



Improving Women's access to Justice in the Province of South Kivu in the Democratic Republic of Congo



This document was produced as part of the "Lobbying and Advocacy Strategic Partnership" program, implemented by SOS IJM asbl in consortium with ten other Congolese organizations and in partnership with Cordaid

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Introduction of SOS IJM asbl and the SPLA Program

SOS *Information Juridique Multisectorielle* (Multisector Legal Information), SOS IJM asbl for short, is a non-profit organization that sprang up in 2007 in the Catholic university of Bukavu (CUB), in the Democratic Republic of Congo. It is governed by the provisions of “Law number 004/2001 of the 20th of July 2001 on the provisions generally applicable to non-profit organizations and public utilities in the Democratic Republic of Congo.” It has legal personality which was granted to it by National Ministry of Justice and Human Rights under the Ministerial Order number 353/CAB/MIN/J&DH/2013.

The ultimate goal of SOS IJM asbl is to contribute to the promotion of the awareness of human rights and fundamental freedoms as well as their effective implementation. SOS IJM asbl dreams of a society in which all its members enjoy a culture of respect for human rights and fundamental freedoms, developing interventions which lead to individual, institutional and communal change. This mission is based on a vision whereby which SOS IJM asbl intends to proclaim once again the faith of the peoples of the United Nations in their fundamental rights, the dignity and the value of the human person, as well as the equality of all human beings in accordance with international, regional, and national legal instruments which promote the rights of the human person. The values that this structure defends are based on the principles of human dignity, equality, responsibility, non-discrimination, universality, interdependence, complementarity, inclusion, enforceability, as well as the freedom of expression and opinion.

This report is produced as part of the “Strategic Partnership for Lobbying and Advocacy” program.

The program, “Strategic Partnership for Lobbying and Advocacy” (SPLA) is a program of the Catholic Organization for Relief and Development Aid, (CORDAID), which is aiming for a strategic partnership between the government of Holland, the Congolese State, and the Civil Society. It ambitiously hopes for the restauration of the social contract through citizen participation in the definition and implementation of public policies. It centers itself around four main themes: Gender and Peace, Security and Justice, Health for all and the Governance of Extractive Resources. In setting up this program, CORDAID works in consortium with 10 civil society organizations, namely: *Action pour le Développement et la Paix Endogène* (Action for Indigenous Development and Peace - ADEPAE), *Action Humanitaire pour la Santé et Développement Communautaire* (Humanitarian Action for Health and Community Development - AHUSADEC), *Bureau d’Etudes Scientifiques et Techniques* (The Office of Scientific Studies and Techniques - BEST), *Cooperative des mutuelles de santé* (cooperativemutual health - COPMUSA) *Commission Episcopale pour les Ressources Naturelles* (The Episcopal Commission for National Ressources - CERN/CENCO), *Conseil National des Organisations de la Santé* (The National Court of Health Organizations - CNOS), *Plateforme des Organisations de la société civile intervenant dans le secteur Minier* (The Platform of civil society organizations intervening in the mining Sector -POM), *Réseau pour la Réforme du Secteur de Sécurité et de Justice* (The Network for Security and Justice Sector Reform - RRSSJ), Résolution 1325 (R1325), and SOS IJM asbl. SOS IJM asbl does field research in South Kivu on the themes of Gender and Peace and Justice and Security and focuses specifically on the question of women’s access to justice.

IMPROVING WOMEN'S ACCESS TO JUSTICE IN THE PROVINCE OF SOUTH KIVU IN THE DEMOCRATIC REPUBLIC OF CONGO

The right of access to justice is universally recognized to every individual without any discrimination. It is made real by the availability and accessibility of the courts, magistrates and other auxiliaries of justice such as clerks, secretaries of the public prosecutors, bailiffs and—without losing sight of the lawyers and/or the Congolese context—legal defenders which ensure the defense of the parties, and that at an affordable cost for the majority of parties. It is important to note that, in a country where this structure is well established, irrefutably, it may be presumed that happen in a way that respects the sacrosanct principles of the right to a fair trial.

