social welfare officers;
 - (d) children officers;
 - (e) state counsel and prosecutors;
 - (f) police investigators;
 - (g) the prisons department; and

- (h) other relevant agencies which, in the opinion of the competent authority, may require such information.
- (4) The special court shall not allow access to the Register where the special court has reason to believe that the information is intended to be used in a prejudicial manner.

9. Coordination and collaboration

- (1) The competent Authority shall require each special court to establish a mechanism for coordination and collaboration among -
- (a) judicial officers assigned to special courts;
 - (b) prosecutors handling sexual violence offenses;
 - (c) investigators handling sexual violence complaints;
 - (d) survivors or victims of sexual violence
 - (e) the family of the survivor or victim of the sexual violence, where the survivor or victim is a person with disability, a child or has suffered trauma;
 - (f) recovery centres;

- (g) defence counsel;
 - (h) prisons authorities, or detention centres; and
 - (i) public officers responsible for probation and welfare of the victims.
- (2) The coordination and collaboration shall support the special court to ensure-
- (a) efficient delivery of justice;
 - (b) respect for the rights of the victim or survivor of sexual violence, and for the accused person; and
 - (c) an environment that is friendly to the victim throughout the trial.

10. Procedure adopted by the special court

- (1) The special court shall adopt special procedures in hearing and determining sexual violence offences.
- (2) The special procedures may relate to-
- (a) witness protection;

- (b) appearance of witnesses;
- (c) use of forensic evidence;
- (d) expert evidence;
- (e) admissibility and relevancy of evidence;
- (f) handling of a child and other vulnerable victims; and
- (g) trial procedures.

11. Evidence of medical or forensic nature

- (1) A person may apply to the special court to direct that an appropriate sample be taken from the accused person charged with a sexual offence, for the purpose of forensic and other scientific testing in order to gather evidence and to ascertain whether or not the accused person committed an offence.

- (2) The sample taken from an accused person under subsection (1) shall be stored at an appropriate place until the trial is concluded and if the accused person is convicted, order that the sample be stored in a databank for dangerous sexual offenders; where the accused person is acquitted, order that the sample or samples be destroyed.
- (3) The dangerous sexual offender's databank referred to in subsection (2) shall contain such particulars as may be determined by the competent authority.
- (4) A person making an application for a sample to be taken under subsection (1) shall, in consultation with a medical practitioner, specify the nature of the sample which may include-
 - (a) blood;
 - (b) urine; or
 - (c) other tissue or substance.

12. Powers of the competent Authority

- (1) The competent Authority shall exercise the following powers:
 - (a) designate a senior judicial officer as a person in charge of a designated special court;
 - (b) issue practice directions, guidelines or rules, as the case may be, on any matter relating to the operations of special courts;
 - (c) conduct a regular monitoring and appraisal of the performance of special courts; and
 - (d) issue practice directions, guidelines or rules on the issuance of protective orders, compensations, damages or reparations to the victims or survivors of sexual violence.
- (2) The guidelines shall provide for the management of the coordination and collaboration mechanism established in section 9.

13. Guidelines for investigations

- (1) The investigating Authority shall develop and issue guidelines for effective and gender-responsive investigation of sexual offences.
- (2) The investigating Authority shall cause the investigating officers of sexual violence offences to be equipped with skills, knowledge, equipment and facilities for carrying out investigations.
- (3) The guidelines shall include a requirement that all officers investigating sexual violence cases shall effectively participate in the coordination and collaboration mechanism established in section 9.

14. Guidelines for prosecution

- (1) The Prosecuting Authority shall develop and issue guidelines for effective and gender responsive of sexual offences.

- (2) The guidelines shall include a requirement that the prosecutors of sexual offences shall participate in the mechanism for coordination and collaboration established in section 9.

15. Prohibitions

- (1) Criminal proceedings relating to sexual offences shall not be subjected to-
 - (a) plea bargaining;
 - (b) mediation; or
 - (c) Amnesty.
- (2) Evidence relating to marital or sexual history of the victim or generally the character of the victim as a defense for the accused shall not be admissible in a special court.
- (3) The provisions relating to limitation of time as a bar to instituting criminal proceedings under a statute of limitations shall not apply to sexual offences.

16. Vulnerable witnesses

- (1) A special court, may declare a witness, other than the accused, a vulnerable witness if such witness is -
 - (a) the alleged victim in the proceedings;
 - (b) a child; or
 - (c) a person with mental disabilities.
- (2) The special court may, on its own initiative or upon request of the prosecution or any witness other than the accused, declare any such witness, a vulnerable witness if in the court's opinion he or she is likely to be vulnerable on account of -
 - (a) age;
 - (b) intellectual, psychological or physical impairment;
 - (c) trauma;
 - (d) cultural differences;
 - (e) the possibility of intimidation;
 - (f) the relationship of the witness to any party to the proceedings;
 - (g) the nature of the subject matter of the evidence; or

- (h) any other factor the court considers relevant.
- (3) The special court may, if it is in doubt as to whether a witness should be declared a vulnerable witness, summon an intermediary to appear before the court and advise the court on the vulnerability of such witness.
- (4) Where a witness has been declared vulnerable, the court shall, direct that such witness be protected by one or more of the following measures -
- (a) allowing such a witness to give evidence under the protective cover of a witness protection box, under pseudo names or through audio-video link;
 - (b) directing that the witness shall give evidence through an intermediary;
 - (c) directing that the proceedings may not take place in open court;
 - (d) prohibiting the publication of the identity of the complainant or of the complainant's family, including the publication of information that may lead to the identification of the complainant or the complainant's family; or

(e) any other measure which the court deems just and appropriate.

17. Monitoring and reporting

- (1) A person in charge of a special court shall:
 - (a) establish a case management system for purposes of tracking the disposal of sexual violence offences; and
 - (b) submit a progress report on the sexual violence cases filed and disposed of in that special court, to the competent Authority, on a monthly basis.
- (2) The competent Authority shall upon receipt of the progress report submit the report to the Ministers responsible for gender and for justice.
- (3) The competent Authority shall issue guidelines to special courts on the format of progress reports.



