



United Nations  
Peacekeeping

[un.org/peacekeeping](http://un.org/peacekeeping)

---

**Report of the Criminal Law and Judicial Advisory Service**  
**Combatting Impunity in the Democratic Republic of the Congo**  
**Lessons Learned from the United Nations Prosecution Support Cell**  
**Programme**



**June 2015**

## Table of Contents

List of Acronyms .....	ii
INTRODUCTION .....	iii
EXECUTIVE SUMMARY .....	iv
A. BACKGROUND TO THE ESTABLISHMENT OF THE PSC PROGRAMME.....	1
B. ACHIEVEMENTS AND IMPACT.....	4
a) Specific cases supported .....	5
b) Other Indicators of Impact .....	7
c) Training.....	9
C. LESSONS LEARNED.....	10
a) Composition and Structure.....	10
b) Methodology .....	12
The Provision of Technical and Logistical Advice and Support .....	12
Training and other Capacity Needs.....	14
Analysis, Monitoring and Reporting.....	15
Partnerships, Coordination and Advocacy .....	18
c) Key Substantive Issues.....	20
Lack of a Clear Procedural Right of Appeal and the Imposition of the Death Penalty .....	21
Prosecutions of High Ranking Officials .....	21
Legal Defence .....	22
Court Administration .....	22
Corresponding Support to the National Prison System.....	23
Crimes Covered by the PSC Programme .....	24
d) International Personnel .....	25
e) Other Operational Constraints .....	30
f) Outreach.....	31
g) Potential Follow-up Support .....	32
D. ANNEXES.....	33
a) List of interlocutors consulted.....	33
b) Reference Documents .....	35

## List of Acronyms

<b>ABA:</b>	American Bar Association
<b>ASF:</b>	Avocats Sans Frontières
<b>CLJAS:</b>	Criminal Law and Judicial Advisory Service, OROLSI/DPKO
<b>CPS:</b>	Child Protection Section, MONUSCO
<b>DSA:</b>	Daily Subsistence Allowance
<b>DMS:</b>	Director of Mission Support, MONUSCO
<b>DPKO:</b>	Department of Peacekeeping Operations
<b>DRC:</b>	Democratic Republic of the Congo
<b>EU:</b>	European Union
<b>FARDC:</b>	Forces Armées de la République Démocratique du Congo
<b>GoDRC:</b>	Government of the Democratic Republic of the Congo
<b>GPP:</b>	Government-Provided Personnel
<b>HQ:</b>	Headquarters
<b>ICTJ:</b>	International Centre for Transitional Justice
<b>ICTR:</b>	International Criminal Tribunal for Rwanda
<b>ICTY:</b>	International Criminal Tribunal for the Former Yugoslavia
<b>INL:</b>	International Narcotics and Law Enforcement Bureau, US State Department
<b>IOM:</b>	International Organization for Migration
<b>JAO:</b>	Judicial Affairs Officer
<b>JCS:</b>	Justice and Corrections Section, MONUSCO
<b>JHRO:</b>	Joint Human Rights Office, MONUSCO
<b>MDFC:</b>	Congolese Ministry of Defence and Former Combatants
<b>MONUSCO:</b>	United Nations Organization Stabilization Mission in the DRC
<b>MoU:</b>	Memorandum of Understanding
<b>NGOs:</b>	Non-governmental Organizations
<b>OMA:</b>	Office of Military Affairs, DPKO
<b>OROLSI:</b>	Office of Rule of Law and Security Institutions, DPKO
<b>PD:</b>	Police Division OROLSI/DPKO
<b>PNC:</b>	Police Nationale Congolaise
<b>PSC:</b>	Prosecution Support Cell
<b>RCN:</b>	RCN Justice et Démocratie
<b>The Team:</b>	CLJAS team that conducted the lessons learned study
<b>UNCT:</b>	United Nations Country Team
<b>UNDP:</b>	United Nations Development Programme

## INTRODUCTION

### *Team Composition*

Charles Briefel (Team Leader) - Senior Policy Officer, CLJAS

Ignacio Tredici - Judicial Affairs Officer, Justice and Corrections Standing Capacity, CLJAS

Neldjingaye Kameldy - Associate Judicial Affairs Officer, CLJAS

1. A mission comprised of three representatives of the Criminal Law and Judicial Advisory Service (CLJAS) of the Office of Rule of Law and Security Institutions (OROLSI) in the Department of Peacekeeping Operations (DPKO), including one member of its Justice and Corrections Standing Capacity (“the Team”), conducted a lessons learned study to the Democratic Republic of the Congo (DRC) from 29 March to 18 April 2015 on the work of the Prosecution Support Cell (PSC) Programme of the United Nations Organization Stabilization Mission in the DRC (MONUSCO).
2. The objective of the mission was to take stock of the assistance the PSC Programme has been providing to the Congolese military justice system in its efforts to combat impunity for serious crimes and to make recommendations to strengthen its effectiveness and efficiency. The study also focused on lessons learned that could be relevant to other peace operations developing similar programmes. The study was carried out through a desk review, as well as in-country interviews with the military justice authorities, relevant MONUSCO sections, officers and consultants serving in the PSCs, relevant United Nations Country Team (UNCT) actors, bilateral donors and NGOs (see Annex (a) for the full list of interlocutors). Three PSCs, located in Goma, Bunia and Bukavu, were visited.
3. This report contains a detailed description of how the programme was established, its objectives, structure, methodology, achievements and impact, providing an essential ‘institutional memory’ and including lessons learned and recommendations. The analysis has been developed with the inputs of the staff of MONUSCO and the UNDP Country Office. As this has been a lessons learned study, not all the recommendations made in this report are necessarily viable for the MONUSCO PSC Programme, taking into account existing resources and capacity, but are ones that should be taken into account in the planning of any future similar programme.
4. The Team would like to express its particular appreciation to the officers of the Prosecution Support Cells of the Justice and Corrections Section (JCS) and the Joint Human Rights Office (JHRO) of MONUSCO and the UNDP Country Office for their invaluable input and support throughout the Mission and to the Chief, JCS for her assistance in finalizing this report.

## **EXECUTIVE SUMMARY**

- i. In response to the prevailing culture of impunity in Eastern DRC, the United Nations Security Council mandated MONUSCO, through resolution 1925 (2010), to ‘support national and international efforts to bring to justice, including by establishing Prosecution Support Cells to assist the FARDC military justice authorities in prosecuting persons arrested by the FARDC’.
- ii. The Prosecution Support Cell (PSC) Programme was established by MONUSCO, pursuant to this mandate, to support and facilitate the work of the Congolese military justice system in the fight against impunity through the provision of technical advice and logistical support, improving its ability to investigate and prosecute serious human rights violations, in particular war crimes and crimes against humanity, including crimes of sexual violence.
- iii. This report, prepared by CLJAS, following its visit to DRC from 29 March to 18 April 2015, contains a detailed description of how the programme was established, its objectives, structure, methodology, achievements and impact, providing an essential institutional memory. The report also provides an analysis of the PSC Programme, including lessons learned and recommendations, to not only help consolidate and strengthen its work but to also inform the establishment of similar programmes in other peace operation settings.
- iv. Operating under the overall management of the Justice and Corrections Section of MONUSCO, the core of the programme is the cadre of 30 Government Provided Personnel (GPPs) – international military and civilian justice investigation and prosecutorial experts – located in seven PSCs in five provinces of the Eastern DRC (Nord-Kivu, South-Kivu, Province Orientale, Maniema and Katanga). These have been supplemented by three UNDP consultants, co-located and integrated within MONUSCO in line with the Global Focal Point arrangement, consultants provided by the Governments of Canada, the USA and the UK and by the Team of Experts for Rule of Law and Sexual Violence in Conflict. The support provided through the PSC Programme has been a joint effort incorporating assistance provided by donors, the Peacebuilding Fund and, since 2013, a joint MONUSCO/UNDP project funded by the European Union (EU). It has also involved close coordination with other partners, in particular the Mission’s Joint Human Rights Office (JHRO) and Child Protections Section (CPS) and external partners such as Avocats Sans Frontières (ASF), the American Bar Association (ABA), RCN Justice et Démocratie (RCN) and the International Centre for Transitional Justice (ICTJ).
- v. A Memorandum of Understanding (MoU) signed in December 2011 between the Congolese Government and MONUSCO laid down the framework of cooperation for the programme ‘to support the investigation and prosecution of serious crimes’ namely those crimes listed in the Rome Statute. The MoU stipulated that the PSCs would ‘not initiate, conduct or lead any criminal investigation or prosecution of such crimes’. Their function is to support and facilitate the work of the FARDC military justice authorities through the provision of the technical advice and logistical support needed to conduct criminal investigations and prosecutions. Under the MoU, PSC officers were given authority to take the necessary steps to secure the crime scene

and any other location where evidence of such crimes could be found if Congolese military justice officials were not present. In practice, the PSCs have generally been granted access to investigation, prosecution and court files.

- vi. Working in close collaboration with the Congolese military justice authorities, the programme effectively combines the political leverage and technical and logistical support of MONUSCO, with the programmatic support of UNDP, while also strengthening coordination and partnerships between a variety of UN and non-UN actors. The programme, taken together with the efforts of partners, incorporates technical and logistical support for investigations, mobile hearings and trials (*audiences foraines*), victim and witness support and assistance, the provision of legal aid for the accused and capacity building training.
- vii. There was broad consensus among the interlocutors interviewed, including Congolese military justice officials and NGOs, regarding the positive impact of the PSC Programme notably the increase, since the operationalization of the programme, in the number of investigations, arrests, and *audiences foraines* conducted in remote and insecure areas of Eastern DRC where atrocities have been committed and where courts barely function or exist. These have included the prosecution and trial of some key FARDC officers and leaders of armed groups for crimes amounting to serious human rights violations. The PSCs have so far received 97 requests to support investigations, as well as 40 requests to organize the deployment of *audiences foraines*. Out of the 97 requests, 63 concerned sexual related offences. The results of the investigations and trials supported by the PSCs range from acquittals to sentences of life imprisonment and 39 death penalties.
- viii. Examples of the more egregious cases involving high ranking officers investigated and/or prosecuted by the national authorities with the support of the PSC Programme include the case of Lt. Col. Bedi Mobuli Engangela, alias Colonel 106, who was prosecuted based on command responsibility for crimes against humanity and sentenced to life imprisonment. For the people of Bunyakiri, in the South-Kivu where the crimes were committed, this was the first time they had seen a high ranking FARDC officer standing trial and being punished for serious human rights violations. Other cases include the case of Kizima Lenine Sabin, a major in the FDLR rebel group. He was sentenced to life imprisonment by the Tribunal Militaire de Garnison of Bukavu in December 2014 for serious crimes on the basis of command responsibility.
- ix. Other notable cases include FARDC Colonel Kapokie Seyanga Jean-Baptist and Justin Matata Banaloki, alias Cobra Matata, the leader of the FRPI rebel armed group. Both their trials for serious crimes including child recruitment, mass rape and crimes against humanity are currently pending. Investigations are being conducted with the support of the PSCs in several other emblematic cases such as in the Oicha Case, concerning alleged serious human rights violations committed in this village in the Nord-Kivu Province in December 2014 by elements of a rebel group ADF/NALU; in the Mbau Case, elements of the ADF/NALU allegedly committed atrocities against the local population in the Nord-Kivu Province.

- x. Anecdotal feedback received from NGOs indicates that the work of PSCs and other key partners has had an important impact and that without their support most of these investigations and prosecutions would never have taken place. Although a systematic assessment of the quality of investigations and trials has yet to be carried out, ad hoc analyses by PSC officers of court decisions show that they are better drafted and reasoned than was hitherto the case, indicating that the transfer of knowledge between Congolese military justice and PSC officers, combined with the monitoring and observation of hearings and training implemented by MONUSCO and other partners have had a positive influence on the quality of decisions.
- xi. The results generated by the combined efforts of the PSCs and those of the Congolese military justice system are gradually helping to rebuild the trust between the populations and the military and in civilians' confidence in the administration of justice. The Team concluded that, other peace operations, both current and future, subject to receiving appropriate mandates and the required cooperation from their host Governments, could benefit from establishing similar initiatives, taking into account the lessons learned from this innovative MONUSCO programme.
- xii. Although CLJAS, in collaboration with MONUSCO, has worked to highlight the work and achievements of the PSC programme through briefings to Member States in New York and articles and newsletters, the Team recommends that more be done to increase the visibility of the PSC Programme through the dissemination of up-to-date information on its activities, including the cases supported, the types of crimes, the ranks of the accused persons, the number of convictions and the sentences imposed, where appropriate incorporated in reports of the Secretary-General and through analytical annual reports.
- xiii. Despite significant achievements, there are areas where the PSC Programme could be improved. First and foremost, despite some indications of improvement, the quality of investigations and compliance with fair trial standards has not been without criticism. There have been concerns expressed about the fact that the assistance provided by the PSCs predominantly relates to cases, albeit serious, that are not international crimes. In this regard, given the mandate of the Mission, the Team recommends that the focus should be on support for the prosecution of those crimes that have, or may have, a direct impact on stabilization, peace and security in the Eastern DRC. In addition, the number of effective prosecutions and convictions for sexual violence and particularly for child recruitment is still low when compared to the scale of the problem. There remain procedural obstacles to investigating and prosecuting the highest ranking officers. As a consequence some cases of serious crimes committed by senior members of the armed forces have gone unpunished. The absence of a clear appeal mechanism from the Cour Militaire Operationnelle remains an ongoing human rights concern. Although a de facto moratorium has meant that death sentences have not been implemented, the continued imposition of the death penalty also remains an important issue for the Mission leadership to resolve.
- xiv. The effective day-to-day management of the PSC Programme remains critical to its success. The Team concluded that the PSC coordination role (currently the responsibility of a GPP officer at the level of colonel) based in Operations East (Goma), should ideally be entrusted to at least two

officers (P5 and P4 level), with rule of law/international crimes background, international experience in peace operations settings coordinating large teams or programmes and, ideally, programme management expertise.