The persistence of discrimination caused by certain long-standing cultures and traditions, by poverty, by gaps in the organization and functioning of justice, by slowness in the administration of justice, and by distancing justice from many people as well as from certain laws in a particular way, continues to prevent women from accessing justice equally with men in South Kivu Province in particular, and in the Democratic Republic of Congo in general. This inaccessibility means that we end up with a society that is operating on two different levels: the typical woman continues to not know her rights or how to vindicate them, and as a result she continues to be left in the dust.¹

SOS IJM asbl, as part of the program "Strategic Partnership for Lobbying and Advocacy", in partnership with Cordaid, carried out investigations in the civil and military courts established throughout the Province of South Kivu. This allowed us to identify the major obstacles to women's access to justice. They also allowed us to interview 20 women who have cases currently pending in court, analyzing their level of satisfaction with the way in which justice has been rendered to them.

Based on these things, the present document, which is just a condensed version of the research report, articulates the following 15 themes:

1. Training women on their rights and the procedure to use the courts

Women in particular continue to face many discriminatory practices. They remain less educated², and they are excluded from inheritance and family property. In most cases where they have begun to claim their rights, including through legal action, they are discriminated against and that often leaves them discouraged.

It should be noticed that, the average woman of South Kivu generally does not know legal rules and procedure, and when she is indigent, she has less access to a *pro bono* lawyer. As a result, the principle that "no one is supposed to not know the law" enshrined in Article 62 of the DRC Constitution is far from a reality.

Recommendation #1 - To the national and provincial ministries responsible for gender and vocational education: to establish literacy centers throughout the Province of South Kivu and to encourage affirmative action for women.

2. The creation of Peace Courts, Children's courts and Courts of Higher Instance

¹ The results of our research show that women access justice 15.78% of the time, versus 84.1% for men, in the Province of South Kivu in the Democratic Republic of Congo.

² In the Democratic Republic of Congo, the occurrence of illiteracy is four times higher for women than it is for men. Women alone represent 80% of the illiterate in Congo. Of the 18 million Congolese who do not know how to read or write, 14.4 million of them are women. See the report on Access to Justice in DRC, Women for Women.

A total of 20 civilian and military courts, as well as their related public prosecutors and auditors, cover this vast and immense province of South Kivu, which itself extends over 65. 103 km² and has a population of 4. 614. 768 inhabitants. They are: one Court of Appeal, one Military Court, four Courts of Higher Instance, two military garrison Courts, one Children's Court³, one Commercial Court and ten Peace Courts.

Their jurisdiction is as follows: the jurisdiction of two Courts (Appeal and Military) is the entire Province. The four regional courts (Courts of Higher Instance) found respectively in Bukavu, Kavumu, Kamituga and Uvira, and the two military garrison courts, have a jurisdiction of more than just one territory, except for the one in Bukavu, which covers only the City of Bukavu⁴.

Both the commercial and the children's courts are located only in the city of Bukavu and they do not have a specific public prosecutor's office. Instead, they have recourse to the Prosecutor's Office of the Court of Higher Instance of Bukavu.

The ten Peace Courts located in the province of South Kivu each have one autonomous public prosecutor's office. There is one in the City of Bukavu and the nine are located in the eight South Kivu territories. That is, one per territory, except the territory of Mwenga which has two, one at Mwenga center and the other at Kamituga.

However, some territories have more than one Chiefdom or Sector. For example, the territory of Kabare is made up of the Chiefdom of Nindja and the Chiefdom of Kabare. However, the prosecutor attached to the court of peace of Kabare has only one magistrate. Some territories, on the other hand, are larger than other countries in the region. Such is the case with Shabunda Territory, which is larger than Rwanda. Just one court cannot cover the whole territory, and just one court cannot give women access to justice.

