



# **SYMPOSIUM ON ACCESS TO JUSTICE AND FIGHTING IMPUNITY OF SEXUAL AND GENDER BASED VIOLENCE IN THE GREAT LAKES REGION**

**LAKE VICTORIA SERENA GOLF RESORT,  
ENTEBBE-UGANDA**

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## **LIST OF ABBREVIATIONS**

Amb.	Ambassador
AU	African Union
CAR	Central African Republic
DRC	Democratic Republic of Congo
ICGLR	International Convention on the Great Lakes Region
ICGLR – RTF	International Convention on the Great Lakes Region- Regional Training Facility
MONUSCO	UN Organisation on the Stabilisation Mission in the DRC
SGBV	Sexual and Gender Based Violence
TOT	Training of Trainers
UN	United Nations
UNMISS	United Nations Mission in South Sudan

## Table of Contents

<b>INTRODUCTION</b> .....	<b>5</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>6</b>
<b>OPENING SESSION</b> .....	<b>7</b>

### **SESSION ONE: OVERVIEW OF TRENDS IN ACCESS TO JUSTICE FOR VICTIMS OF SGBV AND COUNTRY EXPERIENCES**

Presentation on Fighting Sexual Violence in the Great Lakes Region: Opportunity of ICGLR Instruments by Nathan Byamukama, Ag Director, ICGLR-RTF .....	<b>8</b>
Understanding the application of the Peace, Security and Cooperation Framework: Its Relevance in Fighting Impunity related to Sexual Violence by Madeleine Schwarz, (O/SESG- GL) .....	<b>9</b>
Combating Sexual Violence in Africa: African Union Perspective by Antonia N’Gabala – Sodonon, African Union Commission (AUC) – Programme Coordinator Gender, Peace and Security.....	<b>9</b>
Use of Forensic Evidence in Court and its Related Successes and Challenges in the Region – Christine Alai, Physicians for Human Rights (PHR).....	<b>11</b>

### **SESSION TWO: FIGHTING IMPUNITY RELATED TO SEXUAL VIOLENCE**

Emerging Findings From a 12-Country study by the RTF on Access to Justice and Ending Impunity for SGBV by Laura Nyirinkindi, ICGLR Gender Justice Expert. ....	<b>13</b>
BURUNDI.....	<b>14</b>
CENTRAL AFRICAN REPUBLIC.....	<b>15</b>
DEMOCRATIC REPUBLIC OF CONGO .....	<b>16</b>
REPUBLIC OF CONGO (CONGO BRAZZAVILLE).....	<b>18</b>
SOUTH SUDAN .....	<b>18</b>
SUDAN .....	<b>19</b>
KENYA.....	<b>20</b>
RWANDA.....	<b>21</b>
TANZANIA.....	<b>22</b>
ZAMBIA.....	<b>22</b>
UGANDA .....	<b>23</b>
<b>SHARING COUNTRY EXPERIENCES.</b>	
MALI .....	<b>24</b>
MADAGASCAR .....	<b>24</b>

SOUTH AFRICA..... 24  
CHAD ..... 25  
LIBERIA..... 25  
GUINEA BISSAU..... 25  
ANGOLA ..... 25

SESSION THREE: CASE LAW: PRONOUNCEMENTS OF THE JUDICIARY ON ENDING IMPUNITY FOR SGBV:  
ARE THERE GAINS OR LOSSES? Identification of land mark cases on SGBV, Challenges, Best Practices,  
Quick Wins and Recommendations ..... 25

## **INTRODUCTION**

The International Conference for the Great Lakes Region Regional Training Facility (ICGLR - RTF) with support from the African Union and the United Nations convened a Symposium under the theme “Access to Justice and Fighting Impunity of Sexual and Gender Based Violence in the Great Lakes Region” at the Lake Victoria Serena Golf Resort, Entebbe from the 7<sup>th</sup> to the 9<sup>th</sup> of July 2016.

The need for this Symposium arose from the unresolved issue of access to justice for the survivors of sexual violence. Operating in an environment where there is no uniform legal system for Member States, the Symposium provided a platform for the sharing of experiences and mechanisms for accessing justice in SGBV issues, thereby enabling the Member States to share information, learn from each other’s successes as they resolve common challenges and share best practices.

The focus was on the existing measures, good/best practices and major challenges of addressing sexual violence in the Member States of the Great Lakes Region, in order to inform the development of training material for the newly created Regional Training Facility in order to support and effectively assist Member States in the fight against impunity for sexual violence crimes.

The main objectives of the Symposium were to: share the progress and challenges existing in the ICGLR Member States related to fighting impunity in sexual violence related cases; discuss case law related to sexual violence in Member States of ICGLR and beyond and the impact it has had on access to justice; identify good practices to adapt among Member States and also suggest ways, through research and training at RTF, of addressing misconceptions and challenges related to fighting sexual violence and lastly to identify potential experts to train judicial and police officers, medical and social workers and other categories of persons handling cases of sexual violence.

This Symposium attracted 65 participants from 19 countries.

## EXECUTIVE SUMMARY

Expectations from the workshop were listed beforehand as a compendium of national legal frameworks and jurisprudence in Member States and of Regional and International Instruments related to SGBV for training stakeholders at RTF; a report of challenges, best practices and recommendations related to areas of more research, documentation and training in prevention and fighting impunity for SGBV cases and a list of potential experts to train TOTs and related institutes for collaboration at the RTF.

A wealth of information was shared concerning the national legal frameworks of each country represented as well as the status of the implementation of regional instruments legislating on SGBV. Whereas some Member States had functional and implementable laws governing SGBV, there were still gaps identified in either the legislation or the enforcement of legislation.

Some of the specific areas for coverage were: an analysis of the situation of victims and survivors of SGBV and the mechanisms of justice available to them; laws and policies in place as well as institutional, administrative and financial frameworks and any other measures in place to address access to justice for victims and survivors of SGBV taking into consideration preventive/suppressive as well as remedial aspects. In addressing these areas, a good number of countries reported good coordination of implementing bodies by way of multi-sectoral coordination. In the countries where this was weak, better frameworks were suggested to aid this coordination since it was widely agreed as a faster route to the implementation of SGBV laws. For countries emerging from conflict, transitional justice mechanisms were seen as a way of addressing the justice needs of the victims of SGBV. One stop victim care centres have taken root in South Africa and Kenya but remain tentative in most Member States. Specialised care for SGBV victims including psychosocial counselling facilities have taken root in most Member States but the availability of legal aid for victims is not as widely available across the Member States as it should be. It was generally agreed that there should be mandatory and/or pro bono legal aid for SGBV cases either across the board for all lawyers or from a special pool of lawyers especially selected for this purpose as has been done in Madagascar. In addition to psychosocial support for victims, the perpetrators were found to need the same kind of assessment in order to get to the root of what causes them to act out violently.

On the major cases and judgements that have been decided in the courts/judiciary that have a major impact on the rights of the victims and survivors of SGBV in civil or criminal cases, every Member State gave examples of cases decided within their jurisdictions and measures being undertaken to enhance or improve access to justice for victims and survivors. Law reform to stiffen the penalties against perpetrators of SGBV, rejection of out of court settlements for SGBV cases and victim compensation came across clearly as a good way forward. With regard to the challenges, lessons learned and best practices in addressing the access to justice needs of victims and survivors of SGBV, innovations such as toll free lines were shared as broadening the reporting of SGBV cases by shortening the distance information has to travel initially. GBV manuals for prosecutors, medical personnel and Police were also found as a good way to increase dissemination on SGBV to ensure they all have the same relevant information on content, context, procedure and to foster a shared language. Lastly fast-tracking of SGBV cases through either special courts or regular, specially selected court sessions to ensure crimes are addressed in a timely manner for the sake of justice were widely deemed crucial.