- xv. The Team also concluded that the PSC Programme should aim to strengthen the quality of the technical support, advice and feedback provided to national counterparts. This could be achieved by a number of improvements including a more systematic and centralized system for the collation and analysis of lessons learned and of the deficiencies identified from investigations and the *audiences foraines*, supported and observed by PSC and JHRO officers. Improved cross-fertilization between the seven PSCs, the use of standardized reporting formats, the development of practical guidance, for both PSC officers and their national counterparts and the introduction of a new induction programme for incoming PSC officers are also recommended. Ideally a qualitative analysis of the investigations and trials observed and of first instance and appeal court decisions should be conducted, although this would be a significant undertaking and beyond the current capacity of the PSC Programme. To effectively undertake this range of tasks would require an increase in technical capacity at the HQ level in Operations East.
- xvi. Although cooperation between JCS and JHRO is generally good with regards to the coordination of support to investigations and *audiences foraines*, this is less the case in relation to the observation/monitoring, reporting and sharing of information. There is no systematic or routine sharing of reports between the two components. PSC and human rights officers report separately and independently on cases involving serious crimes. More effort could be made to instil a culture of joint reporting or, at a minimum, the systematic sharing of reports. Both sections should also ensure that each fairly and properly reflects the important and complementary contribution of the other MONUSCO components and external partners.
- xvii. The PSCs have played an important role in chairing the meetings of the *Cadres de Concertations* where the efforts of all the partners at the working level in the fight against impunity, through support for investigations and *audiences foraines*, are coordinated. However the *Cadre de Concertation mechanism* remains an internationally-led process in which national counterparts participate but do not lead. In the context of the transition and eventual downsizing of MONUSCO, it is recommended that the national military justice authorities take an increasingly more prominent role in the coordination of the different partners by chairing, or at least, co-chairing these coordination bodies, with the PSCs playing more of a secretariat or facilitation role. This will also help to enhance the sustainability of the process as MONUSCO begins to draw down.
- xviii. The Team noted that, although the *cadres de concertations* have proved effective in coordinating the efforts of the various actors on specific investigations and *audiences foraines*, they do not address broader strategic and policy-level issues relating to the fight against impunity. MONUSCO has an important role to play to ensure effective high-level strategic coordination and advocacy in the fight against impunity and to ensure that systemic obstacles identified by the

PSCs and political blockages are adequately addressed with senior Congolese counterparts. The Team welcomes the recent establishment of the Fight Against Impunity Working Group, chaired by JCS. However, this is an internal MONUSCO body. An effective coordination mechanism at the central and strategic level, ideally nationally-led, is therefore recommended. Such a body could also seek to ensure that responsibility for funding investigations and *audiences foraines* is increasingly assumed by the Government. The establishment of a national-level PSC ideally co-located within the Office of the High Military Prosecutor would also support the development and implementation of policies and strategies for the prosecution of the most serious crimes, including the development of national prosecution strategy.

- xix. While capacity building on issues such as international crimes, managing extensive criminal data, analysing criminal patterns, chains of command and communication can be undertaken on an individual basis through the PSCs, the development and implementation of a comprehensive training programme is beyond the programme's scope. The Team, therefore, recommends that a comprehensive capacity and training needs assessment be conducted to identify and prioritize the capacity gaps to be addressed in the short to medium-term in order to further strengthen the functioning and effectiveness of the military justice system to combat impunity.
- xx. The Government Provided Personnel process is generally a useful mechanism for deploying experts to form the core of the PSC Programme. The GPPs come predominantly from countries in the region and are often not only familiar with the cultural background and speak relevant local languages, they also serve in similar functions in their government service investigating and prosecuting serious crimes, with experience addressing challenges similar to those expected in the Mission area. However, the process has faced challenges in filling vacancies and deploying personnel in an expeditious manner and needs to be streamlined. Greater human resource capacity is required within CLJAS, New York in this regard. In addition, the GPP process may not be the best means for deploying certain types of expertise, particularly in the area of international crimes. The Team concluded that an over reliance on the GPP process can inhibit the overall effectiveness of the programme.
- xxi. MONUSCO and other missions planning for such programmes should aim to possess the capacity to bring in qualified expertise with the right skills and experience through flexible contractual arrangements. These should not only include GPPs and consultants provided by UNDP but also, possibly, temporary deployments or longer-term loan agreements with the ICC, ICTY and ICTR and other experts deployed through assistance providers outside the United Nations system, in particular bilateral partners, regional organizations and civil society organizations. In order to access these capacities and to fund other immediate needs within the PSC Programme, there should be adequate flexible budgetary allocation within the Mission budget, including access to Mission and/or UN system trust funds. With the establishment of the Global Focal Point arrangement, the United Nations stands better placed to advocate for and mobilize resources for such joint initiatives and to generally help to galvanize future support for the PSC Programme.

## A. BACKGROUND TO THE ESTABLISHMENT OF THE PSC PROGRAMME

1. For many years, the eastern part of the Democratic Republic of the Congo (DRC) has witnessed violent armed conflict during which crimes against humanity, war crimes and other serious human rights violations, including crimes of sexual violence have been committed on a large scale by personnel of the *Forces Armées de la République Démocratique du Congo* (FARDC), *the Police Nationale Congolaise* (PNC) and various armed groups.
2. Understaffed and starved of resources, the military criminal justice authorities, with jurisdiction over these crimes, have often lacked the financial, operational and human capacity, and sometimes the will, to effectively investigate and prosecute these crimes. In proportion to the scale of the problem, only a relatively small number of cases of sexual violence have been investigated or prosecuted. Most victims do not report incidents because of the fear of retaliation, stigmatization or rejection by their families and communities, exacerbated by the lack of access to medical and psycho-social assistance.<sup>1</sup> The recruitment and use of children by armed groups is rarely prosecuted and the last known conviction dates back to 2006, despite the fact that, every year, thousands of boys and girls are separated from their families by parties to the conflict.
3. The military justice system has had the jurisdiction under Congolese law to investigate, prosecute and adjudicate crimes committed by members of the FARDC and PNC, as well as crimes committed by civilians with the use of “weapons of war”.<sup>2</sup> With the promulgation of Law No. 13 of 11 April 2013, civilian appeal courts are now also competent at the first instance to prosecute these crimes, when committed by civilians. However, because of the breadth of its remaining jurisdiction in respect to the nature of the crimes committed and their perpetrators, the Congolese military justice system still has responsibility for investigating, prosecuting and adjudicating all or most of such cases. Mindful of the prevailing culture of impunity and its impact on the peace, security and stability of the country as a whole, strengthening the capacity of military investigators, prosecutors and judges has therefore been, and remains, a priority for MONUSCO.

### *Mandate*

4. In April 2009, MONUSCO addressed a letter to the Congolese Ministry of Defence and Former Combatants (MDFC) offering UN support in the fight against impunity<sup>3</sup>. The positive response from the Congolese authorities opened the door for such cooperation<sup>4</sup>, following which Security Council Resolution 1925 (2010) mandated MONUSCO to ‘support national and international efforts to bring to justice, including by establishing Prosecution Support Cells to assist the FARDC military justice authorities in prosecuting persons arrested by the FARDC’.<sup>5</sup> The resolution authorized MONUSCO to ‘assist the Government, along with international and bilateral partners, in strengthening its military capacity, including military justice and military police, in particular by harmonizing efforts and facilitating exchanges of information and lessons

---

<sup>1</sup> See JHRO Report on Progress and Obstacles in the Fight Against Impunity for Sexual Violence in DRC, April 2014

<sup>2</sup> Art.104 to 111 loi n°023/2002 Code Judiciaire Militaire

<sup>3</sup> Letter of the Special Representative of the Secretary General of 31 April 2009 addressed to the Ministry of Defense

<sup>4</sup> Letter of the Ministry of Defence and Former Combatants dated 29 January 2010

<sup>5</sup> See Section 12 Paragraph (d) of the Resolution

learned and, as the Government requests it, assist in the training of FARDC and military police battalions, support military justice institutions and mobilize donors to provide equipment and other required resources.<sup>6</sup>

### ***Establishment***

5. MONUSCO, through its Rule of Law Section<sup>7</sup>, began planning for the phased establishment of PSCs<sup>8</sup> in five eastern provinces, starting with Goma in North Kivu Province, where the need to reinforce investigations and prosecutions was deemed the most acute, and followed by other PSCs in Bukavu (South-Kivu), Bunia (Orientale), Kindu (Maniema) and Kalemie (Katanga). Two more PSCs were established in Kisangani and Lubumbashi at the request of Congolese military justice officials in December 2013 and January 2014 respectively. In 2014, the PSC in Kindu was moved to Beni because of the reconfiguration of MONUSCO and following a specific request from Congolese officials to locate a PSC there.

### ***General Assembly Approval for the Deployment of Government Provided Personnel***

6. The United Nations General Assembly, through the MONUSCO annual budget, initially approved a strength of 18 international Government Provided Personnel (GPPs), hereinafter referred to as ‘PSC officers’, for the five PSCs, later increased to 30 GPPs. Each PSC was to include six PSC officers - one Military Prosecutions Adviser, one Civilian Prosecutions Adviser, two United Nations Police (UNPOL) Advisers and two Military Police Investigations Advisers, all with experience in the investigation and prosecution of the most serious crimes, ideally including war crimes, crimes against humanity and sexual crimes.

### ***Memorandum of Understanding***

7. A Memorandum of Understanding (MoU),<sup>9</sup> signed in December 2011 between the Congolese authorities and MONUSCO, defined the role of the PSCs ‘to support the investigation and prosecution of serious crimes falling within the competence of military courts’, namely those crimes listed in the Rome Statute. The MoU further stipulated that the PSCs would ‘not initiate, conduct or lead any criminal investigation or prosecution of such crimes’. Implementation of the MoU has been overseen by a steering committee composed of MDFC, the Military High Court, the Office of the Senior Military Prosecutor and MONUSCO. UNDP has participated in this committee since the EU funded project commenced.
8. The objectives and function of the PSC Programme have been to support and facilitate the work of the FARDC military justice authorities through the provision of technical expertise, practical advice, recommendations, training, and specific logistical support needed by such authorities in the conduct of criminal investigations and prosecutions.<sup>10</sup> Under the MoU, PSC officers were given authority to take the necessary steps to secure the crime scene and any other location where evidence of such crimes could be found if Congolese military justice officials were not

---

<sup>6</sup> See Section 12 Paragraph (m) of the Resolution

<sup>7</sup> Later to become the Justice Support Section and, in 2014, the Justice and Corrections Section (JCS)

<sup>8</sup> See Concept Note (2010)

<sup>9</sup> Protocol d'accord ente la Mission de l'organisation des Nations Unies pour la Stabilisation en République Démocratique du Congo et le Gouvernement de la République Démocratique du Congo, représenté par le Ministère de la défense nationale et des anciens combattants concernant la mise en place des cellules d'appui aux poursuites judiciaires

<sup>10</sup> See PSC Programme's foundational documents Concept Note (2010) and Support to the Prosecutions Support Cells (2011), Standard Operating Procedures, Prosecution Support Cells, Administration and Management Procedures (draft, June 2011)

present. In practice, the PSCs have been granted access to investigation, prosecution and court files

### ***Extra-budgetary Funding***

9. To address the operational needs of the PSC Programme and the military justice investigations and mobile hearings and courts (hereinafter referred to as ‘*audiences foraines*’) that they support, it was necessary for MONUSCO to secure extra-budgetary resources in addition to its regular budget. MONUSCO mobilized extra-budgetary funding from the Government of Canada and the United Nations Peacebuilding Fund. The International Organization for Migration (IOM) was selected to manage these funds and its responsibilities focused on equipping the PSCs. A number of assets, including vehicles, were provided to the PSCs for their general functioning with the end-use beneficiary being the MDFC. As administrative delays were inevitable pending the recruitment and deployment of the 30 military and police justice GPPs, the project also included the recruitment of 10 consultants to jumpstart the PSC Programme, as a temporary solution aimed at enabling the rapid operationalization of the five PSCs, each consisting of two consultants. The Canada/PBF/IOM project ended on 31 March 2013.<sup>11</sup> Other resources have been provided by the UK, USA, the EU and United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict.

### ***Joint MONUSCO/UNDP Project funded by the European Union***

10. In 2012, the European Union (EU) confirmed its commitment to support the PSC Programme and agreed to provide funding for an initial period of 18 months from February 2013 to August 2014<sup>12</sup>. UNDP was chosen as the implementing partner in a joint project with the MONUSCO Justice Support Section. Key outputs for this project were to support the PSC Programme to 1) establish two additional PSCs in Kisangani and Lubumbashi; 2) provide all existing PSCs with administrative and operational support, including for field operations and mobile courts; 3) establish an evidence and data management system; and 4) provide effective legal aid to the accused<sup>13</sup>. MONUSCO and UNDP signed a Letter of Agreement defining the obligations and rights of both entities. The *Comité Technique de Pilotage*, composed of UNDP, MONUSCO and the EU, oversees implementation. This joint project has involved the co-location and integration of three UNDP-funded experts (consultants) within the Justice and Corrections Section of MONUSCO in line with the DPKO/UNDP Global Focal Point arrangement<sup>14</sup>. These three UNDP experts have worked alongside the PSC officers. In 2013, the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict<sup>15</sup> deployed one consultant with

---

<sup>11</sup> IOM contracted the services of an international expert to carry out an external audit of the PSC project from its conception up to November 2012. Due to the invasion of Goma by the M23 rebels in November 2012, the exercise was conducted in February 2013 and the report was submitted in May 2013.

<sup>12</sup> The EU funded project for the PSCs effectively started in July 2013 due to coordination problems hence the extension of six months accorded by the EU.

<sup>13</sup> This legal aid component was not implemented jointly with MONUSCO

<sup>14</sup> In September 2012, the Secretary-General appointed DPKO and UNDP as the Global Focal Point for the Police, Justice and Corrections Areas in the Rule of Law in Post-conflict and other Crisis Situations. Under this arrangement, DPKO and UNDP, working with other UN partners, are responsible and accountable for responding to country-level requests, channelled through UN entities on the ground, with timely and quality police, justice and corrections assistance in terms of global knowledge, people, and advice on assessments, planning, funding and partnerships. This has involved the co-location of elements of DPKO, UNDP, OHCHR and UN WOMEN at HQ in joint teams in some mission settings.