Recommendation #2 - To the Government and the High Council of the Judiciary:

- To create and install at least one Peace Court in each Chiefdom and Sector;
- To install a Children's Court in each Territory;
- To adopt a timetable for regular inspections by the courts to ensure that they function effectively.

3. Proximity of the courts of the litigants

In the beginning, the customary jurisdictions (which were replaced by the courts of written law) were closer to the people. There was a court at each level: by groupment, chiefdom, sector and territory. However, the Peace Courts have moved and distanced the people from the courts, in a context where the funds necessary to carry out mobile hearings are virtually nonexistent. One can't forget that there is just one Peace Court per territory, and they don't have the necessary means of movement or simple operating costs. People are forced to travel very long distances to have access to a judge.

3. The Legislative Decree N° 11/01 of the 5th January, 2011 established the ordinary seats of the child courts, it also established in the city of Bukavu as well as in the 8 territories of South Kivu, specialized courts for children in accordance with the 84th article, 1st paragraph of the Child Protection Act. Since 2011, only the Juvenile Court in Bukavu has been functioning.

4. The Court of Higher Instance of Uvira (the ordinary seat: Uvira, the territorial area: the administrative area of the City of Uvira and the territory of Fizi), The Court of Higher Instance of Kavumu (the ordinary seat: Kavumu, the territorial jurisdiction: the administrative extent of the territories of Idjwi, Kabare and Kalehe), the Court of Higher Instance of Kamituga (the ordinary seat: Kamituga, territorial jurisdiction: the administrative extent of the territories of Walungu, Mwenga and Shabunda): *See* Judicial Organization Decree n° 14/015 of the 8th May, 2014 fixing the seats and the jurisdiction of the Courts of Higher Instance.

It should be pointed out that “Decree N° 14/015 of 8th May, 2014 establishing the seats and jurisdictions of the Courts of Higher Instance”, which established the territorial jurisdiction for the territories of Shabunda, Mwenga and Walungu, has almost consecrated a denial of justice for women who are victims of sexual violence in these places, particularly rape. They cannot bring their problems before the Peace Court of their territory because of it doesn't have proper jurisdiction, but they can't get themselves to the court in Kamituga because it's just too far away.

It is the same with the military garrison courts; there are only two for the whole Province of South Kivu.

Recommendation #3 - To the Government and the High Council of the Judiciary

- Propose a draft-decree to the Prime Minister to extend the territorial jurisdiction of Kavumu High Court to include Walungu Territory;
- Provide sufficient means for the courts to organize field hearings at other locations within their jurisdictions until the establishment of other secondary courts;
- Add the four nearest territories of the city of Bukavu (Idjwi, Kalehe, Kabare and Walungu) to the jurisdiction of the Bukavu military garrison court, in accordance with the former law of military court jurisdiction.

4. The presence of lawyer's office in most territories.

The Bar of Bukavu has 308 lawyers, 143 of them are registered to fully practice and 165 are registered on the internship list. They are divided among 45 different offices (43 in the city of Bukavu and 2 in the territories). Some offices have extensions in the territories of Mwenga, Uvira and Shabunda but without a large number of permanent lawyers. It should be noticed that no office is headed by a woman. In the absence of lawyers, the work falls to judicial in most of these territories.

Recommendation #4 - To the President of the Bar Association: encourage lawyers to set up offices in the territories, on the one hand and on the other hand to create a leadership preparation program for women lawyers so that they can eventually create their own offices.

5. Inequitable assignment of judicial staff in the various jurisdictions

There is a concentration of magistrates as well as judicial officers in the city rather than in the territories. This fact is due in part to the numerous assignments of magistrates in the jurisdictions of Bukavu city, but also to the refusal of certain magistrates to take up their substantive position in the rural areas where they are assigned. The case of the public prosecutor's office of Bukavu's Court of Higher Instance which had 45 magistrates in the year 2013 compared against 17 judges in the year 2017 constitutes a regression in the implementation of human rights. We have to mention that this Office serves at the same time the Bukavu Higher Instance, the Commercial Court and the Children's Court. It is the same for the Uvira Court of Higher Instance, where out of 8 magistrates assigned, only 5 have complied and have properly taken up their post.

