

MULTI-DONOR TRUST FUND FOR
UN ACTION AGAINST SEXUAL VIOLENCE IN CONFLICT

UN TEAM OF EXPERTS: RULE OF LAW/SEXUAL VIOLENCE IN CONFLICT

FINAL NARRATIVE REPORT COVER PAGE

<p>Participating UN Organization(s): DPKO, OHCHR, UNDP</p>	<p>Project¹ Title: Team of Experts support to the implementation of the Democratic Republic of Congo Joint Communiqué on addressing sexual violence II</p> <p>Project Number: UNA038</p>
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¹ The term “project” is used for projects, programmes and joint programmes

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UN TEAM OF EXPERTS: RULE OF LAW/SEXUAL VIOLENCE IN CONFLICT

Final Narrative Report

I. Background

Following the signature of the Joint Communiqué between the Government of the Democratic Republic of Congo (DRC) and the United Nations on Combating Sexual Violence in Conflict (2013), the Team of Experts on the Rule of Law and Sexual Violence in Conflict (TOE) assisted the Government on the development of a detailed Implementation Plan in which the Joint Communiqué's commitments on the rule of law and accountability were translated into targeted outputs and activities. Accordingly, the TOE identified "areas of particular concern [i.e. eastern DRC] with respect to sexual violence in armed conflict" and worked with the DRC authorities to strengthen national capacities to combat conflict-related sexual violence (CRSV) and ensure national ownership and leadership. Activities aimed at long-term change, such as ensuring the establishment of a strong legal framework and strengthening national institutions, were prioritized. Ultimately, the TOE's theory of change was designed to contribute to the prevention of CRSV and to a renewal of trust between State institutions and Congolese citizens.

Following the identification of these rule of law activities, the Government of Japan provided in 2014 the first of a series of one-year grants to support the work of the TOE in DRC, so that the outputs defined under the Implementation Plan could be delivered. Subsequently, in 2015 and 2016, the Government of Japan generously continued to provide support to the implementation of these activities. The project that is described herein ("TOE/Japan Project") relates the results achieved between 2014 through project completion. The results of the project signal both considerable progress and new challenges. At the time of project completion, there was instability surrounding the then upcoming election in the DRC, new violence in the country such as in the Kasais, continued mass displacement that is some of the highest on the continent of Africa, and the continued prevalence of CRSV in eastern DRC.

In an effort to deliver efficiently and effectively on the project in cooperation with partners on the ground, the TOE worked with the United Nations Development Programme (UNDP) and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). As in previous years, it was agreed that UNDP would be entrusted with: (i) the overall coordination of the project; (ii) the management of the financial resources allocated to the project; and (iii) the consolidation of reports submitted by project partners on their activities. In addition to UNDP, the United Nations Joint Human Rights Office (MONUSCO JHRO) and three national stakeholders – the Congolese Senate's Special Committee on Sexual Violence in Conflict, the FARDC Commission, the Office of the Personal Representative of the President on Sexual Violence and Child Recruitment (OPR) were responsible for the implementation of different project activities.

II. Objectives/Outputs

Building on the Joint Communiqué and its subsequent Implementation Plan, the TOE/Japan Project focused on strengthening the national normative and judicial response to sexual violence in conflict and to ensure national ownership and leadership on the coordination and implementation of these efforts. These objectives were to be attained through the following outputs: (i) the response of national justice mechanisms to reported CRSV cases is enhanced; (ii) the capacity of the national judicial and law enforcement institutions to protect victims, witnesses and other participants in CRSV judicial proceedings is enhanced; (iii) advocacy and law-making efforts of relevant legislative bodies on sexual violence are strengthened; and (iv) the ability of the

OPR to coordinate and advocate for an effective response to CRSV based on data and information regularly shared with relevant constituencies is enhanced.

III. Progress/Results

OUTPUT 1. The response of national justice mechanisms to CRSV reported cases is enhanced.

Product 1.1. Specialized units to investigate and prosecute sexual violence cases, in civil courts, are operational

During the project, seven specialized units on sexual violence became operational in Ituri, North Kivu, South Kivu, and Tanganyika provinces and specifically in the High Courts of Bukavu, Beni, Bunia, Butembo, Goma, Kalemie, and Uvira. Eighteen women magistrates were appointed and deployed in these specialized units² and infrastructural support was provided through the addition of two office-containers in the Prosecutor's Offices in Bukavu and Goma. The establishment of these office-containers, separated from the main Prosecutor's Office buildings, allow for greater privacy when handling sensitive cases, reinforcing victims and witness protection and confidentiality overall and in a cost-effective manner. Two legal clinics were also supported assisting 243 with access to justice in the civilian justice system.