<sup>15</sup> This team was established pursuant to Security Council resolution 1888 (2009), and is comprised of representatives of DPKO, OHCHR, UNDP and the Office of the SRSG on Sexual Violence in Conflict.

expertise on sexual violence for eight months to the Goma PSC and the UK funded one consultant with such expertise to work in the Bukavu PSC.

11. With the end of the EU-funded MONUSCO/UNDP project in January 2015, the EU has agreed to fund a second phase and project documents are currently being finalized between the three partners. This phase will continue to fund logistical support for investigations and *audiences foraines*, provide additional support through targeted consultancies and include a component on evidence management and on defence counsel.<sup>16</sup>

### ***Other Partners***

12. The PSC Programme has involved the Justice and Corrections Section of MONUSCO working closely with various partners. This has involved chairing coordination mechanisms (*Cadres de Concertations*) that include the JHRO<sup>17</sup> and the Child Protection Section (CPS), UNDP and non-UN actors such as Avocats Sans Frontières (ASF), the American Bar Association (ABA), RCN Justice et Démocratie (RCN), and the International Centre for Transitional Justice (ICTJ), particularly in the area of the investigation and prosecution of cases involving sexual violence and child recruitment, and related issues of victim/witness support and protection, and training.<sup>18</sup>

## **B. ACHIEVEMENTS AND IMPACT**

13. With the technical advice, mentoring and logistical support of the PSCs, the Congolese military justice system has started to deliver concrete results in its efforts to combat impunity. It has become increasingly proactive in the investigation and prosecution of serious crimes committed by members of the FARDC, PNC and armed groups. With the support of the PSCs, investigations and *audiences foraines* are being conducted in remote and insecure areas of eastern DRC where atrocities have been committed and where courts barely function or exist, helping to build the confidence of the local population in the ability of the Congolese justice system to hold perpetrators of serious crimes accountable.
14. To date, the PSCs have received 97 requests for support, 57 for investigative missions and 40 for *audiences foraines*. Of the 97 requests, 63 concerned sexual related offences. Most recently, from July 2014 to March 2015, 27 *audiences foraines* were conducted with PSC support. Six investigations and eight *audiences foraines* are on-going.
15. The results of investigations and trials supported by the PSCs have ranged from acquittals to sentences of life imprisonment and 39 death penalties. Except in emblematic cases and partly due to the PSC internal reporting system, including the lack of a common template to systematically report on the results of the investigations and *audiences foraines* supported by the PSCs, it is difficult to determine the precise number and rank of officers convicted. An up-to-date mapping of the cases of serious human rights violations recorded/reported might have enabled a comparison between the number of cases that could have been prosecuted (including those relating to high ranking officials) and the number of cases actually prosecuted.

---

<sup>16</sup> Due to the conflict of interest with support for prosecutions, the support for legal aid will not to be implemented by the PSCs and was not in the first phase of the project

<sup>17</sup> JHRO has been documenting cases of serious human rights violations, in particular relating to sexual violence, through its human rights officers in the field

<sup>18</sup> JHRO, ASF, ABA, RCN provide support, legal assistance and protection to survivors/witnesses of sexual violence.

16. There was, however, broad consensus among the interlocutors interviewed by the Team, including Congolese military justice officials, and feedback from NGOs, regarding the increase, since the operationalization of the PSC Programme, in the number of investigations, arrests, *audiences foraines* and final judgments, including the prosecution and trial of some key FARDC figures for crimes amounting to human rights violations, as a clear indication of the positive impact of the programme and the activities of other key partners.

**a) Specific cases supported**

17. The following are examples of the more prominent and egregious cases involving high ranking officers investigated and/or prosecuted by the national authorities with the support of the PSC Programme:

***Lt. Col. Bedi Mobuli Engangela Case alias Colonel 106***

18. During 2005 and 2006, mass rapes were committed against the populations of Bunyakiri, territory of Kalehe in the South-Kivu province by armed individuals under the commandment of Lt. Col. Bedi Mobuli Engangela alias 106. The latter was prosecuted based on command responsibility for crimes against humanity in accordance with article 7 of the Rome Statute. With the support of the PSCs, three *audiences foraines* were organized in Kahele and at the Central Prison in Bukavu. The prosecution, conviction and sentencing of Colonel 106 in December 2014 to life imprisonment sent the message that members of the FARDC, irrespective of their rank, are no longer above the law. Local communities, including many victims, saw, for the first time, a high ranking FARDC officer standing trial and receiving an appropriate punishment, indicating the commitment of the Congolese military justice system to combat impunity.

***The Minova case***

19. Following the fall of Goma in November 2012, FARDC officers and soldiers were allegedly involved in the rape of dozens of women, as well as murder, pillage and other serious crimes, in and around the village of Bweremana (North Kivu) and Minova (South Kivu). Estimates vary considerably about the number of rapes. The case was investigated in 2013, and 39 individuals were charged. The trial began before the *Cour Militaire Opérationnelle* in Goma in November 2013. It continued intermittently until late March 2014 and included a one week *audience foraine* in Minova itself in February 2014 to take testimony from the victims. The case was concluded in May 2014 with 26 convictions, two of which were for rape. Sentences ranged from three years to life imprisonment. Thirteen officers were acquitted. The Court held the Government of the DRC liable to pay compensation to the victims. PSCs supported the trials, providing technical advice to the prosecution, including on ICC jurisprudence, as well as assistance with security at the trial and the protection of victims and witnesses, in coordination with international partners ASF, ABA and ICTJ.

***The Kizima Lenine Sabin case (rebel group FDLR)***

20. Kizima Lenine Sabin, a Major in the FDLR, was arrested in October 2010 and charged under the Rome Statute, as a direct perpetrator and on the basis of command responsibility for murder, torture, rape, imprisonment or other forms of severe deprivation of physical liberty, and forced

disappearance. It was alleged that Lenine knew or ought to have known that FDLR elements under his command or control were perpetrating many of the crimes and that he failed to take steps to prevent their perpetration. The crimes were alleged to have been perpetrated in 14 villages in Shabunda territory, South Kivu Province, between late 2009 and early 2011. The trial against Lenine, conducted with the support of the PSC and other partners, took place in Shabunda in June 2014 before the *Tribunal Militaire de Garnison* of Bukavu. Lenine was represented by two experienced lawyers. The prosecution case included testimony from 84 victims, who had legal representation throughout the trial, the support of psychologists, and protective measures in place. In a judgement rendered in December 2014, Lenine was found guilty on four counts of crimes against humanity. The tribunal sentenced him to life imprisonment. This first-ever trial and conviction of a high-ranking FDLR officer was an important step in the fight against impunity for abuses perpetrated against the civilian population by armed groups operating in Eastern DRC.

***Oicha Case (rebel group known as ADF/NALU)***

21. Between October and December 2014, elements of the rebel group known as ADF/NALU, armed with firearms and machetes, invaded 11 different villages around the village of Oicha, in Beni, North-Kivu province. As a result, around 160 villagers were killed, their houses burnt and property looted. The alleged commission of these crimes was reported by the NGO, *Convention pour le respect des droits de l'homme*. This investigation is on-going with the focus on the mapping of witnesses and victims to be heard pending the identification and arrest of the fugitive perpetrators.

***Mbau Case (ADF/NALU under the command of Muhindo Kiza Karasa)***

22. From 2009 to December 2013, elements of the ADF/NALU under the command of Muhindo Kiza Karasa, committed acts of murder, serial rape, pillage, kidnapping and torture in and around the village of Mbau, in Beni, North-Kivu province. As a result, around 237 families were targeted. The victims submitted a collective denunciation through the NGO *Convention pour le respect des droits de l'homme*. This investigation is on-going with the focus on the mapping of witnesses and victims to be heard pending the identification and arrest of the fugitive perpetrators.

***Kolwezi Case (four FARDC officers)***

23. Between 2012 and 2014, in various localities around Kolwezi, four FARDC officers, including two Lieutenant-Colonels and their subordinates, were charged with acts of murder, collective rape and arson. The trial is still on-going.

***Colonel Buyengue Birihanze Dominique, alias Colonel Domi (from the MPA rebel group)***

24. Between 2008 and 2013, elements of an armed group named *Mouvement Patriotique d'Autodéfense*, under the command of a deserter from the FARDC, Colonel Buyengue Birihanze Dominique, alias Colonel Domi, allegedly committed acts of serial murder, serial rape and abduction in different localities in Rutshuru district. He is presently detained in the Goma Prison.

The preliminary phase of the investigations supported by the PSCs has been scheduled for the mapping and identification of witnesses and victims.

***FARDC Colonel Kapokie Seyanga Jean-Baptist***

25. Between 2012 and 2013, an armed group under the command of dissident FARDC Colonel Kapokie Seyanga Jean-Baptist, allegedly murdered 32 villagers, committed collective rapes and serial kidnappings in the Masisi area during systematic attacks against villages. He is presently detained in Goma Prison. Investigations are currently taking place in Masisi with the support of the PSCs.

***Justin Matata Banaloki, alias Cobra Matata, leader of FRPI (Child recruitment)***

26. On 2 January 2015, an arrest warrant was issued by the Military Court of Ituri against the leader of the FRPI known as Cobra Matata. Banaloki is accused, among others, of crimes against humanity and war crimes as well as child recruitment.<sup>19</sup> He is alleged to be directly or indirectly responsible for the recruitment and use of at least 610 children (519 boys; 91 girls) between 2007 and 2014, 47 per cent of whom were below the age of 15, constituting a war crime. He is currently detained in Kinshasa pending conclusion of the investigation against him and eventual trial.

**b) Other Indicators of Impact**

27. Over the last two years, there has been an increase in the number of individuals arrested and detained for the recruitment and sexual abuse of children, based on command responsibility and/or direct responsibility. Following the adoption of the UN-GoDRC Action Plan in October 2012<sup>20</sup> and the increase in investigations supported by the PSCs, the Government has taken positive steps to hold perpetrators of child recruitment accountable under national law. In 2013 and 2014, six arrest warrants were issued against and four arrests made of alleged child recruiters not including the Banaloki case. MONUSCO, through its Child Protection Section has developed a new project<sup>21</sup> to be implemented in conjunction with the PSC Programme and partners, to support the military justice authorities in ensuring that the prosecution of child recruiters becomes systematic in the DRC. The expected results of the project are that at least 18 individuals accused of recruitment and use of children will be prosecuted by June 2017. This will be undertaken while ensuring the protection of child victims and witnesses before, during and after the trial.
28. The recently finalized case of Kizima Lenine Sabin (see above) is illustrative of the roles and impact of the PSC Programme and its partners. The PSC became involved in early 2014 at the request of the military authorities providing extensive support to the *auditeur militaire de garnison* (prosecutor) as well as to the *Tribunal Militaire de Garnison*.<sup>22</sup> The PSC provided

---

<sup>19</sup> The arrest warrant is not clear what the basis of the charge of child recruitment is

<sup>20</sup> Action Plan to stop and prevent underage recruitment and use of children in armed forces and groups, and other grave child rights violations by armed forces and the security services of the DRC, signed on 4 October 2012 by the DRC Prime Minister and SRSG MONUSCO

<sup>21</sup> To be funded by the Government of Belgium and expected to commence in July 2015

<sup>22</sup> JHRO was also involved in the case previously in 2011 conducting a joint investigation mission with the military magistrates

advice on issues including territorial competence and on the difficulties of trying such a large number of counts and also organized and chaired the *cadre de concertation*. The PSC, JHRO, UNDP and other international partners provided logistical support for the *audience foraine* and to efforts to locate victims and conduct on-site inspections. The JHRO assisted the Tribunal to put in place protective measures, including code names, disguises and separate areas for the victims and witnesses who testified. The trial was monitored by MONUSCO and generally found to be in compliance with international fair trial standards. The hearings took place in Shabunda territory, South Kivu province, were open to the public and attracted considerable local attention. The trial and its verdict sent out an important message that perpetrators of serious human rights violations, irrespective of whether they are state or non-state actors, will be brought to justice.

29. An Avocats Sans Frontières representative in Bunia highlighted how the effective involvement of military justice through field investigations and *audiences foraines* supported by the PSC Programme had increased community trust in military justice.<sup>23</sup> The case of the Paul Sadala, aka Morgan, charged with serious crimes committed in Ipula in the district of Ituri, is also illustrative. At the first instance, the PSC had not yet commenced its support to investigation missions and *audiences foraines* in the area. ASF initially recorded 60 victims who later participated in the trial. By the time of the appeal, ASF had recorded about 400 victims willing to testify. According to ASF this significant increase was largely due to the increase in *audiences foraines*, supported by the PSC, being held in the area as a result of which the Mambasa community saw the military justice system in action, able and willing to arrest and prosecute perpetrators of atrocities committed in its villages. This indicates a change in perception about justice by local communities. The Programme Director of a local human rights NGO<sup>24</sup> operating in North Kivu Province also commented that his Kiwanja legal clinic saw a rise in the number of complainants after the Kiwanja *audience foraine* during which soldiers were found guilty. Locals were reported to have commented that military justice had been “*born again*”.<sup>25</sup>
30. Other anecdotal information provides further indication of impact. During a recent *audience foraine* in the North Kivu province, Congolese army and police officers as well as members of the armed group Mai Mai Nyatura were convicted of rape and murder and received heavy sentences. This was the first time that the people of Bweremena experienced formal justice and, according to reports, they demonstrated their appreciation by dancing, drumming and using their clothing to clean the United Nations cars which had transported the justice officials to the trial venue. One Congolese military justice official stated “*the audience foraine session in Bweremana shows the determination of Congolese military justice to strengthen discipline within the Congolese armed forces and National Police, no matter the circumstances under which the crimes have been committed.*”<sup>26</sup>
31. Although a systematic assessment of the quality of investigations and trials has yet to be carried out, ad hoc analyses by PSC officers of court decisions show that they are better drafted and reasoned than was hitherto the case, indicating that the exchange of experience and transfer of knowledge between the Congolese military justice and PSC officers, combined with the

---

<sup>23</sup> See UNDP Evaluation Report, January 2015

<sup>24</sup> CREDDHO

<sup>25</sup> See UNDP Evaluation Report January 2015

<sup>26</sup> ‘Bringing Justice to the People: Mobile Courts in the DRC’ - CLJAS Justice and Corrections Update December 2014

monitoring and observation of hearings and training implemented by MONUSCO and other partners, have had a positive influence on the quality of decisions. As one senior military justice official stated “*Just watching us in the course of action has a significant support...The eye of the PSC obliges respect for legal standards*”<sup>27</sup>.

