

CONFLICT-RELATED SEXUAL VIOLENCE MULTI-PARTNER TRUST FUND

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

INTERIM NARRATIVE REPORT COVER PAGE

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

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I. Background

A. Normative Framework

On 30 March 2013, the Government of the Democratic Republic of the Congo (DRC) signed a Joint Communiqué with the United Nations on conflict-related sexual violence (CRSV)², which included a request that the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (“the Team of Experts” or “Team”) provide technical assistance in support of the DRC Government’s efforts to combat impunity for CRSV. This commitment was renewed in December 2019, when the Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSV-SVC) and the DRC Government co-signed an Addendum to the Joint Communiqué³ where the Government specifically committed to several outcomes in the justice field, inter alia:

- Fighting impunity by bringing the perpetrators of sexual violence to justice and ensuring access to justice for victims/survivors;
- Allocating sufficient resources to civil and military judicial institutions, as well as the Special Police for the Protection of Children and the Prevention of Sexual Violence (*Police spéciale de Protection de l’Enfant et de Prévention des Violences Sexuelles*, acronym EPEPVS), and ensuring that they can operate effectively and without constraint;
- Ensuring that victims/survivors and their family members, including in rural and remote areas, have effective access to justice, remedies and just redress;
- Guaranteeing prompt payment of reparations established in court decisions, in particular in cases where an agent of the state or the state is held responsible by guaranteeing the availability of funds in the state budget; and
- Excluding perpetrators of sexual violence from the recruitment and integration process into the army and the police, as well as from any possibility of continuity of service.

In 2020, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) facilitated the preparation of an implementation plan that is designed to guide national authorities, with the assistance of the UN Country Team, to carry out these obligations. Most recently, on 19 June 2021, the President of the DRC addressed the nation to relaunch its Zero Tolerance Campaign for Sexual Violence and committed to achieving, inter alia, the following objectives in the next two years:

- Fight impunity for those responsible for sexual violence and other gender-based violence against women through the pursuit of fair trials;
- Establish a reparation fund for victims/survivors of sexual violence;
- Ensure the establishment of specialised chambers to respond to sexual violence; and

² See: [Statement by the Special Representative of the Secretary-General on Sexual Violence in Conflict Zainab Hawa Bangura on the Joint Communiqué of the Democratic Republic of the Congo and the United Nations on addressing Conflict-Related Sexual Violence](#), 30 March 2013.

³ See: [Addendum au Communiqué conjoint sur les violences sexuelles liées au conflit entre la République démocratique du Congo et l’Organisation des Nations-Unies](#), 9 December 2019.

- Strengthen the capacity of civil and military magistrates and lawyers in response to sexual violence-related files.⁴

B. Political and Security Context during the COVID-19 Pandemic

The commitments assumed by the President take greater significance when read against the current security context in eastern DRC. Despite recent advances, in 2020, as a result of the COVID-19 crisis and the increasing activity of armed groups in the east, the UN registered increased numbers of sexual violence incidents. In its annual report, the Secretary-General reported 1,053 cases of CRSV⁵. The majority (700) were attributed to non-State armed groups. State actors accounted for the remaining cases, 239 of which were attributed to the Armed Forces of the Democratic Republic of the Congo.⁶ These figures are likely to represent only a fraction of the real problem, given the consistent challenge of underreporting.

Also, the restrictive measures taken in the context of the COVID-19 response severely affected the institutional and judicial response to sexual violence incidents, negatively impacting the access and trust of victims/survivors of sexual violence: investigation missions for incidents that occurred immediately before COVID-19 or during the emergency period were postponed; urgent proceedings were conducted in private and trials or were delayed.⁷ Against the general trend of increased violence against women during this period, the already mentioned underreporting became more pronounced. By late 2020, public services and the judicial institution had resumed work.

In response to the crisis in the east, on 3 May 2021, President Tshisekedi imposed a state of siege in Ituri and North Kivu Provinces. This state of siege confirmed by the Constitutional Court has been consistently renewed with the approval of the National Assembly and the Senate. While certain fundamental rights and freedoms (e.g., right to life, freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from sexual and gender-based violence) cannot be derogated, the military and police authorities have been granted increased powers. In addition, military courts have assumed responsibility for criminal prosecutions from civilian courts.⁸ It is important to note that in addition to domestic armed groups, the provinces of North Kivu and Ituri have faced elements of the Allied Democratic Forces (ADF), whose modus operandi and links to foreign terrorist organisations have justified increased calls for support from

⁴ Allocution de son Excellence Monsieur Felix-Antoine Tshisekedi Tshilombo, Président de la République Démocratique du Congo, à l'occasion du lancement de la campagne nationale "Tolérance zéro immédiate contre les violences sexuelles", 19 June 2021. It should be noted here that the government's commitments apply to all victims/survivors regardless of sex.

