

CONFLICT-RELATED SEXUAL VIOLENCE MULTI-PARTNER TRUST FUND

**UN TEAM OF EXPERTS ON THE RULE OF LAW AND SEXUAL VIOLENCE IN
CONFLICT**

FINAL NARRATIVE REPORT COVER PAGE

<p>Participating UN Organization(s): DPO, UNDP</p>	<p>Project¹ Title: Support to Criminal Justice Authorities to Address Impunity for International Crimes in the Democratic Republic of the Congo</p> <p>Project Number: TOE#1-JP-DRC_Criminal justice</p>
<p>Focal Point of the Participating UN Organization(s): UNDP, DPO</p> <p>Name: Chloe Marnay-Baszanger Title: Team Leader – UN Team of Experts on the Rule of Law and Sexual Violence in Conflict</p> <p>Address: UN Team of Experts: Rule of Law/Sexual Violence in Conflict Office of the SRSG on Sexual Violence in Conflict United Nations Secretariat, Room 3107 New York, NY 10017, USA</p> <p>Telephone: +1 917-367-3981 (office) Email: marny-basanger@un.org</p> <p>Name: Stephanie McPhail Title: Chief, Justice Support Section, MONUSCO</p> <p>Address: MONUSCO Kinshasa, DRC</p> <p>Telephone: Mission Extension: 175-6409 Cell: +243-99-706-8817 Email: mcphail@un.org</p> <p>Name: Dominic Sam Title: UNDP Resident Representative (DRC)</p>	<p>Report Number:</p> <p>Project Location(s): Democratic Republic of the Congo</p>

¹ The term “project” is used for projects, programmes and joint programmes

<p>Address: Immeuble Losonia Boulevard du 30 juin Kinshasa, RDC Telephone: +243 81 555 33 05 Email: dominic.sam@undp.org</p> <p>Name: Katy Thompson Title: Team Leader, Rule of Law, Justice, Security & Human Rights</p> <p>Address: United Nations Development Programme (UNDP) Bureau for Policy and Programme Support 304 East 45th Street, FF- 10th Floor New York, NY 10027</p> <p>Telephone: 212-906-5095 Email: katy.thompson@undp.org</p>	
<p>UN Action pillar of activity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Advocacy <input type="checkbox"/> Knowledge building <input checked="" type="checkbox"/> Support to UN system at country level 	<p>Reporting Period: 1 January 2019 – 31 December 2020</p>
<p>Project Budget: \$1,165,800</p>	

Final Narrative Report

Democratic Republic of the Congo

I. Context

A. Political situation

Following the 2018 presidential elections and despite a peaceful transition of power, the Democratic Republic of Congo, in 2019 and 2020 continued to experience great instability. In 2019, the elected President, Félix Tshisekedi, failed to obtain a parliamentary majority in legislative elections, agreeing with the opposition to establish a ruling coalition. The Coalition brought two major political forces, namely the Common Front for Congo (in French, *Front commun pour le Congo*) and the Heading for Change (in French, *Cap pour le changement*). Yet, multiple, substantive differences between the two political parties caused the Coalition to break apart. It was replaced by short-lived government in 2020. At the provincial level, several successful no-confidence motions in provincial assemblies caused provincial governments to be removed. Further, ministerial changes occurred at both national and provincial levels. The combination of these factors led to renewed political and institutional instability for the country.

B. Security situation

In 2019 and 2020, the security situation remained precarious, particularly in eastern DRC, due to the continuing presence of armed groups in North Kivu, South Kivu, Ituri and, to a lesser extent, Kasai Central. Regular clashes between armed groups and the Armed Forces of the Democratic Republic of Congo (FARDC) have caused numerous human rights violations, significant population displacements and generalized insecurity. In the provinces covered by the project, the security situation can be summarized as follows:

- **Ituri:** The militiamen of the "Cooperative for the Development of Congo" (known by the acronym CODECO) were behind numerous attacks against the civilian populations of the territories of Mahagi and Djugu, which have led to the displacement of hundreds of thousands of people. In addition, the Ituri Patriotic Resistance Force (in French, Force de résistance patriotique d'Ituri, known by the acronym FRPI) continued to be active in the Irumu territory, despite the ongoing demobilization process.
- **Nord-Kivu:** The FARDC carried out numerous offensives against the armed groups in the province. In particular, this included military operations against the "Alliance of Patriots for a Free and Sovereign Congo" (in French, Alliance des patriotes pour un Congo libre et souverain, known by the acronym APCLS), the "Nduma Defense of Congo" (known by the acronym, NDC-R) , the "Nyatura-Forces de Patriotes Congolais" (known by the acronym, Nyatura FPC), the "Nyatura Biriko, National Council for Renewal and Democracy" (CNRD), "Collective of Movements for Change" (known by the acronym, CMC) and "Democratic Liberation Forces of Rwanda" (known by the acronym, FDLR).

However, the militiamen of the "Allied Democratic Forces National Army for the Liberation of Uganda" (known by the acronym, ADF-NALU) carried out numerous attacks against the civilian populations of Beni causing the death of hundreds of people and the massive displacement of communities to neighbouring territories or central Béni. Likewise, criminal acts, abductions and targeted killings were on the rise in the territories of Masisi and Ruthuru.

- **Sud-Kivu:** Several FARDC officers and their troops defected and joined armed groups, posing a direct threat to stability and peace, especially in the territories of Uvira, Fizi and Mwenga.

In addition, many militiamen have also taken up arms; the renewed presence of armed groups led to the massive displacement of populations, especially in the territory of Kalehe.

C. Human Rights violations and Conflict-Related Sexual Violence

In 2020, MONUSCO documented 7,909 human rights violations in the DRC, representing an increase of 21% compared to 2019. Most of the incidents were recorded in the provinces of North Kivu, South Kivu and Ituri in line with the presence of armed groups in these areas. Most human rights violations (55%) were allegedly committed by armed groups and militias. 3,359 human rights violations were allegedly committed by state agents, reflecting a decrease from 2019 when security forces were widely deployed in the context of security operations and law enforcement. At least 2,945 civilians (including 553 women and 286 children) were killed, including 2,487 murders alleged to be committed by members of armed groups.

In 2019, MONUSCO documented 1,409 cases of conflict-related sexual violence (CRSV), which represents an increase of 34% since 2018. Of those cases, 955 were attributed to non-State armed groups. In terms of State actors, the FARDC were implicated in 383 of these incidents, which represents a 76% increase from the previous year. Again, the increase in reports of sexual violence coincided with a rise in the number of military operations.² In 2020, MONUSCO documented 1,053 cases of CRSV. The majority (700) were attributed to non-State armed groups. State actors accounted for the remaining cases, 239 of which were attributed to the FARDC, 76 to the Congolese National Police (PNC) and 38 to other State actors.³ The decrease in the total number of cases from 2020 to 2019 may be explained by the limited access to documentation, resulting from the serious public health situation lived throughout 2020 (see Section D).

D. Public health situation

In 2020, the health context in the DRC was characterized by the end of the Ebola virus epidemic in the province of North Kivu, and the arrival of the COVID-19 pandemic. In order to limit the spread of the pandemic, the President and the Government of the DRC took a number of measures, inter alia: the restriction of internal and external movements, the limitation of gatherings; the closure schools, restaurants and bars; the suspension of judicial activities and the establishment of a curfew. The state of emergency was declared and renewed twice to formalize the various restrictions on fundamental rights and freedoms engendered by these various measures. Accordingly, and following directions provided by the host country, UN operations were limited and accessibility to most areas was curtailed.

II. Objectives, project framework and results

A. Project Framework

The United Nations Team of Experts on Rule of Law and Sexual Violence in Conflict (UN TOE), with the generous support of the Government of Japan, provides assistance to the Democratic Republic of the Congo on its efforts to strengthen the rule of law and consolidate peace, especially through the fight against impunity for CRSV. With UNDP and MONUSCO, the UN TOE developed and implemented the current project *Support to Criminal Justice Authorities to Address Impunity for Conflict-Related Sexual Violence in the Democratic Republic of the Congo 2019-2020 (hereinafter Project TOE-CRSV 2019-2020)*.

² Report of the Secretary-General on Conflict-related sexual violence, 2019, 3 June 2020, para. 27.

³ Report of the Secretary-General on Conflict-related sexual violence, 2020, 30 March 2021, para. 28.