Recommendation #5 -The High Council of the Judiciary

- To assign 10 judges per 100,000 inhabitants and 10 prosecution magistrates per 100,000 inhabitants in accordance with the National Policy for the Reform of Justice, and also assign the accompanying judicial staff needed to properly carry out their tasks;
- To put at the disposal of transferred or appointed magistrates the means necessary to enable them to move. For those who refuse to properly take up their posts outside of the city, to declare them as having resigned from their offices, in accordance with article 45 of "Organic Law N° 06/020 of the 10thOctober, 2006 on the Status of Judges."

6. Revision of the price of accessing the courts and the suppression of illegal fees

The price of accessing the courts includes the legally provided court fees as well as lawyers' fees, which vary according to the complexity, nature and duration of a trial. In addition to these various fees, there are other "illegal" fees which litigants are forced to pay and which discourage them to go to the courts.

Recommendation #6 -The Ministry of Justice: to completely revise the various decrees relating to legal fees and make them useful to the public.

7. Improving the working conditions of magistrates and judicial officers

The poor conditions in which most judges and judicial officers work have a negative impact on the confidential investigation of cases. Some women do not feel comfortable when they are interviewed in narrow, over-crowded offices or in the presence of several magistrates and other litigants.

Recommendation #7- The Ministry of Justice: to build court houses that meet international standards and allow each magistrate or judicial police officer to have their own office.

8. Training of judicial officers

According to the findings of the investigations conducted, most judicial officers (clerks, bailiffs, even judicial police officers) are recruited and hired without basic judicial training. This leads them to provide bad information and poor guidance to litigants. It's also the reason behind certain deficiencies in the documents they produce, such as docket information, service of process, official minutes, and so on.

Recommendation #8- To the Ministries of Justice and the Civil Service: to recruit judicial officers on the basis of an evaluation, ensuring their continued training and promoting those who distinguish themselves.

Many of the clerks, secretaries and court bailiffs, although they have an registration number, do not appear on the payment list and consequently do not receive their salary. This situation puts

them in a situation where they have to live on the contributions of the litigants who provide them with money or other goods or services.

Another category of judicial officers do not even have registration numbers and find themselves relegated to the new units: this puts them, in relation to their colleagues with employee numbers but not paid, in the same circumstances in time and place.

Recommendation #9 - The Ministries of Justice and the Civil Service: to pay the judicial officers who have registration numbers and to assign numbers to those who do not yet have them.

10. Speed of the judicial process

The research carried out indicate that there are cases over ten years old since the day they were filed, even in cases of sexual violence, even though the legislature has said that the case must be wrapped up within four months of after its filing with the officer of the judicial police.

The number of requests for delay, or to have the case continued, which often exceed what is provided by the law, cause this slowness. It should be pointed out that the hearings often begin with a long delay which does not allow to finish the actual hearing, which leads to even more requests for delay, and has a negative impact on the quality of the actual judicial decisions. This is the case in Kamituga, where the business of the court begins around 1pm.

Recommendation 10 - To the Heads of Court and of Office and to the High Council of the Judiciary:

- To apply disciplinary and administrative penalties against magistrates who excel in breaking legal deadlines;
- It is imperative also to intensify judicial inspections and punish magistrates and judicial officers who excel in breaking the time of the beginning of services.

Field hearings, or hearings that take place in “in the field”, rather than in the location other than where the court typically sits, should be a palliative solution to the distancing of certain courts from litigants. But field-hearings are barely organized due to the budget restraints of the courts. When they do take place, it is because of funds contributed by partners of Non-Governmental Organizations.

This was the case with the field hearing held from the 8th to the 14th May, 2017 in the territory of Uvira by the Court of Appeal of Bukavu which was supported by SOS IJM asbl and its partners; they resolved sexual violence cases that were over 10 years old.