Acknowledging the need for a holistic response, and in an effort to strengthen cooperation among the relevant actors seeking accountability for CRSV, the project supported the training of 66 individuals for the specialized units including the magistrates themselves and police investigators, lawyers and doctors. The participants in these trainings came from all of the locations where the specialized units were established and focused on investigation techniques and the use of medico-legal and forensic evidence in sexual violence cases. Subsequently, the magistrates of the specialized units organized mentoring sessions for the police investigators and paralegals with whom they currently work.

Regarding the response to specific cases, the project supported the preparation of official Judicial Investigative Missions (JIM) and the regular monitoring of investigative proceedings by judicial inspection officers, which enhanced internal accountability within the judiciary. As an example, from January to December 2017, the specialized units organized two JIMs in Kalemie; seven missions in North Kivu (Bweremana (Masisi), Kibirizi, Kiwanja and Vitshumbi (Rutshuru)); and two missions in Uvira territory (Katogota and Uvira). The project also supported mobile court sessions in Kiwanja, North Kivu, and Minova, South Kivu.

In order to ensure a closer relationship between the specialized units and the communities they serve, the project supported eight days of awareness raising activities. These sessions raised awareness on the applicable law and routes to access justice for sexual violence cases. Participating civil society organizations are now better prepared to inform survivors on how to access justice for sexual violence crimes as well as to advocate effectively on survivors' behalf with judicial authorities.

The activities above – training; mentoring; infrastructural and technical support to judicial investigations and mobile courts; and awareness raising – reflect the qualitative and quantitative improvements in the judicial response to sexual violence. In 2017 alone, 1,726 sexual and gender-based violence cases were

² In the first half of 2017, some women magistrates were reassigned to other jurisdictions. Out of the eighteen magistrates initially deployed and trained, only four remain in the project area. This can be explained by the remaining security challenges in eastern DRC as well as by Congolese administrative rules regarding the rotation of judges, which resulted in the move of judges trained on sexual violence to other areas of the country despite developing significant local expertise. The TOE has consistently raised the issue of judicial rotations with the Congolese government for reform.

registered by the seven specialized units, which resulted in 643 judgements (final judicial decisions) and 460 sentencing decisions.

Finally, the project also allowed for the hiring of seven lawyers to support the execution of judgments of monetary reparations rendered in criminal cases for CRSV in North Kivu (Kitchanga, Mugunga and Oicha) and South Kivu (Kamituga, Minova, Uvira and Walungu). By the end of November 2017, these lawyers had taken legal action in 16 case files for the execution of judicial decisions on reparations. Such assistance represents a significant advance in the process of obtaining civil reparations allocated pursuant to judicial decision. The relevant legal actions were ongoing at project completion. However, despite many litigants following precisely the Congolese judicial process for the execution of monetary reparations, these payments have still not been provided by the Congolese government.

In order to ensure sustainability and national ownership of the specialized units, a monitoring and evaluation committee was established from the outset of the project to monitor the deployment of the women magistrates and evaluate the impact of their activities. Two review workshops were organized in Bukavu and Goma to identify challenges and opportunities. Additionally, with the support of the *Conseil Supérieur de la Magistrature*, one mid-term evaluation workshop was organized in Kinshasa to identify progress made and ways to address challenges, as well as to ensure the sustainability of the project.

Product 1.2. Military prosecutors are able to investigate and prosecute CRSV

In 2016, the TOE and Congolese military justice authorities in former province Orientale, North Kivu and South Kivu joined together to design a case prioritization strategy for serious international crimes, including CRSV, committed within these provinces. A number of priority cases were identified and the TOE followed up the prioritized cases with technical and financial assistance.

This assistance included: (i) the drafting and adoption of Standard Operating Procedures (SOPs) for the planning, management and case processing of CRSV, which were used to inform interviews of and hearings for victims, witnesses and alleged perpetrators; (ii) the drafting and adoption of SOPs on the investigation and collection of evidence for CRSV, including on telephonic and electronic devices; (iii) the production of model investigative plans and interview questions that were used in the proceedings with victims, witnesses and alleged perpetrators; (iv) the provision of financial and technical resources to joint missions to develop evidence for the prioritized cases; and (v) the provision of victim and witness protection (described further in Output 2 below).

