

PROJUSTICE

USAID/PROMOTING AND STRENGTHENING JUSTICE IN THE DEMOCRATIC REPUBLIC OF CONGO PROJECT

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ACRONYMS

AFEMAC	<i>Association des Femmes Magistrats du Congo</i> (Association of Women Magistrates of Congo)
CDF	Congolese Francs
CDJP	<i>Commission Diocésaine Justice et Paix</i> (Diocesan Commission for Justice and Peace)
CEPROSOC	<i>Centre Pour la Promotion Sociale et Communautaire</i> (Center for Social and Community Advancement)
CFMUDEMA	<i>Collectif des Femmes Musulmanes pour le Développement de Maniema</i> (Collective of Muslim Women for the Development of Maniema)
CSM	<i>Conseil Supérieur de la Magistrature</i> (High Council of the Judiciary)
CSM-PS	CSM Permanent Secretariat
CSO	Civil Society Organization
DAI	Development Alternatives, Inc.
DRC	Democratic Republic of the Congo
EFRPJ	<i>École de Formation et de Recyclage du Personnel Judiciaire</i> (School for the Training and Redeployment of Judicial Staff)
FOMEKA	<i>Fondation Monseigneur Emmanuel Kataliko</i> (Monsignor Emmanuel Kataliko Foundation)
FY	Fiscal Year
HBM	<i>Haki za Binadamu-Maniema</i> (Space for Human Rights-Maniema)
IDLP	<i>Institut pour la Démocratie et le Leadership Politique</i> (Institute for Democracy and Political Leadership)
LBA	Lubumbashi Bar Association
LDFC	<i>Ligue pour les Droits de la Femme Congolaise</i> (League for the Rights of the Congolese Woman)
MOJHR	Ministry of Justice and Human Rights
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	Non-Governmental Organization
OCET	<i>Œuvre Communautaire pour l'Education pour Tous, Bukavu</i> (Community Action for Education for All, Bukavu)
PCC	Pilot Court Coordinator
PROSADEF	<i>Promotion pour la Santé de la Femme et Enfant</i> (Promotion of the Health of Woman and Child)
RD	<i>Role Disciplinaire</i> (Disciplinary Case)

TGI	<i>Tribunal de Grande Instance</i> (Court of First Instance)
UCB	<i>Université Catholique de Bukavu</i> (Catholic University of Bukavu)
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
VISO	<i>Vision Sociale</i> (Social Vision)

EXECUTIVE SUMMARY

COMPONENT 1

- The technical and financial support for the Disciplinary Boards of the High Judicial Council (*Conseil Supérieur de la Magistrature*; CSM) was particularly strong during the quarter, with support provided to two board hearings in Bukavu and one in Kindu.
- During this quarter, the project held three coordination meetings with the CSM on January 23, March 12, and March 26, 2012. The meetings focused on strategic planning, budget management, and overall coordination of activities.
- During this quarter, ProJustice continued to work on compilation of the Judicial Code. The project is working on harmonizing the overall text and adding the circulars.

COMPONENT 2

- ProJustice completed three training workshops in computer literacy for the 18 staff of the Ministry of Justice and Human Rights (MOJHR) assigned to the School for the Training and Redeployment of Judicial Staff (*École de Formation et de Recyclage du Personnel Judiciaire*; EFRPJ).
- ProJustice supported the EFRPJ in the organization of two training workshops for clerks and prosecutors' secretaries in Katanga Province from February 13–17 and February 20–24, 2012. The courses are aimed at strengthening the capacity of trainers and supervising EFRPJ staff in the implementation of continuing education activities. The workshops took place in Lubumbashi, with 15 participants in each (9 men and 6 women).
- During the quarter, ProJustice supported the CSM and MOJHR in three aspects of budget management: monitoring the implementation of the delayed 2011 fiscal year (FY) judicial budget; development of budget estimates for FY 2013; and continued collection of budget implementation data for strategic planning.

COMPONENT 3

- In this quarter, ProJustice archived closed cases in Bukavu in conjunction with court staff. In total, 2,850 records were archived: 1,627 cases at the court of first instance (*Tribunal de Grande Instance*; TGI) and 1,223 files at the court of appeals. In Bandundu, ProJustice also assisted in organizing 51 current case files in conjunction with the clerk of the TGI.
- ProJustice worked with the Lubumbashi court in March 2012 to release folders and archival boxes that had been held by the customs service for more than a year. These items were recovered through the combined efforts of ProJustice and the new judicial authorities of Katanga Province.
- Since January 2012, two information kiosks have been functioning in Kindu and Lubumbashi with ProJustice support. Staff assigned to these kiosks provide information to citizens and guide them through the legal process, improving access to justice. During the quarter, 311 people benefited from these services.

COMPONENT 4

- ProJustice provided technical and financial support to the Kindu Court of Appeals in the organization of open house days at the courts held on January 25 and 26, 2012. These open house days increased the public's knowledge and understanding of the judiciary. ProJustice

produced 400 brochures explaining the organization and operation of the courts and offices in Maniema Province, and these were distributed at the open house days.

- ProJustice trained new partner organizations on grants management and signed a total of seven grant agreements with partners in Bukavu, Kalemie, Kindu, and Lubumbashi.
- From February 1, 2012 to March 24, 2012, the Collective of Muslim Women for the Development of Maniema (*Collectif des Femmes Musulmanes pour le Développement de Maniema*, CFMUDEMA), a ProJustice grantee, conducted 38 awareness-raising sessions about violence against women and women's access to justice. These were held in public settings (churches, schools, hospitals, markets, etc.) in neighborhoods of Kindu. A total of 1,163 people attended the sessions (640 women, 217 men, and 306 children).

WINDOWS OF OPPORTUNITY

The renovation works at the Kindu courthouse funded through Windows of Opportunity neared completion during the reporting period. Although small details remained to be finalized, on January 25, 2012, ProJustice elected to organize an official presentation ceremony to coincide with a scheduled monitoring visit by USAID to present the renovated works to the provincial judicial and political authorities.

