



ICGLR REGIONAL TRAINING FACILITY

*Improving Access to Justice
and Ending Impunity for
SGBV in the ICGLR
Member States*

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Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples' Rights
CAR	Central African Republic
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
DAW	Division for the Advancement of Women
DRC	Democratic Republic of Congo
ICC	International Criminal Court
ICGLR	International Conference on the Great Lakes Region
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
SGBV	Sexual and Gender-Based Violence
UN	United Nations
UN DESA	United Nations Department of Economic and Social Affairs
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VAW	Violence Against Women

Foreword

The International Conference of the Great Lakes Region (ICGLR) emerged in the late 1990s out of the war in the Democratic Republic of the Congo (DRC). The war involved or affected most of the states in the Great Lakes Region of Africa. The conference, originally established to forge a common security platform for the region, has developed into a formal institutional structure, with meetings held at the heads of state and government level every two years; a forum for regional ministers who take executive decisions; national coordinators and national-level coordination mechanisms; and an Executive Secretariat headquartered in Burundi. These elements are meant to support the effective implementation of the decisions from the ICGLR summit, but most importantly to follow-up and advance the 2006 ICGLR Pact on Security, Stability and Development in the Great Lakes Region.

Indeed, the Great Lakes framework for SGBV is a great opportunity to turn the region from one where SGBV is chronic and unmitigated to one that provides equal security for all of its citizens. No other region in the world has such a comprehensive framework for dealing with SGBV.

This study is a review of the progress that has been made in ending impunity and improving access to justice for survivors in the ICGLR member states. It considers the general international legal framework on access to justice for SGBV as well as the state of legislative, institutional and administrative developments among ICGLR member States in this regard. The overall international framework is important because the ICGLR explicitly requires member states to ratify international instruments on SGBV such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Maputo Protocol of Women's Rights in Africa.

In spite of all these significant achievements, the challenge remains – states must move beyond mere talking to action. Member states need societal, legislative and administrative change in handling SGBV. Governments must do their part by ensuring adequate laws and adequate law enforcement officers. Above all, governments must finance the cost of access to justice for survivors of SGBV. Societal change takes time to achieve and we must not slacken our efforts to fight SGBV and impunity for it.

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Acknowledgements

The Regional Training Facility would like to thank the office of the UN Special Envoy to the Great Lakes Region who financed the study.

Thanks are also due to the authors of the various country reports and participants who made presentations at the symposium:

Sylvie Panika	Central African Republic
Beatrice Nyamwoya	Democratic Republic of Congo
Dr. Ruth Aura-Odhiambo	Kenya
Virginne Ndebasseka	Republic of Congo
Dr Agee Shyaka Mugabe	Rwanda
Fortunata Temu	Tanzania
Dr. Monica Twesiime Kirya	Uganda
Ms. Sara Hlupekile Longwe	Zambia
Jolly Kamuntu	Democratic Republic of Congo

Lastly, the RTF would like to thank the Acting Director Mr Nathan Mwesigwa Byamukama for his guidance in this study, Madeleine Schwartz of the office of the UN Special Envoy to the Great Lakes Region, Sylvia Nampeera, Oscar Katahweire, Patricia Baheera, Cynthia Ayeza Mutabazi, Kizza Kimbugwe, Cynthia Makhoha Mukiibi Sharon Asimwe and Maurice Muhumuza for their help.

SUMMARY

The ICGLR framework for SGBV is chiefly aimed at improving access to justice and ending impunity for SGBV. The framework also requires member states of the ICGLR to ratify other international law treaties relevant to SGBV such as the CEDAW and the Maputo Protocol. The study takes the ICGLR Protocol on Sexual Violence as its main framework for the assessment, in addition to the other provisions in International Law. The findings show that ICGLR member states have made some progress on improving access to justice and ending impunity for SGBV. The progress is uneven, and some countries have made significant strides while some have made less progress, mainly because they are still embroiled in situations of conflict. Challenges to access to justice include the continued prevalence of customs, norms and practices that perpetuate gender stereotypes and discrimination. This makes it hard for victims/survivors to report and also makes prosecuting cases difficult due to unwillingness to testify. Some countries have made progress in training justice personnel and making court proceedings more friendly to victims/survivors, for instance, by allowing hearings to be held in camera. The need for stiff sentencing is recognized, although awarding compensation to victims/survivors remains a problem as it is not clear whether compensation should be awarded by the perpetrator or by the State. The study recommends a clear theory of change and monitoring and evaluation framework for the ICGLR on SGBV, in order to clarify expectations and outputs for member states, and to put into effect the various deadlines prescribed under the Pact and Protocols, many of which have passed without any repercussions for member states.

CHAPTER 1 INTRODUCTION & BACKGROUND

1.1 Introduction

The International Conference on the Great Lakes Region (ICGLR) is an intergovernmental organization of the countries in the African Great Lakes Region, a focus of which is jointly combating transnational crime, including terrorism, sexual and gender-based violence and various other governance and development issues at a regional level. ICGLR's approach is to address such issues more broadly at a regional level. Its strategy includes improving national and regional cooperation and capacity building, enacting legislation and increasing security measures, improving technological integration and enhancing public awareness.

The members of the ICGLR are Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Republic of South Sudan, Sudan, Tanzania, and Zambia.

The ICGLR Pact on Security, Stability and Development in the Great Lakes Region includes a number of protocols on various themes including judicial cooperation, non-aggression and mutual defence, prevention and suppression of SGBV, prevention of genocide, war crimes and crimes against humanity, democracy and good governance, protection and assistance to internally displaced persons, and property rights of returning persons; among others. The Pact establishes a number of programmes of action with various priority projects, some of which address SGBV. A Special Reconstruction and Development Fund has also been established.

The Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children was further buttressed by the 2008 Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region. Other provisions on SGBV can be found on the Protocol for the Prevention and Punishment of the Crime of Genocide (Atrocity Protocol), which emphasises that SGBV can be interpreted as the international crime of genocide and crimes against humanity. The Atrocity Protocol prohibits gender-based discrimination and outlines strategies for preventing and ensuring accountability for SGBV. Furthermore, the Protocol on Promotion of Democracy and Good Governance includes a priority project on prevention and curbing of genocide, war crimes, crimes against humanity and the fight against impunity which lays down some actions for the prevention of sexual violence based atrocity crimes. The IDPs, Non-Aggression, Judicial Cooperation and Media Protocols also include provisions that cover SGBV.

In December 2011, the International Conference on the Great Lakes Region (ICGLR) met in Uganda's capital Kampala to discuss ways to combat sexual and gender-based violence (SGBV) in Central and East Africa. In December 2011, at the fourth ordinary summit held in Kampala, Uganda, the ICGLR held a special session on sexual and gender-based violence. This session resulted in the adoption of the Declaration of the Heads of State and Government on SGBV, known as the Kampala Declaration. The Declaration reiterates the commitments made under the 2006 Pact and its attendant Protocol on Prevention and Suppression of Sexual Violence Against Women and Children. It establishes time bound objectives on prevention, ending impunity and establishing support for survivors of SGBV.

The Kampala Declaration specifies a number of actions that States must implement as means towards prevention and punishment of SGBV. These include:

- Eradication of armed groups and non-aggression protocol implementation
- Enactment of a national gender policy and other enabling policies and establishment of gender desks in government departments
- Implementation of a Zero Tolerance Campaign
- Building technical capacity of the Judiciary and Police
- Establishing special courts, special procedures and special sessions for SGBV
- Establishing national structures for SGBV and enactment of a specific anti-SGBV Law
- Establishing one-stop recovery centres with free medical, psychological and legal services
- Contribution to the ICGLR Special Fund

The ICGLR 2011 Declaration on SGBV noted that SGBV occurs in times of war, peace and conflict, and that rates remain alarmingly high despite the existence of institutional, legal and policy frameworks for the prevention of SGBV and the punishment of perpetrators. It further notes that SGBV has severe impact on individuals, families, communities and States as whole, and is a serious threat to security and development in the region.

It has been opined that the ICGLR framework is establishing a new anti-SGBV norm across the region. The commitments that have been made and measures put in place so far send a strong message to perpetrators, survivors and all stakeholders that SGBV will no longer be tolerated and that it will be punished appropriately.

This study seeks to contribute to on-going efforts to strengthen responses to SGBV by reviewing progress that has been made and pertinent issues relating to access to justice for survivors of SGBV and ending impunity. Accordingly, Chapter two reviews the international legal framework for SGBV as provided for not only under the ICGLR framework, but also in various United Nations and African Union international law instruments. It also looks at provisions regarding access to justice, and reviews of the role of international human rights complaints mechanisms in redressing SGBV. Chapter three looks at the progress made in ICGLR member states to ensure access to justice for SGBV by enacting adequate laws, establishing appropriate investigation and prosecution mechanisms in the criminal justice system and issuing appropriate punishments for perpetrators and remedies for victims/survivors. Lastly, chapter four draws some conclusions on achievements and shortcomings and makes recommendations for the way forward.

1.2 Objectives of the Study

The main objectives of the study were:

- To review the progress made with regard to enacting laws that criminalise SGBV in the region.

- To review the progress made in enhancing investigations and prosecutions of SGBV in member states.
- Identify the factors that hinder access to justice and ending impunity for SGBV
- Make recommendations on legal and administrative actions that should be taken to improve access to justice and end impunity for SGBV.

1.3 Methodology

The study adopted a qualitative approach and relied on the following methods:

- A review of the relevant international and national law in treaties, declarations and statutes.
- A review of court cases and judgments relevant to the matter of SGBV from international bodies and the member states jurisdictions.
- A review of other studies that have been undertaken on issues of access to justice and SGBV.
- The study also relied on discussions and interactions from the Symposium on “Promoting Access to Justice and Ending Impunity for SGBV in ICGLR member states” that took place in Kampala, Uganda, from 7-9 July 2016.

The study was unfortunately, limited by several factors, including the continuing difficulty of obtaining data on the access to justice for SGBV in countries which are still undergoing conflict, such as South Sudan, Central African Republic and the Democratic Republic of Congo. The authors were unable to obtain data from Angola. Most of the available data concerns cases of rape and defilement, and there is a difficulty of accessing information on other forms of SGBV such as forced marriages, forced prostitution, enslavement and trafficking. Another difficulty was the different languages spoken across the ICGLR member states, including French, Portuguese and English meant that some issues were literally lost in translation. Moreover, the ICGLR currently lacks a monitoring and evaluation framework for SGBV and this makes it difficult to determine the progress being made towards achieving the commitments in the framework.¹

1.4 Theoretical and Conceptual Issues

Sexual and Gender-based Violence

“Gender-based violence” refers to violence that targets individuals or groups on the basis of their gender. The United Nations’ Office of the High Commissioner for Human Rights’ Committee on the Elimination of Discrimination against Women (CEDAW) defines it as “violence that is directed against a woman because she is a woman or that affects women

¹ A monitoring instrument in form of a checklist has been developed by ISIS-WICCE and Akina Mama w’Afrika. However, it would appear this is being used for CSO advocacy purposes and is not in use by the formal institutions of the ICGLR. See Isis-WICCE and Akina Mama w’Afrika (2014) <http://www.akinamamawaafrika.org/index.php/publications/research-reports/88-icglr-evaluation-report-on-the-implementation-of-the-kampala-declaration-by-member-states/file>.

disproportionately”.² It includes acts that inflict physical, mental or sexual harm or suffering, the threat of such acts, coercion and other deprivations of liberty. The terms is often used interchangeably with “sexual violence” and “violence against women.” It should, however, be noted that not that all acts against a woman are gender-based violence, and that not all victims of gender-based violence are female. Often, men and boys have been victims of sexual violence and other forms of gender-based violence, and they too deserve justice.³ It is therefore incumbent upon ICGLR member states to extend the framework to protect men from gender-based violence, even whilst acknowledging that the majority of victims/survivors are female.

In addition, there are several forms of gender-based violence that are not necessarily sexual in nature. These include domestic violence, trafficking in persons for purposes of enslavement, enslavement and forced sterilization.

Violence against women is defined by the UN Declaration on the Elimination of Violence against Women, adopted by the General Assembly on 20 December 1993, as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. The Declaration states that “Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.⁴

Sexual violence includes sexual exploitation and sexual abuse. It refers to any act, attempt, or threat of a sexual nature that result, or is likely to result in, physical, psychological and emotional harm. Sexual violence is a form of gender-based violence.

An expanded definition of Sexual and Gender-based Violence used by the UNHCR states:

Violence against women shall be understood to encompass, but not be limited to, the following: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in

² CEDAW Committee, General Recommendation No. 19, at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

³ Non-sexual gender-based violence against men and boys does not receive much attention globally. However, targeted killings of men and boys because of their gendered role should be recognised as a form of gender-based violence. See Barbelet, Veronica (2014) *Male gender-based violence: a silent crisis*, Overseas Development Institute (ODI) Blogs, retrieved from <https://www.odi.org/comment/8502-male-gender-based-violence-conflict-humanitarian-response> See also, Christian, M. et al (2011). Sexual and gender based violence against men in the Democratic Republic of Congo: effects on survivors, their families and the community. *Medicine, conflict and survival*, 27(4), 227-246; Sivakumaran, S. (2007). “Sexual violence against men in armed conflict”. *European journal of international law*, 18(2), 253-276 and Manivannan, A. (2013). “Seeking justice for male victims of sexual violence in armed conflict.” *NYUJ Int’l L. & Pol.*, 46, 635.

⁴ United Nations General Assembly (1993). *Declaration on the Elimination of Violence Against Women*, A/RES/48/104, 85th plenary meeting, 20 December 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>

educational institutions and elsewhere, trafficking in women and forced prostitution; physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.⁵

In this paper, SGBV is defined in accordance with the ICGLR Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children has an even more comprehensive definition of SGBV, encompassing several acts that are not explicitly defined under previous UN and AU instruments:

Sexual violence is any act which violates the sexual autonomy and bodily integrity of women and children under international criminal law, including, but not limited to:

- Rape;
- Sexual assault;
- Grievous bodily harm;
- Assault or mutilation of female reproductive organs;
- Sexual slavery;
- Enforced prostitution;
- Forced pregnancy;
- Enforced sterilization;
- Harmful practices, inclusive of all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and children, such as their right to life, health, dignity, education and physical integrity, as defined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- Sexual exploitation or the coercion of women and children to perform domestic chores or to provide sexual comfort; Trafficking in, and smuggling of, women and children for sexual slavery or exploitation;
- Enslavement by the exercise of any or all of the powers attaching to the right of ownership over women and includes the exercise of such power in the course of trafficking in women and children;
- Forced abortions or forced pregnancies of women and girl children arising from the unlawful confinement of a woman or girl child forcibly made pregnant, with the intent of affecting the composition of the identity any population or carrying out other grave violations of international law, and as a syndrome of physical, social, and psychological humiliation, pain and suffering and subjugation of women and girls;
- Infection of women and children with sexually transmitted diseases, including HIV/AIDS;
- Any other act or form of sexual violence of comparable gravity;
- Sexual violence also includes gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, as defined by the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, in General Recommendation 19;

⁵ UNHCR (2003) *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, at <http://www.unhcr.org/3f696bcc4.pdf>

- Trafficking in persons: the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs...⁶

Access to Justice and Impunity

Justice is a concept that continues to elicit debate and discussion regarding its meaning and content. The definition of justice is important because it influences how we define access to justice, and determines the measures put in place to improve access to justice. A straightforward definition from the Law Dictionary posits that Justice can be defined as fairness, moral rightness or a scheme or system of law in which every person receives his/her due from the system, including all rights both natural and legal.⁷ This is a fairly straightforward definition that conceptualizes justice as involving some form of recompense for victims of wrong-doing and appropriate punishment for wrong-doers.

Access to justice has been defined elsewhere as the “equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied.”⁸ This is a more complex definition that emphasizes every individual’s right to participate in law-making and law enforcement. This approach has been adopted by the Rwandese government, which looks at access to justice as process that requires (a) the existence of a legal framework that sets down acceptable substantive and procedural standards; (b) a certain level of awareness within the population that legal rights are meaningful for them; (c) legally established Alternative Dispute Resolution processes/mechanisms which citizens own and participate in, with capacity and competence to resolve disputes before they become court cases; (d) existence of mechanisms of legal assistance in place that help people to translate their problems in legal terms; (e) a system of adjudication of disputes that is fair; (f) court decisions executed via an effective enforcement practice; and (g) a system of oversight in place that ensures that good quality justice is delivered in a timely fashion and at reasonable costs.⁹

A much broader definition by John Rawls emphasizes justice as fairness.¹⁰ It aims at creating a fair and just society characterized by equality of opportunity by ensuring that the most vulnerable and marginalized members of society are given special attention. This is relevant to

⁶ ICGLR (2006), Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children. Available at <http://www.peaceau.org/uploads/final-protocol.sexual-violence-en-rev-2.pdf>

⁷The Free Legal Dictionary, <http://legal-dictionary.thefreedictionary.com/justice>

⁸ MacDonald, R. A. “Access to Justice in Canada Today: Scope, Scale and Ambitions”, Julia Bass, W.A. Bogart and Frederick Zemans, eds., *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005), 19, 23.

⁹ Government of Rwanda, National Legal Aid Policy, 2014.

¹⁰ Rawls, John. “Justice as fairness.” *The philosophical review* (1958): 164-194. See also, Rawls, John. *Justice as fairness: A restatement*. Harvard University Press, 2001.

SGBV, which is understood to be rooted in unequal gender relations that result in negative gender stereotypes and pervasive gender discriminatory norms and practices. In this sense, access to justice should not be regarded merely as an issue of retribution and punishment for SGBV, but also as part of the process of jettisoning gender oppression, ending discrimination and promoting gender equality and equity in society.

Access to Justice is a human right in itself, and also a process of attaining human rights; thus it is a means to an end. It is two-dimensional, addressing both de facto and de jure barriers to obtaining effective remedies. The first aspect refers to procedure and involves access to courts, lawyers and law enforcement agencies as well as making the justice system more user friendly. On the other hand, substantive justice looks at the fairness of the legal system and the procedures and laws in place, that is to say, access to just outcomes.¹¹

In this paper, “access to justice” focuses on post-hoc response to SGBV; that is measures in place to prosecute perpetrators and provide remedies for victims or survivors. This paradigm looks at access to justice more or less as “access to courts.” While prevention measures such as participation in law-making are important in creating a fair and just society, they are not the focus of the present study.

Impunity is in essence, the opposite of justice. It means “exemption from punishment or freedom from the injurious consequences of an action.”¹² Impunity perpetuates injustice and wrong-doing, and creates a moral black-hole in society by the failure to acknowledge and punish transgressions of moral norms and failing to repair the damage caused by wrong-doing. It is related to power, in the sense that those who have power can get away with wrong-doing by silencing their victims or by manipulating the justice and law enforcement process. Access to justice is therefore important because it is the means by which the power relationship between perpetrators and survivors is equalized and the dignity and equality of victims/survivors is restored.

Impunity is also related to gender inequality and discrimination, when negative gender stereotyping results in victims/survivors of SGBV not being taken seriously, when acts are not criminalized because prevailing patriarchal norms trivialize sexual violence, and when the justice system is male-dominated and ill-equipped to ensure successful convictions of perpetrators due to gender insensitivity amongst investigators, prosecutors and judges.

The ICGLR framework is a clear statement from the Member States of normative change in this area characterized by zero-tolerance to SGBV, backed by a commitment to improve both procedural and substantive justice by reforming the court system and compensating and rehabilitating victims/survivors so as to restore their dignity.

¹¹ Farrow, T. (2014). *What is access to justice?* Osgoode Hall Law Journal, 51(3), Research Paper No. 51 Vol. 10/ Issue. 12.

¹² Oxford Dictionary, at <http://www.oxforddictionaries.com/definition/english/impunity>

CHAPTER 2 THE INTERNATIONAL LEGAL FRAMEWORK ON SGBV AND ACCESS TO JUSTICE

2.1 Overview

The legal framework analysed in this section relates primarily to the international legal provisions that speak to SGBV. The section looks at the ICGLR framework as well as other treaties at the UN and African Union levels. In addition, the section analyses some examples of international case law that provides for access to justice in order to reiterate the importance of access to justice for victim/survivors of SGBV.

2.2 The ICGLR Framework against SGBV

The framework consists of the *Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children 2006*, the *Judicial Cooperation Protocol of 2006* and the *Kampala Declaration of 2011*. The Protocol is the foundational document for addressing SGBV in the Great Lakes Region. Its objectives are stated as being to:

- Provide protection for women and children against the impunity of sexual violence in the specific context of the Great Lakes Region;
- Establish a legal framework under which Member States undertake to prosecute and punish the perpetrators of crimes of sexual violence in the Great Lakes Region;
- Provide a legal basis for the surrender of persons and fugitives charged with committing offences of sexual violence, without prejudice to the Protocol on Judicial Cooperation;
- Make provision for the establishment of a regional mechanism for providing legal, medical, material and social assistance, including counseling and compensation, to women and children who are victims and survivors of sexual violence in the Great Lakes Region.¹³

The Protocol emphasises the importance of criminalisation of SGBV in times of both peace and war, the punishment of perpetrators and the ratification by States of all instruments that address SGBV as well as the Convention on the Rights of the Child.

Other important elements of the protocol include commitments by member states to discourage impunity in the following ways:

- Facilitate the extradition of perpetrators of crime;
- Simplify procedures for lodging complaints of sexual violence by women, children and other interested parties;
- Ensuring that criminal proceedings are sensitive to the emotional state of victims and survivors by holding them in camera, using video links, and excluding evidence of character of the victim/survivor as part of the defence;
- The removal of statutory limitations to crimes of sexual violence;

¹³ Article 2.

- Payment of compensation to victims by perpetrators;
- Establishment of legal and medical procedures for assisting victims and survivors;
- Establishment of a fund for sensitizing perpetrators on the wrongfulness of their sexual behavior as well as a fund for reconstruction and development for the rehabilitation and reintegration of survivors and providing them with legal, medical and psycho-social assistance;
- Establishment of a regional training facility for training and sensitizing judicial officers, police units, social workers, medical officers and other categories of persons who handle sexual violence cases in the Great Lakes Region.

Crucially, the Protocol puts in place Model Legislation on the Prevention and Suppression of Sexual Violence Against Women and Children. The Law reiterates the provisions of the Protocol, and in addition, establishes the punishment for crimes of sexual violence as maximum of life imprisonment. It does not preclude the death penalty from being applied in countries where it is legal.¹⁴

The Model Legislation also establishes national level institutions for the implementation of the Protocol, including a National Committee on Sexual Violence. The Committee has the responsibility of coordinating the protection of women and children from sexual violence, advising the Minister responsible on harmonization of laws and criminal procedures, facilitating the ratification and domestic implementation of treaties that address sexual violence, sensitization of the public, coordination of protection activities by all government agencies, civil society and international organisations, receiving complaints from victims and advising them accordingly, as well as ensuring that criminal proceedings in sexual violence cases respect the dignity of victims and survivors.

A Commission for Compensation of Victims of Sexual Violence is also provided for under the Model legislation. Its role is to receive assessed claims for compensation from the above-mentioned committee and determine the quantum of compensation to be paid to victims or survivors.

The Kampala Declaration reiterates commitments made under the Protocol on Sexual Violence, and in addition, member states promise to:

- Increase financial and technical support for judiciary and security sector reform on women's rights and SGBV extradition.
- Strengthen national level structures for prevention, protection and support of women and children against SGBV.
- Establish early warning mechanisms to facilitate reporting and documentation of SGBV cases from the grassroots.
- Fast-track prosecution of those responsible for perpetrating crimes.
- Integrate SGBV in National Planning Frameworks and allocate budget lines for prevention and response, particularly in ministries for gender, health, defence, security, interior, local government, justice, education and youth.
- Establish and /or strengthen gender desks and allocate relevant budget within the next financial year (2012).

¹⁴ S. 13 of the Model Legislation

- Declare zero tolerance on SGBV and launch national campaigns including men.
- Establish and strengthen special courts, sessions and procedures to fast track SGBV cases in the Police and the Judiciary (with adequate financing, facilities and gender sensitive officers) to improve access to justice and protect SGBV victims/survivors.
- Establish appropriate mechanisms to investigate and prosecute sexual violence crimes
- Fast track contributions to the ICGLR Special Fund for Reconstruction and Development so that assistance for SGBV victims/ survivors is provided.
- Fast track the establishment and scale-up of “recovery centres” that are user-friendly and that provide comprehensive and free medical, psychosocial, forensic, judicial/prosecution services.
- Establish and strengthen income-generating programmes and initiatives to support women, especially survivors of SGBV.

It is evident that not all the resolutions and commitments in the Kampala Declaration relate to access to justice. The most important resolution in this regard is the establishment and strengthening of special courts, sessions and procedures to fast-track SGBV cases and the establishment of appropriate mechanisms to investigate and prosecute SGBV crimes.

Another crucial protocol for access to justice and ending impunity is the *Protocol on Judicial Cooperation of 2006*. One of the factors that has led to impunity for SGBV in the Great Lakes Region is that many perpetrators have escaped punishment. There are armed groups such as the Lord’s Resistance Army (LRA) and others, who freely roam the region, committing atrocities in various countries and hiding in the jungles of Central Africa. The Protocol on Judicial cooperation aims to address such impunity by establishing a mechanism for reciprocal judicial assistance with respect to the extradition of fugitives and accused persons, as well as mutual legal assistance in criminal investigations (Article 16). Political offences, are however not extraditable. SGBV crimes are excluded from the category of political offences (Article 4). The Protocol establishes the procedure for extradition through diplomatic channels, initiated by a request that includes a warrant, a bench warrant and a description of the person to be extradited (Article 7). The Protocol allows the establishment of ad hoc Joint Investigation Commissions to investigate particular crimes.

The ICGLR framework is definitely comprehensive and has the potential to reduce SGBV in the region and ensure justice for victims/ survivors. However, it has been criticized for being too ambitious, with numerous objectives whose feasibility is in doubt as it is not clear where the financial resources for such extensive interventions would come from.¹⁵ Several deadlines for the implementation of some of the objectives have passed unheeded. For instance, special courts and procedures for fast-tracking SGBV cases were supposed to have been established within 12 months of the Kampala Declaration, but several countries are still lagging behind on this matter as will be shown in chapter three. Nonetheless, the framework represents a noble set of aspirations, and despite slow progress, there is a discernible improvement as will be shown in the subsequent chapter.

¹⁵ Ndinga-Muvumba, A (2012), *Preventing and Punishing Sexual Violence: The Work of the International Conference of the Great Lakes Region*. ACCORD Policy Brief, Issue No. 17 of 2012. Retrieved from <http://www.accord.org.za/wp-content/uploads/2012/10/ACCORD-PPB-17-Preventing-and-Punishing-Sexual-Violence.pdf>

2.3 United Nations Instruments on SGBV

The Geneva Conventions which provide for the law of armed conflict or the law of war, prohibit rape. *The 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War* states that women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault. Rape is specifically prohibited by the *1977 Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts*, which provides that women shall be the object of special respect and protected in particular against rape, forced prostitution and any other form of indecent assault. In addition, rape is expressly prohibited by the *1977 Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflict*. It forbids outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution as well as any other form of indecent assault.¹⁶

These provisions have now been buttressed under the Statute of the International Criminal Court, which provides that ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. It also says war crimes include committing rape, sexual slavery, enforced prostitution, forced pregnancy..., enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.

UNSC Resolution 1325 on Women, Peace and Security calls upon parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. It emphasizes “the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions.”¹⁷

The Beijing Declaration and Platform for Action of 1990 talks about violence against women in strategic objective D. This calls upon states to take integrated measures to prevent and eliminate violence against women, study the causes and consequences of violence against women and the effectiveness of preventive measures, eliminate trafficking in women and assist victims of violence due to prostitution and trafficking. It prescribes comprehensive actions to be undertaken in this regard.

The *UN Declaration on the Elimination of all forms of Violence Against Women* of 1993 is the most comprehensive UN document on SGBV. A key provision is article 4, which specifies the measures to be taken to address violence against women. These include exercising due diligence

¹⁶ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 973, Art. 27(2). See also Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts, 12 December 1977, 1125 UNTS 3, Art. 76(1) and Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts, 12 December 1977, 1125 UNTS 609, Art. 4.

¹⁷ Adopted by the Security Council at its 4213th meeting, on 31 October 2000. Retrieved from [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325\(2000\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325(2000))

to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons; and developing penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Further, women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should also inform women of their rights in seeking redress through such mechanisms.

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), requires States parties to:

- Adopt necessary legislative and other measures to establish trafficking in persons as a criminal offence when committed intentionally (article 5);
- Ensure that their domestic legal or administrative system contains measures that provide to victims information on court and administrative proceedings and assistance to enable their views and concerns to be presented and considered during criminal proceedings against offenders (article 6);
- Ensure that their domestic legal systems contain measures that offer victims the possibility of obtaining compensation for damage suffered (article 6);
- Adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (article 9); and
- Consider adopting legislative or other measures that permit victims of trafficking to remain in their territory, temporarily or permanently, in appropriate cases (article 7).

The *Rome Statute establishing the International Criminal Court* recognizes gender-based violence as a crime under international criminal law. In article 7(1)(g), the Rome Statute classifies “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” committed “as part of a widespread or systematic attack directed against any civilian population” as crimes against humanity. These same offences are classified in article 8(2) (b) (xxii) as serious violations of the laws and customs applicable to international armed conflict and thereby classifiable as war crimes. Under the principle of complementarity established by the Statute, States parties have primary responsibility for bringing those responsible for genocide, crimes against humanity and war crimes to justice. The preamble of the Rome Statute recalls that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”.

UNGA Resolution 52/86 on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women, further condemns violence against women, and notes that the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women contributes to the elimination of violence against women. It emphasizes access to justice for SGBV in urging “Member States to review and evaluate their legislation and legal principles, procedures, policies and practices relating to criminal matters, in a manner consistent with their legal systems, to determine if they have a negative impact on women and, if they

have such an impact, to modify them in order to ensure that women are treated fairly by the criminal justice system.”¹⁸

UNSC Resolution 1820 on Sexual Violence Against Civilians in Conflict reiterates Resolution 1325, noting that despite several resolutions, sexual violence in conflict remains a serious cause for concern. The resolution further emphasises that “rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.” It stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

There have been several other resolutions on the issue of sexual violence in conflict, all reiterating the same condemnation of the matter and urging the cessation of such behaviour. These include *UNSCR 2103 of 2013* and *UNSCR 2122 of 2013*.

Sustainable Development Goal (SDG) 5 is geared towards achieving gender equality and empowerment for all women and girls. The targets in this regard include ending all forms of discrimination against all women and girls everywhere, eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, and eliminating all harmful practices, such as child, early and forced marriage and female genital mutilation.

2.4 African Union Instruments on SGBV

The key document in this regard is the Protocol to the *African Charter on Human and Peoples’ Rights on Women’s Rights in Africa*, also known as the *Maputo Protocol*. It contains far reaching and comprehensive provisions on SGBV in Article 4, which proclaims that “Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.”¹⁹

Article 4 calls upon states parties to take appropriate and effective measures to, among others:

- Enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
- Adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;

¹⁸ UNGA Resolution on Crime prevention and criminal justice measures to eliminate violence against women, adopted 12 December 1997 (without a vote). Retrieved from <http://www.un.org/ga/documents/gares52/res5286.htm>

¹⁹ Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003. Retrieved from http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

- Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- Actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
- Punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- Establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
- Prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk; and
- Provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women.

Article 5 focuses on the elimination of harmful practices, particularly female genital mutilation.

2.5 International Legal Provisions on Access to Justice

Article 7 of the *Universal Declaration on Human Rights (UDHR)* of 1948 recognises that all are equal before the law and are entitled without any discrimination to equal protection of the law and all have right to an effective remedy by the competent national tribunals for any violation of legal or constitutional rights.

Article 2 of the *Convention on the Elimination of all forms of Discrimination Against women (CEDAW)* provides that States parties must take all appropriate measures to guarantee the substantive equality of men and women in all areas of life, including through the establishment of competent national tribunals and other public institutions to ensure the effective protection of women against any act of discrimination. Article 15 of the Convention provides that women and men must have equality before the law and benefit from equal protection of the law. On the other hand article 3 of the Convention lays out the need for appropriate measures to ensure that women can exercise and enjoy their human rights and fundamental freedoms on a basis of equality with men.

The Optional Protocol to CEDAW was an important development that allowed women across the world who are citizens of states parties to access justice by filing complaints/communications regarding the violations of their rights before the CEDAW Committee. The CEDAW Committee has received several communications and made a number of observations and recommendations on practical measures States should take to protect women from SGBV. Some of these communications are summarized later on in this chapter.

The *Maputo Protocol* is significant for being the only international women's rights instrument that specifically mentions access to justice as a right. Article 8 recognises the right of access to Justice and Equal Protection before the Law, noting that women and men are equal before the law and shall have the right to equal protection and benefit of the law. Specifically, it highlights

the right to effective access by women to judicial and legal services, *including legal aid*. It further provides for support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid; the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women; that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights; and that women are represented equally in the judiciary and law enforcement organs. It advocates reform of existing discriminatory laws and practices in order to promote and protect the rights of women. Thus the protocol provides by far the most comprehensive compulsion to remove *de facto* and *de jure* barriers to accessing justice, including through the provision of legal aid.

Citizens of States Parties to the Africa Charter, States Parties and NGOs with observer status can file complaints/communications regarding the violation of their rights before the African Commission on Human and Peoples Rights. They may also file complaints before the African Court of Human Rights if their government has ratified the Protocol to the Charter establishing the Court, and explicitly allowed such communications to be filed by issuing a declaration in accordance with Article 5 and 34 of the Protocol.²⁰ As of March 2016, thirty States had accepted the Court's jurisdiction. These are: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda. On the other hand, eight States have accepted the Court's jurisdiction to receive complaints referred by individuals and NGOs; these are: Benin, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Rwanda, and Tanzania. In February 2016, Rwanda announced it would withdraw its acceptance of the Court's jurisdiction over individual and group complaints.²¹

Goal 16 of the Sustainable Development Goals aims at the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels. Some of the key targets linked to this goal with regard to access to justice include: promoting the rule of law at the national and international levels and ensuring equal access to justice for all; developing effective, accountable and transparent institutions at all levels; ensuring responsive, inclusive, participatory and representative decision-making at all levels; ensuring public access to information and protecting fundamental freedoms, in accordance with national legislation and international agreements; and promoting and enforcing non-discriminatory laws and policies for sustainable development.

2.6 The Role of International Human Rights Complaints Mechanisms in redressing SGBV

As mentioned above, international law has enforcement mechanisms that allow individuals to file complaints against States for the violation of their human rights. Thus victims/survivors of SGBV in ICGLR member states that have ratified the relevant conventions and protocols can bring complaints before mechanisms such as the Human Rights Committee, the CEDAW

²⁰ Protocol may be retrieved from http://www.achpr.org/files/instruments/court-establishment/achpr_instr_proto COURT_eng.pdf.

²¹ See website of the Court at <http://en.african-court.org/index.php/about-us/court-in-brief>

Committee, the African Commission on Human and Peoples' Rights or the African Court on Human Rights. It is however important to bear in mind the requirement that domestic remedies must have been exhausted before one can access remedies at the international level. This limitation does not apply if the domestic remedies are unavailable, ineffective or too lengthy and cumbersome.²²

With regard to sexual violence in conflict situations, it is notable that perpetrators may be charged and convicted before the International Criminal Court with war crimes and crimes against humanity.

The CEDAW Committee has made various decisions in regard to States' obligations in addressing SGBV. The ICC, ICTR and ICTY have made decisions on individuals' responsibility for rape as a weapon of war during armed conflicts. Examples of these decisions are in the accompanying Compendium of Cases on SGBV.

2.7 International institutional responses to SGBV

UNFPA and UN Women run the Joint Global Programme on Essential Services for Women and Girls Subject to Violence. In collaboration with other UN partners, the programme is developing guidance to improve survivors' access to these services and to ensure the quality of these services, with a particular focus on health, justice (including policing and legal aid), social services (such as psycho-social counselling, helplines and safe houses), and coordination and governance.

UNFPA plays a key role in addressing gender-based violence through its programmes on sexual and reproductive health. Health services are among the first places survivors of abuse seek assistance. UNFPA-supported health programmes provide information about women's and girls' rights, including their right to live free of abuse. These programmes also provide essential medical supplies, such as rape kits, to assist survivors, and support psychosocial and legal counselling. In Rwanda, for example, UNFPA is working with other UN agencies in "one-stop centres" to address the diverse physical, emotional and social needs of survivors. UNFPA also victims survivors of gender-based violence in humanitarian crises.²³

The above discussion shows that international law at both the UN and AU level has gone a long way to establish a normative framework that condemns SGBV, in addition to a commitment to ensure appropriate remedies for victims/ survivors and punishment of perpetrators. States have an extensive responsibility to protect citizens from SGBV by putting in place a responsive and effective justice system, and this cannot be achieved without training law enforcement officials on gender and women's rights. Under international law, States are responsible for human rights violations by both public and private actors. They have a duty to punish perpetrators and

²² For a discussion of admissibility and exhaustion of local remedies, see Udombana, Nsongurua J. "So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples' Rights." *American Journal of International Law* (2003): 1-37. See also Romano, C. (2013) "The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures." In N. Boschiero et al (eds) *International Courts and the Development of International Law* (pp. 561-572). TMC Asser Press.

²³ See more at: <http://www.unfpa.org/gender-based-violence#sthash.rcb6YXlj.dpuf>

compensate victims / survivors. States are obliged to refrain from acts of violence, and also to prevent and protect women from violence.

Whereas it is possible to obtain remedies at the international level, it is still important to effect these provisions at the national level as required by the international treaties themselves. This requires that Statutes be passed at national level with clear enforcement mechanisms through the Courts of Law. The existing national mechanisms in ICGLR member states are considered in greater detail in the following chapter.

CHAPTER 3 PROMOTING ACCESS TO JUSTICE AND ENDING IMPUNITY FOR SGBV IN ICGLR MEMBER STATES

3.1 Overview

This chapter looks at progress made by ICGLR governments in ensuring access to justice for SGBV. From the analysis of international law in chapter two, there are four broad areas of intervention that must be undertaken to ensure access to justice for SGBV. These are categorized in the present study as: legislative measures that criminalize SGBV; appropriate investigation mechanisms; gender sensitive court procedures for hearing SGBV cases, and lastly; appropriate sentences for perpetrators and remedies for victims/ survivors.

3.2 Legislation and Criminalisation of SGBV in ICGLR member states

International law and the ICGLR framework oblige states to pass laws criminalizing SGBV as the first step to ensure access to justice. SGBV is a complex phenomenon that includes a variety of acts and behaviour, ranging from physical abuse such as rape and domestic violence, to more nebulous ones such as trafficking in women and forced marriage. The model law in the Protocol for the Prevention and Suppression of Sexual Violence against women and children lists a catalogue of actions that constitute SGBV, and provides that “No person shall commit any act of sexual violence against any woman or child,” and that “Any person who commits an act of sexual violence shall be prosecuted and if found guilty, shall be punished in accordance with the provisions of the Protocol or under any existing law of the Republic which provides for a greater penalty than that provided in the Protocol.” Article 5 of the Protocol provides: “member states encourage a maximum sentence of imprisonment...for any person convicted of a crime of sexual violence against any woman or child, without prejudice to the imposition of a higher term of imprisonment or other more severe punishment for such a crime.” This implies that life imprisonment and even death are not precluded as lawful punishments for SGBV crimes.

In 1996, the United Nations Special Rapporteur on violence against women, its causes and consequences, presented a framework for model legislation on domestic violence. It urges States to adopt legislation which, inter alia, contains the broadest possible definition of acts of domestic violence and relationships within which domestic violence occurs.²⁴

In 1997, the United Nations General Assembly adopted model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice. These require states to, among others revise their laws to ensure that all acts of violence against women are prohibited (para. 6).²⁵

²⁴ Report of the Special Rapporteur on violence against women, its causes and consequences (1996) “A framework on model legislation” E/CN.4/1996/53/Add.2. See also Fifteen Years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009)—A Critical Review, United Nations Special Rapporteur on violence against women, its causes and consequences (2009), available online at: <http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>

²⁵ Annex to General Assembly resolution 52/86, Crime prevention and criminal justice measures to eliminate violence against women.

The UN Handbook on legislation for violence against women emphasizes that legislation must be gender sensitive, not gender blind. It must protect all women regardless of their social or economic background, and where there is a conflict between international human rights law and religion or custom, it must be resolved in accordance with human rights and gender equality standards. Further, all laws governing the family, property, employment and any other sphere must be amended to ensure consistency with human rights and gender equality standards.²⁶

All the ICGLR member states have passed the necessary legislation criminalizing SGBV. Some states have SGBV related crimes in their Penal or Criminal Codes, but a number have gone ahead to pass specific legislation on SGBV, including domestic violence legislation, legislation against female genital mutilation, against trafficking in women and other forms of SGBV. For states which may not have specific laws for specific SGBV crimes, it is important to remember that Article 7 of the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children provides that the Protocol is an integral part of the ICGLR Pact and is not subject to separate signature and ratification by member states. Members are obliged to harmonise all national laws and criminal procedures in accordance with the provisions of the Protocol (Article 6(10)). States are therefore bound to comply with the Pact and its Protocols and ensure that all SGBV crimes as defined in the Protocol can be punished within the law if and when they occur.

3.2 Investigation and pre-trial considerations

The ICGLR framework requires states to undertake the following measures in regard to investigation and pre-trial considerations: simplify procedures for lodging complaints; remove statutory limitations on sexual violence cases and ensure availability of medical assistance to victims/survivors.

The UN Special Rapporteur on Violence Against women's model recommends that legislation should include complaints mechanisms and duties of police officers, including that the police must respond to every request for assistance and protection in cases of domestic violence and explain to the victims their legal rights.

The UNGA resolution on crime prevention and measures to eliminate violence against women recommends that States revise their criminal procedure to ensure that the primary responsibility for initiating prosecution lies with prosecution authorities, that police can enter premises and conduct arrests in cases of violence against women. Ensure that acts of violence are responded to and that police procedures take into account the need for the safety of the victim (para. 8(c)).

These measures require that criminal justice personnel receive training on gender sensitivity and SGBV. The Sexual Violence Protocol specifies that the regional training facility shall train and sensitise judicial officers, police units, social workers, medical officers and other categories

²⁶ UN Department for Economic and Social Affairs, Division for the Advancement of Women (DESA/DAW) (2010) Handbook for Legislation on Violence Against Women. Retrieved from <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

of persons who handle SGBV cases. The UN recommends that such training should not just be a one off event, but must be regular and institutionalized.²⁷

Below is a summary of progress made by ICGLR countries in regard to enactment of legislation and investigations:

Angola	No data availed
Burundi	<p>The Penal Code severely punishes SGBV and there is a specific legislation on prevention, protection and punishment of SGBV passed in December 2015.</p> <p>A gender equality Bill promotes equal relations between men and women especially in household relations.</p> <p>The Constitution of Burundi allows the application of international law treaties such as CEDAW, ICCPR, ICESCR, the Beijing Platform for Action and UNSC Resolution 1325.</p>
Central African Republic (CAR)	<p>The Penal Code criminalises SGBV. However, reportage remains low due to socio-cultural factors (victims/survivors not aware of their rights or fear to report). Marital rape is not regarded as a crime and SGBV is trivialized in most cases, except where it involves the rape of minors.</p> <p>There have been allegations of sexual violence perpetrated by UN peacekeepers. The culprits will be prosecuted in their home countries.</p> <p>The Police have not received training on handling evidence in SGBV cases.</p> <p>CAR is currently in the middle of an armed conflict and the police force is hardly functional. Most government institutions are not functional either, there is complete systemic breakdown. The current priority is to contain the conflict, which to date is still on-going.</p> <p>The government has signed two communiqués with the United Nations towards ending impunity and ensuring the protection of citizens.</p> <p>CAR is a signatory to the Rome Statute and the government referred its situation to the ICC, which has been investigating crimes of sexual violence. According to the ICC, “the peak of violence and criminality occurred in 2002 and 2003. Civilians were killed and raped; and homes and stores were looted. The alleged crimes occurred in the context of an armed conflict between the government and rebel forces. This is the first time the Prosecutor is opening an investigation in which allegations of sexual crimes far outnumber alleged killings. (...) Hundreds of rape victims have come forward to tell their stories, recounting crimes acted out with particular cruelty. Reports detailing their accounts were ultimately provided to the Prosecutor's Office. Victims described being raped in public; being attacked by multiple perpetrators; being raped in the presence of family members; and being abused in other ways if they resisted their attackers. Many of the victims were subsequently shunned by their families and communities.”²⁸</p>
Republic of Congo	The Criminal Code, Articles 309 and 311 on the prevention of intentional assault is the law applicable on sexual violence.

²⁷ UN Handbook for Legislation on Violence Against Women, 2010, at p. 18.

²⁸ Statement retrieved from ICC –CAR webpage, <https://www.icc-cpi.int/car>.

	<p>The Constitution provides for the direct application of international human rights treaties in the Republic of the Congo. These include the CEDAW, the Maputo Protocol, the Vienna Convention and the ICGLR pact and protocols.</p> <p>There is also a Family Code, Laws on Child Protection, Protection of Indigenous Peoples and Protection of Persons Living with HIV/AIDS. The Family Code, Penal Code and Criminal Procedure Code are currently being revised. A law on sexual violence, including sexual harassment and defilement is being drafted.</p> <p>Violations against women and children are considered as human rights violations. However, women are largely ignorant of their rights and this fuels impunity. Impunity in GBV is rampant despite the ratification of relevant instruments. Nonetheless, SGBV is criminalized and punished in courts and tribunals, and impunity is not tolerated.</p> <p>The use of ICT by CSOs to name and shame perpetrators and equip victims e.g. disabled persons with ICT to facilitate reporting through, among others, activists blogs and Facebook interactions.</p>
Democratic Republic of Congo	<p>SGBV is criminalized in the penal code and cases are fast-tracked. A case must be taken to court within a month of being received and take no longer than 3 months from the time the complaint was initially received to the conclusion of the case.</p> <p>The primary evidence is a medical certificate, provided free of charge by decree of the Ministry of Health, which the presiding magistrate must requisition for. It must indicate the severity of injury so that the judge can appreciate the gravity of the offence. There is a commitment at national level strengthening of legal texts. In sexual violence cases, it is mandatory that the perpetrator be produced in court. Nobody has privilege/protection from prosecution. There is no provision for out of court settlements in SGBV cases.</p> <p>However, there is still some impunity amongst MONUSCO forces, although abuses from these forces have gone down. Sexual Violence is still rampant in Eastern Congo, where sporadic conflict is still on-going, communication and facilities are poor.</p>
Kenya	<p>International Law is directly applicable in Kenya under Article 25 of the Constitution. The Constitution guarantees equality and freedom from discrimination, as well as security of the person.</p> <p>The Penal Code, Sexual Offences Act, Children's Act, Prohibition of FGM Act, Protection of Victims Act and Protection against Domestic Violence have been enacted and provide remedies for SGBV.</p> <p>There are gender desks at Police Stations that handle cases of SGBV and Police officers have been trained by collaborating institutions such as FIDA Kenya.</p>
Rwanda	<p>The constitution guarantees gender equality, as does the 1999 Law on Matrimonial Relations.</p> <p>The law relating to rights and protection of children against violence 2001 protects girls from forced and early marriage.</p> <p>The Law on the Prevention and Punishment of GBV 2008 criminalises various forms of SGBV and provides remedies for victims and punishment for perpetrators.</p>

	<p>The Law Regulating Labour of 2009 prohibits workplace discrimination and sexual harassment.</p> <p>Rwanda has established anti SGBV and child protections committees from the central level to the village/Umutugudu level and ISANGE within Police Forces.</p>
South Sudan	No data available
Sudan	The Constitution of 2006 ensures equality of persons before the law. The 1991 criminal law has 2 amendments and in 2009, a chapter was added to cover Crimes against Humanity, Genocide, Rape and others. An attempt has been made to harmonise laws and eliminate contradictions. The Children's Act established a juvenile justice system.
Tanzania	<p>The law of Marriage Act of 1971, revised 2002 criminalises domestic violence, although the crime is vaguely defined. It previously allowed child marriage, although this provision has now been declared unconstitutional by the High Court.</p> <p>The Sexual Offences Special Provisions Act of 1998, now integrated into the Penal Code, criminalises various forms of SGBV such as rape, sexual assault and harassment, FGM and sex trafficking. However, marital rape is not criminalized.</p> <p>The Law of the Child Act 2009 sets the age of marriage at 15 for girls and 18 for boys, which is discriminatory and in violation of international law.</p> <p>The Anti-Trafficking of Persons Act 2008 criminalises trafficking but vague on intra-country trafficking.</p>
Uganda	SGBV is criminalized under the Penal Code Act, the Domestic Violence Act 2010, the Anti-FGM Act 2010, Anti-Trafficking in Persons Act and the Anti-Pornography Act. The Sexual Offences Bill has stalled due to controversy on the criminalization of marital rape. The employment Act provides civil remedies for sexual harassment in the workplace. The Constitution guarantees gender equality and security of the person.
Zambia	<p>The Anti-Gender based Violence Act of 2011 clearly defined SGBV and penalties therefor, including rape, defilement, sexual harassment and other forms of SGBV.</p> <p>Police are not well facilitated to conduct investigations.</p>

3.3 “Justice must not only be done, but must be seen to be done.”²⁹ Trials that promote access to justice for SGBV victims

The ICGLR Framework obliges States to institute special courts, sessions and procedures for SGBV in accordance with Article 6 of the Sexual Violence Protocol and Article 8 of the Kampala Declaration. Article 6 of the Sexual Violence Protocol specifies that member states “agree that criminal procedures for the prosecution of persons accused of crimes of sexual violence shall be sensitive to the emotional state of the victims and survivors of such crimes. Under these procedures, such victims and survivors shall give evidence in camera, or by video links, and they shall neither be compelled nor required to give evidence in criminal proceedings,

²⁹ Famous dictum of Lord Chief Justice Hewart in the English case of *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233

nor shall the casting of aspersions on their character and integrity be permitted as part of the defence of any person charged with a crime of sexual violence.”

The UN Special Rapporteur Model legislation says that national laws should include both criminal and civil proceedings for SGBV.

The UNGA Resolution on crime prevention and measures to eliminate violence against women says that States must adopt measures to protect the safety of victims and witnesses before, during and after criminal proceedings (para. 9(h)) and provide for training of police and criminal justice officials (para. 12(b)). States should ensure that measures are available to facilitate the testimony of victims and that evidence of prior acts of violence is considered during court proceedings.

In order for the justice system to be effective and responsive to SGBV, criminal justice personnel, especially the presiding judges, must be gender-sensitive. Hence appropriate training is recommended under the UN and ICGLR frameworks. In pursuit of this objective, the ICGLR SGBV Regional Training Facility has been established in Kampala, Uganda.

The summary below shows the progress made in regard to the institution of special courts and special procedures in ICGLR member states and training justice system personnel on gender sensitivity:

Angola	No data availed
Burundi	There are special courts and special (police) stations enable cases to be fast-tracked. There is support for the victims. Once a week there is a day dedicated to the hearing of SGBV cases and these case files have a specific code and file colour (red). CSOSs collaborate with the government to provide training to criminal justice personnel, however, the overall level of knowledge on SGBV by justice personnel is still considered to be low.
Central African Republic	There has been a complete breakdown in systems due to armed conflict. However, the transition authorities have established a Special Criminal Court comprising of foreign and local magistrates to adjudicate crimes committed by armed groups, including sexual violence crimes. This court will help to fill the current gap in the legal system created by the chaos of the war.
Republic of Congo	There is continuous training of police officers on GBV and prevention is being promoted through sensitisation campaigns. UNICEF, FAO and other UN agencies have initiated district sensitization programs. The UN also recruits psychologists. Research institutions have revised manuals on child protection laws. A Sexual Violence Bill is in the offing and will soon be enacted. While the government has made an effort to increase the number of courts countrywide and ensure that they are well equipped, a notable challenge to access to justice and ending impunity is the lack of special procedures for SGBV. As a result, for instance, in 2015, no special criminal sessions for SGBV were held, and there were no convictions.
Democratic Republic of Congo	Victims/ survivors receive police assistance from the time of complaining up to the time of passing judgement. Witness protection is provided for by the law but the institutional mechanisms for its enforcement are weak. There are special mobile courts that have been set up with international assistance that go around the country adjudicated SGBV cases.
Kenya	Hearings in camera for all SGBV cases where the victim is a child have been put in place. There are however no special courts or special sessions and no special procedures for adult victims.

	There is a Sexual Offences, Gender Violence and Victims' Rights Unit under the Directorate of Public Prosecutions since 2012.
Rwanda	<p>Gender desks and gender focal points in all ministers and departments including the Rwanda National Police.</p> <p>There are regular trainings and thousands of police officers and soldiers have been trained to-date.</p> <p>There are special sessions for SGBV in the courts and a special SGBV unit under the National Public Prosecution Authority.</p>
South Sudan	<p>The Government established a joint court to try violations by SPLA because it was well known that the armed forces commit many violations. Progress is being made in prosecutions for SGBV. In addition to this there are hybrid institutions, with Truth, Reconciliation and Healing tribunals in the offing. There is a GBV data collection system that was created in partnership with a UN agency.</p> <p>The formation of joint/hybrid courts has helped women and girls to come forward to openly report violations and receive services.</p>
Sudan	<p>There are courts that handle SGBV cases, although it was not possible to establish whether these are special courts.</p> <p>The Ministry of Gender has been involved in capacity building of personnel on gender equality.</p>
Tanzania	<p>There are Children and Gender desks at all police stations.</p> <p>There are difficulties with medical evidence, as the examination is not free and Police form PF3 must be filled in by a medical officer. Many health centres are not well staffed and there is no body to conduct the examination.</p> <p>There are no special courts or special sessions for SGBV.</p> <p>Few or limited efforts have been made to train criminal justice personnel, although some judges have received training in gender and the law</p>
Uganda	<p>The Child and Family Protection Unit (CFPU) handles cases of SGBV. It refers victims to the medical facility and takes statements of the complainants and accused. There is no specialized SGBV investigation unit and the CFPU, after recording statements, must pass the matter on the Criminal Investigations and Crime Intelligence Directorate.</p> <p>An SGBV crimes unit was established in the Directorate of Public Prosecutions (DPP). There are no special courts, but special procedures involving hearings in camera and video links have been put in places for SGBV cases involving child victims and witnesses.</p> <p>There have been various efforts to train the CFPU officers and the criminal justice personnel on SGBV and the DPP has published a detailed guide/manual on handling cases of SGBV for use by prosecutors and other criminal justice personnel. The National Association of Women Judges conducts gender sensitivity training for judicial officers in conjunction with the Judicial Studies Institute. Health Workers across the country have received training of SGBV with the assistance of UNFPA.</p> <p>An SGBV management information system to collect real time data on SGBV as recently been established at the Ministry of Gender.</p> <p>The Justice Centres Uganda (JCU) provide legal aid to all vulnerable and marginalised people who approach them for assistance. They currently work in 6 centres spread throughout the country. They also offer counselling, referrals and a toll free line.</p>
Zambia	A Victim Support Unit was established in the Police Force in 1996. It acts as the coordinating centre for access to justice for SGBV victims.

	<p>A GBV fast-track court is currently being piloted in Kabwe and is to be spread out to other provinces. Each of the ten provinces will have a GBV fast-track court.</p> <p>There are no shelters available.</p> <p>There are no mechanisms in place for the rehabilitation of victims and no budgetary provisions for SGBV.</p>
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3.4 Ending Impunity: SGBV sentencing, remedies and post-trial considerations

The ICGLR recommends appropriate sentences for SGBV crimes, up to a maximum sentence of life, although the death penalty is not precluded in countries where it is legal. In addition to stiff sentences, the ICGLR framework recommends that states provide legal assistance, medical assistance, counseling, training, as well as rehabilitation and reintegration of survivors and victims. States should establish one-stop recovery centres where all these services can be accessed in one place. In addition, States should ensure that survivors and victims are compensated by the perpetrators. Under the Kampala Declaration, states should establish income-generating programmes for survivors of SGBV. All these interventions are to be underwritten by the Special Fund for Reconstruction and Development in the African Development Bank, whose main purpose is to finance assistance for survivors of SGBV (Article 6(8) of the Sexual Violence Protocol).

The UNGA Resolution on Crime Prevention and criminal justice measures to eliminate violence against women recommends that sentencing policies hold offenders accountable and take into account their impact on victims and are comparable to those for other violent crimes (para. 9(a)). Further, Courts should have the authority to issue protection and restraining orders (para. 7).

The CEDAW Committee has emphasized reparations, restitution or compensation as a key element of remedies for SGBV in the cases discussed in chapter three, even though, as already pointed out, the ICGLR takes it a step further by recommending that women should be supported to become self-sufficient through income-generating activities (article 12 of the Kampala Declaration). The issue of compensation, however remains unresolved, as shown in the country summaries below.

It is also important to establish rehabilitation measures for perpetrators of SGBV in order to prevent recidivism.

A compendium of judgements on SGBV from member countries has been compiled as an accompanying publication to this study, and contains examples of good practices from how courts are handling SGBV cases.

The summary shows progress made in regarding to establishing appropriate remedies for SGBV.

Angola	No data available
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Burundi	<p>SERUKA centre in Bujumbura is a one stop recovery centre that works in some provinces in the country. NTURENGAHO was created by nurses and focuses on social and cultural activities and is in 4 provinces of the country.</p> <p>A compensation fund is provided for under the law but has not yet been implemented due to budgetary constraints.</p>
Central African Republic	<p>Jean Pierra Bemba was convicted before the ICC for war crimes and crimes against humanity, including crimes of sexual violence. Investigations by the ICC have continued into crimes committed between 2012 -2015 and some of the perpetrators will soon be charged before the ICC.</p> <p>There is some supported offered to victims/survivors of SGBV under the Peace Consolidation Fund (PBF). There is also a fund for Support for Vulnerable Groups funded jointly by the World Bank and the African Development Bank.</p> <p>Some international humanitarian NGOs are offering medical assistance and psychosocial support to victims/ survivors of sexual violence.</p>
Republic of Congo	<p>Legal aid is provided for under Law 001/84 which governs legal aid service provision in the country. The law enables citizens to access partial (some costs paid) or total legal aid. There are a number of legal aid clinics, located in Brazzaville, Pointe Noire and Niari Dolisie which handle victims, assist them to file cases (both civil and criminal). The clinics are run by NGOs such as the Association of Women Lawyers of the Congo, the Mibeko Association and others.</p> <p>There is a special care unit for sexual violence victims/survivors of sexual violence at the Basic Hospital Makelekelede Brazzaville.</p> <p>Regarding the care of victims, the creation of psychosocial support and medical care units allows victims to get systematic gynaecological exams and treatment for sexually transmitted infections. This psychosocial support consultation includes HIV testing and HIV Post Exposure Prophylaxis where less than 72 hours have elapsed.</p> <p>Unfortunately there is lack of funds to compensate victims.</p>
Democratic Republic of Congo	<p>The handling of victims of sexual violence is holistic with medical treatment, psychosocial counselling and care being provided to victims/ survivors.</p> <p>There is a fund under the Ministry for Women which caters for sexual violence victims and cover legal fees from the inception of their cases up to the time the judgement. However, it is not sufficient to cover compensation decreed by the courts. However, the fund is used to help victims to find occupation for their reintegration into society.</p>
Kenya	<p>The sentencing guidelines concern crime in general and are not specialized towards SGBV.</p> <p>The Victim Protection Act of 2014 establishes a fund to assist victims of crime.</p> <p>The Government has established a toll free line for SGBV victims with the assistance of the Communication Authority of Kenya. It enhances support for SGBV survivors as it works closely with the health care system.</p> <p>A recovery centre for SGBV victims was piloted in Nairobi women's hospital since 2001 and has now been rolled out to other government hospitals in various regions of the country. Post-exposure prophylaxis and contraception is available for victims of SGBV.</p>

Rwanda	<p>There are anti-GBV committees and child protection committees at grass-roots level.</p> <p>Isange one stop centres exist in 17 out of 30 districts and provide a comprehensive package for SGBV survivors, including free medical, legal and psychosocial support. Plans are under way to expand them to include forensic laboratories, and to ensure that centres are operational in all district hospitals by 2017.</p> <p>Access to justice bureaus “Maisons d’accès à la justice were established in 2006 at district level and have lawyers who are dedicated to SGBV,</p> <p>Rehabilitation and reintegration mechanisms are, however, still lacking. It is also not clear whether compensation is awarded to SGBV victims.</p>
South Sudan	South Sudan is currently embroiled in conflict and the priority is cessation of fighting.
Sudan	
Tanzania	No specialized remedies in place.
Uganda	<p>The Penal Code Court allows the awarding of compensation to victims of defilement. However, often the perpetrators are poor and have nothing at all which can be given to the victims.</p> <p>There are currently 15 SGBV shelters countrywide, all run by CSOs. Some are run in concert with the Ministry of Gender but none of them are directly funded by the Government of Uganda.</p> <p>Gender budgeting has enabled the allocation of some funds to SGBV under the Health sector, but the funds provided are grossly inadequate to operationalize the policies in place.</p>
Zambia	<p>The Minister of Gender has not yet established any shelter for victims (apart from one proto-type in Mansa) as is required by Part IV of the Act, nor is there any government provision for the rehabilitation of victims. Instead there are very few spaces available at shelters run by YWCA and other NGOs;</p> <p>There is as yet no government provision for the rehabilitation of victims, as is required by Section 30 of the Act;</p> <p>There has been no establishment of the Anti Gender Based Violence Fund as required by Part VI of the Act, and therefore no funds available for the basic material support of victims, counseling and rehabilitation, as provided for in Section 32 of the Act;</p> <p>The anti-Gender Based Violence Act however provides clear and stiff sentences for SGBV.</p>

3.5 Summary assessment on access to justice for SGBV victims/ survivors

	Angola	Burundi	CAR	CongoB	DRC	Kenya	Rwanda	RSS	Sudan	TZ	UG	Zambia
1												
2												
3												
4												
5												
6												

KEY

1= Specific legislation on SGBV

2= Simplified Complaints Mechanisms and fast-tracking cases

3= Special courts and special procedures for SGBV

4= Criminal Justice Personnel Trained in human rights and gender equality standards

5= Holistic assistance including medical, legal and psycho-social assistance through one stop centres.

6=Compensation for victims/survivors in addition to stiff sentences

	Data not available
	Partially implemented
	Fully implemented
	Not yet implemented

4.1 Concluding observations: continuing challenges in law enforcement

From the data available, a number of conclusions may be drawn regarding the progress that has been made towards improving access to justice and ending impunity for SGBV in the Great Lakes Region.

The first step to improving access to justice and end impunity for SGBV is to have a specific law in place that criminalises various forms of SGBV. While some countries such as Rwanda, Kenya and Zambia have made progress in enacting specific anti-SGBV laws, concerns remain over the definitions of crimes in the law, some of which are not clear. This could negatively impact the ability to successfully prosecute these crimes.

There is a focus on sexual violence and domestic violence in legislative enactment, and some issues such as sexual harassment in schools and at the workplace are not receiving adequate attention. In addition, information on the extent of child marriages in the region, enslavement and trafficking is hard to come by. Marital rape is acknowledged to be a problem, but much stronger commitment and action is needed.

Countries have adopted a varied approach to the issue of enacting laws for SGBV, which in many ways makes comparisons difficult. Some have amended old laws by inserting new provisions to comply with the ICGLR framework, such as Central African Republic. Uganda has taken the road of enacting different statutes for different aspects of SGBV; while Rwanda has a unified anti-SGBV law.

Most of the ICGLR member states have made it easier to report cases of SGBV by having specialized SGBV desks at Police Stations, this is commendable. However, reporting is hindered by lack of awareness and negative socio-cultural practices that condone SGBV and discourage victims from reporting.

In most of the member states, it was found that investigations are greatly hindered by poor facilitation of the police forces. Lack of adequate health services make it difficult to obtain medical evidence that is often necessary to secure a conviction.

Special courts and special procedures for SGBV have been instituted in most member states, although some such as Tanzania are lagging behind despite being a largely peaceful country. In some countries such as Uganda, special procedures are available only to child victims of domestic violence. Governments should consider extending the in-camera hearing and video links to victims of rape and other forms of SGBV.

Countries have made some progress in training criminal justice system personnel on SGBV, although some such as Rwanda have made a more visible and concerted effort in this regard. The problem here seems to be that most training efforts are by CSOs, they are not well coordinated and tend to be ad hoc and sporadic. This goes against the CEDAW committee recommendations that such training should be regular. This is the only way to ensure that all officers on the ground have the gender sensitivity to respond adequately to SGBV.

One-stop recovery centres are working successfully in Rwanda and Kenya. There are some SGBV shelters in Uganda, but these have been established by NGOs and not by the state.

Whereas progress has been made with stiff sentences for SGBV, there has been reticence on the issue of compensation for victims/survivors of SGBV. In the DRC, survivors are given support to start an occupation or income generating opportunity, but no other country is offering this type of rehabilitation and reintegration service.

It is evident therefore, that a decade since the Protocol on sexual violence was passed, progress has been slow and uneven across the Great Lakes Region. An obvious reason is that some countries such as CAR and South Sudan are still embroiled in conflict and the priority is to re-establish stability, peace and security. Among peaceful countries, financial constraints are the main reason for the lack of progress on SGBV. However, not all the prescribed measures under the framework require additional financial resources. For instance, hearing cases in camera, or having special sessions for SGBV is a matter of administrative organisation.

The other commonly cited reasons cited for lack of progress include the prevailing patriarchal socio-cultural attitudes that make it hard for victims to report SGBV. Some report and then withdraw their complaints. However, in all the countries, there are ongoing efforts by CSOs and the governments to improve knowledge and awareness of SGBV.

The study revealed that one of the reasons for the uneven progress is the lack of a clear monitoring and evaluation framework with a theory of change and proper output indicators that countries should aspire to.

4.2 Recommendations

There is a keen sense of awareness among member states of the gap between the commitments in the ICGLR framework for SGBV and the realities on the ground at home. Accordingly, this report will not delve into providing detailed recommendations for each state, but suggests the following strategic actions to be addressed at the regional level by the ICGLR bodies in order to catalyse progress in addressing SGBV:

- i) *Monitoring and evaluation mechanisms.* The ICGLR should draw up a theory of change for SGBV with accompanying indicators on the process, outputs and outcomes envisaged. This will provide all member states with a clear road map to follow. It will assist countries to move forward in a planned manner and foster uniformity across the region as envisaged by the framework. It will also assist countries to collect data on SGBV that will inform the provision of the necessary services.
- ii) *Fundraising.* There is outcry across the region that budgetary constraints are hindering progress on SGBV. The ICGLR should establish a clear fundraising strategy to raise money for the ambitious aspirations established by the framework. For instance, the secretariat should recommend targets for country contributions to the Special Fund for Reconstruction and Development, based on member states' GNP and GDP per capita. This fund is crucial to fill the urgent need for compensating victims/survivors of SGBV.

- iii) *Training.* The Uganda Government offered to host the regional training facility but has not availed sufficient funding or infrastructure, which has slowed training efforts across the region. This too is due to budgetary constraints and reinforces the need for a fundraising strategy that will help raise money for much needed training.

REFERENCES

Barbelet, Veronica (2014) *Male gender-based violence: a silent crisis*, Overseas development Institute (ODI) Blogs, retrieved from <https://www.odi.org/comment/8502-male-gender-based-violence-conflict-humanitarian-response>

CEDAW Committee, General Recommendation No. 19, at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

Christian, M. et al (2011). Sexual and gender based violence against men in the Democratic Republic of Congo: effects on survivors, their families and the community. *Medicine, conflict and survival*, 27(4), 227-246

Cusak, Simon (2013) Optional Protocol to the CEDAW blog, at <https://opcedaw.wordpress.com/2013/06/29/fatma-yildirim-deceased-v-austria/>

Farrow, T. (2014). *What is access to justice?* Osgoode Hall Law Journal, 51(3), Research Paper No. 51 Vol. 10/ Issue. 12.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 973

Government of Rwanda, National Legal Aid Policy, 2014.

Hewart, Lord Chief Justice, Judgement in *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB

ICGLR (2006), Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children. Available at <http://www.peaceau.org/uploads/final-protocol.sexual-violence-en-rev-2.pdf>

Isis-WICCE and Akina Mama w'Afrika (2014) <http://www.akinamamawaafrika.org/index.php/publications/research-reports/88-icglr-evaluation-report-on-the-implementation-of-the-kampala-declaration-by-member-states/file>.

MacDonald, R. A. "Access to Justice in Canada Today: Scope, Scale and Ambitions", Julia Bass, W.A. Bogart and Frederick Zemans, eds., *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005), 19, 23.

Manivannan, A. (2013). "Seeking justice for male victims of sexual violence in armed conflict." *NYUJ Int'l L. & Pol.*, 46, 635¹

Ndinga-Muvumba, A (2012), *Preventing and Punishing Sexual Violence: The Work of the International Conference of the Great Lakes Region*. ACCORD Policy Brief, Issue No. 17 of 2012. Retrieved from <http://www.accord.org.za/wp-content/uploads/2012/10/ACCORD-PPB-17-Preventing-and-Punishing-Sexual-Violence.pdf>

Oxford Dictionary, at <http://www.oxforddictionaries.com/definition/english/impunity>

Oxford Human Rights Hub. Retrieved from <http://ohrh.law.ox.ac.uk/cedaw-issues-a-historic-ruling-in-a-gender-violence-case/>

Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts, 12 December 1977, 1125 UNTS 3

Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts, 12 December 1977, 1125 UNTS 609

Rawls, John. "Justice as fairness." *The philosophical review* (1958): 164-194.

Rawls, John. *Justice as fairness: A restatement*. Harvard University Press, 2001.

Romano, C. (2013) "The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures." In N. Boschiero et al (eds) *International Courts and the Development of International Law* (pp. 561-572). TMC Asser Press.

Ross, Antonia (2013) Optional Protocol to CEDAW blog. Retrieved from <https://opcedaw.wordpress.com/category/communications/fatma-yildirim-deceased-v-austria/>

Sivakumaran, S. (2007). "Sexual violence against men in armed conflict". *European journal of international law*, 18(2), 253-276

Special Rapporteur on violence against women, its causes and consequences (1996) "A framework on model legislation" E/CN.4/1996/53/Add.2.

The Free Legal Dictionary, <http://legal-dictionary.thefreedictionary.com/justice>

Udombana, Nsongurua J. "So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples' Rights." *American Journal of International Law* (2003): 1-37.

UN Department for Economic and Social Affairs, Division for the Advancement of Women (DESA/DAW) (2010) Handbook for Legislation on Violence Against Women. Retrieved from <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

UNGA Resolution on Crime prevention and criminal justice measures to eliminate violence against women, adopted 12 December 1997 (without a vote). Retrieved from <http://www.un.org/ga/documents/gares52/res5286.htm>

UNHCR (2003) *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, at <http://www.unhcr.org/3f696bcc4.pdf>

United Nations General Assembly (1993). *Declaration on the Elimination of Violence Against Women*, A/RES/48/104, 85th plenary meeting, 20 December 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>