These activities yielded the following emblematic results:

- The conviction by military justice authorities of FARDC Colonel Julius Dhenyo Becker for sexual violence that was committed in Musenyi, Kalehe territory in South Kivu in 2015. Colonel Becker received a criminal sentence for command responsibility for war crimes and reparations were ordered to victims.
- In close collaboration with the iNGOs Physicians for Human Rights and TRIAL (as well as other civil society organizations), the successful investigation, prosecution and conviction by military justice authorities of provincial parliamentarian Mr. Frederic Batumike Rukembanyi and members of his “Jeshi ya Yesu” (“Army of Jesus”) militia for crimes against humanity for the rapes of 39 children in Kavumu township in South Kivu province between 2013 and 2016.

- The surrender of Mr. Ntabo Ntaberi Sheka, leader of the Nduma Defence of Congo militia, allegedly responsible for the rapes of 387 victims in Walikale, North Kivu province in 2010, an attack that led to Presidential Statement No. 2010/17, the first by the Security Council calling for the prosecution of a specific incident of conflict-related sexual violence.

Legal assistance was provided by the project and its partners to nearly 100% of the victims/civil parties and accused/defendants in the trials and convictions described above. On the basis of existing agreements between UNDP and the national bar, *pro bono* lawyers were appointed and assigned to the relevant cases following requests from the Court, during investigations and at mobile court hearings.

Product 1.3. Buildings and equipment are provided to the three Special Police Units for the Protection of Children and Women of the Congolese national police in Bukavu, Kavumu and Kitshanga.

Three fully equipped buildings for the Special Police Units for the Protection of Children and Women (PSPEF) of the *Police Nationale Congolaise* (PNC) in Bukavu, Kavumu and Kitshanga were inaugurated and made operational by project completion. These units include adequate rooms for the reception and interviewing of especially vulnerable victims.

Product 1.4: The FARDC Action Plan is established.

During the project period, the FARDC agreed to an action plan to combat sexual violence and a commission was established during the project period. Numerous commanders have signed undertakings to take measures against sexual violence in their ranks, but the FARDC Action plan requires future revision and implementation.

OUTPUT 2. The capacity of the national judicial and law enforcement institutions to protect victims, witnesses and other participants in CRSV judicial proceedings is enhanced.

Product 2.1. Establishment of protection measures

During the project period, 22 Protection Missions were conducted with the support of the project. These Protection Missions, led by MONUSCO, allowed various judicial actors to identify and locate prospective victims and witnesses. During these Missions, local actors, along with the UN, defined and agreed on the protective measures that would need to be taken before organizing a JIM and/or mobile court sessions. Protection Teams, composed of local actors (judicial and non-judicial) and relevant UN actors, were then established to ensure that security conditions were met and that victims were and remain safe from threats through a protection plan established and agreed with Congolese courts or tribunals.

These missions allowed for the sensitization, identification and establishment of protection measures for thousands of victims and witnesses over the entire project period, the majority of whom were women and girls. During the Protection Missions, JIMs and mobile court sessions, victims and witnesses benefited from the support of lawyers and psychologists especially trained on addressing the needs of victims and witnesses of sexual violence crimes.

Product 2.2 Training of judicial and non-judicial actors on protection measures

In collaboration with the *Conseil Supérieur de la Magistrature*, the local bar and local partners, the project organized a series of four trainings on the protection of victims and witnesses in sexual violence cases with members of NGOs, civil society, lawyers and journalists. These trainings were initiated at the request of

civil society, based on the complex protection issues arising from ongoing cases prioritized by the Government with the assistance of the TOE (e.g. the Kavumu case). The trainings included topics such as: general principles of protection under both national and international law on protecting victims and witnesses; the definition and preparation of victim and witness protection plans; and the implementation and monitoring of protection plans during judicial processes. The trainees included 87 lawyers and human rights defenders, including 65 men and 22 women; and 62 members of NGOs, including 35 men and 27 women who act as focal points for protection issues. Thus, in total, the project improved the technical skills of 149 people (lawyers, judicial advocates and NGO/CSO members) including 100 men and 49 women.