## DAY 1

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### OPENING SESSION

The opening address was given by Ambassador Rosette Nyirinkindi who was representing the ICGLR National Coordinator for Uganda. Highlighting that 12 member states had already adopted the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children, she stated that it was hoped that this measure would contribute to reducing the widespread incidence of sexual violence in the region and its destructive impact on the lives, health, physical, sexual, psychological, social and economic well-being of women and children.

Ambassador Zachary Muburi Muita lauded the cause of the ICGLR and in some detail told the meeting about the presence of ICGLR in member states, pointing out their unique roles. Raising a concern about the handling of SGBV perpetrators and citing the absence of corrective therapies related to these crimes, he posed the question for discussion about whether the systemic/ institutional/ legislative weaknesses were not merely treating the consequences when they really should be treating the causes of sexual violence.

The Office of the Special Envoy of the Secretary-General for the Great Lakes Region (O/SESG-GL) was represented by Ms Madeleine Schwarz who stood in for Ambassador Said Djinnit. The focus of this speech was on the work of The Peace and Security Cooperation Framework in addressing the root causes of conflict with emphasis on calling the Heads of State to neither harbour nor protect perpetrators and to facilitate judicial cooperation.

Under Secretary General (USG) Zainab Bangura was represented by Mr. Innocent Zahinda, the Director UN Team of Experts on Sexual Violence in Conflict. He updated the participants on what the United Nations Team of Experts of the Rule of Law and Sexual Violence in Conflict has been up to in terms of trainings conducted. In tackling the impediment of national capacity, the team of experts noted 6 main entry points which he named as ensuring adequate law reform and review, enhancing investigative capacity, the importance of military justice, protection of witnesses and victims, reparations for survivors and experience sharing/ cooperation.

Honourable Justice Mike J. Chibita, the Director of Public Prosecutions in Uganda discussed the legal framework of SGBV in Uganda with an overview of the challenges and gaps encountered in the trial and prosecution of SGBV cases which included, but were not limited to: stigma, lack of witness and victim protection structures, lack of capacity of law enforcing entities and a very adversarial court system.

The Minister for Gender, Labour and Social Development who was represented by Honourable Peace Mutuuzo, the Minister of State for Gender and Culture reassured the participants of the Government of Uganda's commitment to the eradication of gender based violence along with a detailed update of the measures taken by the Government of Uganda so far in realising the same.

## **SESSION ONE: OVERVIEW OF TRENDS IN ACCESS TO JUSTICE FOR VICTIMS OF SGBV AND COUNTRY EXPERIENCES**

### Presentation on Fighting Sexual Violence in the Great Lakes Region: Opportunity of ICGLR Instruments by Nathan Byamukama, Ag Director, ICGLR-RTF

This presentation was made by Mr Nathan Byamukama, the acting Director for the Regional Training Facility. It started out with a definition of sexual violence, its ingredients and addressed sexual and gender based violence (SGBV) as a specific problem. The presentation went on to discuss the challenges to women victims of SGBV and then looked at the existing mechanisms to address these challenges in the region. In examining the opportunities/ bases for justice in the existing mechanisms, Mr Byamukama went into the various international instruments that member states in general and Uganda in particular have adopted. He also discussed the International Criminal Tribunal for Rwanda, African Charter on Human and People's Rights, the International Criminal Court and national courts.

During a detailed discussion on ICGLR instruments and the punishment and rehabilitation provisions therein, he mentioned that while Member States are guided by the Protocol on the Prevention and Suppression of Sexual Violence in the Great Lakes Region, which is binding and bears the force of law, the "suppression" it speaks of does not cover the spirit of the Protocol and suggested that this discrepancy could easily be attributed to the interpretation of the document. With rape, sexual assault, grievous bodily harm, female genital mutilation, sexual slavery, forced pregnancy, forced abortion, sexual comfort by children and trafficking as some of the crimes covered, it emerged as still disturbing that government forces are included as alleged and recorded perpetrators of these crimes and these have been documented in reports. Citing Angola and Tanzania as the only exceptions, other member states have all experienced conflict and even then, whether during peace time or conflict, everyone is subjected to this crime. The only difference comes in is in the degree of severity, with conflict being a more severe environment for the perpetration of sexual and gender based violence. The statistics in support of this may not be accurate due to the low incidences of reporting but almost 60% of inmates are in prison for sexual offences.

The meeting was further informed on some of the barriers to access to justice for victims of sexual violence. Some of the challenges are the cumbersome evidence requirements by the courts; the failure to report by some victims; displacement during conflicts; the lack of coordination between the authorities meant to work together and inadequate investigations. In instances where there is evidence, accessing it is cumbersome. Compensation either comes too late or never comes at all. The usually rough treatment of the victim in court tends to disorient victims and discourage their participation in the quest for justice. Whether assessed alone or in concert, these challenges lead to the high withdrawal or cases or the failing of cases altogether. He looked at the regional legal response to SGBV in fact and prospect. He examined the GOMA declaration separately and its recommendations. In exploring the regional follow - up mechanism, the discussion fed into the decisions from the Kampala Declaration. In his summary, he listed 4 areas for prioritisation for justice in sexual violence as establishing special courts or have special court sessions on sexual violence cases; domesticating the protocol on sexual violence, non-aggression and mutual defence; judicial cooperation and finally supporting the Regional Training Facility as a centre of excellence to train the stakeholders appropriately for facilitating justice, prevention and ending impunity of sexual violence.

#### **Questions/Feedback arising from this session**

- i. On the dislocation between medical centres, police and the courts, what is the way forward for Member States?



The 1 stop centres are good but very expensive to implement. Part of the problem we have is the access to a centre for a victim. If communities have institutions that can aid in the reporting of SGBV then this can make the model more viable and achievable. For example in SA, there are levels of SGBV that suggest that the country may be in a conflict situation so in a bid to handle the cases arising from this situation, their own 1 stop centres close the distance that evidence has to travel and eases investigations. In Uganda, the 1-stop centre proved to be a very expensive model. UNFPA, for example, has worked with other agencies and government to enhance psychosocial counselling and legal advice. The Ugandan model that seems to be working is uniting health, police and the justice system to enable them access justice through a national referral mechanism adopted to the districts. When funds are available then the one stop centres will be more available. The current emphasis is on male-model engagement. They, being the majority of the perpetrators, are now being engaged in the solutions.

ii. On Dissemination of information: How can this be corrected?

Each country must take charge of the implementation of their protocols. Under the ICGLR structures, the national coordination mechanisms are meant to act as a bridge into the national systems. They are supposed to be in charge of sensitisation and publicity of ICGLR and establish focal points. Ultimately the protocols are supposed to be domesticated. What mechanisms are employed to enable/ensure this ratification are up to the individual member states. National coordinators should be proactive and slow to tire/give up. The information must be continuously pushed through. The dissemination should be as wide as possible. In Tanzania for example, the Faculty of Law now teaches the EAC Law. This is important because there are always discussions on the international instruments but the regional instruments are seldom discussed? There is a need to engage communities, justice service providers and learning institutions. Prosecutors, judges and other judicial officers tend to refer to what they know. These instruments are not accessible to them easily. They can read them if they have them. The local legislation is limiting in the definition of SGBV. The law on SGBV is regional and international in nature but lawyers are trained to stick to local legislation. If hard copies are distributed then they can reach the highest number of people/lawyers.

iii. How should the issue of getting the reparations to the actual victims be addressed, cultural and societal structures notwithstanding?

On the issue of reparations, in Nov 2010 civil society brought this up and the ministers of gender knocked it down. One of the arguments at that time was that the state could not be responsible for rape. Negotiations are continuing and are encouraged to continue. The special courts are a good step. The actual survivors of SGBV do not benefit from reparations. African traditions ensure that the reparations go the male members of the family. UNFPA is enacting special session courts as an initiative to see how this can be mainstreamed immediately and up scaled later.