It is important to note that the *TOE-CRSV 2019-2020* directly contributed to the implementation of the National Plan of Justice Reform and its Priority Action Plan. The technical assistance provided through the project is directly geared to further the fight against impunity and access to Justice.⁴ The *TOE-CRSV 2019-2020* project was also integrated as part of the United Nations Joint Justice Support Program for Justice Reform which aimed at strengthening the Rule of Law in the Democratic Republic of Congo. Finally, the project is aligned with projects financed by the UN Peacebuilding Fund aimed at consolidating peace through support for the definition and implementation of transitional justice processes, in particular in the provinces of Kasai, Kasai Central and Tanganyika.

B. Results

Activity 1.1 - Provide technical advice for the investigation and prosecution of CRSV cases in the targeted provinces in eastern DRC through the deployment of international expert(s)

Activity 1.2 - Facilitate the organization of investigations and mobile courts sessions in rural/interior areas affected by CRSV

The results 1.1. and 1.2 are jointly reported as the cases benefiting from technical advice were consistently supported by the project, in its investigation and trial phases.

Technical strategic advice

In order to improve the fight against impunity for crimes under international law, including conflict related sexual violence, technical advice was provided to criminal justice actors in the various provinces.

In Ituri, the project team conducted strong advocacy for the establishment and deployment of staff in the Military Court and Military Prosecutor's office in Bunia. The aim was to strengthen judicial coverage and bring justice closer to litigants. This was particularly important due to the resurgence of violence linked to the presence of several armed groups and increase in violations. human rights. The establishment and operationalization of these jurisdictions directly contributed to improving the processing of judicial files and increasing judicial activity, leading to an improvement in the fight against impunity and the restoration of the rule of law.

Technical advice and assistance in the organisation of investigations and mobile courts

In 2020, the fight against impunity for crimes under international law, including CRSV was strengthened and several priority cases were tried before the military and civil courts of North Kivu, South Kivu and Ituri.

- A fact-finding mission was organized in the territory of Manono in connection with a case of international crime pending before the Court of Appeal. This mission led to the identification of 37 victims (including 25 women) who benefited from legal assistance and psychosocial support. The trial is expected to be conducted in 2021.
- Seven mobile hearings were organized in North Kivu, South Kivu, Ituri and Kasai Central in the context of priority cases. Thus, seven judicial decisions were rendered in the context of

⁴ Likewise, the activities developed by the UN TOE are aligned with the main strategic frameworks of the United Nations, in particular: the United Nations Framework for Cooperation for Sustainable Development (UNSDCF 2020-2024); and Security Council resolution 2556 defining the mandate of the United Nations Organization Stabilization Mission in the Congo (MONUSCO); and, finally, the UNDP-DRC Country Program Document 2020-2024 (in particular, its priority 1 linked to improving governance, with an emphasis on restoring the rule of law).

cases of crimes under international law, including conflict related sexual violence. A total of 50 people prosecuted for crimes under international law were tried by military courts, 45 were sentenced to prison terms and four were acquitted.

- The *Sheka* case was tried in 2020 by the Operational Military Court (CM OPS) of North Kivu leading to the life sentence of the main defendant, former militia leader, Ntabo Ntaberi Sheka, and Séraphin Nziton, alias Lionceau, for crimes against humanity and war crimes, including the crimes of sexual violence and rape, murder, child recruitment. The court also sentenced another member of the armed group, alias Kamutoto, to 15 years in prison for murder and insurrection and acquitted another defendant. Several indicted individuals are still at large. The case involved his attacks in North Kivu in 2010 where the Office of the United Nations High Commissioner for Human Rights (OHCHR) estimated that the attacks resulted in 387 victims of CRSV. The Security Council directly condemned these attacks in (S/PRST/2010/17) and this case was the culmination of a decade of work by the UN TOE and its partners.
- The Military Garrison Tribunal (TMG) of Bukavu organized a hearing in Kalehe from 16 to 23 August as part of the “Bukanga” priority file. The Tribunal convicted the three defendants, members of the Raiya Mutomboki armed group, of crimes against humanity by imprisonment, torture and other inhumane acts intentionally causing great suffering and injuring physical integrity.
- The TMG of Bukavu organized a hearing in Kalehe from 27 September to 7 October 2020 as part of the “Hamakombo” priority file. The TMG sentenced the Secretary General and the Intelligence Officer of the armed group Raia Mutomboki wing Hamakombo to 20 years of penal servitude for crimes against humanity by murder, rape, sexual slavery, torture, serious deprivation of liberty and inhuman acts causing intentional great suffering.
- The TMG of Ituri organized a hearing in Mambasa from 29 October to 10 November 2020 as part of the Biakato case. A total of 13 militiamen were prosecuted for war crimes of murder and inhuman and degrading treatment. The TMG handed down 9 life sentences and 4 acquittals.
- The Kananga TMG organized a fairground hearing in Luiza in August 2020, which resulted in the conviction of the 7 people prosecuted for war crimes and crimes against humanity by murder and rape.