Separately, training courses were also organized for civil and military magistrates in Ituri, North Kivu, South Kivu and Tanganyika on legal frameworks, case law and best practices on the protection of victims and witnesses of sexual violence crimes. The training was prepared with the active collaboration of the *Conseil Supérieur de la Magistrature* and lead judges of the main jurisdictions dealing with CRSV.

Finally, four roundtables on victims and witness protection brought together the previously trained civil and military magistrates, lawyers, NGOs and international partners in Bukavu (South Kivu), Bunia (Ituri), Goma (North Kivu) and Kisangani (Tshopo) to enable both groups to work more closely together on victims and witness protection.

OUTPUT 3. Advocacy and law-making efforts of relevant legislative bodies on sexual violence are strengthened.

Following the recommendations contained in the report of the Congolese Senate's Special Commission on Conflict-Related Sexual Violence (Special Commission) that was adopted in 2015,³ the Special Commission carried out a series of missions focused on awareness-raising and the possible creation of legislation for victims and witness protection in Congo (as there is presently no specific statutory law on victims and witness protection, although there are more general provisions in DRC's law permitting judges to fashion protection measures they deem necessary) and for victims' assistance, compensation and reparation.

The TOE provided assistance to the Special Commission in drafting legislation on victims and witnesses protection and has provided comments on various draft bills on victims' assistance, compensation and reparation. Due to the ongoing political discussions in the Congolese legislature about the schedule of elections and revisions to laws related to natural resources, the Congolese Senate did not have the opportunity to take up the Special Commission's legislation during the legislative session falling within the project period. The TOE will continue to advocate with the Senate for the enactment of bills related to victims and witnesses protection, as well as expediting the payment of reparations judgments, that were developed pursuant to the present project.

OUTPUT 4. The ability of the OPR to coordinate and advocate for an effective response to CRSV based on data and information regularly shared with relevant constituencies is enhanced.

The DRC created the OPR to serve as its high-level focal point to the United Nations and the international community on the issues of sexual violence and child recruitment. Since its inception, the TOE project has provided the funding and technical assistance for the OPR to be established and become operational. This support has allowed the OPR to ensure the coordination of the main governmental entities in the DRC working on CRSV. Beyond active work amongst its governmental partners, the OPR has also become a key

³ The Senate's Special Commission on Conflict-Related Sexual Violence was established in 2014 following the visit of the Special Representative of the Secretary-General on Sexual Violence in Conflict.

link for MONUSCO and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict on political and operational issues directly related to conflict-related sexual violence, including as one of the UN's primary interlocutors on the monitoring and reporting of CRSV in the DRC.

The TOE's support during the project period allowed for the OPR to engage in its national "*Brisez le silence*" ("Break the Silence") advocacy campaign to raise awareness on preventing sexual violence, reducing the stigma associated with sexual violence, and alerting the public to methods of obtaining assistance from the Government if sexual violence is committed. The OPR has also been a key point of contact on advancing justice issues especially with regard to the DRC's priority cases mentioned above. Finally, the OPR has been consistently engaged in advocacy for greater victims' assistance, economic reintegration and the payment of reparations to victims of sexual violence based on the TOE's technical and financial support.

IV. Lessons learned

The Team of Experts identified the following lessons learned as a result of this project which should be considered in any further support to the Congolese authorities to prevent and respond to CRSV:

- The creation of synergies among stakeholders (military justice, civil society, local lawyers, parliamentary institutions and executive agencies) proved to be essential to the quantitative and qualitative improvement of the law enforcement and judicial response to sexual violence in the country and to ensure the ownership of the project by the Government;
- The creation of synergies between existing projects on the response to CRSV allowed for a more efficient and effective use of resources. Ongoing coordination between the Canadian-funded Gender-Based Violence Project, MONUSCO's EU-funded Prosecution Support Cells, and the TOE/Japan Project led to better information sharing and pooling of expertise and knowledge, improving the project's impact; and
- The prioritization of cases of serious international crimes including CRSV that was part of the TOE/Japan Project prompted a more coordinated response and action of key entities when urgent measures were needed and led to the investigation, prosecution and conviction of high-level perpetrators.

V. Conclusion

With the completion of the project, the TOE no longer had any dedicated project funding for accountability measures in the DRC. However, after a one-year gap, the Government of Japan generously contributed future funding for accountability measures on sexual violence in conflict along with its core funders in the DRC. The TOE's project will focus on accountability measures in eastern DRC, where sexual violence remains prevalent and where the TOE has the greatest breadth of experience due to its previous project activities.