⁵ Annual Report of the Secretary General on Sexual Violence in Conflict, S/2021/312, para. 28. The Annual Report reflecting the data verified in 2021 will be released in April 2021.

⁶ Ibid.

⁷ On 2 April 2020, the justice minister Célestin Tunda issued an official statement detailing nation-wide measures to be taken to avoid the spread of COVID-19 in prisons, such as suspension of mobile hearings and of visits of lawyers. Additionally, on 8 April 2020, the *Premier Président of the Cour de Cassation* issued a statement advising that, in all civilian jurisdictions, all cases under examination are suspended until after the state of emergency period, as well as the fixation of new cases for trial.

⁸ Report of the Secretary-General, S/2021/587, 21 June 2021, paras. 6-7.

MONUSCO and Member States.⁹ In the Kasai region, the judicial response to the cases of CRSV perpetrated by all parties to the conflict there is progressively advancing,¹⁰ but requires additional technical support.¹¹

In parallel, following the adoption by the Security Council of resolution 2556 (2020), approving the joint strategy on the progressive and phased drawdown of MONUSCO, the UN has developed a transition plan that has been endorsed by the Government of the DRC. This plan, which was welcomed by the Security Council in its resolution 2612 (2021) renewing MONUSCO's mandate, contains clear benchmarks and indicators related to the fight against impunity for CRSV and that reflect the minimum conditions for the drawdown of MONUSCO.¹²

C. Team of Experts' Engagement in DRC

In line with its mandate under Security Council Resolution 1888 (2009) and within the framework of the Joint Communiqué and of the UN Joint Programme on the Reform of the Justice Sector,¹³ the Team of Experts has been assisting the Government of the DRC to address accountability for CRSV crimes since 2013.

Significant progress was achieved in accountability for CRSV in DRC since then, notably through the support provided by the Team of Experts through the UN Joint Programmes to the development and implementation of prioritisation strategy for the prosecution of international crimes, including CRSV. Such support contributed to the conviction and sentencing to life of Frederic Batumike in December 2017, a local parliamentarian and militia leader for crimes against humanity for the rapes of 39 children in Kavumu between 2013 and 2016. Then, in 2020, the judicial proceedings against Ntabo Ntaberi Sheka, notably for the alleged mass rape of 387 people in the Walikale area in 2010 were concluded with a life sentence for the perpetrators.¹⁴

⁹ Press Release-Briefing Security Council, Special Representative Reports Challenges, Opportunities in Lead-up to Democratic Republic of Congo Elections, SC/14480, 30 March 2021.

¹⁰ Rapport détaillé de l'Equipe d'experts internationaux sur la situation au Kasai, A/HRC/38/CRP.1, 29 June 2018

¹¹ Report of the team of international experts on the situation in Kasai, A/HRC/41/31, 7 May 2019, para 74 and 80 e).

¹² Report of the Secretary-General, S/2021/807, 21 September 2021. See notably benchmark 10 ("Engagement of State institutions in the protection of civilians and their rights, strengthening the rule of law to combat impunity and corruption in accordance with national laws and international human rights obligations") indicator 4 ("Allegations of serious human rights violations are investigated, and credible prosecutions are conducted by the judicial authorities and the perpetrators, including those in command and control positions, are brought to justice"), and benchmark 12 ("Enhanced demand for justice, access to justice and legal protection for the population, in particular vulnerable and at-risk groups by setting up the appropriate legal and operational mechanisms.") indicator 2 ("Access to information and justice (investigation and prosecution processes) is facilitated for the non-discriminatory treatment of women, girls and boys facing the judicial system").

¹³ Currently, the Team of Experts contributes with MONUSCO and UNDP to the implementation of the Joint Project on the Reform of the Justice Sector, covering the period 2020-2024. In particular, the Team of Experts will focus on supporting the implementation of the third output of the Joint Project, aimed at strengthening criminal justice institutions particularly to build their capacity to prosecute, investigate and adjudicate CRSV. The Team of Experts will also contribute to the Joint Programme on the Reform of the Police Sector, which is currently being finalized and is pending its full validation by the Government of the DRC.

¹⁴ For a more comprehensive overview of the results achieved in the fight against impunity, see Annual Report of the Secretary-General on Sexual Violence in Conflict, S/2021/312, para. 30.