Judicial activity and decisions 2020:

File name	Court number	Charges (in french)	Province	Civil parties	Accused	Decision
Dossier Bukanga	RP 1634/20	Crimes contre l’humanité par tortures, emprisonnement et par autres actes inhumains de caractère analogue causant intentionnellement de grandes souffrances ou des atteintes graves à l’intégrité physique ou à la santé physique ou mentale	Sud-Kivu	57	03	3 condamnations
Dossier Hamakombo	RP 1635/20	Crimes contre l’humanité par meurtre, viol, esclavage sexuel, autres actes	Sud-Kivu	48	02	2 condamnations

		inhumains de caractère analogue causant intentionnellement de grandes souffrances ou des atteintes graves à l'intégrité physique ou à la santé physique ou mentale.				
Dossier Biakato	RP161/20.	Crimes de guerre par meurtres, destructions des biens et atteintes graves à l'intégrité corporelles	Ituri	34	13	9 condamnations et 4 acquittements
Dossier Sheka	RP0272/2019 ;RP0191/017 ; RP0255/018 ;RP0270/018 ;RP0271/018	Crimes contre l'humanité par viol et autres actes analogues Crimes de guerre par meurtres, mutilation et enrôlement d'enfants.	Nord-Kivu	11	4	3 condamnations et 1 acquittement.
Dossier Miriki	RP : 0159/2017 ; 0182/2017 ; 0264/2018 ;0335/2020.	Crimes de guerre par meurtres et par destruction des biens appartenant aux civils Crimes contre l'humanité par meurtres.	Nord-Kivu	159	20	20 condamnations
Dossier Luiza		Crime de guerre et crime contre l'humanité par meurtres et viols	Kasai Central	8	7	7 condamnations

Technical advice on protection issues

Law enforcement agents of the Squadron for the Protection of the Child and the Prevention of Sexual Violence and magistrates received advice regarding victim and witness protection and support. This included both protection and support in and outside of court.

International Expert

A Technical Specialist in Judicial Affairs and Conflict-Related Violence was recruited in May 2020 to support national judicial authorities in implementing an appropriate and effective judicial response in the fight against CRSV. However, due to public health restrictions mentioned above, the technical specialist worked remotely, liaising with the relevant UNDP and MONUSCO teams on the ground and was only physically deployed in January 2021.

Activity 1.3 - Support the operation of Special Police Units for Women and Children in areas affected by CRSV

In North Kivu, the military and civil judicial authorities as well as the Squadron for the Protection of the Child and the Prevention of Sexual Violence of the National Police have been provided with solar kits for power generation and other equipment and supplies (including improving access to information technology). This support allowed the EEPVS to improve their operational capacity and ensure the continuity of protection services during the COVID-19 pandemic.

Activity 1.4 - Assist in evaluating and strengthening the prioritization strategy of the Congolese authorities for prosecuting CRSV cases

From the 64 cases prioritized in 2015, 24 priority cases were resulted in a judicial decision between 2015 and 2020 in the provinces of North Kivu, South Kivu, Ituri, Tanganyika and Kasai Central (38%). It should be noted that the year 2020 is marked by 7 judicial decisions but only one investigative mission. Many cases under investigation did not progress during the year, due to restrictions linked to the COVID-19 pandemic and the security context.