1. QUARTER 14 – ACTIVITIES AND RESULTS

1.1. COMPONENT 1: SUPPORT THE ESTABLISHMENT OF NEW JUDICIAL INSTITUTIONS

1.1.1. Component 1A: Establish Transparent Procedures for the Recruitment, Selection, Discipline, and Promotion of Magistrates

Transparent, Merit-based Criteria for the Recruitment, Selection, Discipline, and Promotion of Magistrates Adopted and Implemented by the CSM

Participation of Women in the Magistracy

Despite treaties, resolutions, international conventions, and constitutional and statutory provisions in favor of women, female magistrates are underrepresented in the CSM and the judiciary in the Democratic Republic of the Congo (DRC). Only four of the 133 members of the CSM are women, and none of the members of the CSM Permanent Secretariat (CSM-PS) are women. Only 2 of 26 members of the Supreme Court are women. Of the 215 courts and prosecutor's offices of the DRC, only five are headed by women. No women serve at the High Military Court or in the office of the Prosecutor General of the Armed Forces of the DRC.

One of ProJustice's primary tasks is to establish transparent mechanisms for recruitment and promotion of magistrates. If this is successful, the DRC will have more competent magistrates and better justice overall. An important part of this effort is increasing female representation.

Last quarter, ProJustice organized a workshop on the involvement of women judges in the judiciary. Following the workshop, the Association of Women Magistrates of Congo (*Association des Femmes Magistrats du Congo*; AFEMAC) held a meeting on January 9, 2012, at the Kinshasa-Gombe Commercial Court to develop strategies for establishing a list of women willing to hold positions of responsibility within the judiciary as recommended by the first president of the Supreme Court and president of the CSM. Following this meeting, the committee agreed on the goal of a larger number of women participants in each jurisdiction of the courts of appeal in the DRC, and as of this writing, was preparing a draft of the list to submit.

Technical Assistance to CSM Disciplinary Boards

The majority of magistrates in the DRC have limited knowledge regarding laws providing for disciplinary proceedings against magistrates who are in violation of their code of ethics. Disciplinary boards, which are an organ of the CSM and adjudicate alleged breaches of ethics and professional conduct codes, often come to inconsistent interpretations of how the laws should be enforced. Despite a national legal system, there is no consistent enforcement of disciplinary rules.

The internal regulations of the CSM provide that disciplinary boards should each be granted US\$10,000 annually to cover their operating costs, but the Congolese Government has never allocated money to these bodies. In addition to the lack of state funding, heads of jurisdictions and offices (presidents of the courts and public prosecutors) generally ignore disciplinary procedures.

To help overcome these deficiencies, ProJustice has been providing technical and financial assistance to the disciplinary boards. Between January and March 2012 the project provided technical and financial support for CSM disciplinary board hearings in Bukavu and Kindu.

Bukavu Disciplinary Board

ProJustice supported five disciplinary board hearings in Bukavu on January 27 and 28, 2012 (*see Attachment 1*). Of the five cases, four were dismissed due to procedural errors or failure to appear of the accused magistrate. Given the lack of success in arriving at decisions, the disciplinary board in Bukavu was singled out by ProJustice as needing further support. A meeting was held in Bukavu on February 6, 2012, attended by the first president of the Bukavu Court of Appeal, the president of the Provincial Disciplinary Board, and ProJustice representatives. At the meeting, ProJustice representatives expressed their concerns about the proceedings in Bukavu. In addition to the lack of decisions reached during the January hearings, the head of the Bukavu disciplinary board was one of the magistrates charged with an offense being considered by the disciplinary board, but the first president had taken no action to replace him; this violates the procedural rules of the disciplinary board. The project suggested that he be removed from his position as head of the disciplinary board, and the permanent secretary of the CSM instructed his administration to prepare a letter to change the head of the Bukavu Disciplinary Board (*see Attachment 2*).

The project also proposed to the permanent secretary that the president of the Supreme Court intervene and order a rehearing of these cases. On February 13, 2012, the president signed a directive on the administration of disciplinary boards, warning that any president of a disciplinary board who attempted to cover up a disciplinary offense by a magistrate on spurious grounds of procedural irregularity will make himself or herself the subject of disciplinary proceedings. This letter was circulated to presidents of all appeals courts and chairmen of all disciplinary boards in the DRC.

To address these failures on the part of the disciplinary board in Bukavu, and to prepare for new hearings scheduled for March 2–3, 2012, the project provided the disciplinary board with model decisions in disciplinary matters, drawing on the work of the Bandundu Province disciplinary board supported by ProJustice.

At the disciplinary board hearings in Bukavu in March, four cases were heard including two cases from the January session which were previously dismissed for procedural error. The board rendered decisions in all four cases, with three accused magistrates convicted and given sentences and one acquitted due to lack of evidence. *Case details are provided in Attachment 1.*

Coordination Meetings between CSM and ProJustice

ProJustice holds regular coordination meetings with the CSM to ensure that activities and the organization in general continue to function as expected. During this quarter, the project held three coordination meetings with the CSM, on January 23, March 12, and March 26, 2012.

Coordination Meeting on January 23, 2012 (*see attachment 3*)

The meeting on January 23, 2012 addressed three key points:

- Training of newly posted magistrates of peace courts (replacing deputy prosecutors appointed in 2010)
- Training in strategic and operational planning
- The annual report of the judiciary

Training of Peace Court Magistrates

Meeting attendees made the following decisions:

- Training will be conducted early in the careers of justices of the peace; following an evaluation, additional trainings can take place.

- Training will be conducted by the CSM, not by ProJustice.
- Training will be held in the jurisdiction of each court of appeal.
- The trainers will be appointed in the jurisdiction of each court of appeal.

Training in Strategic and Operational Planning

The CSM asked that the ProJustice expert in judicial finance and budget to complete the ongoing training cycle (focused on budget management) through a series of practical trainings in strategic and operational planning. The CSM proposed that the content of this training also include identification of priority areas of intervention for the judiciary over the next five years. This would assist in defining a plan that will be broken down into operational plans to be implemented by the courts and prosecutors' offices. Members of the CSM asked that this training benefit all provinces (including outside the ProJustice pilot sites). ProJustice explained that the project has no mandate to be involved outside the four pilot provinces.

Annual Report of the 2011 General Assembly of the Judiciary

The report was read and adopted by the CSM general assembly in May 2011, but has yet to be approved by the President of the Republic. The CSM has asked ProJustice to work through informal channels with the Presidency of the Republic to request that the report be approved for publication.

Miscellaneous

The CSM permanent secretary expressed concern about the current state of their office due to recent thefts. Additionally, the sign placed by ProJustice at the CSM-PS has been temporarily removed following damage in an accident.

During the meeting, ProJustice also reminded the CSM-PS of plans to support the South Kivu disciplinary board in hearing five cases in January 2012.

Coordination Meeting on March 12, 2012 (see Attachment 4)

On March 12, 2012, ProJustice held a meeting with the CSM attended by 15 people (14 men and 1 woman); the participants included ProJustice staff, members of the CSM Permanent Secretariat (CSM-PS) and the CSM at large, with the following agenda items:

- CSM general assembly scheduled for April 2012
- Technical and financial support to CSM disciplinary boards
- Preparation of the Judicial Code Compendium
- Magistrates' careers database
- Preparation of the 2013 judicial budget
- CSM communications plan
- Tripartite Committee: CSM–MOJHR–United States Agency for International Development (USAID)

Based on the outcomes of the meeting, ProJustice felt that the CSM was not ready to hold the general assembly on the first Monday in April as required by law. The two reasons are that the CSM lacks budget for the assembly and the fact that the CSM chairman will be absent. The project will continue supporting the CSM to organize these sessions, with a subsequent meeting planned for early May 2012.

The meeting also discussed support for the disciplinary boards, preparation of the Judicial Code Compendium, the magistrates' career database, the preparation of the fiscal year (FY) 2013

judicial budget, and the CSM's communication plan. Members of the CSM-PS reiterated their request for assistance on establishing a website for their organization.

Coordination Meeting on March 26, 2012 (see Attachment 5)

On March 26, 2012, ProJustice met with six members of the CSM-PS. The following is a brief summary of what was discussed at the meeting.

Preparation of the CSM General Assembly in April

The permanent secretary noted that he wanted the office of the CSM to determine the agenda for the general assembly.

Organization of Elections for New CSM Members for Three-year Terms

The permanent secretary asked the CSM member in charge of magistrates' careers to contact the first presidents in each jurisdiction to determine the election sites for new CSM members and which members should stand for election following the end of their term.

Updating the CSM Member Directory

The meeting discussed the need to update the CSM members' directory to include 48 new members to be elected in 2012, 11 new first presidents of the courts of appeal, 12 prosecutors general, 12 first presidents of military courts, and 12 senior military prosecutors. The participants agreed that the directory would be published every three years to avoid unnecessary expense.

Technical and Financial Support to the CSM Disciplinary Boards

The project plans to continue its technical and financial support for the CSM disciplinary boards by ensuring proper staffing and requisite materials for sessions.

Elaboration of the Judicial Code Compendium

ProJustice is continuing its work updating the Judicial Code Compendium by integrating circulars and instructions issued by various judicial authorities, including the first president of the Supreme Court and chairman of the CSM, the prosecutor general of the Republic, the first president of the Supreme Military Court, and the prosecutor general of the Supreme Military Court.

Preparation of the FY 2013 Judicial Budget

The participants agreed to use the same budget approved by the CSM general assembly in May 2011 for FY 2013. The draft has already been submitted to the Ministry of Budget.

Presentation of the Methodology for the Magistrates' Careers Database

The ProJustice consultant working on the magistrates' careers database (see next section) discussed his progress on the activity, noting that he has completed entries for 300 civil magistrates and 133 military magistrates. The CSM members emphasized the confidentiality of this data and asked the consultant to work closely with the CSM focal point for magistrates' careers. The participants suggested establishing a method by which the CSM would be able to update the database in real time.

New Career System for Magistrates Based on Transparent, Merit-based Criteria for Promotion

Data Collection on Magistrates' Careers

To properly manage the careers of magistrates, the CSM must have reliable and comprehensive information. However, the CSM has had no database to keep track of information on magistrates' careers such as years in service, promotions, etc. What little information does exist is obsolete and usually unavailable. To address this, ProJustice hired a consultant to design a comprehensive and easily-updated database for magistrate career records.

The consultant was hired for 10 days with the following tasks:

- Counting and verifying the gathered data
- Reviewing tools developed for data collection
- Creating, presenting, and testing a database
- Allowing for variables on collection forms in database
- Completing data entry

The consultant worked throughout March to enter new records in the system. As mentioned above, on March 26, 2012, he presented his work to members of the CSM-PS for guidance. The CSM focal point for magistrates' careers suggested arranging working sessions with the consultant and scheduled meetings for the next reporting period.

1.1.2. Component 1B: Establish Transparent Organizational Procedures for New Judicial Institutions

New Internal Procedures and Organizational Structure of Judicial Council Adopted and Implemented

The last judiciary code in the DRC dates back to 1986. It contains outdated laws and impedes the work of magistrates and lawyers. ProJustice Component 1 is currently recommending amendments to the code to include new laws, ordinances, orders, and circulars applicable to newly created judicial institutions such as the CSM, the Constitutional Court, the Court of Cassation (*Cour de Cassation*; the highest court of appeal), and juvenile tribunals. The project also held meetings with leaders in the Senate and National Assembly to explain the importance of codification and updating of the judicial code. The updated code will greatly facilitate the work of magistrates in the DRC.

New Internal Operating Procedures and Organizational Structures for the Constitutional Court Adopted and Implemented

Activities in support of the Constitutional Court have not yet started. The project continues to await the promulgation of the Law on Organization and Functioning of the Constitutional Court prior to implementing activities. The project is working through informal channels with the Office of the President to push for enactment of the law.

1.2. COMPONENT 2: EFFECTIVE AND TRANSPARENT MANAGEMENT OF THE JUDICIARY AND MINISTRY OF JUSTICE

1.2.1. Component 2A: Strengthen the Management Skills of Justice Institution Personnel and Training Institutions

Enhanced Management Skills of MOJHR Staff

Meetings with the School for the Training and Redeployment of Judicial Staff

ProJustice is striving to ensure the continuity and sustainability of its work in the DRC after the project ends by working closely with local partner organizations such as the EFRPJ. For more than 20 years, the administrative structure of this organization did not function properly. Many agency staff have never been trained in the use of modern equipment or technology. The project is working with the current staff and training them to take over project activities related to training judicial personnel.

On January 20, 2012, ProJustice had met with the secretary general of the MOJHR at which ProJustice staff raised the issue of training the administrative staff of the EFRPJ. The project had recently conducted training in basic computer use for 18 EFRPJ staff, covering the use of Microsoft Office (primarily Microsoft Word). ProJustice discussed how the training had improved the performance of the EFRPJ, and the secretary general thanked ProJustice for the quality of the training provided to the EFRPJ staff.

On February 21, 2012 ProJustice organized a meeting with the director of the EFRPJ to discuss capacity building for non-magistrate personnel. During the meeting, the project addressed three main points: the organization of the workshop for new clerks and prosecutors' secretaries in Bandundu Province; the presentation of participation certificates to 18 MOJHR administrative staff assigned to the EFRPJ; and organization of an internship at ProJustice for female staff who received training in office management. The EFRPJ had specifically requested additional training activities for women assigned to the school as a means of building their skills.

The director of the EFRPJ requested additional training, the need for which was noted during the last inspection by the first secretary of the Prosecutor General of the Republic and the representative of the chief clerk of the Supreme Court in June 2011. In response to this request, ProJustice assisted the EFRPJ in organizing training workshops in Bandundu Province from March 16 to 21, 2012. These are described under Component 2B, below.

Meetings with the CSM-PS

On January 23, 2012, ProJustice met with members of the CSM-PS. Eleven people participated in this meeting: six magistrates and members of the CSM-PS, including the permanent secretary, and five ProJustice staff members. This meeting addressed two main issues:

- Preparation of the training program for peace court judges
- Preparation of the training program for capacity building for administrative staff of the CSM-PS

During the meeting, ProJustice staff emphasized that the CSM should begin preparing for these programs, pending assignment of new magistrates by the CSM and the evaluation of training needs of administrative staff.

ProJustice delivered its draft training plan for new judges to the CSM-PS. The participants asked the head of training of the CSM to work with ProJustice to finalize a document that will be used by the CSM for the training of new peace court judges throughout the country.

The CSM-PS promised to identify administrative personnel to train and assess their training needs. The CSM appointed a magistrate for this purpose.

Staff Training for EFRPJ

ProJustice completed three training workshops in computer literacy for the 18 staff of the MOJHR assigned to the EFRPJ. The first group of three men and three women was trained in December 2011. Twelve staff (8 men and 4 women), divided into two groups, received training from January 9 to 13 and from January 18 to 24, 2012. Evaluations at the start of the course indicated that some of the trainees had never used a computer before the course. Thus, special attention was given to them.



Computer literacy training conducted for EFRPJ staff at the ProJustice offices in Kinshasa

The training ran over five days, with 30 hours of lectures and exercises on the description of the computer, powering up, operating programs, word processing, formatting, and printing, among other skills. Project staff members and a consultant provided the training. Training was evaluated daily to verify the relevance of the previous day's materials (*see Attachment 6*).

1.2.2. Component 2B: Enhance the Skills and Qualifications of Court Personnel

Standardized Initial and Continuing Training Programs for Court Personnel

Training Workshops for Clerks and Prosecutors' Secretaries in Katanga Province

ProJustice supported the EFRPJ in the organization of two training workshops for clerks and prosecutors' secretaries in Katanga Province (February 13–17 and February 20–24, 2012). The objective of the training was to strengthen capacity of trainers trained with the help of the project, and to supervise EFRPJ staff in the implementation of continuing



A participant at the Kikwit training session for clerks and prosecutors' secretaries receives training materials at the end of the workshop

education activities. The workshops took place in Lubumbashi, with 15 participants (9 men and 6 women) in each workshop. Local trainers,

trained and appointed by the EFRPJ, facilitated the workshops. The second training session was hosted by the new trainers, this time without supervision by former trainers from Kinshasa. During the 10-day period, local trainers completed instruction on each of the three modules on practical management of clerks' and prosecutors' secretaries' offices. At the end of the workshops, all participants received copies of the training modules.

Training Workshops for Clerks and Prosecutors' Secretaries in Bandundu Province

ProJustice supported the EFRPJ in the organization of two continuing education workshops for clerks and prosecutors' secretaries in Bandundu Province from March 16 to 21, 2012. In keeping with the goal of ensuring sustainability of activities following project closeout, the training focused on strengthening the capacity of trainers trained by ProJustice. The workshops were facilitated by two new trainers: Gregory Nkoumoung (prosecutor's secretary) and Tondo Npwo Ngemi Donatien (clerk). The project held the training in Kikwit, so that participants from remote sites such as Kenge, Idiofa, and Bulungu could attend.

Thirteen clerks (10 men and 3 women) and 12 prosecutors' secretaries (10 men and 2 women) participated in the training sessions, which focused on the practical management of clerks' and prosecutors' secretaries' offices and related responsibilities. As this was the first training session led by new trainers, the EFRPJ appointed Liuta Bokau, principal secretary to the prosecutor general of the Republic, to ensure accuracy in the training sessions. Additionally, the director of the EFRPJ, Henry True Kalombo, paid a visit to the training session. The closing ceremony was attended by authorities of the city of Kikwit, including a representative from the Kikwit mayor's office, the chairman of the Kikwit TGI, the chief prosecutor of Kikwit, a representative of the Kikwit peace court, and a representative of the Kikwit juvenile court. At the end of these workshops, all participants received copies of training modules prepared by ProJustice (*see Attachment 7 for speech of participants' representative*).

Evaluation of Lubumbashi Non-Magistrate Personnel Training Workshops

At the beginning of March 2012, ProJustice was asked to grade the answers to 180 certification exams sat by clerks and prosecutors' secretaries from Katanga Province. The exams are currently being reviewed and transcribed. ProJustice will complete its grading of the exams in April and will send the results to the EFRPJ for final evaluation. The school will then certify all candidates who earn a minimum of 60 percent on the exam.