32. The increase in number of official requests for support from the Military Prosecutor is a good indication of the improved level of collaboration and commitment from the military justice authorities to tackle impunity by identifying and making accountable alleged perpetrators of serious crimes. All of the Congolese military justice officials that the Team consulted with indicated their general satisfaction with the work of the PSCs. The agreement to renew the MoU between MONUSCO and the MDFC for the fourth time also demonstrates the willingness of national counterparts to continue this modality of collaboration in the fight against impunity.
33. However, the quality of investigations, respect for due process and compliance with fair trial standards has not been without criticism. Human Rights Watch has highlighted the shortcomings it observed in the investigative approach and the lack of prosecutorial strategy of the military justice authorities during the Minova case. Many of these concerns were shared by MONUSCO. There have also been concerns expressed about the lack of equality of arms between the prosecution and defence, in particular the low capacity of defence lawyers, the lack of independence of the military justice system, the absence of a clearly defined right of appeal in certain cases, and the fact that very few high ranking officials are, or can be, held accountable under the military justice system. Military tribunals have been imposing the death penalty in the most egregious of cases despite the advocacy efforts undertaken by the Mission against the imposition of such sentences. Despite some progress, given the scale of the problem, the number of effective prosecutions for sexual violence and child recruitment remains low.

#### **c) Training**

34. In addition to the technical advice provided for investigations and prosecutions, in developing the programme, the need to build the capacity of national counterparts through targeted trainings was also taken into account. This has primarily been achieved through the INL/IOM project. INL provided 500,000 USD to train military justice officials focusing on procedural efficiency, management of archives and evidence, IT, investigative tools, collection and processing of statistical data, and training for registry clerks and military investigators. While IOM managed the budget, the Justice Support Section and its PSCs undertook most of the day-to-day planning and organizing of the training, elaborating the curricula and identifying trainers and participants. It also designed, developed and delivered a number of the trainings.
35. Specifically, three trainings focussed on military court clerks, secretaries, registrars and bailiffs, two trainings aimed at building the capacity of judicial actors to conduct fair trials, with an emphasis on cases involving sexual violence. Four trainings were aimed at addressing systemic gaps in information technology knowledge and usage. One training focussed on basic skills for criminal military investigators and the final training was a six-week induction programme for incoming military court clerks. Together, these 11 trainings addressed specific needs as identified by the military justice system to enhance their overall capacity to combat impunity for serious crimes. JCS is now conducting follow-up sessions in respect of the four IT trainings but

---

<sup>27</sup> See UNDP Evaluation Report January 2015

the Team is unaware of any other evaluations having been carried out to assess the extent to which the skills acquired in other trainings are being applied in practice.

### **C. LESSONS LEARNED**

36. The PSC Programme is an innovative and robust initiative that has had a positive impact on efforts to combat impunity in the DRC. Working in close collaboration with national military justice authorities, the programme effectively combines the political leverage and technical and logistical support of MONUSCO, with the programmatic support of UNDP, while also strengthening coordination and partnerships between a variety of UN (in particular the Mission's JCS, JHRO and CPS) and non-UN actors such as ASF, ABA, RCN and INL. The programme, taken together with the efforts of partners, and drawing upon their comparative advantages and distinct roles, incorporates support for investigations, prosecutions, *audiences foraines*, victim and witness support and assistance, the provision of legal aid for the accused and capacity building training. Had it not been for the technical, logistical and other support provided by this programme and the activities of its partners, many of the investigations, hearings and trials that have taken place would not have proceeded.
37. The programme forms an integral part of the broader stabilization efforts being undertaken by MONUSCO under its current mandate through the establishment of '*functional, professional, and accountable state institutions, including security and judicial institutions in conflict-affected areas, and through strengthened democratic practices that reduces the risk of instability*',<sup>28</sup> as well as the fulfilment of the mandate of MONUSCO with respect to the protection of civilians, security sector reform, and, more generally, the development of an environment conducive to respect for human rights and the rule of law.
38. Subject to receiving appropriate mandates and the required cooperation from their host Governments, other peace operations, both current and future, could benefit from establishing similar initiatives, taking into account the lessons learned from this programme. Despite its achievements and impact, the Team identified a number of areas where the PSC Programme could be improved.
39. The sections below outline in detail the various aspects of the PSC Programme, in terms of composition, structure, management, methodology, coordination and partnerships, highlighting the challenges faced and the strengths and weaknesses identified. The Team makes observations and recommendations to help improve the effectiveness not only of this particular programme but also to inform future similar initiatives undertaken by other peace operations.

#### **a) Composition and Structure**

40. Under the MONUSCO budget, PSCs have an authorized strength of 30 GPPs, supplemented at various times and locations by consultants provided by the Governments of the UK, Canada and the USA, and the EU and the Team of Experts. Initially, it was planned that each PSC would be

---

<sup>28</sup> Para 6 (b) of SC Resolution S/2015/209 of 25 March 2015

composed of six PSC officers. Since the establishment of two additional PSCs in Kisangani and Lubumbashi, the 30 GPP posts had to be distributed among seven PSCs. Low staffing in each PSC has also arisen from the high vacancy rate, although JCS has striven to ensure that all PSCs have at least a balance of prosecutors and investigators among their ranks.

41. The seven PSCs operate as part of the JCS. Each PSC is headed by a Team Leader, designated by the Chief, JCS and is usually the Military Prosecution Adviser. The PSC Team Leader is responsible for the coordination, operations, administration and reporting of each PSC team. The Team Leader has dual reporting lines to the JCS Team Leader in the relevant Field Office and to the PSC Coordinator based in Operations East, Goma.
42. Although GPPs are not intended to perform programme management functions,<sup>29</sup> the day-to-day management and coordination of the PSC Programme is entrusted to the PSC Coordinator, based in Goma, who is a GPP with a military justice background. The responsibilities of the PSC Coordinator also include ensuring that requests for support to investigations and *audiences foraines* fall within the purview of the programme, reviewing reports received from PSC teams, managing the interface with senior military justice officials in Kinshasa and working with UNDP in respect of the EU-funded joint project.
43. The PSC Coordinator, supported by a US-funded Operations Advisor, reports to the Chief of JCS. Because of the nature of GPP deployment, since the operationalization of the PSC Programme, there has been a high turnover of coordinators – seven such coordinators in less than four years. The choice of a military prosecutor for PSC Coordinator has been made on the understanding that PSC officers in the field were likely to better respond to a higher rank military officer, although some noted that such officers do not possess the requisite experience to effectively manage and supervise a United Nations programme. The PSC Coordinator needs to have the experience and capacity to guide up to 30 GPPs and the consultants based in seven different locations, most of them with no peacekeeping experience.
44. The day-to-day management of the PSC Programme remains critical to its success. The Team concluded that the PSC coordination role should ideally be entrusted to at least two officers (P-posts) based in Operations East (Goma): a Coordinator, ideally with a military background who will facilitate communication between the PSCs and military justice officials, and a Deputy Coordinator. These posts should be at the P5 and P4 level with rule of law/international crimes background, proven international experience in peace operations settings coordinating large teams or programmes and, ideally, programme management expertise. These two coordination officers should be supplemented by the additional expertise required to undertake the necessary analysis, reporting and development of guidance based on the reports and information received from the PSCs.
45. Some of the management difficulties noted above have arisen since the reconfiguration of MONUSCO in 2014. In particular, a senior management decision was made in late 2013 that the former JSS could maintain a staffing strength in Operations East (effectively the JSS HQ in Goma) of only three professional staff – the D1 Chief of Section and two P3 Judicial Affairs

---

<sup>29</sup> See Guidelines on Non-uniformed Civilian Government Provided Personnel on Assignment with UN Peacekeeping and Special Political Missions 2015

Officer (JAO) posts<sup>30</sup>. The merger of the justice and corrections sections in September 2014, added only one more professional staff member to this capacity, a corrections officer. This put considerable strain on the general management capacity of the office which had to oversee and administer up to 150 civilian justice, corrections and PSC staff and coordinate and report on their activities. The P3 JAO has been responsible for preparing initially monthly, now weekly, reports on the work of the Section as a whole, as well as preparing code cables and contributing to other reporting requirements.

## **b) Methodology**

46. The PSCs provide technical advice and logistical support to investigations and *audiences foraines*,<sup>31</sup> coordinate international support, observe and report on hearings and engage in other capacity building activities such as training.

### **The Provision of Technical and Logistical Advice and Support**

47. The primary function of the PSCs is to provide technical advice to the Congolese military justice personnel. The advice will vary depending on the specific situation and will include, but not be limited to advice on the conduct of investigations and prosecutions, the collection of evidence, use of forensic tools, the conduct of trials and the facilitation of communication with interested partners. Under the overall guidance of the Chief of JCS and the PSC Coordinator, in this way, the military and civilian prosecution advisers assist FARDC military prosecutors in prosecuting the most serious crimes, including war crimes and crimes against humanity, with a special emphasis on homicide and sexual violence. The military and civilian police investigations advisers assist Congolese military *Inspecteurs de Police Judiciaire* as well as other relevant Congolese judicial authorities, in the conduct of investigations of serious crimes.<sup>32</sup>
48. In addition to providing technical advice, following receipt of a request for support from the national authorities, PSCs coordinate the provision of logistical support, necessary because of the shortage of Government resources for the travel to the field required in the investigation and prosecution of serious crimes. This support includes the transportation of magistrates, the provision of daily subsistence allowance (DSA) and other logistical support. To mitigate any security risks, the MONUSCO Force provides support, including escorts and secure convoys when the operational situation requires, thereby enabling PSCs and their Congolese counterparts to visit the sites of investigations or to set up *audiences foraines*.
49. Once a request is received, the relevant PSC and the other partners, including UNDP, JHRO and the CPS, ASF, ABA, RCN, meet in the *Cadre de Concertation*, chaired by the respective PSC, to discuss the required support and agree upon the division of responsibilities. In the case of Col. 106, for example, the PSCs provided advice and logistical support to prosecutors and judges. JHRO identified the victims and encouraged them to file complaints and worked with partners such as ASF, ABA and RCN to provide support and legal assistance to victims/witnesses in particular relating to sexual violence. CPS provided the military justice authorities with

---

<sup>30</sup> one of which became vacant in December 2013 and could only be filled in April 2015

<sup>31</sup> The JHRO also has some additional funds to support 'Joint investigation Teams'

<sup>32</sup> See Standard Operating Procedure on the Prosecution Support Cells - draft dated June 2011

identifying information of a number of child victims. The MONUSCO/UNDP project provides funds for the logistical support for investigations and *audiences foraines*, including DSA for national officials who travel to the locations where these take place, and work to ensure that suspects and accused receive legal representation through agreements with local bar associations.

50. Despite its achievements, the PSC Programme has faced a number of challenges. Most recently, following the decision of the *Cour Militaire Opérationnelle* in the Minova case, some observers, although praising the programme, also voiced concerns regarding the effectiveness of the assistance provided to the Congolese authorities. It was, for example, mentioned that although the experts serving in the PSCs have strong and relevant experience in the prosecution of serious crimes, very few have expertise in international crimes. There remains an imbalance between technical, logistical and financial support, with the bulk of attention focusing on logistical and financial assistance. In addition less than 10 per cent of cases the PSCs have supported to date have related to international crimes. In November 2014, MONUSCO and the Government agreed to expand the scope of PSCs to include other serious crimes that fall under the jurisdiction of the FARDC military justice authorities, including serious human rights violations, notably sexual violence, killing and theft using weapons of war. Although this change took account of the reality of PSC work and requests for support, it raises the question of whether the PSC programme risks being spread too thinly, losing focus on the most serious crimes, in particular crimes against humanity.
51. The importance of logistical support cannot be overstated in a country like DRC, so lacking in infrastructure and other resources and where so many areas are difficult to access and insecure. However, the Team also concluded that the PSC Programme should aim to increase and strengthen the quality of the technical support and advice provided to national counterparts. This could be achieved by the improvements described below, including a more systematic and centralized system for the collection, collation and analysis of lessons learned, and of the gaps and deficiencies identified from investigations, and *audiences foraines* supported and observed by PSC officers. Improved cross-fertilization between the seven PSCs, the use of standardized reporting formats and the development of focused and practical guidance for both PSC officers and their national counterparts is also recommended. Ideally a qualitative analysis of first instance and appeal court decisions should be conducted, although this would be a significant undertaking beyond the current capacity of the PSC Programme.
52. To effectively undertake this range of tasks would require a significant increase in technical capacity at the HQ level in Operations East. In this regard the Team recommends that, in the next phase of the MONUSCO/UNDP project, the three consultant posts, which in the first phase of EU support used the same terms of reference as other PSC officers and were posted to three PSCs, be reassigned to perform a more central role that focuses on the analysis, reporting and the development of guidance and lessons learned based on the feedback received from the seven PSCs. To address the shortage in experience of the GPPs in international crimes, the three consultant posts should include strong expertise in the investigation and prosecution of such crimes (see section (d) below).