Recommendation #11 - The ministries of justice (national and provincial) and the parliament (national and provincial): Consistently include in the budget a budget line which will enable civilian and military courts to organize regular field hearings in their jurisdictions.

the numeral order of documents remains a major problem. This issue is limited to only some of the public prosecutor's offices in the city, with certain inadequacies relating to the necessary

information on the litigants. Fire, burglary or theft of the registers or the physical files themselves automatically results in the loss of data and all traces of it. This was the case of Kavumu's Court of Higher Instance, which almost lost everything on September 18th, 2016 when their building was lit on fire by people angry protestors.

Recommendation #12 - The Ministry of Justice:

- To develop a structured manual archiving system to provide sufficient security for judicial data, in the same way as the civil registry archives where the legislature requires duplicates be produced in four copies (birth certificate) and keep them in several places;
- To develop a numeral archiving system allowing for the proper preservation of physical records, registers and long-term reports.

12. Support for legal aid services

It appears from our various investigations with the Provincial Assembly, the Provincial Ministry of Justice and the Bar Association, that an amount of about 1 650 000 Congolese francs, or 1500 US dollars is provided for legal assistance to the indigent, per year, in South Kivu's budgetary edict for 2017. For the provincial ministry of justice, this amount, minimal though it may be, it is not claimed by the Bar Association, who instead prefer to turn to financing technical NGO partners. The same source indicates that in fact these funds are taken by the Governorate to supplement the budget line of the legal counsel of the Congolese State. According to the Bar Association, the procedure for the disbursement of the said funds is very heavy and no one has yet put forth the effort to actually go through all the steps necessary. In practice, it is observed that most of the time indigents requiring *pro bono* assistance are confined to trainee lawyers. This action does not assure quality assistance, while at the same time the Bar Association does not make available the means of their policy.

Recommendation #13 - To the Ministries of Justice (National and Provincial) and to Parliament (National and Provincial):

- To increase the budget line to support the Bar Association's Free Consultation Offices (FCO) and legal clinics and ensure their actual disbursement;
- Require the Bar Association to produce reports indicating how the funds are used.

Recommendation #14 - To the Bar Association: to follow closely the budgeting process at the national and provincial levels and request the actual disbursement of the budget line for the operation of the Free Consultation Offices (FCO).

14. Display the explanation and cost of court fees in the courts

During the different investigations and discussions with female litigants, it became apparent that not only are they not aware of the explanation of cost of the various court fees, but they are unaware of the fact that fees are to be paid throughout the proceedings. The fees that they end up paying actually depend simply on the various requests of the lawyer, the magistrate, the clerk or the bailiff.

The results of the investigations also indicate that the explanation and cost of the court fees is only displayed in certain jurisdictions of the City of Bukavu, only in French, and even where they are posted the authorities do not respect them.

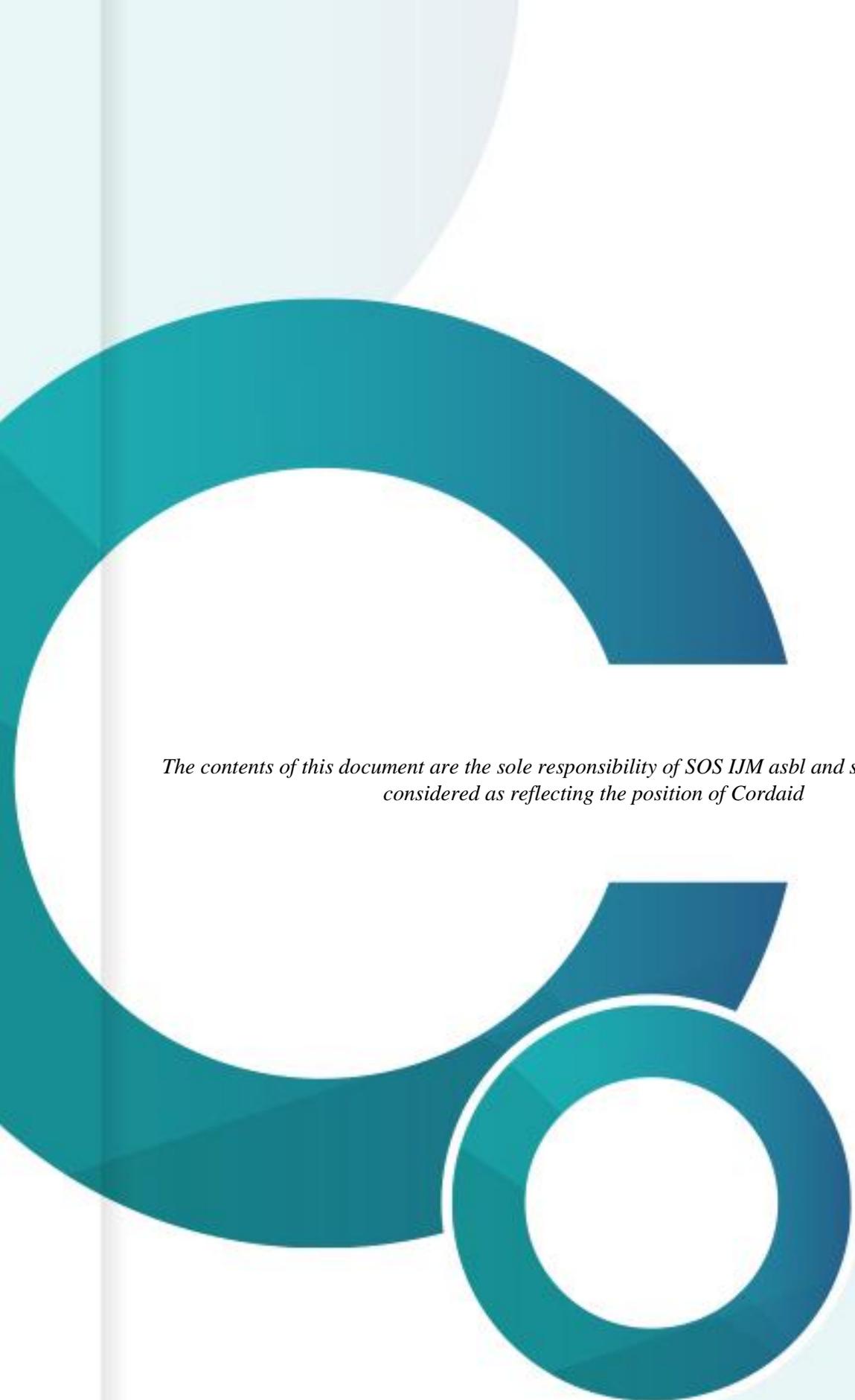
Recommendation #15 - To the Heads of Offices: to require their subordinates to post the explanation and cost of the court fees and to provide an exhaustive explanation to litigants who require such an explanation.

15. Continuous support of Technical and Financial Partners

In view of the above recommendation, the Technical and Financial Partners (TFP) would very much like to make use of the contents of this document and the report of the related investigations in order to continue their support of the Congolese State and the civil society organizations who work in the DRC:

Recommendation #16 - To the Technical and Financial Partners:

- To continue their support of the Non-Governmental Organizations who are developing different interventions aiming to contribute to the proper administration of justice in general and to women's access to justice in particular;
- To support the initiatives of the Bar Association and Non-Governmental Organizations to enable Free Consultation Offices (FCO) and Legal Clinics to accompany indigent women toward justice in accordance with the National Justice Reform Policy;
- To support the organization of different field hearings to deal with the proximity of justice to litigants;
- To participate in the establishment of literacy and women's learning centers.



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Contacts: Tel. (+243) 997 706 157, 0853 718 840 - **Mail:** sosijmasbl@gmail.com, - **P.O.:** 376 Cyangugu-Rwanda
Web Site: <https://www.sos-ijm.org>, <https://www.facebook.com/sosijmcongo>