Building on these successes, the Team of Experts continued advancing accountability in DRC and ensuring that the impact of COVID-19 and the current state of siege declared by the President in the provinces most affected by the CRSV did not undermine these efforts and the progress made.

II. Objective/Outputs

The objective of this project is to improve the judicial response to CRSV in conflict-affected provinces of the DRC (namely, Ituri, North Kivu, South Kivu, and Tanganyika).

The project also assisted the Government of DRC in progressing toward achieving the Sustainable Development Goals of the 2030 Agenda for Sustainable Development (SDGs), particularly Goal 16 on peace, justice and strong institutions, by promoting the rule of law at the national and international levels and ensuring equal access to justice for all (SDG target 16.3) and Goal 5 on gender equality and empowerment of women and girls, by supporting the elimination of all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation (SDG target 5.2).

III. Progress/Results

The project has been implemented jointly by the Team of Experts, UNDP and MONUSCO, as part of the United Nations Joint Project on the Reform of the Justice Sector.¹⁵

OUTPUT 1: Capacity of the DRC investigative authorities to investigate CRSV is enhanced.

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

In October and November, the Team of Experts, MONUSCO-UNPOL¹⁶ and UNDP organised two training sessions about criminal investigations on sexual violence crimes, including CRSV, for 40 judicial police officers of the EPEPVS in Goma and Bukavu. The training aimed to improve their understanding of the legal framework and skills required to investigate sexual violence crimes, including victim-centred judicial approaches to CRSV. Also, training manuals on cellphone forensics, the prosecution of sexual violence, and investigation skills for international crimes under the DRC legislation (which implemented the International Criminal Court (ICC) Statute) were distributed to the participants. Through the trainings, the participants were able to enhance their expertise on CRSV investigations for a victim-centered judicial response to CRSV.

Activity 1.2 – Facilitate the organisation of investigations in rural/interior areas.

The UN Joint Project on the Reform of the Justice Sector received a support request to facilitate the deployment of three field investigation missions and two mobile court hearings in North and

¹⁵ See *supra* note 11.

¹⁶ A Specialized Police Team on Sexual and Gender-Based Violence (SPT-SGBV) supported by the governments of Canada, Sweden and Tanzania has been deployed to MONUSCO in 2020 to provide technical support to the EPEPVS in the eastern provinces of the DRC. The Team of Experts and UNDP have worked closely with this specific team within the United Nations Police (UNPOL) component of MONUSCO.

South Kivu on cases involving incidents of CRSV as war crimes and crimes against humanity. However, due to procedural delays, including some linked to the State of Siege in North Kivu, the field investigation missions and the mobile court hearings could not be organized in 2021, but have been rescheduled for 2022.

Activity 1.3 – Support the Special Police for the Protection of Children and the Prevention of Sexual Violence.

Throughout the reporting period, the Team of Experts, UNDP and MONUSCO-UNPOL provided material support to the EPEPVS units in Goma and Bukavu. In the absence of fully adequate financing of basic logistical and material needs of the EPEPVS through the State budget, computers and other IT equipment were provided to these two units, along with solar panel kits in case of an extended power outage. In addition, the Team delivered hygiene products, including for COVID-19, to be used in detention facilities and their offices. The Team's support helped create an environment in which the EPEPVS units could fully carry out their mandate in a clean and hygienic facility.

OUTPUT 2: Capacity of the DRC judicial authorities to prosecute and adjudicate CRSV crimes is enhanced.

Activity 2.1 – Provide technical advice for the prosecution of CRSV cases in the targeted provinces in eastern DRC through the deployment of international expert(s), in particular, to assist in implementing the latest prioritisation strategy of the Congolese authorities for prosecuting CRSV cases.

Between May and July, the Team of Experts and UNDP organised six technical workshops during the reporting period to take stock and reassess the provincial strategies for prioritising the prosecution of international crimes in the conflict-affected provinces adopted by the Congolese judiciary. During the sessions, 137 participants from civil society organisations and the military were asked to review the strategies, analyse the success and constraining factors related to the prosecution of the prioritized cases under the leadership of representatives of the Office of the Attorney General of the armed forces and of the Ministry of Justice. One hundred and seven cases were identified as priority cases in 2021, out of which 50% were cases concerning CRSV. In addition, the participants discussed and developed litigation strategies for some of the pending cases before the military courts. In the end, the participants agreed that it was essential to increase their effort to mobilise partners for joint support in the fight against impunity for international crimes.