53. Such a programme would also benefit from standard operational procedures (SOPs) to help guide the work of PSC officers.<sup>33</sup> These would outline the administration and management procedures and methodology of the PSC Programme and include provisions on: the role of the PSCs, composition and structure of the PSCs, functions and responsibilities of PSC personnel, role of administrative and support personnel, other PSC experts, status, recruitment and selection, reception and deployment, extension of tour of duty, performance appraisal of PSC members, early end of mission/repatriation, disciplinary cases, duty schedules, leave and CTO, coordination mechanisms, chain of command, reporting arrangements, confidentiality, security related matters and the use of PSC vehicles.

### **Training and other Capacity Needs**

54. The PSCs have had little involvement in short-term capacity-building programmes for national counterparts, except indirectly through the IOM/JCS-implemented INL project. Although there are a number of international partners who have been providing such training, coherence and coordination in this area has, according to some interlocutors, been lacking. Courses organized for military justice officials have generally been on a short-term and ad hoc basis. Although a number of trainings have been conducted on court administration, little progress had been made in establishing a system-wide and uniform court administration for the military justice system.

55. National military justice magistrates emphasized the need for training, guidance and more technical support on the prosecution, investigation and adjudication of international crimes, for example to assist and build national capacity to manage extensive amounts of criminal data, analyse and identify criminal patterns, chains of command and communication to build bodies of evidence of international crimes. While some of this can be undertaken on an individual level through the PSC Programme, the development and implementation of a comprehensive training programme is beyond its scope. The Team, therefore, recommends that a comprehensive capacity and training needs assessment be conducted by a partner organization to identify and prioritize the capacity gaps to be addressed in the short to medium-term in order to further strengthen the functioning and effectiveness of the military justice system in relation to serious crimes, including setting priorities for future training.<sup>34</sup>

56. Other gaps have also been highlighted. The lack of forensic expertise was identified by several national magistrates as a weakness in the military justice system. Currently there is only one national forensic expert based in Kinshasa to cover the whole territory of DRC. The deployment of specialized expertise to identify and to train local professionals on forensic sciences should therefore be considered.

### **Recommendations**

- ***The PSC coordination role should be entrusted to at least two officers (P-posts) based in Operations East (Goma) - the PSC Coordinator, responsible for overseeing the day to day supervision, management and coordination of activities and communication between the PSC Programme and higher level military justice officials and a Deputy***

---

<sup>33</sup> SOPs were drafted in June 2011 but never formally finalized or adopted

<sup>34</sup> See code cable CCX-094 dated 6 April 2015.

*Coordinator. The PSC Coordinator and Deputy should be at the P4 and P5 level with rule of law/international crimes background and proven international experience working in peace operation settings coordinating large teams or programmes and, ideally, in programme management.*

- *Concrete steps should be taken to ensure that technical advice on serious crimes remains at the core of the PSCs' work while essential logistical support continues to be provided.*
- *In order to strengthen the information management and analytical capacity of the programme, the ToRs of the three UNDP consultant posts, should be amended to reflect a more central role that focuses on the analysis, reporting and the development of guidance and lessons learned. To address the shortage in experience of the GPPs in international crimes, the three consultant posts should include strong expertise in the investigation and prosecution of such crimes.*
- *Tailored and practical guidance on the investigation and prosecution of serious crimes, including international crimes, taking into account the local context, should developed.*
- *Standard Operational Procedures to clearly define the role of PSC officers and help guide their work should be finalized.*
- *A comprehensive capacity and training needs assessment should be undertaken by a partner organization, to ensure that international capacity building efforts are coherent and coordinated based on identified gaps and priorities.*

### **Analysis, Monitoring and Reporting**

57. Effective support to the military justice system in DRC requires the ongoing analysis and assessment of the functioning of the system to provide both national and international decision makers with the accurate and specific information and feedback needed to strategically target resources and interventions based on clearly identified gaps, challenges and obstacles.

#### ***Internal Reporting***

58. Each PSC reports on its activities by contributing to the weekly report prepared and submitted by each JCS field team in accordance with a reporting template and guidance provided by JCS Ops East, most recently in July 2014. PSCs should also submit flash reports to quickly convey information on emblematic and sensitive cases and on the *audiences foraines* they have supported and observed or on other urgent, time-sensitive developments. However, reporting by PSCs tends to focus on the description of activities rather than on results, impact, trends and analysis. While weekly reporting, which is inevitably more activity focused, is an important means for the Mission leadership to be informed of developments and activities as they occur in the field, the development of more analytical quarterly and annual reporting for the programme as a whole should be considered.

59. At the time of writing, the weekly report template was under review, to take account of the merger of the justice and corrections components in field teams, and JCS was using the opportunity to review the military justice component of the report, along with the guidance on it. As currently staffed, there is insufficient capacity at the Goma/HQ level for the systematic collation and analysis of the information received from the seven PSCs through their periodic reports regarding the investigations, prosecutions and trials supported. This was identified by the Team as a weakness in the current design of the programme.

### ***Trial Observation and Monitoring***

60. In addition to periodic reporting, systematic and effective trial observation or monitoring in a manner that identifies how investigations and trials are conducted, making concrete recommendations to address obstacles and deficiencies, should be part of, or complement, such a PSC programme. This can elicit essential information regarding the quality of investigations, the preparation of prosecution cases and the performance of judges, prosecutors and defence lawyers and the treatment of victims and witnesses, forming the basis of critical feedback to the Congolese authorities. The Team could find little readily available or accessible information regarding the quality of justice administered by the military justice system.
61. The Team found some differences in approaches being applied and what appeared to be a lack of consensus among PSC officers regarding their roles in terms of observing or monitoring trials. Some PSC officers stated that the role of PSCs was not to ‘monitor’ trials but to provide technical support during the process to all parties, namely the judge, the prosecutor and the defence and that this should be done during a break in a hearing or at the end of the day, then providing written feedback at the conclusion of the trial. Other PSC officers did describe their role as ‘monitoring’. However they interpreted this role to include providing advice to judges or prosecutors during the trial. In contrast, some of the national judges emphasized the importance of PSC officers respecting the independence of the judiciary and not advising or meeting with the judges about a case until after the conclusion of the trial. There was some conflicting opinion whether the PSCs could, or should, provide advice to the defence.
62. Trial observation therefore remains an ad hoc activity within the PSC programme. Whatever label is given to this activity, PSC officers are usually present at the trials in the cases for which they have advised and their observations can elicit essential information regarding respect for due process and the effectiveness of the key actors. In the absence of clear and specific guidance on the roles of PSC officers in this regard, the distinction between providing technical assistance to *audiences foraines* while also observing the hearings is likely to remain a confused one, resulting in different practices and the potential for unwarranted interferences in the legal process. The role, responsibilities and standards of conduct of PSC officers during trial hearings should therefore be clarified through the provision of written guidance, standards of conduct and training.
63. The JHRO uses a standardized format for reporting by human rights monitors but the reports remain internal JHRO documents and are not shared routinely with PSC members. The Team was informed that requests for their disclosure were often rejected. It is recommended that JCS and JHRO work to centralize, coordinate and consolidate feedback from the various trials observed to enable a detailed analysis of the findings followed, where appropriate, by feedback provided to the national authorities identifying deficiencies, weakness and gaps in the process as well as highlighting trends and best practices. The PSCs could similarly develop systematic reporting on and assessment of the effectiveness of the investigations supported by PSC programme. However, in this regard, it is important that MONUSCO clarifies the division of labour between the PSCs and the JHRO, drawing upon their distinct but different roles and comparative advantages. This might result in the PSCs focusing on the provision of technical and operational support and advice to the *audiences foraines*, including the coordination of the

support of others, while the JHRO documents human rights violations committed by State agents and armed groups and monitors and reports on the compliance with international human rights standards of investigations and trials, including the treatment of victims and witnesses.

### ***Exchanges of Experiences and Lessons Learned between PSCs and Partners***

64. Effective cross-fertilization and exchanges of experiences and lessons learned between the PSCs is essential to strengthen the quality of their technical advice and support and to generally maximize the impact of the programme. The programme would benefit from the consolidation of analysis regarding the efficiency and effectiveness of the quality of investigations and trials and their compliance with international human rights standards. This should include not only the collation of feedback from MONUSCO components such as JCS, JHRO and CPS but also ASF, ABA and RCN. There have been a number of retreats of PSC officers and consultants with their Congolese and other counterparts, most recently in Kinshasa in December 2014, and of PSC team leaders in Goma in early 2015. In addition, the PSC Coordinator holds teleconferences with all PSC teams while all JCS field teams are expected to copy each other on their weekly reports. Despite these opportunities to learn from each other, the Team generally found that each PSC worked independently of each other with limited sharing of experiences.
65. It is recommended that the cross-fertilization and exchange of experiences and lessons learned between the seven PSCs and other partners and the consolidation of analysis regarding the efficiency and effectiveness of the quality of investigations as well as trials, be a priority. Such analysis will help inform the future focus of the work of PSC personnel, identify deficiencies, gaps and obstacles in the investigation, prosecution and trial of serious crimes to inform the development of guidance and feed into future training programmes. This will also help ensure that the main obstacles and deficiencies identified are addressed systemically.
66. The above recommended improvements could only be achieved by strengthening capacity at the Goma HQ level, including by reinforcing the PSC coordination (two P posts) and by also reassigning the three consultants posts under the MONUSCO/UNDP project to the development of analysis and guidance, while ensuring that the PSCs focus their reporting on results and analysis and the sharing of good and bad practices.

### ***Internal Sharing of Reports***

67. Although cooperation between JCS and JHRO is generally good with regards to the coordination of support to investigations and *audiences foraines*, this is less the case in relation to the observation/monitoring, reporting and sharing of information. There is no systematic or routine sharing of reports between the two components. PSCs and human rights officers report separately and independently on cases involving serious crimes. More effort should be made to instil a culture of joint reporting or, at a minimum, the systematic sharing of reports. Both sections should also ensure that each fairly and properly reflects the important and complementary contribution of the other MONUSCO components and external partners.

### ***Reporting to Headquarters***

124. The PSC Programme reports on its activities via the weekly reports of JCS, which are provided to CLJAS, and through occasional Code Cables dealing with PSC related topics, including important judicial decisions. However, there is a lack of visibility of its work with Mission leadership, key international actors in the DRC and New York Headquarters. CLJAS has

undertaken some activities to promote and give visibility to the work and achievements of the PSC programme through briefings to Member States at the Special Committee for Peacekeeping Operations and meetings of justice and corrections contributing countries (held twice a year), and through articles in CLJAS magazines and newsletters.<sup>35</sup> In 2013 the Chief, JSS and the PSC Coordinator participated via VTC in a Briefing to Member States in New York. Such activities require up-to-date and readily available information from the Mission. Statistics on the amount of cases resolved, the types of crimes, the ranks of the accused persons, the number of convictions and the sentences imposed should be reported on periodically and, where appropriate, included in reports of the Secretary-General. To enhance visibility, it is recommended that annual reporting at the Mission level be instituted into the PSC Programme.

### ***Recommendations***

- ***A structured periodic reporting process for each PSC (separate to the JCS team weekly reports), utilizing a standard template should be established.***
- ***Guidelines should be developed that provide the methodology on observing and reporting on investigations and trials. The guidelines should include trial observation codes of conduct and standards, guidance on non-intervention, contacts with justice officials during trials, confidentiality, case reporting forms/templates, managing information, and report writing.***
- ***The guidelines should be supplemented, where practical, by a training course for all PSC officers.***
- ***The centralized collation and analysis of information received from the seven PSCs regarding the efficiency and effectiveness of the quality of investigations and trials, supported and observed should be instituted.***
- ***The PSC Programme should report on an annual basis on its activities, achievements impact, and challenges providing statistical data on the cases investigated and audiences foraines conducted and the verdicts and sentences imposed. Ideally this report should be finalized jointly with UNDP and other MONUSCO components, in particular JHRO and CPS.***

### **Partnerships, Coordination and Advocacy**

68. MONUSCO has a central role to play to ensure both working-level coordination in relation to the supporting specific investigations and *audiences foraines* and high-level strategic coordination and advocacy in the fight against impunity.

#### ***Coordination at the Working-Level - Cadres de Concertations***

69. The PSCs have played an important role in chairing and organizing the meetings of the *Cadres de Concertations* and similar groups, such as *audiences foraines* working groups, where the efforts of all the partners involved at the working level in the fight against impunity are coordinated. These meetings take place at the regional level where the PSCs are located and include, national military justice investigators, prosecutors and judges and international partners,

---

<sup>35</sup> CLJAS Brochure March 2015, CLJAS Justice and Corrections Update 2014, CLJAS Justice Update 2013, CLJAS Justice Review June 2012, CLJAS Justice Update May 2011, and numerous briefings to the Special Committee for Peacekeeping Operations and briefings to countries that contribute justice GPPs.

in particular, JHRO, CPS and the Senior Women Protection Adviser of MONUSCO, UNCT partners and ASF, ABA, INL, RCN, the ICTJ, UNDP, the EU, and the Bureau de Consultation Gratuite (BCG)<sup>36</sup>. The meetings provide the opportunity to share roles and responsibilities with respect to the required support to national authorities for the organization of specific investigations and *audiences foraines*.

70. The *Cadre de Concertation* remains an internationally-led process in which national counterparts participate but do not lead. In the context of the transition and expected downsizing of MONUSCO, it is recommended that the national military justice authorities increasingly take a more prominent role in the coordination of the different partners by chairing, or at least, co-chairing these coordination bodies, with the PSCs playing more of a secretariat or facilitation role. This will also help to enhance the sustainability of the process as MONUSCO begins to draw down.
71. The *Cadre de Concertation* mechanism is a decentralized, working-level one, operating at the locations where the PSCs are based. The Team noted that although these committees have proved effective in coordinating the efforts of the various actors on specific investigations and *audiences foraines*, they do not address broader strategic and a policy-level issues relating to the fight against impunity. The absence of an effective coordination mechanism at the central and strategic level, ideally nationally led, has therefore been a gap. Such a body could also seek to ensure that responsibility for funding investigations and *audiences foraines* is increasingly assumed by the Government.