Assistance to Law Schools

Through field visits, ProJustice staff have verified that professional gaps exist in the knowledge of some current magistrates, which are the consequence of poor academic preparation. One of the reasons for poor preparation is the lack of qualified teachers. At the request of law schools in the pilot sites, ProJustice made staff experts available so that new courses could be offered, including those on criminal law.

ProJustice staff and authorities of the Catholic University of Bukavu (*Université Catholique de Bukavu*; UCB) have planned a course on general criminal law for April 2–13, 2012. The project updated the course syllabus in March, and will distribute 100 copies to students, in addition to copies of the Congolese Criminal Code Compendium produced by ProJustice.

1.2.3. Component 2C: Improved Budget and Resource Management by the CSM and MOJHR

Judicial Budgets Adopted Through Transparent Procedures that Increasingly Reflect Real Operational Costs of Justice System Operations

Improved and More Transparent Financial and Resource Management Procedures Adopted and Implemented by the CSM and MOJHR

The Congolese judiciary has been unable to operate properly due to a lack of necessary funds. The funds approved are either not disbursed or are mismanaged. The main reasons for this are that judicial authorities often do not provide strong arguments that convince policymakers to approve the budget and present it to the Council of Ministers and Parliament. This has led to the reduction or even cancellation of budget lines, some of which are essential for the proper functioning of the judiciary. In addition, the payment process is nontransparent; money leaves the treasury and often fails to arrive at the judiciary. In practice, this leads to constant operational difficulties for courts, tribunals, and prosecutors.

ProJustice conducted the following activities this quarter to improve judiciary budget management.

- On January 13, 2012, at USAID's suggestion, ProJustice held a working session with the good governance expert from Development Alternatives, Inc. (DAI) to discuss his participation in a working group on monitoring the execution of the judiciary's budget. The expert agreed to participate in the group's work. From January 12 to 20, 2012, the project also helped develop the working group's terms of reference for monitoring budget execution. These define the group's duties and responsibilities, objectives, and approach to work.
- On January 23, 2012, ProJustice held a meeting with the CSM regarding training for magistrates and administrative staff in strategic and operational planning. During this meeting, the ProJustice finance and budget expert focused on the need for the CSM to plan its activities more effectively and to know its strategic areas of intervention. He also explained the need for training of judges and administrative staff of the CSM in strategic and operational planning based on verifiable data.
- On January 28, 2012, the project held a working session at the CSM-PS with CSM's head of training and the ProJustice expert in finance and budget. The session focused on the development of an educational brochure on strategic and operational planning of training.
- From February 1 to 15, 2012, the project continued to collect empirical data on the strategic business areas of the CSM to enrich the training module on strategic planning. Once completed, the module will be used to develop a strategic plan for the CSM on budget management and to establish budget lines for the Congolese judiciary. From February 16 to 29, 2012, the expert in budget and finance worked on tracking spending with all stakeholders, including CSM's director of finance and deputy budget director, the Ministry of Finance, and the president of the Independent Union of Congolese Magistrates.
- From February 20 to 25, 2012, the project assisted the CSM with the development of budget estimates for FY 2013 and the preparation of the draft budget for submission at the next CSM general assembly. The project also held meetings with officials of the budget monitoring division within the Ministry of Budget.

Collection of Budget Implementation Data for Strategic Planning

This quarter ProJustice conducted a study on budget implementation using FY 2011 as a baseline. Prior to beginning the study, ProJustice verified with the Ministries of Finance and Budget that the judicial budget was fully funded in October 2011. Although the judicial budget was fully funded, the funds were not fully disbursed or spent. The study indicated three major trends:

- Some budgetary allotments have not been disbursed.
- Others have been partially disbursed.
- Other allotments have been completely disbursed and in some cases a surplus existed.

Budget details are shown in Table 1.

Table 1. Judiciary Budget and Expenditure, FY 2011				
No.	Line	Allocation (Congolesse Francs, CDF)¹	Expenditure (CDF)	%
Budget Lines with No Expenditure				
1	Maintenance and Office Products	37,452,845	0	0
2	Printing, Copying, and Binding	40,500,000	0	0
Budget Lines with Partial Expenditure (Sample)				
1	Salaries for Non-Permanent Staff	4,710,413,613	3,629,641,858	77
2	Vehicles	112,350,000	88,226,182	79
Budget Lines Fully or Overspent (Sample)				
1	Salaries for Permanent Staff	32,653,300,124	32,653,300,124	100
2	Expenses and Services for Reallocation	34,240,088	62,480,176	182

The reason for non-disbursement on certain lines is not clear. The manager of the judicial budget did not provide sufficient explanation in response to questions on this issue. In the vehicle line, the difference between allocation and expenditure in the purchase of vehicles is justified by the relatively low purchase cost. Payment of salaries for non-permanent staff is delayed for unknown reasons. It should be noted that the budget line for office products exceeds the amount appropriated in Kinshasa, while in the provinces the expenditure rate is 0%. The primary reason for the apparent lack of expenditure is that the judiciary budget is integrated into the general provincial budget as per Articles 95, 96, and 97 of Law No. 08/016 of October 7, 2008,² which places budgetary disbursements under the supervision of the provincial governor. As a result, the funds have not been distributed to the judiciary. However, other laws suggest that the budget should be allocated directly to the judiciary by the Ministry of Budget, while others still state that it should be disbursed at the provincial level. A ProJustice representative met with staff of the DAI good governance project to discuss strategies to address this issue at the legislative level.

¹ US\$1= approximately CDF 920

² This law deals with the composition, organization, and operation of decentralized territorial entities and their relations with the state and the provinces.

ProJustice has proposed the following solutions to the CSM for judicial budget implementation:

Increase Transparency in Fiscal Management of the Judiciary

- The head of the CSM financial unit responsible for judicial budget disbursements should provide information directly to the President of the CSM and the Budget Ministry.
- Traceability³ of the budget should be ensured by setting up effective mechanisms for transfer of funds directly into a dedicated judicial account.
- The judicial budget manager should be replaced due to his consistent inability to oversee judicial financial affairs in a competent, transparent, and appropriate manner.
- New terms of reference should be developed for the judicial budget manager, with clearly defined responsibilities focusing on transparency.

Solve the Problems of Decentralization Relative to Courts, Tribunals, and Prosecutors

- Advocate for harmonization of legal texts promoting decentralization in these areas. The project convened a meeting on March 30, 2012, with USAID and DAI to analyze the conflicts between laws and to suggest possible steps to resolve them.
- Initiate direct negotiations (with the help of the magistrates' union) with the MOJHR and the Ministry of Finance and Budget for actual funding of the Judiciary in the provincial budget.
- The ProJustice expert in finance and budget should attend all budgetary conferences pertaining to the allocation of the judicial budget scheduled in April at the Ministry of Budget.

Additional Support Measures

- Enforce strict compliance with budget lines by all parties involved in managing the budget.
- Reinforce procedures for transparent budget allocation and disbursement with the CSM budget focal point.
- Place the judicial budget manager under the direct supervision of CSM's focal point for finance of the judiciary.
- Open a bank account for each court and prosecutor's office to allow them to receive budgetary allocations and to ensure transparency in financial management.
- Establish a joint commission to monitor monthly judicial budget disbursements, with detailed reports to the CSM-PS.

³ The transfer of magistrates' salaries directly into their bank accounts in the provinces and Kinshasa has been successful. ProJustice believes this can be replicated for other budget lines.

1.3. COMPONENT 3: MORE EFFECTIVE, TRANSPARENT, AND ACCESSIBLE COURT OPERATIONS IN PILOT JURISDICTIONS

1.3.1. Component 3A: Enhanced Effectiveness and Transparency of Court Management Practices

More Streamlined and Transparent Court Management Procedures and Regulations Established and Implemented in Pilot Courts

New File Classification System

The classification of court files is critical to the efficient operation of the courts, as the files record the progress of cases through the justice system. It is vital that these records be available, easily accessible, maintained, and secured. More importantly, the management of criminal cases requires a deliberate and systematic monitoring of files to ensure that cases advance through the judicial process in the shortest possible time. Excessive delay results in memory loss of witnesses, absence or refusal of witnesses to appear, disappearance or misplacement of evidence, and prolonged pretrial detention of accused persons who may eventually be exonerated. Both victims and the public lose faith in the justice system if cases are not managed efficiently.



Case files at the Kindu Court of First Instance

In the DRC, offices of court registrars and prosecutors' secretaries are understaffed, and personnel are ill-trained and ill-equipped, and work in cramped, poorly-lit, and poorly-ventilated file rooms. Their registers are inaccurate because of poor maintenance, and file folders and shelves are in short supply or in a poor state of repair. Files are frequently lost, susceptible to theft or tampering, and incomplete. As a result it is impossible to screen cases to select those that are urgent or important and require early disposition.

During the quarter, ProJustice continued to support efforts to develop a filing system for case records in each of the pilot courts, particularly in the TGIs and courts of appeal. The court clerks responsible for case management managed the organization of 874 files in Kindu with ProJustice support.

Pilot court coordinators (PCCs) in each of the pilot courts conducted spot checks of case files to ensure appropriate application of the system. A sample of 253 files was checked: 20 in Bandundu, 30 in Bukavu, 158 in Kindu, and 45 in Lubumbashi. The PCCs confirmed that the spot checks showed few errors; however complete results of the spot checks in each site are not available. Staff have been instructed to record specific results for future checks.

In addition to this new filing system, ProJustice developed a tracking system for all cases pending before the courts and shared it with the chief clerks at each of the pilot courts. In this quarter, ProJustice worked with court staff in Bukavu to archive closed cases. In total, 2,850 records were archived: 1,627 cases at the TGI, and 1,223 files at the court of appeals. In Bandundu, ProJustice also helped the clerk of the TGI organize 51 current case files.

Pilot Site Program Action Plan Committees

ProJustice’s approach to improving administration in the four pilot court jurisdictions is through community development and partnership. The various levels of courts and prosecutor’s offices tend to function independently of one another in the pilot jurisdictions. In order for the pilot courts to succeed in their goals, the stakeholders must collaborate. Autocratic values, a hierarchical system, and lack of resources to support attendance at regular meetings leads to poor communication, disparate priority setting, lack of collaboration, and the absence of unified goals. Lawyers and civil society organizations (CSOs) working in the justice sector are commonly excluded from judicial operations and thus have little input into the system’s management. Another problem is that most heads of jurisdiction (e.g., prosecutors general) lack the managerial skills to run integrated and democratic meetings.

To address these shortcomings, the project initiated regular planning meetings with all stakeholders. The PCCs facilitate meetings by setting agendas, booking meeting facilities, scheduling meetings, providing financial support for attendance, managing the meetings, and ensuring that minutes are taken, distributed, approved, and followed up on.

In January 2012 the project held four coordination meetings at pilot sites: two in Bandundu (*see Attachment 8*), and one each in Kindu and Bukavu. Two of the meetings focused on the work of implementation committees (one in Bandundu and Kindu) and two (one in Bandundu and one in Bukavu) concerned NGO networks working in the justice sector.

In Kindu, the coordination committee met on January 25, 2012 (Table 2), chaired by the new first president of the court of appeal in Kindu. Sixteen participants (all men) were present. Participants again requested partners to provide motorcycles or bicycles to increase the mobility of judiciary staff.

Twenty-four people (19 men and 5 women) attended the meeting in Bandundu (Table 2), representing 16 local NGOs working in the justice sector, the Rule of Law Section of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) (one person), and ProJustice (two people). Participants discussed the possibility of arranging training on pretrial detention for members of civil society.

Seven people (four men and three women) from six organizations (MONUSCO Rule of Law Section, the American Bar Association, the United Nations Development Programme [UNDP], Lawyers Without Borders, International Protection [an NGO working on human rights], and ProJustice) met in Bukavu on January 25, 2012 (*see Attachment 9*). The discussion focused on the coordination of activities among the organizations.

Two program coordination meetings (previously known as PACT meetings) took place in February, one in Bukavu and one in Lubumbashi (Table 2). For the first time, the meeting of the implementation committee (composed of prosecutors, magistrates, attorneys, and local NGO representatives attending the meetings) was held at the office of the first president of the Bukavu Court of Appeals. This shows the partners taking ownership of this activity, a welcome step.

Table 2. Action Plan Committee Meetings and Participants, January 2012				
Site	Date (2012)	Beneficiaries	Men	Women
Bandundu	January 12	Magistrates, clerks, prosecutors'	16	0
Bukavu	February 22		14	1

Kindu	January 25	secretaries, bar association representatives, other partners	16	0
Lubumbashi	January 25		13	0

In addition to program coordination meetings, ProJustice also supported meetings in each of the pilot sites between NGOs and other institutions working in the justice sector (Table 3). These meetings serve as an opportunity for local and international organizations working to support to support the Congolese justice sector to harmonize their activities and assistance.

Table 3. NGO Meetings and Participants, January–March 2012				
Site	Date (2012)	Beneficiaries	Men	Women
Bandundu	January 11	Local and international NGOs, United Nations representatives	21	5
Bukavu	January 25, February 21, March 7		6	3
Kindu	February 15		10	0
Lubumbashi	February 25		10	7

Basic Supplies to Pilot Courts

The availability of basic supplies such as paper, folders, and pens is critical to the functioning of the courts and judicial offices. The MOJHR provides none of these supplies. The courts and offices have requested supplies from international organizations or purchased them using the fees they collect from justice services. Such sources are inadequate; supplies provided are minimal and irregular, and when funds or supplies are obtained they are regularly stolen.

To address the issue, in the past ProJustice supplied US\$300-worth of essential office supplies, including, paper, pens, carbon paper, and other small supplies (e.g., ink, markers, pencils) each month to the courts and offices in each pilot jurisdiction. The PCCs purchased the supplies and distributed them directly to each office to ensure the supplies arrive where intended. From this quarter, however, the project will no longer provide this support, in light of the 300 percent increase in the judiciary’s budget. The project distributed supplies for the last time on February 10, 2012, in Bukavu, February 15, 2012, in Bandundu, and February 17, 2012, in Lubumbashi and Kindu. In March ProJustice worked with the Lubumbashi court to deliver folders and archive boxes that had been held by the customs service for more than a year. The success in recovering these items was made possible through the combined efforts of ProJustice and the new judicial authorities of Katanga Province. The project recovered the following items:

- 4,900 folders
- 600 place cards to use for files not physically present on shelves
- 850 archive boxes for closed cases

Reduction in Average Time from Case Filing to Disposition for Minor Cases without a Corresponding Time Increase for Major Cases

Inspection of Detention Centers

Under Congolese law, detention centers are under the governance of the prosecuting magistrates of the TGI. Detention centers typically contain 5 to 30 individuals and are operated by the Judicial Police, the Maritime Police, prosecutors' offices, and provincial prisons. A province normally has several detention centers within its territory, most in relative proximity to the provincial courthouses. Local police provide security, at times supported by trusted detainees.

Any police authority has the power to place a person in detention. Such authorities have little legal training and often exercise authority on a whim, without cause. Once detained, a detainee is subject to rules of which neither they, nor the arresting personnel, have significant understanding.

Prosecutors are legally bound to inspect detention centers regularly to ensure due process and respect for both the basic human and legal rights of detainees regarding their detention. The required inspections occur infrequently, however, primarily because of lack of transportation for the inspecting magistrates and their administrative assistants. Without such inspections, detainees may languish in deplorable conditions (without food, sanitary facilities, privacy, or medical care) for months while being held illegally or unnecessarily. During detention, victims of crime and witnesses to the events may not be served, or may disappear altogether. Detainees who are guilty of their charges may be illegally released following the payment of a bribe.

To remedy the situation, ProJustice PCCs provide funds for transportation and meals for the inspection team. PCCs also provide administrative assistance by including recommendations for improving the collection of relevant information on these inspections.

Details of all inspections conducted during this quarter are listed in Tables 4 and 5.

Table 4. Demographics and Dispositions of Detention Center Inspections, January–March 2012

Category		Number of cases											
		Bandundu			Bukavu			Lubumbashi			Kindu		
		Jan	Feb	Mar	Jan	Feb	Mar	Jan	Feb	Mar	Jan	Feb	Mar
Cases reviewed	Men	60	31	29	67	72	60	150	138	57	42	62	48
	Women	8	4	5	6	11	1	10	8	5	5	11	8
	Girls	0	0	0	0	0	1	0	0	0	1	0	0
	Boys	1	0	1	3	5	12	4	10	4	4	9	3
	Elderly	0	0	1	0	0	0	0	0	0	0	0	0
	TOTAL	69	35	36	76	88	74	164	156	66	52	72	59
Cases transferred to prosecutor's office	Men	17	4	4	32	33	15	47	61	15	29	28	24
	Women	1	1	1	0	7	0	5	3	0	1	1	3
	Girls	0	0	0	0	0	0	0	0	0	0	0	0
	Boys	0	0	0	2	3	3	3	4	2	3	8	3

Table 4. Demographics and Dispositions of Detention Center Inspections, January–March 2012

Category		Number of cases											
		Bandundu			Bukavu			Lubumbashi			Kindu		
		Jan	Feb	Mar	Jan	Feb	Mar	Jan	Feb	Mar	Jan	Feb	Mar
	Elderly	0	0	0	0	0	0	0	0	0	0	0	0
Cases with detention confirmed	Men	17	15	7	27	32	32	50	49	14	10	34	22
	Women	1	2	1	3	1	0	0	1	1	2	9	5
	Girls	0	0	0	0	0	1	0	0	0	0	0	0
	Boys	0	0	0	0	0	3	0	1	0	0	1	0
	Elderly	0	0	0	0	0	0	0	0	0	0	0	0
Cases with detainee released unconditionally	Men	5	3	2	8	7	13	52	32	28	4	0	2
	Women	1	0	0	3	3	1	5	4	4	1	1	0
	Girls	0	0	0	0	0	0	0	0	0	1	0	0
	Boys	0	0	0	1	2	6	2	5	2	1	0	0
	Elderly	0	0	0	0	0	0	0	0	0	0	0	0
Cases of sexual violence (NB: Not counted separately in inspection total)	Men	3	0	0	0	1	1	3	6	1	2	17	3
	Women	0	0	0	0	0	0	0	0	0	0	0	0
	Girls	0	0	0	0	0	0	0	0	0	0	0	0
	Boys	0	0	0	0	0	1	0	0	0	2	2	1
	Elderly	0	0	0	0	0	0	0	0	0	0	0	0
Cases with detainee held under provisional warrant	Men	22	9	17	0	0	0	0	0	0	0	0	0
	Women	5	1	3	0	0	0	0	0	0	0	1	0
	Girls	0	0	0	0	0	0	0	0	0	0	0	0
	Boys	0	0	0	0	0	0	0	0	0	0	0	0
	Elderly	0	0	1	0	0	0	0	0	0	0	0	0

Table 5. Number of Cases of Various Types, January–March 2012

Charges	Bandundu			Bukavu			Kindu			Lubumbashi			Total
	J	F	M	J	F	M	J	F	M	J	F	M	
Abortion	0	0	2	0	0	0	0	0	0	0	0	0	2
Animal abandonment	0	0	0	0	2	0	1	0	0	0	0	0	3
Armed robbery	0	0	0	0	0	4	0	0	0	0	0	0	4
Arson	0	0	3	0	0	0	0	0	1	1	0	0	5
Assault	0	0	0	0	0	0	0	0	1	0	0	0	1
Associating with criminals	0	0	0	0	1	3	0	0	0	1	0	1	6
Attempted battery	1	0	0	0	0	0	0	0	0	4	0	0	5
Attempted rape	1	0	0	0	1	0	0	1	0	0	0	0	3
Attempted robbery	0	0	0	0	0	0	0	0	0	1	0	0	1
Attempted theft	15	4	0	0	0	1	2	0	2	3	0	0	27
Breach of trust/fraud	5	6	3	18	12	13	4	13	9	36	27	10	156
Children abandonment	1	0	2	0	0	0	0	1	0	0	0	0	4
Concealment and handling stolen goods	0	1	0	2	1	2	3	2	5	1	3	1	21
Contempt of public authority	1	0	0	0	0	2	0	0	1	0	0	0	4
Death threat	1	0	0	0	0	0	0	0	0	11	0	2	14
Deception	0	0	0	0	0	1	0	0	0	0	0	0	1
Defamation	5	4	0	0	2	1	0	0	0	0	0	0	12
Destruction of property	1	3	1	1	3	2	0	1	3	9	10	9	43
Driving under the influence	0	0	0	0	0	0	0	0	0	4	5	0	9
Embezzlement, misappropriation of funds, bribery	0	0	0	0	0	0	2	0	2	0	0	0	4
Excessive speeding, hit and run	0	0	0	0	0	1	0	0	0	0	0	0	1
Extortion with theft	7	5	1	17	34	19	11	9	7	22	34	8	174
Failure to assist person in danger	1	0	0	0	0	0	0	1	2	0	0	0	4
Family abandonment	0	0	0	0	0	1	0	0	0	0	0	0	1
Forgery	0	0	0	0	0	0	0	0	0	0	3	0	3
Fraud	0	0	0	0	0	0	0	0	0	2	0	0	2
Gambling	0	0	0	0	0	1	0	0	0	0	0	0	1
Grievous assault	0	0	2	0	0	0	0	0	0	6	0	0	8
Homicide	0	0	0	0	0	0	0	0	0	0	0	2	2

Table 5. Number of Cases of Various Types, January–March 2012

Charges	Bandundu			Bukavu			Kindu			Lubumbashi			Total
	J	F	M	J	F	M	J	F	M	J	F	M	
Impersonation of a state official	0	0	0	0	0	0	0	0	0	0	0	1	1
Involuntary manslaughter	1	0	0	0	0	0	0	0	1	6	5	0	13
Labor fraud	0	0	1	0	0	0	0	0	0	0	0	0	1
Littering	0	0	0	0	0	0	0	0	0	0	0	4	4
Loitering	0	0	0	0	3	0	0	0	0	0	2	0	5
Manslaughter	0	0	0	0	0	0	0	0	0	2	0	0	2
Minor assault	13	3	7	5	22	10	12	14	7	26	21	13	153
Public drunkenness/drinking under age	0	0	0	1	0	1	0	0	1	2	0	2	7
Public indecency	0	0	0	0	0	0	0	1	0	1	1	0	3
Rape	2	0	4	0	1	1	4	10	0	5	5	1	33
Rape (aggravated)	1	0	0	0	0	0	0	4	4	0	0	0	9
Rebellion	0	0	1	0	0	0	0	0	0	1	4	1	7
Robbery	0	0	4	25	5	17	0	7	2	7	12	2	81
Slander	3	4	2	4	9	0	5	7	4	8	8	4	58
Smoking cannabis	0	0	0	0	1	0	0	1	0	0	0	1	3
Threat of treason	0	0	2	0	0	0	0	0	0	0	0	0	2
Threat to state security	0	0	0	0	0	0	0	3	4	0	1	0	8
Unlawful confinement/kidnapping	1	1	1	1	0	0	0	2	2	0	0	3	11
Unlawfully at large	1	0	0	0	0	0	0	0	0	0	0	0	1
Vagrancy	0	0	0	2	0	0	0	0	0	0	0	0	2
Verbal threat	7	3	0	2	3	0	3	9	3	3	13	0	46
Civil cases transferred to civil court	3	2	0	0	0	0	5	0	2	2	2	1	17
TOTAL	71	36	36	78	100	80	52	86	63	164	158	66	988

Workshop on Detention Center Inspection Techniques

Thirteen new magistrates and state prosecutors in Bandundu (all men) attended a workshop organized by ProJustice held on January 13, 2012. The purpose of the workshop was to discuss strategies for effective inspection of detention centers, including the proper location for inspections, means of introduction to detention center authorities, documents to examine, and proper questions to ask of detainees.