Understanding the application of the Peace, Security and Cooperation Framework: Its Relevance in Fighting Impunity related to Sexual Violence by Madeleine Schwarz, (O/SESG- GL)

Sexual violence has been prevalent in all the Great Lakes Region conflicts. Sexual violence is one of the most serious threats to the safety and security of those who flee conflict. For this reason, the Peace, Security and Cooperation (PSC) is a comprehensive long-term approach to peace and stability that reinforces the goal of ending impunity for sexual and gender-based

violence, therefore making the link between the conflict and the consequences. Ms. Schwarz informed the meeting of the regional strategies to implement commitments in the PSC framework which are the January 2014 Roadmap borne out of the Heads of State Meeting to domesticate the ICGLR Protocols and set up the Regional Training Facility, SESG Roadmap to, inter alia, conduct regular advocacy and support regional strategies and the UNCT Great Lakes Region Strategic Framework 2016-2017 to consolidate UN efforts in fighting impunity on SGBV. For all these to have effect, political will, commitments and actions that can be taken must be in place. Pertaining to the Women's Platform (as a tool for monitoring and advocacy, combating violence against women, advancing women's livelihood development initiatives and increasing access to clean energy) the meeting was informed of the communication and grant making fund that was set up for giving small grants for financial empowerment and as a means of enabling access to justice. This was noted as having the additional benefits of helping the victims regain confidence and respect.

For the case of judicial cooperation, the ICGLR Ministers of Justice in August 2015 made a declaration centred on the domestication of ICGLR protocols aimed at enhancing judicial cooperation.

In summary in order to realise access to justice for victims of sexual violence, the fight to end impunity in SGBV will require a multi-pronged approach; overcoming legal, social and political barriers and provide confirmation on the impact that this violence has on survivors, their families, communities and society at large and finally information and experience sharing for easy identification and implementation of best practices.

Combating Sexual Violence in Africa: African Union Perspective by Antonia N'Gabala – Sodonon, African Union Commission (AUC) – Programme Coordinator Gender, Peace and Security.

In line with the principle of solidarity, the AU strongly supports ICGLR through RTF and this support led in 2015 to an assessment of the centre in order to scale it up to a centre of excellence through building the capacity of police officers, CSOs and social workers. The strategy is to build, manage and transfer the capacity and it is for this reason that the assessment was conducted. In its partnership with ICGLR, the AU monitors the implementation of the protocols. The communities will respond on the impact of the ICGLR. The convening power of the AU is to get member states to address critical issues on the continent. Sexual violence divided the member states in 2013. Experts were brought together to speak to the PSC on the impact of SV on communities. The consequences were recognised anew at the meeting. In 2011, AU commissioned a report on the vulnerability of women and children in conflict and there have since been requests for regular reports on the progress. Other activities of the AU include formulation of policies and guidelines, code of conduct by AU on its position against sexual violence, a strong commitment to end sexual violence and impunity. AU engages in creating a mind-set change in member states regarding sexual violence. There was a report on the situation in South Sudan and Somalia. The report gave the position and achievements realised from what each party had done in those countries. AU affords high level advocacy on issues and has a strong partnership with the UN to address sexual violence issues with the prospect of joint activities pursued in the future. Opportunities to share info and experiences remain vital.

Questions/Reactions from this session:

- i. The Central African Republic is in a situation similar to that of South Sudan and Somalia. Does the AU plan to undertake similar missions there?

There is a report by independent investigators with comprehensive information. In 2014 a team was deployed at the request of the CAR Government to take stock and bring response to the victims of sexual violence. This report has been up scaled. As part of engagement commitment to end impunity there is a follow up in place and there will be a serious vetting post-deployment of the troops.

- ii. There are many inhibitions surrounding sovereignty. What is the way around this?

For example in Burundi, with respect to sovereignty and protection of civilians the AU is struggling.

#### Use of Forensic Evidence in Court and its Related Successes and Challenges in the Region – Christine Alai, Physicians for Human Rights (PHR)

This presentation centred on the role of science vis -a- vis forensic evidence in the solving of sexual violence crimes and as a means of access to justice for the victims of sexual violence. Forensic evidence being evidence obtained through the use of science in anticipation or use in legal proceedings, it is used to prove or exclude a physical connection between an individual and/or a place. Where available, other than help the victim make a compelling case, the value of scientific evidence in supporting access to justice for victims is:

- It can link victims to crime scene
- It can identify the assailant
- It can link an assailant to a victim
- It can indicate circumstances of the crime
- It can identify and document physical and psychological impact of the crime on the victim.

The sequence from crime scene to court is first recognition of what could be forensic evidence, collection, documentation, preservation and analysis of the evidence and the conclusion of this process leads up to the application in court.

In Kenya, sexual violence has been recognised as a crime to wit laws have been enacted. The challenges that still remain are: Whereas forensic medical exams are rarely conducted for lack of capacity, there are 3 laboratories in the country that can deal with forensic testing; the lack of standardised documentation is a hurdle; where the examination and documentation is subjective and the forms are documented without some uniformity, clinicians are likely to miss key elements of a given offence. Lack of a shared language means that clinicians and lawyers find themselves on different planes of understanding the same offence. Insufficient resources and incompetent infrastructure. Lack of preservation and storage facilities. Transmission of evidence is still wanting. The issue of DNA has become critical because DNA evidence can positively identify who had sexual contact with the victim but remains extremely expensive and therefore difficult to insist on as a requirement in solving sexual violence cases. Whatever is collected is useless if it cannot be analysed and interpreted for use in a case as evidenced by Frederick Masanjui Vs R (2014). Focus needs to be on

strengthening medico-legal evidence. Crime scene processing. This should be able to be done by any well trained clinician/ law enforcement officers in low resource settings. In conclusion Ms Alai told the meeting that for forensic evidence to thrive multi-sectoral coordination has to be strengthened. The enhancement of legal frameworks to articulate the requirement for forensic evidence cannot be overlooked either. The Post-Rape Care Form in Kenya is one of the examples of a positive outcome of an enhanced legal framework. Pre-service training as a focus and change from in-service training for clinicians and law enforcement officers. If states invest in early warning and preparedness mechanisms that can help identify the kind of contingency resources required, investment in research, M & E to bring about empirical evidence to support securing additional resources then there can be better planning for sexual violence cases and its victims. Experience sharing and partnerships also go a long way.

#### Questions/ Reactions from this session:

i. Have you ever had a case where you were unable to have forensic evidence and how did you manage this situation?

Any offence has specific elements that must be proved to secure a conviction. What remains foremost in our minds is what type of evidence will be the most compelling. Circumstantial evidence is easily refutable. What forensic evidence does is make the evidence irrefutable.

ii. Are there any cases that have been taken to the regional courts?

Regarding to whether there have been cases taken to the regional courts, the ICTR is the most recent. Numerous other cases emanating from the genocide and defining various forms of sexual violence that were not necessarily reflected before are now in the Rome Statute. In Burundi, since April 2015 there were mass rapes of women but people are now in exile, complicating the collection of information for rape cases. The communication of cases has gone digital. There is an association that is collecting data and files are being taken to the ICC. The civil society finds it hard to help victims inside Burundi because of the difficulties encountered in the collection of information.

iii. In the northern region of CAR, the judges sometimes work in a narrow way without external expertise. There is a case where, for 2 years there have been issues surrounding the paternity of a child. The mother did not know who the father was. 2 men are claiming paternity and the judge intervened. She was asked who the father was but she did not know but the judge said she should know since she was the one who had carried the pregnancy. The regional hospital took blood samples but there was a coincidence of blood groups. It was only the DNA test that aided identification. The mother of the child had deceived the 2 men so the child had 2 birth certificates yet the law does not allow such. This brought difficulties. They finally decided on apparent proof

iv. There is a story from Chad of collective rape. The accused was sentenced following information on the file however those interested were detained and sentenced.

## SESSION TWO: FIGHTING IMPUNITY RELATED TO SEXUAL VIOLENCE

### Emerging Findings from a 12-Country study by the RTF on Access to Justice and Ending Impunity for SGBV by Laura Nyirinkindi, ICGLR Gender Justice Expert.

This presentation started with a definition of terms and quickly went into the ICGLR prescribed legal, procedural and institutional responses to combating SGBV. Ms Nyirinkindi summarised the Kampala Declaration and its areas of emphasis with particular attention on Access to Justice. The mainstay of the presentation was 12-country trends analysis study on providing access to justice. The innovations and good practices identified were:

- Zambia's fast tracking courts on Anti SGBV
- From Rwanda, Tanzania, Zambia, Congo Brazzaville, one stop or recovery centres to fast track victims reporting, evidence gathering, medical services, legal services. Angola, South Sudan and DRC have safe houses and shelters.
- The Republic of Congo's (Congo Brazzaville) 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.
- Kenya has the Nairobi Women's Hospital, a private sector initiative that provides medical aid to victims of gender violence and is to be replicated in provincial and district hospitals with the aid of the Government.
- Rwanda has established anti SGBV and child protections committees from the central level to the village/U mudugudu level and ISANGE within Police Forces.
- National Association of Women Judges and Magistrates in Uganda (NAWJ-U) are incorporating Anti SGBV training with Gender and the law.
- FPU, VSUs and Gender Desks exist though not well resourced and trained (Uganda, Burundi, Tanzania, Zambia, Kenya, Government of South Sudan- in Rwanda RPF has gender focal point at HQs since 2007)
- Uganda- in 5 pilot districts with the highest prevalence, 80% of all health workers were trained leading to an increase in referrals of SGBV cases to police
- DRC has established (under the Ministry of Gender) a fund for the Empowerment and Protection of Women and Children to fund initiatives set up by women survivors. In addition, they have special mobile or circuit courts have helped to improve access to justice for SGBV survivors.

Furthermore, the judgements coming out of the Ugandan courts are adopting regional and international standards and there is a lot of work within the country being done in collaboration with medical healthcare professionals on gender sensitivity to increase the reporting of SGBV cases. UNFPA for example has established 5 shelters under the Ministry of Gender.

## DAY 2

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### COUNTRY EXPERIENCES

#### BURUNDI

GBV in Burundi was exacerbated by the conflicts. Burundi was already ahead with a number of aspects of the declaration but the environment of conflict enabled SGBV. Currently, various national policies and sectoral strategies aimed at gender mainstreaming are available. These need operationalization in both public and private spheres. The legal framework severely acts on SGBV. The national law on GBV protects women now more than ever before. In as much as Burundi has a legal framework, the context and its practice are where the challenges lie. SERUKA in Bujumbura is a 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. Their work gives insight on the scourge of GBV in the country. The challenges are many but in brief include, but are not limited to a lack of information and sensitisation. The Minister for Solidarity had envisioned a data collection centre for SGBV but this has not yet been actualised yet this is the best means through which the extent of the scourge can be understood. The lack of witness protection presents another problem. Legal aid is done more by CSOs but their reach remains limited. Corruption is only making things more difficult because it permeates police and the judiciary. Burundi remains in need for community development centres.

#### Questions arising from Burundi's presentation

- i. How is Access to Justice ensured?

There are special courts. The special stations enable the cases to move very fast. 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).

- ii. Do CSOs collaborate with the state in the mentioned efforts?

When there is support for the victims the cases progress fast. The first good practice is availability and sensitisation of magistrates. They collaborate well with CSO's and SERUKA received victims of SGBV. NTURENGAHO concentrates on psychosocial help. With time it is hoped that there will be information from other countries that can be transplanted to Burundi to better this situation.

- iii. What is the concept of an unforgivable crime in Burundi? Doesn't this conflict with the constitution?

Whatsoever concerns SGBV and is free of political connotation is not subject to settlement out of court. The mentioned conflict situation does not translate into the stopping of partnerships. The already established links between government and the responsible ministers, technical and financial partners go on with their work.

- iv. What about the absence of a remedy fund for the victims? Doesn't their absence violate the rights of the victim?

These remedy funds are provided for in the laws but the Government remain unimplemented because of budgetary constraints. The CSO's that come in focus their attention more on the remedies and for that reason, that bill they did not accept complementary punishments because they felt that if they were complimentary then the victims would have a sense of reparations.

## CENTRAL AFRICAN REPUBLIC

The penal code punishes pornography and SGBV. The sentence against rape has been escalated when the circumstances are it was preceded by kidnap then the sentence is death; if there was collective rape, the sentence is forced labour. There have not been many recorded complaints due to the fact that victims do not notify judicial systems out of fear or the customary practices of the day. The cases that are regularly reported are formulated by parents regarding violence against children but even then there is no systematic method to this. In cases where there has been marital rape; the victim may be unable to report and there have been cases where the wife later on goes and requests for the release of the husband. With regard to the care of victims, institutional care exists albeit without coordination.

The absence of victim protection and compensation is deplorable and it is for this reason that the acts go largely unreported. The police in CAR are not trained to extract evidence. Militia groups in some parts of the country disable access to those regions and with no army to fall back on, those regions remain unreachable and unreached.

The issue of violence against women in CAR is worrying. Rape against minors does not raise eyebrows and sexual violence between couples is seen not as a crime, but as a domestic issue. Violent sex in CAR is viewed as normal. At the family level, the workplace and during conflict sexual violence is the norm. Traumatizing events such as the introduction of pepper in the vagina and other degrading activities that are not deemed strange. In terms of institutional framework, policy framework for national, international and regional partners, the attempts to solve the problems of SGBV gave rise to the National Plan on sexual violence and put emphasis on sexual violence during conflict. Lack of coordination makes it hard to capitalise on the achievements and programs as well as an assessment of their impact. The fight against sexual violence in CAR constitutes for us violations that can be prevented with a quick end of the conflicts arrived at or any progress so far registered will all be in vain. The special embargo by the UN under which CAR finds itself with no army leaves the country with a police force that is functional but not equal to the task in the face of a breakdown of basic services, law and order caused by and worsened by an ongoing conflict. CAR is under special embargo by UN with no existent army. This leaves the country with insufficient protection and the occupation of some courts in the provinces by bad elements.

### Questions/Issues/Reactions

- i. Zambia is specifically interested in the stabilisation of the CAR. Question is on the ritual and its importance. Parliament condemned the practices as bad. When a husband dies the contents of the baskets, everything that can be ingested is contaminated/dirty. There is some starvation involved.
- ii. Jean Pierre Bemba has been convicted of offences committed in CAR. Does the CAR continue to cooperate with the ICC and what is the impression of Government after this conviction?

The ICC being sovereign indicted Jean Pierre Bemba using the principle of command responsibility and not to suggest that he was the only one who committed this crime. Nevertheless the victims are satisfied because both men and women were raped. The Chief Prosecutor of the ICC visited the CAR about the sexual violence committed during the arrival of the troops as well as to forge the way forward on how to bring the other perpetrators forward. These cases are almost before the ICC. What the victims take into account more than anything is the sheer duration that that case was before the courts. It took too long. Not only did some victims die but the duration it took meant that vital things got lost

iii. There was talk about a corrupt judiciary and the penal code. Does the penal code cover crimes committed in conflict?

There is a special criminal court to deal with all these questions. As regards international forces committing sexual violence. The laws signed between CAR and the UN it is in their respective countries that these offenders will be tried. Political connections do not allow effective prosecution. In the example given of putting pepper in the vagina among other violations, the situation on the ground sometimes does not allow the victims the freedom of going to court for reparations. Due to trauma and fear of reprisals some victims do not bring their cases forward.

iv. The CAR is dealing with complete systematic breakdown. The focus should be on the containment of the present conflict. The heads of state have made a decision to help build the health and security system. They dispatched a team of military experts to Bangui who interacted with stakeholders and made a report to heads of states that was adopted and decided on. What is on the ground is bigger than what is being addressed here. As SGBV and impunity is being addressed there has to be a preservation of systems. The ICGLR was established for this to address real issues pertaining to the people of the Great Lakes Region. The willingness of CAR to address issues of transitional justice brought them to the AU to address this issue and the issue is still on the table.

#### DEMOCRATIC REPUBLIC OF CONGO

The penal code has preliminary steps with short and strict time limits within which an action should be brought e.g. 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. The 1st evidence is a medical certificate, provided free of charge by decree of the Ministry of Health, which the presiding magistrate requisition for. It must have indications on the form to inform the court on the severity of the crime committed against the victim and in this way the judge can appreciate the gravity of the offence. The victim has help from the police up to the time the judgement is made. Victim protection is provided for by the law in DRC but has not yet been adopted.

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. Ministry of Gender is now the Ministry of Women, Family and Children and it gives special focus on matters relating to women and for this reason created a strategic cell for the family as well as a fund for protection of women and children. Different multisectoral programmes are in operation and there have been projects on the construction of women's houses. National programs for the stabilisation of DRC, gender mainstreaming programmes. There are collaborations with MONUSCO, a policy to put an end to child marriage and activate victim compensation.

Key challenges for the DRC are the current lack of a reparation fund, lack of capacity building attributable to insecurity and diversity of sources for data collection. With regard to training and the need for the enlargement and generalisation of this, there have been efforts by the President who has a special representative for SGBV and current figures for training stand at 76 persons trained in Nyirangongo.



It was previously a taboo to talk about sex but this is changing slowly. There has been an increase in prosecution with the support of MONUSCO in reaching remote areas to judge cases. Regional synergy has been enhanced. The handling of victims of sexual violence is holistic with medical treatment, psychosocial counselling and care being provided to them. Each Friday GBV case handling magistrates meet to gauge progress. Insecurity remains a challenge on the ground and creates reservations from victims who fear reporting their cases.

#### Questions/Issues

i. Is the fund functional? Where does it come from?

The fund falls under the Ministry of Women and Children. The funds cater for sexual violence victims and cover legal fees from the inception of their cases up to the time the judgement is made but cannot stretch to the level of compensation decreed by judgement. This fund also helps the victim access an occupation for her reintegration into society. There is a structure in the same Ministry for their protection. The challenge though is the strengthening of the political powers. The subsidies obtained by government do not cover efficient intervention in all cases. There is technical capacity building and people prefer out of court settlement as being more amicable than judicial process.

ii. What is the logistical participation of MONUSCO apart from them accompanying magistrates to relatively unsafe regions?

There is a recognised problem arising from the fact that the army is hybrid comprising people with almost no military training to the very highly trained. They have a code of good conduct governing behaviour as well as modules elaborated for them and the police. Thanks to sensitisation campaigns, violations by MONUSCO have gone down. Their participation remains vital because of the size of the DRC and the media coverage of Kivu, many sexual violence cases happen because of conflict. Add that to the fact that that area has the poorest road network.

iii. How are cases of SV being reduced in the conflict areas?

In Eastern DRC, children borne from rape were once called children of vipers. Many of these are now street children and ostracised for the manner of their conception. Civic education is in dire need to change these attitudes. A negative effect of this has been that these very children take up arms and rebel. Among the challenges for magistrates is the problem of condemning people and send them to the East in old prisons that are congested. They escape from these prisons and go on to re-offend, sometimes violating the same victim. There is a lot of political interference and the courts cannot go after high profile or politically connected offenders.

### REPUBLIC OF CONGO (CONGO BRAZZAVILLE)

The Congolese government considers violations against women and children as human rights violations. Women are largely ignorant of their rights and this fuels impunity. Impunity in GBV is rampant in the Congolese community despite the ratification of relevant instruments. Multiple acts taken as socially normal have legal punishments in criminal courts and tribunals. 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. There is continuous training of police officers on GBV and prevention is being taught through sensitisation campaigns. UNICEF, FAO and other UN agencies have programs covering districts and target the sensitisation and training of communities and committees. It also recruits psychologists. Institutions of research have revised manuals on the laws on protection of the child. There is also a Sexual Violence Bill.

Notable challenges to access to justice and ending impunity are the lack of special procedures and lack of funds to compensate victims. These are by far not the only challenges but we hope more can be achieved through our interaction, mobilisation and federation of our activities.

### SOUTH SUDAN

The Government of South Sudan is determined to eradicate sexual violence violations and in so doing has signed regional and international instruments. The Ministry of Gender has a plan to eradicate human rights violations. The Government established a joint court to try violations by SPLA with the knowledge that the armed forces commit many violations. The joint court handles them and is making strides against these cases. 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.

The formation of joint courts is one of the best practices. Women and girls are now coming to openly report violations against perpetrators and are receiving services. That said, a big challenge remains that culture and traditions normalise some violations.

Most of the citizens are armed and there is general ignorance on human rights issues. Poverty causes/fuels violations. The rule of law sectors need to be strengthened mainly the customary justice system in South Sudan which plays a role in addressing GBV but does not apply human rights principles. Equally troubling is the inflow of guns to South Sudan that allows the weapons to be everywhere including the custody of civilians.

There remains a need for the development of organisations with technical capabilities need to be developed, for financial and technical support to be increased for implementation and, last but not least, a way to implement sustainable peace in South Sudan.

## SUDAN

Women play a significant role in the development of the society and the world at large. Sudan recognises the importance of combating SGBV. Since 2012 the Ministry of Women and Social Welfare has been involved in building legal capacities. The Constitution of 2006 ensures equality of persons in the law. The 1991 criminal law has 2 amendments and in 2009 a whole chapter was added to cover Crimes against Humanity, Genocide, rape and others. The 2015 amendment removes the contradiction between Articles 149 and 146. The Children's Act established a juvenile justice system. The courts have criminal circuits. For the case of GBV in Khartoum it was found that domestic violence was highest between husband and wife.

### **Best practices**

The establishment of female police and directives to end impunity.

### **Challenges**

- i. Weak democratic practice of women
- ii. Insufficient work opportunities and low wages taking into consideration the high cost of living
- iii. Unavailability of statistical data measuring the extent and magnitude of violence against women
- iv. Low levels of awareness and understanding about gender based violence and its negative impact on society and how to combat it
- v. Lack of holistic coordinated approach to issues pertaining to violence against women and programs at planning and implementation level.
- vi. Illiteracy rates among women and children as well as lack of knowledge of their rights.

### **Way forward**

- i. End civil war and conflicts in Sudan
- ii. Establish a National Mechanism with involvement of local community group for monitoring and addressing violence against women, that can also work as an early warning tool
- iii. Establish academic and research centres
- iv. Review and enforce laws incriminating violence against women and children and review existing ones
- v. Strengthen the capacity of states for combating violence against women and children
- vi. Build on the political will so far expressed by the Ministry of Justice statement
- vii. In dealing with other SGBV attached to traditions, there is still a lot of social intervention required.
- viii. Establish a Law Reform Commission with a specific mandate staff and personnel to make reviews and laws. Project is UNFPA/UNDP funded. Harmonisation of all laws to which Sudan is a party.

### Questions/Issues/Reactions

Is marital rape covered in the penal code of Sudan? Marital rape is not an offence recognised in the penal code but there is a section that covers injuries whether physical or emotional. Everyone has the right to go to court and prove their injuries and court can compensate so this is a round-about way of addressing the issue.

### KENYA

This presentation focused on the challenges and opportunities in the implementation of laws curbing impunity of SGBV.

The challenges listed were weak implementation of laws; weak coordination amongst the actors at all levels; inadequate resources; limited technical capacity; inconsistency of services occasioned by frequent transfers of experienced officers; imbalances in the severity of judicial decisions regarding the same offences and legal illiteracy.

The opportunities identified were constitutionally enshrined rights; comprehensive care centres that act as one-stop shops for survivors of sexual violence; intolerance to sexual violence as evidenced through campaigns that enlist the participation of men such as the He for She campaign which is carried out with the cooperation of UN Women; survivor friendly desks at police stations; toll free lines for assistance and GBV recovery and rescue centres. There was an invitation by the Director of Public Prosecutions in Kenya to give FIDA (K) prosecutorial powers in cases involving SGBV.

In Kenya, the general direction being taken is to make the government accountable. Individual people are suing government institutions and perpetrators with positive response from the courts, providing a viable fall back from the much trusted criminal law.

### Questions/Reactions/Issues

i. Is the specialised hospital dealing with violence against women functional?

Yes. Every provincial hospital has a special ward for dealing with SGBV cases.

ii. Are there any special radio/ television programmes in Kenya addressing SV?

Yes. Not only are there constant talk shows on radio and television stations, the Department of Gender has a webpage as a government requirement.

iii. On sentencing: Many jurisdictions want stiff sentences but these may not necessarily work. Uganda has sentencing guidelines that give a range. Death for sexual offences is only for the rarest of the rare cases. In Kenya, medium sentences do not send a strong enough message to perpetrators of sexual violence. When stiff penalties are imposed, they serve as a commitment by the government that sexual violence will not be condoned and the perpetrators will not be allowed to go scot free.

iv. On the toll free lines: There are 3 most common helplines. 1 is privately owned by Healthcare assistance an NGO, another one is operated by the office of the DPP and was initiated when the media was the main source of reports on SGBV. This was done in collaboration with FIDA Kenya. The government owned toll free line is the childcare helpline by the Department of Children's Affairs. All the toll free lines are functional.

## RWANDA

### PRESENTATION FROM RWANDA

In Rwanda, the penal code is one of the most important GBV tools and includes the offence of marital rape. It carries life imprisonment and allows abortion after a due court process for the victim. There is a move to remove the court approval required before the grant of permission to carry out an abortion. GBV cases are given priority.

Rwanda has 30 districts over 26,000 sq. km. Police has a toll free hotline and a forensic lab for forensic examinations. The forensic labs cannot conduct DNA tests however, there is cooperation with an external lab that carries out these tests when the need arises. GBV cases have their own prosecutors. Rwanda has victim protection structures. Courts have been asked to specially consider GBV cases. Trials are held in camera to avoid stigmatisation of the victims however there are times when the courts hear GBV cases in the community as a deterrent to future/repeat offenders.

Some of the measures that have been put in place are one-stop centres where psychosocial counselling and legal aid services are available around the clock at no fee for victims. Advocates provide mandatory legal aid. CSOs help victims get redress. All GBV cases are exempt of court fees.

Some of the challenges registered in the fight against SGBV are lack of evidence during prosecution of GBV cases, leading to loss of cases in courts of law; delayed reporting of GBV cases, leading to loss of evidence and escape of perpetrators; inadequately trained prosecutors and judicial police officers in charge of GBV cases; lack of DNA Laboratory in Rwanda to help reveal scientific evidence in GBV cases (esp. rape). Samples are sent abroad (in Europe), which is more expensive and delays adjudication of cases. Male GBV victims are reluctant to report violence committed against them due to cultural mindset and patriarchal attitudes.

The way forward for Rwanda therefore lies in raising community awareness on preservation of evidence for GBV offences; encouraging the public to report GBV cases in a timely manner; the new National Forensic Laboratory under construction will be operational by 2017 and will help to carry out DNA tests within the country and New Africa's Centre for Security Organs Coordination of Action to end Violence Against Women and Girls (AFSOCCA-VAWG) will help to conduct training and research on SGBV for all actors in the judicial system on how to handle SGBV cases. Lastly, continue the scale-up of Isange One Stop Centres (IOSCs) in all District Hospitals.

### Questions/Issues/Reactions

- i. What are the ingredients for marital rape in Rwanda?

It is usually hard to get evidence but these cases exist. Even between spouses there must be consent for sexual intercourse. Men tend to use force even when their partners are unwilling. There have been cases of HIV positive men and their women are negative but the men nonetheless want to have unprotected sexual intercourse. There is potential for this crime to attract the penalty of life imprisonment if it ends in the death of the victim.

- ii. On transitional justice: how well was sexual violence addressed?

For the Gacaca courts, rape was the most difficult issue. The rapists were categorised as the most eminent criminals during the 1994 genocide. Rape would carry life imprisonment so those cases were tried just like any other acts of genocide including mass killings. Perpetrators were punished and victims were taken care of. The children born of rape continue to live with that stigma. Gacaca courts have been helpful in revealing the truth of what happened in 1994.

## TANZANIA

GBV exists and is pushed by culture. With over 120 tribes in Tanzania, this translates into an adverse impact on GBV. There are almost 50 million people. The districts are huge and sometimes have just 1 court making them inaccessible to most people. These courts cannot handle criminal cases (primary courts) yet they are in every ward. The primary court can neither try nor interpret penal code crimes. Corruption, few magistrates and prosecutors inattention by police only make the problem worse. There are tribes where the victims believe that some practices are cultural such as being beaten. The courts find themselves in the position where they are nullifying cultural practices which are fine with the people but must be nullified by the courts. The case of Leonard Jonathan vs. Republic sheds some light on such practices. Under customary law there was never a requirement for consent from a woman so in this case a man waylaid a girl and raped her but claimed that he was married to her under customary law. He claimed he was in love with her. The court found that the so called customary marriage was improper.

Until the 8th of July 2016, the Law of Marriage Act 1971, 14 year old girls were allowed to get married. Parliament had until then turned a deaf ear to amending or repealing it. Even with progress being made in other areas such as with the Education Act which was amended with a 30-year jail term, corporal punishment and a fine payable to the victim for impregnating school going / school age children, there was serious reluctance to repeal the controversial Marriage Act.

Access to justice is addressed by special provisions for sexual offences under the penal code. The evidential complexities were reduced. Originally a child below 18 could not give evidence that would result in a conviction but now the court can convict without a *voire dire* and can rely on the child's evidence so long as the court is convinced on the truth of the evidence.

### Questions/issues/reactions

The judiciary in Tanzania has deliberately sent judges and magistrates to the University of Zimbabwe to study and train on SGBV and International Human Rights. This has helped judges grow into experts on gender issues. In practice Tanzania is doing well. The Chief Justice called upon all judges to give GBV cases specific attention. Most of these cases are conducted in camera.

## ZAMBIA

The victims are mostly females and the statistics from the Gender Support Unit. The majority of victims are women between 15 and 49. In Zambia, without a medical examination form the case can be thrown out. The age of maturity is 21. For 2014 cases, only 5% cases get to the conclusion of the case. On defilement the withdrawal of cases is 23% and court convictions are about 14%. Parents do not easily withdraw their cases. Many obstacles have been put in place. Anti GBV law came late and there were no fast track courts put up. Zambia does not have an SGBV shelter. Within the social context, the predominantly patriarchal culture and religion poses a challenge. Some of the laws are not up to date. It is difficult to provide evidence on offences. Improvements noted are that the law now has a description of sexual abuse that covers marital rape.

### Questions/Issues/Reactions

- i. What does the medical examination form cover? Is it brief or does it go into some detail?

These are so thorough that CSOs have made simplified booklets. Parents and guardians are advised on what to do in order to preserve as much evidence as possible. Some of the fees had to be removed but still, some problems remain.

ii. Defilement is almost the only sexual violence we hear about. This is very rife and covers all age groups. To make sure that the report is made when the memory is still fresh there has been a push for fast track courts.

## UGANDA

The main problem for Uganda lies with the legal framework and the lack of an implementation framework. There is a disconnect between practice and the laws. Some laws have not been disseminated and those people aware of the existence of some laws remain ignorant on implementation. A manual was developed by the Office of the Director of Public Prosecutions on how to handle GBV cases. The high levels of SGBV reflected in the statistics suggest that there is conflict in Uganda but this is not so. Culturally entrenched inequalities makes men scavenge on children. Police have GBV units and the Ministry of Health has tried to specialise the response to GBV victims. Data remains disaggregated.

There is some progress in the judiciary with the majority of judicial officers in lower bench being women. The use of court sessions expedites trials and should be an advantage but the number of judicial officers at the higher levels doesn't allow the holding of sessions in time. There is a lot of breakdown in public services. The quality of investigations are poor due to ignorance by some police officers and many times they do not act with due diligence. The time spent pursuing judicial processes is too long. There is also a lack of effective coordination and a poor referral chain system.

If the courts do not apply the law in a liberal manner the safety of victims is undermined. Currently the only provision for in-camera proceedings appears in the Children Act. The technical language used in court acts as a hindrance. There is a need for the expansion on the typology of rape. There is a Sexual Offences Bill 2015 which seeks to include rape by use of drugs and/or intoxication. Marital rape remains a controversial subject due to religious constraints in Uganda and is very indirectly addressed. More needs to be done on this. Sexual harassment is not talked about much and is not even a criminal matter. The same Bill criminalises what is up to now a civil matter.

The problem with DNA analysis in Uganda is that though available, the Government laboratory is stretched and underfunded. There is also the new sphere of violence against women that has been created ICT and the arena is cyberspace. There is a gap that requires addressing. In summary, SGBV needs better prioritisation.

### Questions/Issues/Reactions

i. A gender based book on access to justice is underway. The Ugandan Government felt the need to distinguish between the kinds of defilement and therefore simple defilement covers sexual intercourse with a child between the ages of 14 -17 and aggravated defilement pertains to intercourse with a child under the age of 14.

ii. On the issue of what language is used in court, the Government has just recently put extra emphasis on this challenge. For instance, family interpreters were being used where there is ignorance of official sign language. Judges have not been insensitive to this and therefore allowed it in the interest of justice but it remains a big problem. Deaf and dumb people are the invisible victims of crimes.

## SHARING EXPERIENCES

### MALI

In the Malian courts, adultery is handled by special procedure. Damages are awarded in cases of domestic violence. Paedophilia and rape are also addressed by law. When a peace agreement was made with the terrorists the amnesty was difficult to enforce. The procedures are followed. The same problems that have been addressed by the other countries, such as fear of making complaints also exist in Mali. There is an association for the promotion of women's rights. Transitional justice allowed the people to follow their societal traditions and eased access to justice but the perpetrators of sexual violence were not found. The victims who were allowed to speak have the right to protection and care.

On international judicial cooperation and particularly extraditions and general legal cooperation, West Africa has a focal point for each country. They share the information. Conventions with other countries mean that they do not use the offices of the other Attorney Generals when pursuing SGBV criminals but go straight to the DPP.

### MADAGASCAR

There is a legal clinic to solve community conflicts and giving people access to justice to the vulnerable e.g. children. It has been noted that they are the majority of victims who have gone to that clinic and this helps the work of courts. There is a pool of lawyers in Antananarivo that handles SGBV cases with a specific focus on the interests of women and children. Unfortunately, other provinces do not have this pool. Women and men with financial means do not use this pool of lawyers.

Madagascar has embraced the adoption of efficient and fast procedure. The more the procedure delays the more the crimes go unpunished and the higher the chance of silencing of witnesses. There are also magistrates who specialise in GBV cases. Again, the majority of these institutions are only in the capital city and the future prospect is that they should be spread out and be able to receive the complaints with officers competent to handle the complaints, have doctors to treat them and have access to in-camera court proceedings. Finances and space are still being looked for to realise these goals. Finally, the penal code needs amending with the definition of rape. The current definition is not clear.

### SOUTH AFRICA

With the highest rates of GBV outside of a conflict zone, the scale of sexual violence in South Africa is wide. Unique to the country are high incidences of corrective rape which is the rape of lesbians to correct their sexual orientation. There is also sexual violence against children and infants to correct disease diagnoses. Patriarchy is largely a driving force of the epidemic. Government is now citing Satanism as a cause of GBV which in turn means that the church can cure GBV, a position that is untrue.

Marital rape is a crime documented by South African Law. Domestic Violence Act applies also to family members. From 2007, apart from rape not having to be proven beyond reasonable doubt, both the complainant's previous sexual history and the complainant's relationship with the accused became irrelevant and immaterial. Cultural and religious beliefs cannot mitigate sentencing.



There are specialised sentences in SA for SGBV. An extensive framework exists. There are 55 Tutuzela (one-stop) centres in existence. There are also specialised family and sexual crime units in every police station. The enforcement officers are knowledgeable in the examination of sexual violence. There are sexual offences courts for crimes related to rape and children and alleviate the trauma of testifying of children. The issue of stranger rape is in most cases akin to a myth for the case of South Africa. Many times the perpetrator is known to the victim.

#### CHAD

Chad has seen conflict. Rape was first recognised by the penal code in 1962. Chad with its main partners helped in the fight against SGBV. There are problems of education and sensitisation to stop the taboos and a drive to change this was instituted by FUNWAP through women lawyers. Many of these crimes also took place in refugee camps. Women lawyers go to these refugee camps with UNDP and FUNWAP. The women are also afraid of the sociocultural norms that prevent the talking about of these issues. The women lawyers have a fund to help the victims gratis. There are many instances of out of court settlements. The cultural practice of the day meant that it was taboo for a girl who had been raped to remain unmarried. However, from the 15<sup>th</sup> of March 2015, it became illegal to procure such marriage and the Government set the age at which a girl can get married at 18 years.

Out of court settlements happen and they are allowed because they make the decision more lenient but depends on the gravity of the rape. This remains dependant on the position of the court and the settlement does not affect public action. Perpetrators can benefit from provisional freedom.

#### LIBERIA

Rape was used as a weapon of war and thus became a serious problem. The first thing the women of Liberia did was to amend the law regarding rape. The new 2005 law made rape a non-bailable offence. In 2008 the Special Court amended the laws. Trials in court are held in-camera. A new court with 2 judges was established specifically for rape cases. In the police department there was training of a special unit. The jurisdiction of the Magistrates Court is limited to the preparation of a charge sheet in matters of SGBV and thereafter the case has to be transferred to a higher court. The victim support centres care for the needs of the victims and give precedence to indigent victims.

#### GUINEA BISSAU

Domestic violence is a public crime needing immediate investigation and rapid prosecution

#### ANGOLA

There is a legal framework and institutions to combat SGBV as well as a Women's Department within government. The country has a unified direction in the guarantee of women's rights. There is a council for Angola families. The Ministry works in coordination with the Ministry of Women and Children. A law enacted in 2011 addresses violence and the government disseminates information on human rights.

## DAY 3

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### SESSION THREE: CASE LAW: PRONOUNCEMENTS OF THE JUDICIARY ON ENDING IMPUNITY FOR SGBV: ARE THERE GAINS OR LOSSES? Identification of land mark cases on SGBV, Challenges, Best Practices, Quick Wins and Recommendations

#### *Is there any hope?*

IGAD does not have a regional court but what is discussed at country level does. On regional and international perspectives a lot has been discussed about national laws and initiatives. What remains unsaid is the effective use of international instruments.

Prosecution in Uganda and the nation is not happy with the courts not because of failure to make good decisions but the lack of creativity and the slow pace at which cases move. It is not the courts per se that the public is not happy with but the criminal justice system. Prosecution is partly happy and partly unhappy because some decisions have made prosecution a little easier and law reforms that make it easier for the prosecution to work have taken effect. The limited definitions of rape and a narrow definition of sexual violence remain on as stumbling blocks.

There is a move in the right direction going by the evidence from national jurisdictions on the amendment of laws concerning women. The typical rape definition has in the recent days been expanded to include men and that on its own serves as an indicator of willingness by states. There were gains and losses through the ICTR. Although able to build jurisprudence, it built SGBV specific crimes but it was not a smooth ride and some cases were lost.

The case **Christopher Kizito vs. Uganda** whose focus was on the defilement of children is about the corroboration of a child's evidence. Mandatory sections of the law were revoked for children's unsworn evidence. In this case the DPP and other actors were seen to reform the law in order to address the roadblock. The Tanzanian evidence act gives the parameter of the court having to believe the evidence of the child as the standard.

**Hamidu Yiga's** case raised the defence of honest belief/mistaken fact where a man thought a woman was his wife and went on to rape her. The court found that there was no evidence of marriage and even if they had been married his action would have still been rape based on the jurisprudence from jurisdictions that recognise marital rape.

**Mukungu Vs Republic (a Kenyan case):** Any practice of the courts that requires the evidence of a woman or girl when the complainant is a woman is unconstitutional for discrimination. The Supreme Court of Uganda now disregards the requirement for caution. This has made prosecution easy for sexual violence cases.

From the case of **Prosecutor Vs Silvestre Gacumbitsi**, the evidence of no consent does not have to be elicited from the victim if the surrounding circumstances negate the consent of the victim. In Common Law, The victim has to also prove that s/he did not consent. In the tribunals, one of the first things that the defence counsel would do is try to prove that they did indeed consent. The judges said that that had to stop. The women were being raped under

circumstances where sex was the only alternative available to them to prevent death. The trial chamber said that the circumstances prescribed succumbing rather than consenting.

## Is justice about the courts and the law?

A big problem is that there is no specific law for GBV. Tampering with evidence and interference with victims also rank high up amongst problems. None of the people brought before ICTR were arrested in Tanzania and bail was denied for this reason. There have been trials in countries but it is difficult to have sentences that satisfy everyone. One of the reasons accused persons cite in the appeals documents for ICTR is the lengthy pre-trial detention. **Jean Paul Gatete** was the only person whom the appeals tribunal found undue delay in his trial.

In national jurisdictions the investigative process is to blame for undue delay in trials. The delay exposes the victims to the perpetrators influence. The perpetrator can re-offend. In Lesotho, in 2002/2002 the legislature drafted the speedy trials court act and limited 2 remand sessions before the start of a trial.

Justice is not just about the penal law. There are other intervening conditions that affect access to justice: access to economic and social rights, health, support and preparation of victims; the area of protection and all actions to prevent systematic abuse; gender based barriers; war situations where people are displaced (Somalia, South Sudan).

Within the context of transitional justice, South Sudan has proposed to establish a Truth and Reconciliation Commission, a Reparations Commission and hybrid courts.

In what context was Akayesu tried? This case is the pride of the ICTR. It was the first case ever since the adoption of the 1948 Genocide Convention. Rape was accepted as a way of committing genocide. The investigators did not go into the field looking for evidence of sexual violence because the rape was not publicly talked about. The victims were shy and reserved about discussing their rape with strangers. During the trial, one witness was brave enough to talk about her rape. The prosecution was allowed to go and reinvestigate in the context of rape. The trial was suspended and investigations brought up all these other issues. The trial chamber opened their view on the crime of rape. They did not just look at the impact on the individual victim but on the entire Tutsi group. It resulted in their physical and psychological destruction and therefore fit the process of destruction.

A case of defilement is lost at the village level in Uganda. Everybody examines the child and sometimes the child is transported to the police station with the accused. She is examined by so many people that she gets re-traumatised. She also gets stigmatised.

In the case against **Uwera Nsenga** and the separate case of **Lydia Draru Atim** the GBV victims were men: the husband of the accused for the former and an army general for the latter. The courts ruled that they will disregard minor inconsistencies and only consider major inconsistencies in their decisions. This is particularly important for GBV cases. To wit, accumulated anger can be a partial defence or a good mitigating factor when it happens. And thus qualifies as provocation.

On whether medical evidence is necessary in SGBV cases, the case of **Basoga Vs Uganda** comes in handy because it was held that court can convict without medical evidence where there is strong evidence to leave no ground for reasonable doubt. In **Basita Hussein's** case the complainant had testified and no medical evidence was ever adduced. The medical doctor was severally summoned with no results. The case was closed and a conviction was secured. Direct or circumstantial evidence therefore suffices. Whatever evidence the prosecution may need to prove its case can be used but medical evidence is not necessary. Even eye witness accounts suffice because injuries are not sustained in every case and DNA evidence will not always be there. GBV victims do not always understand/know the procedures for sexual victims. They often bathe and change clothes, take some time/days without going to the doctor/police. They do not compile testimonies/evidence.

### What is fuelling SGBV?

At the root of this problem is the concept of patriarchy and this is abused severally. There are contributing economic, social and political factors. Rape in domestic relationships is rampant. One of the suggestions from Uganda was to add the offence of marital rape but this was not taken well. It is a question of power and control: who has it and how are they using it?

If the government chemists can be resourced to enable investigations then this will go a long way. Law can only be made where the constitution says that the modifications and adaptations bring in gender equality.

Incompetence of judicial officers can be remedied by meetings of judges and justices of the region to enhance competence.

On the interruption by politics in the work of the judiciary, there are cases where the sexual violence offence is committed by an influential person or someone influentially connected and only in some cases are biased decisions made. Human rights defenders especially women should rise up and support the victim register a complaint and receive justice. The major challenges are limited police and magistrate resources so there should be plea to correct this at country level.

The reason SGBV crimes are not treated as severely as murder cases is because there is social tolerance of SGBV. What type of violence is more prevalent in Uganda and how do you work around this? In Uganda, defilement is the most common form of sexual violence, followed by attempts to defile and then rape.

Regarding the stigma attached to rape cases, when addressing the withdrawal rates it is important to note that these withdrawals are almost always sanctioned by the parents of the victim to avoid shame. The stigma goes both ways. Some accused people would rather plead guilty to other crimes but not so for rape.

The issue of relevance of special courts can derive inspiration from South Africa where conviction rates in cases brought to a court connected to Tutuzela stand at 97%.

### Recommendations:

There should be insistence on the structures put in place. There are a limited number of complaints. There should also be translation of the tools into local language.

- i. In the training of police and other enforcement is there a provision for acceptable language since some things may not easily be said by everyone the same way. In the training of the RTF, prosecutors are critical players and should be targeted. Prosecution is a secondary means of prevention.
- ii. Develop modules of effective behavioural change in communities.
- iii. There should be a comprehensive Monitoring and Evaluation report citing the progress so far achieved. People from the member states should be trained and brought to the same levels of implementation as the other more successful countries. This way the heads of state can be put to task.
- iv. Recommendations are always formulated at meetings such as these. Countries have national coordination mechanisms within ICLGLR framework, ministerial committees and Heads of State summits, but the same problems still persist especially the problem of implementation and budget allocations to allow this. We must act on the decision makers.

Heads of State summits can address these issues. These recommendations can be operationalized at that level.

- v. When there is a law that has been passed there must be enforcement without exogenous considerations. If a sentence has been pronounced and jurisprudence created as a source of law to change mentality/society, the judge should be able to interpret it.
- vi. Human rights defenders especially women should rise up and support the victim register a complaint and receive justice. The major challenges are limited police and magistrate resources so there should be plea to correct this at country level. In DRC for example, since the victims are often poor, Coca Femme provides legal aid
- vii. Early marriages must be criminalised.
- viii. There should be no mediation or out of court settlement in SGBV cases.
- ix. The crime of defilement should be expanded to include insertion of objects and not remain limited to organs.
- x. Medical assistants and midwives should be allowed by law to carry out examinations in cases of sexual violence.