### ***Higher-Level Strategic Coordination***

MONUSCO has an important role to play to ensure effective high-level strategic coordination and advocacy in the fight against impunity and should, in this regard, make the best use of the good offices of the Special Representative of the Secretary-General (SRSG) and the political leverage of DPKO in New York. In 2014, MONUSCO prioritized five high profile cases on the basis of the serious nature of the alleged crimes and the rank of the offenders. These five cases were the subject of high level advocacy by the Mission leadership and were brought to the attention of Security Council which urged the Government of the DRC to take action to investigate these cases and bring the perpetrators to justice. One of these cases was the above-mentioned case of Colonel 106 who was subsequently convicted in December 2014 for crimes against humanity and sentenced to life imprisonment and another was that of General Kakwavu who was convicted in November 2014 by the High Military Court and sentenced to 10 years imprisonment for rape as well as war crimes. Other than the example of these five prioritized cases, it was less apparent to the Team how else the good offices of the SRSG were being used to advocate for improvements to the military justice system to address obstacles with regards to the prosecution of serious crimes and to what extent the Mission has been pro-active in advocating for the prosecution of other cases, particularly relating to high-level individuals, for which it did not receive a formal request from the Congolese authorities.

72. In 2014, JCS established at the Operations East level in Goma the Fight Against Impunity Working Group. This includes JHRO, CPS, United Nations Police (UNPOL), the Senior Women Protection Adviser and the Stabilization Support Unit, and is intended to not only ensure a

---

<sup>36</sup> Pro-bono Legal Aid Offices

coordinated approach to the fight against impunity but also to develop a mechanism to compile information on key cases and, thereby prioritize support to particular investigations and prosecutions (similar to the high-profile five referred to above). It should be noted, however, that this is an internal MONUSCO group intended to co-ordinate activities and strategies among MONUSCO sections and it does not involve external partners. At the national level, in 2013, as part of a number of groups planned to support security sector reform, EUSEC initiated a military justice working group to discuss broader issues relating to development of the military justice system and to harmonize international support. The group met several times in 2013 and 2014, albeit not frequently, and with some impetus from JCS, it is being revived to be held in Goma in June 2015.

73. One option worthy of consideration to address more strategic and higher level issues relating to the prosecution of serious crimes would be to establish a national-level PSC. Such a PSC, ideally collocated within the Office of the High Military Prosecutor, would help promote accountability of higher ranking officers, and support the development of policies and strategies applicable to the prosecution of serious crimes, such as a National Prosecution Strategy. Given the hierarchy of the Office of the High Military Prosecutor, such a PSC could support the national military justice authorities to handle the most sensitive cases in the provinces, for example, to prosecute a high ranking regional commander that the local prosecutor could not easily prosecute.

#### ***Recommendations***

- ***The national military justice authorities should take a stronger role in the coordination of the different partners by chairing or co-chairing the cadres de concertations, with the PSCs playing more of a secretariat or facilitation role.***
- ***An effective and functioning higher level strategic and policy level working group should be convened to address broader issues relating to the investigation and prosecution of serious crimes such as, mapping of serious human rights violations, cases to prioritize, the identification of needs and resources, addressing political blockages and differences in approaches, and the future direction and focus of the PSC programme more generally.***
- ***Subject to support from the national authorities, MONUSCO should consider establishing a national-level PSC, ideally collocated within the Office of the High Military Prosecutor, to help promote accountability of higher ranking officers, and support the development of policies and strategies applicable to all PSCs, such as a National Prosecution Strategy.***

#### **c) Key Substantive Issues**

A number of other important and outstanding substantive issues were considered by the Team and discussed with various stakeholders during the mission. These issues, both individually and taken together, raise important questions about the scope and implementation of the PSC Programme. Many of these matters are ones that need to be further discussed and addressed at the policy, strategic and political level. These are summarized as follows:

### **Lack of a Clear Procedural Right of Appeal and the Imposition of the Death Penalty**

74. The absence of a clear appeal mechanism for cases tried before the *Cour Militaire Opérationnelle*, remains an ongoing justice and human rights concern. This is particularly egregious in cases where the death penalty is imposed, albeit not implemented. Although there is a school of thought in DRC that the general right of appeal provided for in the Constitution should override the absence of an explicit right of appeal, this is by no means clear. There is currently a draft proposed law to bring the *Code Pénale Militaire* and *Code Judiciaire Militaire* in conformity with the Constitution to establish a right of appeal from judgments of the *Cour Militaire Opérationnelle*.
75. In addition to the appeal issue, another key and related concern is whether the United Nations should be supporting the investigation and adjudication of cases that might result in the imposition of the death penalty. To date, 39 death sentences have been imposed during the lifespan of the PSC Programme, although a moratorium has been in place in respect of carrying out these sentences. In general, “the United Nations should not... directly participate in any tribunal that allows for capital punishment”.<sup>37</sup> PSC officers meet with national counterparts in relation to individual cases, advising and/or requesting that the death penalty not be imposed. There was limited information readily available to the Team confirming that all of these 39 cases meet the "most serious crimes" test as set out in Article 6(2) of the International Covenant on Civil and Political Rights - a treaty to which the DRC is a State party. Furthermore, the fact that the death penalty is part of the law, albeit not implemented, has implications for extradition requests made to other countries by the Congolese authorities. In the case of Nkunda (CNDP rebel group), for example, Rwanda rejected an extradition request on the basis that DRC still imposed the death penalty.
76. While recognizing that the support provided by the PSCs to the Congolese military justice system is an important part of the fight against impunity for the most serious cases, the extent to which overall United Nations support for that system complies with its Human Rights Due Diligence Policy (HRDDP) is a matter for further consideration and reflection at the senior level of the Mission and United Nation HQ in New York and Geneva.

### **Prosecutions of High Ranking Officials**

77. The jurisdiction and competence of a military court depends on the rank of the accused. In the first instance, a *tribunal militaire de garnison* may only prosecute soldiers up to the rank of captain. The highest ranking officers (generals) may only be tried by the High Military Court. Furthermore, judges and military prosecutors participating in court proceedings must be of an equal or higher rank than the soldier facing justice. As a consequence, some of the highest ranking officers may benefit from de facto immunity because of the lack of military personnel of equal or superior rank to investigate, prosecute and adjudicate over their cases.<sup>38</sup> Some serious human rights abuses committed by senior members of the armed forces have gone unpunished because of this rule. This is another area where the leverage of the Mission leadership may be

---

<sup>37</sup> See Guidance Note of the Secretary-General : United Nations Approach to Rule of Law Assistance (2008) Para A.1

<sup>38</sup> If there are no sufficiently high-ranking magistrates, then the court can make a request to the High Military Court to designate sufficiently high-ranking magistrate to preside over the case. However this procedure is cumbersome and time-consuming

necessary to ensure the nominations of suitably high ranking magistrates to investigate and prosecute the highest ranking officers.

### **Legal Defence**

78. Providing for effective legal defence for indigent defendants is an essential part of combatting impunity. This not only ensures compliance with fair trial standards, but also improves the general functioning of the legal process. The presence of experienced and competent defence lawyers results in prosecutors and judges better performing their functions. The MONUSCO/UNDP project included a component to ensure indigent defendants charged with serious crimes have the representation of competent defence counsel including the provision of support to local bar associations and pro-bono legal assistance offices (BCGs), the training of lawyers and collaboration with bar associations to provide pro-bono representation for defendants through logistical support and, importantly, the provision of daily subsistence allowance (DSA) to attend court. However, this component of the project was deliberately not implemented by MONUSCO because of the perceived conflict of interest of the PSCs in advising the prosecution while also providing support and advice to defence counsel.
79. Although the project has had positive results, in particular in relation to the provision of representation in court by defence lawyers and capacity building of lawyers, there remain concerns about the project's disproportionate support to prosecutions when compared to the more limited support provided to defence advocates. The military justice system itself does not adequately cater for the rights of the defendant. Defence lawyers usually receive limited notice of a hearings and limited time to review the files before having to represent their clients.
80. One other gap identified by the Team related to the attendance of defence witnesses at mobile court hearings. In one high profile case, the defendant complained about the inequality of arms and the inability to conduct his defence in light of the unavailability of means to fund the attendance at court of his defence witnesses.<sup>39</sup> UNDP also highlighted the need to enhance capacity building programmes for pro-bono defence lawyers. The Team discussed this issue with UNDP and it is understood that the second phase of the project will include enhanced support for legal defence.

### **Court Administration**

81. Another area of the military justice system where support needs to be further strengthened is that of court administration, including establishing a structured efficient and uniform evidence and data management system. This was highlighted by the military justice officials the Team interviewed in Goma, Bunia, Bukavu and Kinshasa. JCS currently has two court management experts (GPPs) and two more are in the process of being deployed. These experts are not part of the PSC programme as such, but work within JCS to support both the civilian and military justice systems. The activities of the two experts have focused on providing specific support to particular courts. One of the planned outputs of the MONUSCO/UNDP project was to establish an evidence and data management system, which for various reasons was not achieved, but is expected to form part of the next phase.

---

<sup>39</sup> Assistance for defence witnesses to attend was ultimately provided by the PSC programme

### **Corresponding Support to the National Prison System**

82. The issue of pre-trial detention and sentence enforcement poses additional challenges that require particular attention in such prosecution support programmes. In September 2013 a lieutenant colonel of the FARDC, Felix Djela, alias Bravo Tango, escaped with another military inmate from Bukavu Central Prison. He had been sentenced to life imprisonment for acts including murder and rape. MONUSCO documented that 1646 prisoners escaped from DRC prisons in 2014, including the escape of 288 inmates from Bukavu prison in June 2014 and of 326 persons from the prison of Butembo in October 2014.
83. The last two years have seen an increasing number of long-term sentences, up to life imprisonment, imposed on high profile defendants found guilty of serious crimes, including crimes against humanity. In addition, 39 defendants have been sentenced to death while a number of high profile accused are currently in pre-trial detention, thereby imposing significant strains on an already poorly functioning and under-resourced prison service. In March and April 2015, the PSC programme provided technical support to the Cour Militaire Supérieure of North Kivu in convening *audiences foraines* at Beni and Butembo, North Kivu province, to hear the appeals brought by FARDC and PNC elements earlier convicted on charges including murder, rape and armed robbery. One case was adjourned due to the escape of the appellant.
84. This highlights the fact that efforts to combat impunity through such programmes inevitably require corresponding support to build the capacity of the national prison system to ensure secure and safe conditions of detention, particularly for individuals detained pre-trial and those sentenced to long terms of imprisonment for serious human rights violations.
85. The PSC Programme itself does not provide support to the national prison system although this has been part of the broader area of support provided by the Mission (formerly under the Corrections Advisory Unit and more recently by JCS, since it was formed by the merger of the former justice and corrections sections in September 2014). The need for additional targeted corresponding support to the prison service should be taken into account when developing a PSC programme. Comprehensive security risk assessments in coordination with the police, courts and security services are required to ensure the effective classification and separation into respective categories of such high profile and long-term detainees. This needs to be reinforced with internally-initiated control risk assessments focussing on improved physical security structures, complimented with a more positive staff-prisoner relationship and effective intelligence-gathering, taking into account throughout respect for prisoners' fundamental human rights.
86. MONUSCO, through its corrections component, has contributed in the past to upgrading the infrastructure of Ndolo military prison in Kinshasa, where the most senior military prisoners are often housed, and makes use of the mission QIP budget to undertake some prison infrastructure upgrades elsewhere. Corrections staff also provide daily mentoring to prison directors on security issues and, in some cases, staff training. For example, JCS staff are currently providing a series of training sessions on the use of the DPKO Prison Incident Management Handbook. Similarly, corrections mentoring has included topics such as the development of basic vocational training schemes to reduce idleness and the potential to plan escapes and threaten prison security.

### **Crimes Covered by the PSC Programme**

87. The available data on the activities of the PSCs indicates that the majority of the assistance provided to date relates to cases not involving international crimes. Out of the 97 cases supported by the PSCs since their inception, less than 10 per cent of those relate to international crimes. Complementarity with the International Criminal Court (ICC) is essential.<sup>40</sup> Therefore enhancing the capacity of investigative magistrates to collaborate with the ICC should be a priority. Even though many of the crimes investigated and prosecuted may have been classified as ordinary crimes, a more thorough analysis of the pattern of crimes committed and the identity of those responsible including at the higher level of command could, in certain cases, elevate them to international crimes.
88. The original MoU did allow for some flexibility for the PSC Programme to deal with ordinary crimes of a serious nature. However, the fact that the work of the PSCs has so far focused predominantly on such ordinary crimes is a notable characteristic of the programme to date; it was established, according to the MoU, with the clear objective to support the prosecution of serious international crimes as listed under the Rome Statute. The Team was informed that the scope of the MoU had been recently expanded slightly in order to grant clearer authority to the PSCs to support the prosecution of those serious but “ordinary” crimes the commission of which poses a threat to peace and stability. These may include transnational crimes and crimes relating to the exploitation or pillaging of natural resources. As there is no mention in the mandate to the prosecution of “international crimes”, the Team recommends that the focus should be on support for the prosecution of those crimes that have, or may have, a direct impact on stabilization, peace and security in conflict-affected areas in the Eastern DRC. The scope of the crimes to be covered by the Programme therefore remains an importance political, policy and operational issue that will need to be carefully monitored and reviewed by the Mission leadership.
89. A number of interlocutors referred to the need for the Congolese authorities to develop, with the support of MONUSCO, a national prosecution strategy. This would enable the DRC to prioritize the investigation and prosecution of crimes that have the biggest impact on the consolidation of the peace, stability and security. Undoubtedly, international crimes fall within this definition. However, economic crimes, such as pillaging of natural resources that fund the commission of international crimes and perpetuate the existence of warlords, also fall within this definition. Such a strategy could also help identify the resources available and required to efficiently investigate and prosecute such crimes. The best possible investigative strategies should be adopted as a matter of policy with investigators and prosecutors being given clear direction and guidance on how to proceed.

### ***Recommendations***

- ***MONUSCO should monitor and review the scope and focus of the PSC Programme, in particular the crimes/cases the investigation/prosecution of which are deemed the most appropriate for PSC support.***
- ***The JCS, including through the MONUSCO/UNDP Project, should strengthen support to the military justice system in the area court administration, including establishing a structured, efficient and uniform evidence and data management system.***

---

<sup>40</sup> DRC is a party to the Rome Statute of the International Criminal Court

- *MONUSCO should advocate for and consider supporting the development of a National Prosecution Strategy*

#### **d) International Personnel**

##### ***The Recruitment and Deployment of Government Provided Personnel***

90. Thirty international GPPs within the JCS of MONUSCO form the core of the PSC Programme. These are experts currently in government service in their home countries who are nominated by their respective governments, through their Permanent Missions in New York, to provide advisory, capacity building and mentoring support to national counterparts based on their experience in the prosecution or investigation of serious crimes.
91. The contributing Member State is responsible for paying the salary, entitlements and allowances for the duration of the deployment. MONUSCO pays the Mission Subsistence Allowance (MSA). The selection is undertaken through interviews organized jointly by CLJAS of OROLSI/DPKO in conjunction with the Police Division (PD) and the Office of Military Affairs (OMA) in New York, MONUSCO and the Congolese military justice officials. The involvement of national counterparts in the selection of GPPs is a novel aspect of this programme that helps to make it more inclusive.
92. Once deployed, the selected personnel serve a tour of duty (TOD) of one year, renewable once. On an exceptional basis and according to operational needs the TOD can be renewed for a third year. All experts should have experience in the investigation or prosecution of serious violent crimes, including sex crimes, and, ideally, war crimes and crimes against humanity. In reality, as these personnel come from government service, very few have direct experience in international crimes. Although this is a perceived weakness in the PSC Programme, it could be addressed by the inclusion of a small cadre of experts in international crimes at the Operations East-level in Goma, possibly through the three UNDP consultants providing specific advice on international crime related issues to the seven PSCs as and when required (see paras 117-118 below)
93. The fact that the PSCs include civilian, police and military officers imposes different provisions and methodologies relevant to their nomination, selection, deployment and extension. As the entity responsible for providing backstopping support to justice and corrections components in peace operations, CLJAS has the lead in requesting nominations of civilian justice experts, processing their selection, deployment and extensions. PD and OMA have the lead in requesting the nomination of police and military experts respectively, and processing their deployments and extensions. However, given that the deployed officers substantively fall under the authority of the Chief of JCS, CLJAS retains the responsibility to select police and military experts and inform PD and OMA which officers are to be recruited. While deployed, military justice experts operationally fall under the command of the MONUSCO Force Commander, they report on substantive issues to the Chief of JCS and are under his/her overall supervision. The position of the police officers that form part of the PSCs is similar.
94. One of the main challenges faced by the PSCs is the difficulty filling vacancies and deploying selected personnel in an expeditious manner. Currently, none of the PSC have all their posts filled. At the time of writing, out of 30 authorized posts, only 15 were encumbered, of which six

were civilian, four military and five police posts. This amounts to a vacancy rate of 50 per cent. Seven additional PSC officers have recently been selected and will be deployed shortly, thereby reducing the vacancy rate to 27 per cent. Continuous challenges have been faced in terms of filling these positions, including insufficient nominations by Member States for these posts, challenges in identifying candidates with the correct qualifications, experience and skills for the posts, and challenges with the selection and deployment process.

95. Currently, the number of Member States that provide such nominations is low. As of April 2015, PSC personnel are provided by a total of 11 countries. While language might be a contributing factor, there are a number of Member States that could provide highly skilled military justice and police officers to serve with the PSCs but choose not to do so.
96. The applicability of different provisions (civilian, police and military) to staff that need to function as part of one team and share the same level of qualification and experience does not facilitate the process. While there are no general limitations on the maximum age of the civilian experts, military experts can be deployed only until the age of 55 and police until the age of 62 years (with preference given to officers younger than 55 years). The application of a maximum age limit of 55 years decreases the number of sufficiently qualified candidates that can be nominated for the posts.
97. The vacancy levels are not the same between the three groups of PSC staff. Broken down per category, the vacancy rate as of 29 April 2015 was 25 per cent for civilian, 78 per cent for military and 50 per cent for police staff of the PSC. The reason for the disproportionately higher number of vacant posts on the police and military side may be connected to the perception that the work of the PSC is inherently judicial and thus not an obvious priority for PD or OMA, as well as the fact that while civilian officers are processed by CLJAS under a single set of guidelines, military and police officers are processed in conjunction with CLJAS and OMA or PD respectively.
98. Force generation guidelines and practices differ significantly between CLJAS, OMA and PD. In accordance with its procedures, OMA approaches Permanent Missions and requests nominations of officers alongside their full deployment documentation, conducts technical review of applications, selects and deploys officers. CLJAS on the other hand requests nominations (without deployment documentation), technically clears and interviews candidates, placing successful candidates on a roster and after a candidate is selected from the roster his or her deployment documentation is requested and the candidate deployed. The combination of the two different approaches in the case of military PSC officers results in nominations by Permanent Missions to OMA alongside the full deployment documentation, submission of received nominations after a first technical review from OMA to CLJAS, a second technical review and interview by CLJAS, rostering and selection by CLJAS, notification by CLJAS to OMA with a request for the deployment of the officer. Given the complexity of the process, by the time the deployment is initiated by OMA the deployment documents received at the moment of the nomination would usually have already expired, requiring OMA to re-approach Permanent Missions, who in turn contact their capitals with instructions for the officers to retake medical exams or renew other documents. This process clearly needs to be streamlined and made more efficient.

99. Another potential reason for the high vacancy rate is the discrepancy in the possibility to extend already deployed officers. Military officers of the PSCs, in most cases, have only been allowed to serve for a period of up to two years, while the police officers in the PSCs have served for three or more years as an extraordinary measure to allow for continuity of activities. While the continued extension of GPP experts is not recommended, the possibility for officers remaining in place until a suitable replacement is identified allows not only for continuity but also safeguards accomplishments and facilitates the transfer of knowledge and institutional memory to incoming officers.
100. The current vacancy rate of PSC personnel and the difficulty in finding the required expertise from the lists of those nominated negatively impacts on the programme and needs to be urgently addressed. It is recommended that CLJAS, PD and OMA, in consultation with the Mission, review the ToRs for the different posts within the PSCs. Introducing flexibility in terms of the current GPPs posts is recommended, including, for example, to allow officers that are currently not in active military service but have extensive experience in military justice to be nominated and selected as military justice experts with MONUSCO, including the possibility to be temporarily re-uniformed during their service to assure better access to national counterparts.
101. Once the ToRs have been agreed, CLJAS, PD and OMA should immediately send out a call for nominations of candidates to Permanent Missions. Coordination between CLJAS, PD and OMA on the subject of PSCs staffing should be strengthened to streamline the process and decrease the time needed for selection and deployment. Additionally, options should be explored at the senior management level in New York for adopting a joint approach to requesting nominations, selections, deployments and extensions of PSC officers to allow for more expedient processing of PSC staff.
102. Messaging on the importance of the PSCs and the need for qualified officers to be nominated for deployment should be strengthened and consistently included in discussions with key Member States both at the level of Permanent Missions in New York, as well as with Member States representatives in the DRC. Given the importance of the project and current needs, support should be sought jointly by OROLSI and OMA. Francophone Member States or Member States which are likely to have francophone civilian, military and police officers and who have not provided support to the PSCs to date should be specifically approached and encouraged to nominate candidates. Countries that have war crimes offices within their Attorney-General offices should also be targeted with a view to seeking the nomination of GPPs with international crimes experience. In this regard, increasing the visibility of the PSC Programme through periodic reports and other outreach efforts that highlight its achievements and impact, including up-to-date statistics of cases investigated, prosecuted and completed, is essential (see section 2 above).
103. Force generation is a labour-intensive task. Just one Force Generation Officer within CLJAS/HQ is responsible for liaising with the permanent missions of Member States, reviewing the TORs, preparing and sending notes verbales, reviewing nominations, conducting interviews, and initiating and monitoring the deployment for hundreds of officers, including corrections, military justice and civilian justice GPP to all United Nations peace operation for which CLJAS provides

backstopping support, in addition to addressing other broader force generation issues. This heavy workload, involving such a high number of officers to be recruited and deployed, inevitably impacts the efficiency of the process. Additional force generation capacity for CLJAS is therefore recommended so that Headquarters is staffed with at least two officers responsible for these tasks.

### ***Recommendations***

- ***MONUSCO, in collaboration with the Government and other relevant partners, should reassess the needs of national counterparts and review whether the current structure and composition of the PSCs needs to be maintained.***
- ***CLJAS should streamline GPP recruitment and deployment.***
- ***MONUSCO, in collaboration with CLJAS, should take steps to increase the visibility of the PSC programme, its work achievements and impact to help attract the nomination, by Member States, of GPPs and other required resources to the programme.***
- ***The Force Generation Capacity of CLJAS should be strengthened to at least two officers.***

### ***Other Modalities for the Flexible Deployment of Expertise***

104. The GPP process has proven to be a useful mechanism for deploying experts to form the core of the PSC programme. The GPPs come predominantly from countries in the region and are often not only familiar with the cultural background and speak relevant local languages, they also serve in similar functions in their government service and have, in many cases, experience in addressing challenges similar to those expected in the Mission area. However, one finding of the Team was that the over reliance on the GPP process (supplemented by only a small number of consultants) can inhibit the overall effectiveness of the programme. The GPP process may not be the best means for deploying certain types of expertise, particularly in the area international crimes.
105. To ensure the deployment of the right expertise at the right time in such prosecution support programmes, peace operations working closely with UNCT partners and through the Global Focal Point arrangement, should ensure that they can supplement their core staff on the ground by additional qualified expertise with the right skills and experience deployed on a flexible, on-demand basis.<sup>41</sup> These should not only include Mission GPPs and consultants provided by UNDP but also, possibly, temporary deployments or longer-term loan agreements with the ICC, ICTY and ICTR and other experts deployed under individualized memorandums of understanding with assistance providers outside the United Nations system, in particular bilateral partners<sup>42</sup>, regional organizations and civil society organizations. This can offer Member States, including those from the region, additional opportunities to provide civilian capacities in partnership with the United Nations. In order to access these capacities and to fund other immediate needs within the PSC programme, there should be adequate flexible budgetary allocation within the Mission budget, including access to the Mission and/or UN system trust fund, and other funding streams.

---

<sup>41</sup> See CLJAS Paper on the Flexible Deployment of Civilian Expertise – 6 December 2013

<sup>42</sup> It should be noted that the USA, Canada and the PBF provided such consultants at the start-up phase of the programme as did the UK and the UN team of Experts on Rule of Law and Sexual Violence in Conflict

### ***Recommendation***

- ***To ensure the deployment of the right expertise at the right time in such prosecution support programmes, a Mission should ensure that it is able to supplement its core staff and GPPs on the ground by additional capacities deployed on a flexible, on-demand basis, utilizing the Global Focal Point arrangement.***

### ***Co-location of GPPs with National Counterparts***

106. The co-location of PSC officers with national counterparts was considered in the early stages of the implementation of the PSC Programme and specifically referred to in the PSC Programme concept. Because of the lack of work space and related facilities, co-location has not yet been implemented. During the meetings the Team had with military justice officials, some requested that co-location be implemented as originally planned in order to strengthen the interaction between the PSC experts and their national counterparts. The team was informed that the *Tribunal militaire de garnison* of Goma has already allocated an office for the collocation of the Goma PSC. The envisaged co-location will bring added value to the partnership between MONUSCO and the national authorities in the fight against impunity. The Team welcomes the fact that implementation of the co-location is foreseen in the next phase of the PSC project.

### ***Induction Training and Guidance for GPPs***

107. All incoming GPPs undergo an induction training programme. Until late 2014, a one-week induction training conducted by national authorities took place in Kinshasa which focused mainly on the legal framework of the Congolese military justice system. However, this induction training became more difficult to organize after all incoming staff were brought into the Mission through Goma and not Kinshasa. The organization of a one-week induction programme remains a big imposition for national partners that could only be justified for a large number of new PSC officers at a time. JCS has agreed with national partners to now send incoming staff to Kinshasa for one day, or to organize an induction briefing with military justice authorities in Goma.
108. The new induction training should include a number of modules not previously covered. JCS should explore the possibility of including training techniques for the investigation and prosecution of international crimes, challenges and obstacles, the methodology of the PSC programme, guidance on mentoring, training on trial observation and on effective report writing.
109. In June 2011, the former Rule of Law Unit produced an induction guide known as the ‘Guide du Voyageur’ to help newly deployed PSC members familiarize themselves with the Congolese military justice system. Although described as useful by some PSC officers, the guide requires updating and does not provide guidance on practical issues relevant to the work of deployed officers such as on mentoring, reporting and trial observation. JCS is currently updating the package of induction material to be provided for all incoming staff, including PSC officers. The Team identified, in particular, the need for specific guidance and training for PSC officers on mentoring to ensure the effective transfer of experience, knowledge and skills to national counterparts.
110. At the same time, CLJAS, PD and OMA should reiterate the need for pre-screening of candidates for required skills and expertise to be conducted by Member States prior to

nomination, encourage Member States to nominate only highly qualified staff, as well as remind them of the need to provide officers with pre-deployment training, including on the specific functions they will perform within the PSCs in accordance with their terms of reference.

### ***Recommendation***

- ***Induction training programme for PSC officers should be reinstated and the ‘Guide du Voyageur’ updated to provide effective guidance and training on substantive and practical issues relevant to the work of PSC officers such as the investigation and prosecution of international crimes, reporting and trial observation. This should also include specific training on mentoring to ensure the effective transfer of experience, knowledge and skills to national counterparts***

### ***Role of UNDP-Funded Consultants***

111. Since its inception, the PSC Programme has consisted of PSC officers and consultants (funded variously by Canada/IOM, the UK, the US, the Team of Experts and EU/UNDP). Consultants provided under the MONUSCO/UNDP project were recruited to serve either as investigators-advisors or prosecution-advisors on the basis of the same terms of reference as the GPP PSC officers.
112. In discussions between the Team, JCS and UNDP there was broad agreement that different use should be made of the UNDP consultant posts to ensure that they play a more centralized technical role to help guide the work of the seven PSCs through the collation and analysis of information and statistics and the development of guidance and reports based on lesson learned, deficiencies and best practices identified through work in the field (see section 2 above).<sup>43</sup> There is also a need to address the shortage of expertise among the GPPs in the area of international crimes. This is now being addressed between MONUSCO and UNDP in developing the consultants’ terms of reference for the next phase of the MONUSCO/UNDP project.

### **e) Other Operational Constraints**

113. Other operational constraints have negatively impacted the efficiency and effectiveness of the PSCs. This programme and others like it will need to ensure that such constraints are anticipated and addressed early on. By drawing attention to these issues in this report it is also hoped that future programmes are not impeded by similar obstacles.

### ***Approval of Field Missions***

114. The PSC Programme relies for its effectiveness on the ability to flexibly deploy PSC officers alongside their national counterparts on field investigations and mobile courts. All mission staff travelling in-country need to have their travel approved. Missions for more than five days have required approval of the Director of Mission Support (DMS). Recently, in order to control spending, all in-country travel has required DMS approval. The same rules apply to all MONUSCO staff. For PSC officers it is particularly difficult to foresee the exact number of days

---

<sup>43</sup> To date the UNDP consultants have developed papers on the investigation of serious crimes in particular the recruitment of children

a specific investigation or *audience foraine* will take as it is not easy to anticipate in advance the number of witnesses, victims or suspects to be interrogated. As approval is given for field missions for fixed periods, if an extension cannot be obtained in time, the GPP expert(s) has to return to the duty station at the expiration of the period even if the investigation or the mobile court is still ongoing. This can significantly impact on the continuity of the support.

#### ***Disbursement of Funds to Support or Investigations and Audiences Foraines***

115. Military justice interlocutors indicated their appreciation for the support provided by the PSCs. However, with regards to the logistical support in particular, they highlighted that procedures for disbursements of MONUSCO/UNDP funds to support investigations and mobile court were lengthy and cumbersome. This has resulted in delays when serious crimes have to be investigated immediately after they are committed in order to ensure that evidence is preserved. Similarly, mobile courts have to be organized in a timely manner. The Team understands that UNDP is taking the necessary steps to review its internal procedures for the disbursement of funds and is also exploring the possibility to allocate emergency cash funds which can be managed by the PSCs themselves.

#### ***Integration of UNDP Consultants into the Mission – Inter-operability***

116. The joint project between MONUSCO and UNDP brings together the expertise and means of both organizations. This has included the co-location and integration of UNDP-funded consultants into the MONUSCO structure in line with the Global Focal Point arrangement. “This approach allows for the maximizing of strengths of both organizations while mitigating the impact of their weaknesses”.<sup>44</sup> Conflicting operational rules of UNDP and DPKO peace operation can delay the implementation of such joint arrangements. In general, it appears that within MONUSCO there have been no greater problems, in principle, in integrating the UNDP or other consultants into the MONUSCO structure, with access to IT equipment, email addresses and cars when compared to regular MONUSCO staff member. The Team welcomes the flexibility of Mission Support in this regard. The Team did, however, receive some feedback that indicated that, in practice, there were delays in the provision of this support, which proved particularly frustrating for PSC consultants who were only deployed for relatively short periods.
117. With the establishment of the DPKO/UNDP Global Focal Point in New York, there has been an increased emphasis on integrated teams and co-location both at HQ and in the field. A Global Focal Point Inter-operability Task Force was established by DPKO and UNDP in mid-2015 to review some of the inter-operability constraints that can impede progress in this area. The experience of the joint PSC MONUSCO/UNDP project, including the integration of UNDP consultants within the Mission structure is being included in this review.

#### **f) Outreach**

125. As anticipated in the original concept documents for the PSC Programme, the Team recommends the development of a structured communication strategy in collaboration with the Mission’s Public Information Office to raise awareness of the local population and the FARDC on the

---

<sup>44</sup> See Final Evaluation Report of (EU funded) Support to the military Justice through Reinforcement of the Prosecution Support Cells, January 2015

activities of the Congolese military justice system as supported by the PSCs. The communication strategy could include other initiatives such as the preparation of pamphlets to be shared with civil society groups and media coverage of *audiences foraines*.

#### **g) Potential Follow-up Support**

The Team identified a number of areas for which the UN HQ, the Justice and Corrections Standing Capacity of CLJAS and/or other partners could, subject to a request from MONUSCO and available capacity, provide follow-up support to the PSC Programme. Some of this work could be undertaken remotely;

1. Assistance and advice on finalization and dissemination of the SOPs on Prosecution Support Cells - There is already a draft in existence (dated June 2010) that was never finalized.
2. Development of guidance on the investigation and prosecution of serious crimes, including international crimes, taking into account the local context. This could involve an external expert accompanying PSC officers on investigations and *audiences foraines* to better understand the type of advice and support the PSCs provide or are asked to provide to their national counterparts.
3. Development of PSC-specific guidance on mentoring and advising techniques and good practices, drawing on material already developed by OROLSI.
4. Conduct an up-to-date mapping exercise, in collaboration with other partners, on the serious crimes alleged to have been perpetrated in Eastern DRC and those that have been, or are being, investigated and prosecuted.<sup>45</sup>
5. Development of a standardized reporting template and guidance for PSC officers to report on the investigations, prosecutions and trials they provide support on and observe.
6. Development of a template for a PSC Annual Report and the provision of assistance to MONUSCO to finalize an annual report for 2015 in December (or the budgetary year 2014/15).
7. Development of a new induction package and training module for PSC officers
8. Facilitation with external partners of a comprehensive capacity and training needs assessment of the Congolese military justice system.

---

<sup>45</sup> A mapping exercise was previously conducted by JHRO documenting crimes committed between 1993-2003

## D. ANNEXES

### a) List of interlocutors consulted

#### United Nations Interlocutors

1. Mr. David Gressly, Deputy SRSR Rule of Law/Operations East, MONUSCO
2. Mr. Pascal Champion, Police Commissioner/Acting Deputy SRSR Rule of Law/Ops East/OIC
3. Ms. Ilene Cohn, Chief of Office-DSRSR-Rule of Law/Ops East, MONUSCO
4. Ms. Stephanie McPhail, Chief Justice and Corrections Section, MONUSCO
5. Ms Harriet Solloway, Chief Legal Affairs, MINUSCA (former Chief, Rule of Law Section, MONUSCO)
6. Mr. Daniel Ruiz, Head of MONUSCO Goma Office
7. Mr. Jose Maria Aranaz, Head of the Joint Human Rights Office
8. Mr. Michel Benon, Chief of the Profiling Team Unit, JHRO, Kinshasa
9. Ms. Christine Kapalata, Acting Head of MONUSCO Office in Bukavu
10. Mr. John Meyers, Stabilization Adviser, Office of the DRSR-RoL
11. Mr. Ladislav Decoster, Rule of Law Adviser, UNDP, Kinshasa
12. Ms. Erica Bussey, Acting Coordinator, Transitional and Fight against Impunity Section, Joint Human Rights Office, Kinshasa
13. Mr. Henri Mashagiro Bonane, Project Manager, UNDP Goma
14. Mr. Herve Come Gogo, Senior Judicial Affairs Officer, MONUSCO
15. Ms. Hanan Talbi, Senior Expert, Protection Unit, JHRO, Goma
16. Col. Smarth Nagar, CMPU, Military Affairs Section of Goma
17. Mr. Mohamed Lamine NABE, Chief of Staff, UNPOL Goma
18. Mr. Coulibaly Souleymane Kafana, Head of JHRO Bukavu
19. Col. Sone Adjang Sone, Military Prosecution Adviser, PSC Coordinator
20. Col. Maj. Moussa Diallo, former PSC Coordinator
21. Col. Ridha Rezugui, UNPOL Investigation Adviser and Team Leader, Goma PSC
22. Mr. Simpore Marius, Civilian Justice Adviser and Team leader PSC Bunia
23. Ms. Adelaide Dembele, Civilian Justice Adviser, Team Leader PSC Bukavu
24. Ms. Kabuwo Dada, Associate Judicial Monitoring, UNDP, Goma
25. Col. Mamy Rasoanaivo, UNPOL Investigation Adviser, PSC of Bukavu
26. Mr. Nekoua Mampira, UNPOL Investigation Adviser, PSC of Bukavu
27. Mr. Nizar Shghaier, Head of the JCS of Bunia
28. Ms. Karine Ardault, UNDP Consultant, PSC Goma
29. Mr. Akoute Apolinaire Comlan, UNPOL Investigation Adviser, PSC Bunia
30. Mr. Kalaga Boureima, Court Management Experts, JCS
31. Mr. Peillet Jean Sebastien, UNDP Consultant, PSC Beni
32. Mr. Rodhou Hubert, Civilian Justice Adviser, PSC of Goma

33. Ms. Sophia Coelho Candeias, Judicial Officer, Team of Experts on the Rule of Law and Sexual Violence in Conflict (Formally Access to Justice Project Manager UNDP, Goma)

### **National Authorities**

1. General. Mutombo, Focal Point for the PSCs in the Ministry of Defense
2. Colonel. Mutanzini Toussaint, Attorney General and Chief of Staff, Office of the High Military Prosecutor;
3. Mr. Kilimpimpi Mwa Kilimpimpi Remy, Counselor at the High Military Court and Chief of Staff;
4. Major. Makelele, Substitut de Auditeur militaire supérieur Opérationnel du Nord-Kivu
5. Lieutenant-Colonel Jean Paulin Ntshaykolo Esosa Masele, First President of the Military Court for the North-Kivu;
6. Colonel Binena Serges, Président du Tribunal de Garnison de Goma ;
7. Colonel. Mwawau Cyprian, Auditeur militaire supérieur, Cour militaire Nord-Kivu ;
8. Major Kayuka, Acting president at the military Court of Bukavu;
9. Major Mirindi Theophile, Major Greffier, Military Court of Bukavu;
10. Major Kasha, Substitut de l'auditeur militaire supérieur du Sud-Kivu ;
11. Major Bayawa Jerome, Auditeur Militaire de Garnison de Bukavu ;
12. Capitaine Magistrat Jean Pierre Tshiteya, Président de Tribunal Militaire de Garnison de l'Ituri ;
13. Capitaine Christian Rubakare Safari, Substitut de l'Auditeur militaire de Garnison of Bunia.

### **Other Partners**

1. Ms. Roberta Del Giudice, Chargee de Programme Instrument Contribuant à la paix et à la Stabilité, European Union ;
2. Mr. Julien Tigolo, Coordinator Access to Justice, Avocats Sans Frontières, Goma
3. Mr. Jules Rhuhunenugu Nyanusheba, Responsable du programme Nord-Kivu, Avocats sans Frontières ;
4. Me. Murielle Kahatwa Amani, Chef de projet lutte contre les violences sexuelles, American Bar Association, Goma ;
5. Ms. Murielle Basofela, Administrative Officer, American Bar Association, Goma;
6. Ms. Nadine Sayida, Lawyer and Consultant, American Bar Association, Goma;
7. Ms. Raymond-Jetté Myriam, Criminal Justice Officer, International Center for Transitional Justice, Goma;
8. Mr. James Michel SONGA, Criminal Law Programme Officer, International Center for Transitional Justice, Goma;
9. Mr. Patient Kikwaya, Project Assistant, Avocats Sans Frontières, Bunia ;
10. Mr. Prince Byamungu, Project Assistant, RCN Justice & Démocratie, Bunia.

## **b) Reference Documents**

### **Reports**

1. UNDP, Support to the military justice through the reinforcement of the Prosecution Support Cells (PSC) Project, January 2015;
2. OHCHR/MONUSCO, Progress and Obstacles in the fight against Impunity for Sexual Violence in the Democratic Republic of Congo, April 2014;
3. MONUSCO, Best Practice Snapshot: Judicial Protection, 31 December 2014;
4. DCAF and UNESCO, Commission on Human Rights, Principles Governing the Administration of Justice through Military Tribunals, 2009;
5. Human Rights Watch, DR Congo: War Crimes by M23, Congolese Army, February 2013;
6. Human Rights Watch, Democratic Republic of Congo: ending Impunity for Sexual Violence, June 2014;
7. IOM, Support to the Prosecution Support Cells (PSC) Project by Provision of Funds for their Operations and Training;
8. OHCHR, Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003;
9. UNJHRO & MONUSCO, Analysis of the Human Rights Situation in 2014;
10. IOM, Final Report to the US Department of State, Bureau of International Narcotics and Law Enforcement (INL), Support to the Prosecution Support Cells (PSCs) by Provision of Funds for their Operations and Training

### **Guidelines**

11. DPKO/DFS Guidelines for Non-Uniformed Civilian Government-Provided Personnel on Assignment with the United Nations Peacekeeping and Special Political Missions, April 2015;
12. DPKO/DFS UNMEM Manual for the Selection, Deployment, Rotation, Extension, Transfer and repatriation of UN Military Experts on Mission in UN Peacekeeping Operations, December 2012;
13. DPKO/PD Guidelines for UN Police Officers on Assignment with Peacekeeping operations, June 2007

### **Other United Nations and Official Documents**

14. MONUSCO, Concept Note on the Prosecution Support Cells;
15. UNSC Resolution 1925 (2010) on MONUSCO;
16. Child Protection Section, Accountability of perpetrators of recruitment and use of children, Project Proposal, 23 March 2015;
17. Memorandum of Understanding between the United Nations Organization Stabilization Mission in the DRC Congo and the Government of the DRC on the Establishment of Prosecution Support Cells;
18. MONUSCO, (Draft) Standard Operating Procedure for the Prosecution Support Cells: Administration and Management Procedures, June 2011;
19. MONUSCO, Project document on Support to the Prosecutions Support Cells, June 2011;
20. MONUSCO, Request to Support MONUSCO Rule of Law-Prosecution Support Cells and Newly approved Posts (Inter-Office Memorandum), June 2011.