In September, UNDP released a report analysing the implementation and impact of the prioritisation strategies between 2015 and 2019. The report was aimed at analysing the extent to which the intended outcomes had been attained, and if they had not been realised, to define the corrective measures that could be taken in the near future. The Team of Experts and UNDP distributed 500 copies of the report to the national judicial authorities in the conflict-affected provinces.

From 17 to 21 October, the Team of Experts accompanied the SRSB-SVC for her high-level mission to the DRC. During the mission, the Team of Experts participated in a two-day workshop on establishing a reparations fund for victims of international crimes, including CRSV. The workshop was organised by the Office of the First Lady and the Minister of Human Rights. During the discussion, the Team of Experts emphasised the importance of reparations to victims as a form of justice and gave technical inputs on the bill regarding the fund. Also, the Team of Experts presented the Office of the First Lady and the Minister of Human Rights with a legal memorandum that summarised its key recommendations on establishing a reparation scheme. After the workshop, the President announced the creation of a new ad-hoc intergovernmental commission responsible for the establishment of a national fund for reparations for victims of CRSV. The commission consists of the representatives of the Ministry of Gender, the Ministry of Human Rights, the Ministry of Justice, civil society organisations, victims of CRSV, and national and international experts.¹⁷ In 2022, the commission will first start drafting a bill with a victim-centred reparations approach. The commission has officially requested the Team of Experts to provide technical support, particularly in drafting the bill.

In October and November, the Team of Experts conducted a one-month technical mission to the DRC together with a Rule of Law Officer from Justice and Corrections Standing Capacity (JCSC) deployed in MONUSCO. During the mission, the Team and JCSC-MONUSCO organised a number of consultations with national judicial authorities, UN representatives, and civil society organisations to assess the judicial response to CRSV, particularly in the provinces where the prioritisation strategies have been developed, namely in Kinshasa, North Kivu, South Kivu, and Ituri. Based on the numerous exchanges held with national judicial authorities, UN representatives, and civil society organizations in Kinshasa as well as in the provinces of North Kivu, South Kivu, and Ituri, an assessment report will be published in 2022 to present the conclusions of the research team.

In November, the Team of Experts, JCSC-MONUSCO, and UNDP also organised a three-day workshop in Kinshasa to discuss the judicial response to CRSV and lessons learned from the case against Ntabo Ntaberi (*alias* Sheka), who has been sentenced to life imprisonment for war crimes including rape and sexual slavery. The workshop gathered more than 40 participants from high-level military justice officials, representatives of the UN and civil society organisations. The participants engaged in discussions on a broad range of topics, such as the protection of victims and witnesses in conflict, evidence collection and preservation, prosecution strategies, the rights of the accused, and the role of financial and technical partners. Through the workshop, very concrete recommendations and action points, such as the need to improve the strategic impact of the provincial prosecution strategies and the importance of systematically developing communications strategies to keep the victims and their communities informed of and engaged in the judicial process, were identified by the participating judicial actors and will be implemented at the provincial level including with the technical support of the Team of Experts through the UN Joint Justice Reform Program.

¹⁷See *Mission de la Commission FONAREV*, available at : <https://twitter.com/DeniseNyakeru/status/1500574735134076932?cxt=HHwWiMC96a2xjtMpAAAA> (last visited 11 March 2022).

Activity 2.2 – Facilitate the organisation of mobile court sessions.

In January 2021, the Team of Experts and UNDP facilitated the deployment of a mobile court hearing on the priority case “Migamba”. In this case, the leader of an armed group operating in Mwenga territory in South Kivu, Takungomo Mukambilwa alias “Le Pouce”, was accused of having led a series of attacks on several villages between 2007 and 2012 to take control of areas rich in natural resources and minerals. The hearing, which was held in South Kivu by the Tribunal Militaire de Garnison of Bukavu, led to the sentencing of the defendant to 20-year of imprisonment for the crimes against humanity of rape, torture, murder and inhuman treatment.

IV. Conclusions

In 2021, the Team of Experts, together with UNDP and MONUSCO, successfully contributed to building the capacity of the national judicial authorities to investigate and prosecute CRSV, despite persistent insecurity in the provinces of intervention and health restrictions. The Team’s engagement notably contributed to building the capacity of judicial police officers to investigate CRSV, ensured the provincial prosecution strategies were assessed and updated, and also contributed to the launch of the development of a national reparations scheme. In 2022, the Team will use the conclusions of its upcoming assessment report to further tailor its technical and strategic interventions to support further the judicial response to crimes of CRSV, as part of the UN Joint Programme on the Reform of the Justice Sector.