Implementation status of the prosecution strategy in 2020:

Provinces	Prioritized files (2015-2019)	Files currently under investigation	Files waiting for trial	Files with a first instance decision
Nord-Kivu	10	6	0	4
Sud-Kivu	22	9	0	13
Ituri	13	7	0	6
Tanganyika	5	5	0	0
Kasai Central	14	11	2	1
Total	64	39	2	24

Prosecution strategies

In 2019, provincial workshops bringing together civil and military judicial actors, the bar and technical and financial partners (PTF) who work and support the judicial system (UN and INGOs), were organized to assess and renew provincial prosecution strategies in North Kivu, South Kivu and Ituri and to define them for the provinces of Tanganyika and Kasai Central for the first time. Five provincial prosecution prioritization strategies were defined and updated in 2019; a list of priority cases is thus established and validated by all the legal actors and the PTF at the level of each of the provinces.

Coordination

In order to improve the effectiveness and cooperation among actors, the project implementing partners, facilitated the establishment of coordination working groups, composed of judicial actors and PTFs. In 2020, 25 meetings of the coordination working groups were held in Bukavu, Goma, Bunia, Kananga and Kalemie. These meetings allowed for better coordination for the identification of priority files, inter alia CRSV cases, to be supported as well as a consistent support by PTFs.

III. Ownership and sustainability

The fight against impunity remains a challenge in the DRC; justice authorities, however, have improved their willingness and ability to address cases of CRSV during the project period. As one example, the renewal of provincial prosecution strategies demonstrate a desire of local actors to address such cases.

In addition, the abovementioned coordination working groups are now operational thanks to the commitment of the judicial authorities who have fully assumed their leadership role. They remain an important mechanism to strengthen coordination among judicial actors, planning judicial activities and improving the effectiveness of support from PTFs through the identification of synergies.

Thus, provincial prosecution prioritization strategies and coordination working groups are two complementary mechanisms that play a major role in improving effectiveness in the fight against

impunity and have been encouraged and supported by the implementing partners of the current project. Challenges, lessons learned and good practices.

A. Challenges

In the DRC, criminal justice is still characterized by many challenges, related to the lack of resources and the lack of cooperation, communication and coordination among the different actors.

Significant progress has been made in recent years through the increase of cases and judicial decisions taken before the Congolese courts. However, the enforcement of these decisions, including correctional support and the payment of court-ordered reparations to victims is a major challenge. Major escapes occurred during the project period including of individuals convicted of CRSV crimes and no court-ordered reparations have been paid. Lack of enforcement undermines the work of the judiciary, reduces the deterrent effect of criminal proceedings, and reduces the confidence that survivors of CRSV have in the Government.

The application of protective measures for victims and witnesses remains a challenge. Such protection measures are essential for victims and witnesses of all serious international crimes, and victims of CRSV also have distinct and acute vulnerabilities both in and out of court. The judicial system in the DRC continues to rely heavily on testimonial evidence due to shortcomings in collecting physical and other types of evidence to prove crimes, which increases protection needs.

It is therefore important to pursue the strengthening of the entire criminal justice chain to address these challenges. Separately, but importantly, these challenges have only been compounded by the COVID-19 pandemic, which has resulted in the suspension of judicial activities, in particular hearings and investigative missions.

B. Lessons learned and good practices

The collaboration and cooperation maintained between the project team and the national partners (judicial authorities, political and administrative authorities, bars, civil society actors, etc.) through working groups has been high, facilitating the implementation of the project and achieving results. Working relationships established over several years through consistent project support by the Government of Japan and others has helped to strengthen these relationships and resulted in increased project ownership by national authorities and results.

The preparation, consistent support, and political advocacy at various levels, was essential to ensure the completion of complex investigations and trial that have lasted multiple years such as in the Sheka case.

C. Visibility

The activities implemented have benefited from significant media coverage, in particular through mobilization of national and local press. This effort has been made through the consistent dissemination of information related to emblematic, identifying and explaining different aspects of criminal justice, and ensuring the recognition of violations committed. UNDP and MONUSCO have also mobilized their communication units, in particular Radio Okapi, to relay the results of the assistance. The media coverage of conflict related sexual violence cases has been strengthened

through the regular drafting of press releases regarding the proceedings initiated and the judicial decisions rendered.⁵

⁵ United Nations Officials Welcome Conviction of Ntabo Ntaberi Sheka for War Crimes of Rape, Sexual Slavery, Child Recruitment and Murder in Democratic Republic of the Congo - United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict.