



Submission
to the Secretariat of the International Conference on the Great Lakes Region (ICGLR)
on the Implementation of the Kampala Declaration in Member States

Submitted by

**Coalition on Violence Against Women, FIDA Uganda, Independent Medico-Legal Unit,
Kenyan Section of the International Commission of Jurists, Kituo Cha Sheria,
Physicians for Human Rights, REDRESS, TRIAL**

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INTRODUCTION

1. This submission provides an overview of the progress made by the Democratic Republic of the Congo (DRC), Kenya and Uganda in implementing the ICGLR's Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (ICGLR Protocol on SV)¹ and the Declaration of the Heads of States and Government of the Member States of the International Conference on the Great Lakes Region at the Fourth Ordinary Summit and Special Session on Sexual and Gender Based Violence (Kampala Declaration)².

It is submitted by the above-listed national and international non-governmental organisations (NGO) working on the issue of sexual and gender-based violence (SGBV) through the provision of victim support, advocacy for policy change, capacity building and strategic litigation.³

¹ Adopted on 30 November 2006.

² Adopted on 15 December 2011.

³ See Annex A for a short description of each organisation's mandate.

IMPLEMENTATION OF ICGLR PROTOCOL ON SV

2. According to paragraph 2 of the Kampala Declaration the member states commit to implement the ICGLR Protocol on SV. Each member state agrees to ensure that all provisions of the Protocol are reflected in domestic laws and practices. Below, we provide a summary on how far the DRC, Kenya and Uganda have complied with certain obligations under that protocol.

Article 6(4) of the ICGLR Protocol on SV: Simplify procedures for lodging complaints

3. According to Article 6(4) of the ICGLR Protocol on SV, member states agree to simplify the procedures for lodging complaints of sexual violence by women, children, and other interested parties. According to the Principles and Guideline on the Right to a Fair Trial and Legal Assistance in Africa issued by the African Commission on Human and People's Rights (ACHPR) in 2003⁴ judicial mechanisms for victims of crimes, including women who have been subjected to violence, should be expeditious, fair, inexpensive and accessible.⁵ Being the first step in initiating judicial procedures, the process for lodging complaints should follow the same standards. For example, it is not usual for domestic jurisdictions to require the payment of a fee to report a crime.⁶ Yet, in the countries under review, fees are regularly requested; posing practical difficulties for victims of crime and creating a space for corruption in the criminal justice system. It is mostly practical obstacles such as this, which inhibit victims from coming forward.
4. In the **DRC**, the procedure governing sexual violence complaints is regulated by legislation preceding the entry into force of the ICGLR Protocol on SV and the Kampala Declaration, in particular the Code of Criminal Procedure⁷ and the law on sexual violence.⁸ The law on sexual violence modified the Code of Criminal Procedure to speed up prosecutions by setting a deadline of one month for investigations and three months for prosecutions.⁹ It also requires the judicial police to inform the office of the prosecution of such a complaint within 24 hours which ensures the involvement of the prosecution at an early stage.¹⁰

⁴ Available at <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>.

⁵ Section P(d).

⁶ REDRESS, *Victim Participation in Criminal Proceedings – Survey of Domestic Practice for Application to International Crimes Prosecution*, September 2015, available at <http://www.redress.org/downloads/publications/1508Victim%20Rights%20Report.pdf>, p. 38.

⁷ Decree of 6 August 1959 on the Code of Criminal Procedure.

⁸ Law No. 06/019 of 20 July 2006 modifying and complementing the Decree of 6 August 1959 on the Congolese Code of Criminal Procedure.

⁹ *Ibid*, Presentation of Motives, par. 2; Article 7bis of the (modified) Code of Criminal Procedure.

¹⁰ Article 7bis of the (modified) Code of Criminal Procedure.

5. Complaints can be filed by a victim of sexual violence orally or in writing to a judicial police officer (who have offices on the sub-territorial level).¹¹ Investigations can also be initiated by a prosecutor and/or a judicial police officer during their ordinary missions to seek out violations.¹² Thus they can rely on accusations or information emanating from multiple sources, such as NGOs, the press and the community.¹³ This can be helpful in cases where direct victim evidence is not available.¹⁴
6. While the law allows victims to lodge a complaint without complicated procedures and formalities, in practice victims face a series of obstacles when they attempt to file a complaint. The lack of knowledge about legal procedures and the unavailability of transport to the nearest police station can prevent survivors of sexual violence from coming forward.¹⁵ Other factors hindering victims from reporting are the risk of being stigmatized, threatened, intimidated, or physically attacked by the perpetrators or people linked to them.¹⁶ Instead of lodging a criminal complaint, families of the victims sometimes enter into “amicable arrangements”, such as forced marriage with the perpetrator, as an easier way to receive compensation than going through the formal justice system.¹⁷
7. Additionally, judicial police officers and prosecutors generally ask for bribes as a condition for the lodging of complaints.¹⁸ Such demands are not justified by any legal basis but weak oversight institutions and the lack of enforcement of existing anti-corruption laws make complaints against them futile.¹⁹ This situation diminishes the confidence of victims in the response of the judicial system and thus their willingness to lodge complaints.
8. In **Kenya**, the Sexual Offences Act 2006 defines a complainant as “the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is

¹¹ Article 2 and 7bis of the (modified) Code of Criminal Procedure.

¹² Vahida Nainar, *Litigation Strategies for Sexual Violence in Africa*, September 2012), available at <http://www.redress.org/downloads/publications/VAW%20Manual%2027%20Aug%202012%20UPDATED.pdf>, p. 7.

¹³ *Ibid.*

¹⁴ See REDRESS, *Expert Conference on Participation of Victims of International Crimes in National Criminal Justice Systems - Conference Report*, November 2015 available at <http://www.redress.org/downloads/publications/Conference%20Report17%20Nov%202015.pdf>, p. 21 .

¹⁵ Results of discussions with stakeholders at a conference held by Berkeley Human Rights Center in August 2015.

¹⁶ *Ibid.*

¹⁷ FIDH, *DRC Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation*, August 2013, available at http://www.fidh.org/IMG/pdf/rapport_rdc_.pdf, p. 55; UN Office of the High Commissioner for Human Rights, *Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights*, March 2011, available at <http://www.refworld.org/docid/4d708ae32.html>, p.21 and 33.

¹⁸ TRIAL et al., *Rapport de suivi sur les Observations finales du Comité pour l'élimination de la discrimination à l'égard des femmes sur la République démocratique du Congo en juillet 2013*, CEDAW/C/COD/CO/6-7, August 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGS_COD_21288_F.pdf, para. 64 and its Annexe 1, *Tableau récapitulatif des frais pour les parties civiles dans les procédures judiciaires en matière de crimes de violences sexuelles dans Rapport présenté au CEDAW par TRIAL*, p. 31.

¹⁹ See legal framework and institutions for anti-corruption in Transparency International, *Overview of Corruption and Anti-Corruption in the Democratic Republic of the Congo (DRC)*, 11 March 2014, available at http://www.transparency.org/files/content/corruptionqas/Country_Profile_DRC_2014.pdf.

unable or inhibited from lodging and following up a complaint of sexual abuse.”²⁰ In providing such a wide definition of who a complainant is, the right to lodge a complaint has been guaranteed to a fairly wide audience, enabling victims as well as other interested parties to do so.

9. The procedure for lodging sexual violence complaints in Kenya is outlined in the 2014 National Guidelines on Clinical Management of Sexual Violence (hereafter referred to as “the Guidelines”).²¹ The Guidelines recommend that victims lodge complaints with the police soon after seeking initial or emergency medical attention. The Guidelines require a health practitioner to record a victim’s complaint, and medical and forensic findings following examination in a Post-Rape Care Form (PRC Form). The health practitioner is then required to submit the original copy of the PRC Form and all relevant evidence and samples obtained from the victim to the police for custody and production in court during trial. At a police station, an officer is required to record the victim’s complaint in an Occurrence Book (OB) and issue an OB number and a police medical examination form known as the P3-form to be completed by an authorized health care provider based on the PRC form.²² In the event that a victim reports to the police first, the Sexual Offences (Medical Treatment) Regulations of 2012 place an obligation on a police officer who receives the complaint to notify and refer the victim to a medical practitioner, clinical officer or nurse at a health facility.²³
10. This procedure has resulted in a double burden on the victim when lodging a complaint as s/he must now produce two forms.²⁴ In addition, victims of sexual violence experience several challenges in reporting their cases. Notably, in many cases police officers demand bribes to record and process complaints and to provide P3-forms.²⁵ Further, police stations are mostly located in or near urban areas, making them inaccessible to victims coming from remote areas. Most health care facilities in the rural areas have never heard about the forms.
11. The law now allows clinical officers to fill the forms but most shy away from doing so because it means they will be required to attend court and often it is an expense they have to cover out of their own pockets. Most victims are therefore forced to still rush to the few government police surgeon offices for these services. Further, the government doctors are not properly equipped and trained, so that in most cases victims are not handled properly and the forms not filled correctly. The lack of one-stop-service centres for sexual violations is burdensome on victims, who have to

²⁰ Sexual Offences Act, No. 3 of 2006, Section 2, available at http://www.chr.up.ac.za/undp/domestic/docs/legislation_40.pdf.

²¹ National Guidelines on Clinical Management of Sexual Violence, 2014 edition.

²² National Guidelines on Clinical Management of Sexual Violence, 2014 edition, 26 and 35.

²³ Sexual Offences (Medical Treatment) Regulations, 2012, available at <http://gbvhivonline.com/wp-content/uploads/2013/02/medical-regulations.pdf>, Article 4.

²⁴ See par. 47 below.

²⁵ See par. 44-46 below.

move from health facilities to police stations and vice-versa, to complete the process of lodging their complaint and accessing emergency medical care.²⁶

12. In **Uganda**, victims can file a complaint to the police.²⁷ The police then undertake investigations and gather evidence before submitting the case to the Director of Public Prosecution (DPP).²⁸ According to the law, the procedures for lodging a complaint are relatively simple.
13. However in practice, there are a number of challenges which hinder the effectiveness of this procedure.²⁹ Similar medical examination forms as in Kenya which are also called P3-Forms must be completed when lodging a complaint.³⁰ It is a welcome step that these forms can now be filled out by medical staff, midwives and clinical officers.³¹ Progress has also been made with regard to adapting the form to victims of SGBV. The new police form³² has been designed specifically for medical examination of survivors of SGBV and allows for the reporting of unconventional forms, such as anal or oral rape.³³ However, the police forms are not readily available at all police posts, and thus survivors are often asked to photocopy them which represents a significant hurdle for victims, especially as photocopying facilities may be extremely difficult to access in remote villages.³⁴ Doctors are also reluctant to sign the form because this means they might have to testify in court.³⁵

Article 6(5) of the ICGLR Protocol on SV: Victim-sensitive criminal procedures

14. Under Article 6(5) of the ICGLR Protocol on SV, member states have agreed 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

²⁶ Human Rights Center, University of California Berkeley School of Law, *The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings*, 2015, available at <https://www.law.berkeley.edu/wp-content/uploads/2015/07/The-Long-Road-Accountability-Study-Executive-Summary.pdf>.

²⁷ See Just Law and Order Sector, *Revision of Police Form 3*, 17 October 2013, available at <http://www.jlos.go.ug/old/index.php/2012-09-25-11-09-41/revision-of-police-form-3-pf3>.

²⁸ REDRESS, *Litigation strategy for sexual violence in Africa*, September 2012, available at <http://www.redress.org/downloads/publications/VAW%20Manual%2027%20Aug%202012%20UPDATED.pdf>, p. 10.

²⁹ See par. 51-53 below.

³⁰ See Just Law and Order Sector, *Revision of Police Form 3*, 17 October 2013, available at <http://www.jlos.go.ug/old/index.php/2012-09-25-11-09-41/revision-of-police-form-3-pf3>.

³¹ JLOS, *Revision of Police Form 3*, 17 October 2013, available at: <http://bit.ly/1KRN6lk>; Rubimbwa and Komurembe, *Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration*, 2012, available at <http://bit.ly/1WvAcYJ>, p. 18.

³² Police Form 3A, as modified, available at <http://www.uwonet.or.ug/wp-content/uploads/downloads/2012/03/Police-Form-3A.pdf>.

³³ Makerere University, *A Situational Analysis of the State of Sexual and Gender Based Violence in IPPF Uganda With Special Focus on Health Services*, May 2013, available at <http://www.rhu.or.ug/assets/sgbv-situational-analysis-report-by-rhu-may2013.pdf>, p. 24.

³⁴ *Ibid.*

³⁵ ACORD Uganda, *Protection and Restitution for Survivors of Sexual and Gender Based Violence in Uganda*, September 2010, available at <http://www.acordinternational.org/silo/files/uganda-protection-and-restitution-for-survivors-of-sexual-and-gender-based-violence.pdf>, p.7.

crimes. This corresponds to the UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power which requires that victims are treated with compassion and respect for their dignity.³⁶ Additionally, this declaration calls on states to minimize inconveniences for victims and protect their privacy and safety.³⁷ In the context of sexual violence, this obligation should be read to include gender-sensitivity which the Committee on the Elimination of Discrimination Against Women (CEDAW) translates to a justice system free from gender myths and stereotypes.³⁸ In all three countries under review, more needs to be done to mainstream victim- and gender-sensitive measures into criminal justice procedures, especially with regards to the protection of victims.

15. In the **DRC**, the Code of Criminal Procedure requires that “the Office of the Prosecution or the Judge seized in the matter of sexual violence takes necessary measures to safeguard the security, physical and psychological well-being, the dignity and the respect for privacy of victims and any other persons involved.”³⁹ However, in practice legal procedures are not sufficiently victim-sensitive due to the following reasons:
16. There is an insufficient number of women among police, prosecutors and judges, especially in the Eastern provinces of North and South Kivu.⁴⁰ Also, there is no consideration of the victims’ preference for a male or female interviewer to be assigned to the case, partly because of the lack of female officers but mostly because victims are not asked about their choice. In a case represented by one of the authors, the victim declared that it was difficult for her to answer the questions posed by a male police officer. The complainant, a victim of rape who had contracted HIV and become pregnant following the attack, noted: “I felt as if I was leaving my body when the police officer and sometimes the other who was in the room next door laughed when I answered to questions. He [the police officer who interviewed the complainant] treated me sometimes like a liar. When the case is with the prosecution, I would like to speak to a woman.”⁴¹
17. In addition, investigations and prosecutions often fail because victims are not willing to testify due to fear, intimidation or lack of proper support throughout the process.⁴² Despite the above-mentioned obligation under the Code of Criminal Procedure to take measures to safeguard the security and well-being of victims, victim and witness

³⁶ UN General Assembly, *UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, A/RES/40/34, 29 November 1985, available at <http://www.un.org/documents/ga/res/40/a40r034.htm>, Section 4.

³⁷ *Ibid*, Section 6(d).

³⁸ CEDAW, *General recommendation on women’s access to justice*, CEDAW/C/GC/33, 23 July 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf, par. 28.

³⁹ Article 74 bis of the (modified) Code of Criminal Procedure.

⁴⁰ TRIAL et al., *Rapport de suivi sur les Observations finales du Comité pour l’élimination de la discrimination à l’égard des femmes sur la République démocratique du Congo en juillet 2013*, CEDAW/C/COD/CO/6-7, August 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGS_COD_21288_F.pdf, para. 35.

⁴¹ Interview with victim conducted by TRIAL in September 2014.

⁴² Susannah Sirkin, *Assembly of States Parties to the ICC Plenary Panel Session on Cooperation and Sexual and Gender Based Crimes*, 11 December 2014, available at: https://s3.amazonaws.com/PHR_other/icc-plenary-remarks-by-susannah-sirkin-12.11.14.pdf.

protection in the DRC is virtually non-existent and not sufficiently applied. The Code of Criminal Procedure stipulates that the courts can order closed hearings on the request of the victim or the prosecution.⁴³ However, this type of protective measure is not widely used, possibly because of the lack of awareness of this possibility among practitioners.⁴⁴ Among 209 cases examined by Avocats sans Frontières in 2012, only 24 were held without the public, all of which involved minors.⁴⁵ The more frequent use in cases of minors may be a result of the application of the 2009 Law on the Protection of the Child which requires any hearing involving minors to be conducted in closed session.⁴⁶

18. Apart from this specific stipulation on *in camera* hearings, there is no legal framework and dedicated resources in place for the implementation of protective measures.⁴⁷ This means that judges and prosecutors do not have sufficient tools to fulfil their protection obligations under the Code of Criminal Procedure. As a result, protective measures for victims of sexual violence are patchy and mostly limited to identity protection during their in-court testimonies whereas other measures such as temporary relocation or police patrolling are not applied.⁴⁸ For example, in the Minova and Fizi trials, the full-body veil was introduced as a measure to protect the identity of the victims.⁴⁹ These ad hoc steps, however, do not meet the need for a comprehensive victim and witness protection scheme as they only shield the victim from the eye of the public but do not necessarily protect from possible retaliation by the accused who has the right to know their identities.
19. In **Kenya**, the Sexual Offences Act makes provision for a court to declare a victim of sexual offences a “vulnerable witness” on account of being a victim, and to provide him or her with protective measures including a protective witness box, closed hearings, and redaction of publication of any information identifying the victim and his or her family.⁵⁰ In October 2015, the Witness Protection Rules were gazetted by the Chief Justice which will become operational on 30 November 2015.⁵¹ These rules

⁴³ Article 74 bis of the (modified) Code of Criminal Procedure.

⁴⁴ Avocat sans frontière, *La justice face à la banalisation du viol en République Démocratique du Congo – Etude de jurisprudence en matière des violences sexuelle de droit commun*, May 2012, available at http://www.uanet.org/sites/default/files/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf, p. 72.

⁴⁵ *Ibid.*

⁴⁶ Article 33 of Law No. 09/001 of 10 January 2009 on the Protection of the Child, available at <http://www.hsph.harvard.edu/population/aids/congo,dem.child.09.pdf>.

⁴⁷ Protection International, *Executive summary of a study on the protection of victims and witnesses in D.R. Congo*, July 2012, available at <http://protectioninternational.org/wp-content/uploads/2013/08/PI-Summary-Victims-Witnesses-protection-study-DRC-3.08.2012-EN1.pdf>, p. 5.

⁴⁸ Protection International, *Executive summary of a study on the protection of victims and witnesses in D.R. Congo*, July 2012, available at <http://protectioninternational.org/wp-content/uploads/2013/08/PI-Summary-Victims-Witnesses-protection-study-DRC-3.08.2012-EN1.pdf>, p. 6.

⁴⁹ See image in Al Jazeera America, *They will be heard: The rape survivors of Minova*, 14 March 2014, available at <http://america.aljazeera.com/multimedia/2014/3/they-will-be-heard-therapesurvivorsofminova.html>; Human Rights Watch, *Democratic Republic of Congo: Ending Impunity for Sexual Violence; New Judicial Mechanism Needed to Bring Perpetrators to Justice*, 10 June, 2014), available at: <https://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>.

⁵⁰ Article 31 (1) (a) and (5) of the Sexual Offences Act, 2006, available at http://www1.chr.up.ac.za/undp/domestic/docs/legislation_40.pdf.

⁵¹ Legal Notice No.225 of 2015.

will facilitate the obtaining of evidence from vulnerable, threatened and intimidated witnesses, including SGBV victims. In practice, however, the implementation of such protective measures is faced with the lack of financial resources and inadequately trained personnel.⁵² This is arguably rooted in the lack of political will and has led to cases where victims were killed by the suspect after their testimony.⁵³

20. The Chief Justice introduced the Sexual Offences Rules of Court which outline procedural rules for cases of sexual violence crimes.⁵⁴ These rules recognise that victims of sexual violence must benefit from procedures and provisions which recognise their vulnerability. The rules have introduced laudable provisions, such as the possibility for victims to appoint an intermediary to accompany them during their testimony,⁵⁵ the possibility to use previously recorded statements instead of in-court testimony as evidence-in-chief,⁵⁶ and the submission of victim impact statements during the sentencing phase of a convicted perpetrator.⁵⁷
21. Additionally, according to the Victim Protection Act, it is now acceptable for a victim to be represented in court by a party referred to as a 'victim's advocate'.⁵⁸ This person differs from the above-mentioned 'intermediary' who is a support person accompanying the victim in court. The victim's advocate can seek and be granted leave to take action in ongoing proceedings during court hearings, for example by asking additional questions during examination and/or presenting research to the judges which may aid in the determination of the case.⁵⁹ This is a welcome development as this person can protect the victim's interests throughout the court proceedings, including questioning the judges and prosecutor if there appears to be any irregularities in the conduct of the case.
22. However, there are still gaps not addressed by the two laws. There is no provision requiring psycho-social support by a qualified psychologist, psychiatrist or social worker during in-court testimonies which is often crucial to help victims speak about their experience. Further, the laws and rules do not require protection of victims from inappropriate or abusive questioning and cross-examination both during initial

⁵² Wilson Kiprono et al. in International Journal of Innovation and Scientific Research, *Gaps Influencing Implementation of the Witness Protection System in Kenya*, Vol. 17 No. 1, August 2015, available at <http://www.ijisr.issr-journals.org/abstract.php?article=IJISR-15-127-06>.

⁵³ Wanja Gathu, Institute for War and Peace Reporting, *Big Questions About Witness Protection in Kenya*, 27 May 2014, available at <https://iwpr.net/global-voices/big-questions-about-witness-protection-kenya>.

⁵⁴ Sexual Offences Rules of Court, Legal Notice No. 101, 11 July 2014, available at <http://kenyalaw.org/kl/index.php?id=4340>.

⁵⁵ Article 7 of the Sexual Offences Rules of Court, Legal Notice No. 101, 11 July 2014, available at <http://kenyalaw.org/kl/index.php?id=4340>.

⁵⁶ Article 14 of the Sexual Offences Rules of Court, Legal Notice No. 101, 11 July 2014, available at <http://kenyalaw.org/kl/index.php?id=4340>.

⁵⁷ Article 20 the Sexual Offences Rules of Court, Legal Notice No. 101, 11 July 2014, available at <http://kenyalaw.org/kl/index.php?id=4340>.

⁵⁸ Article 13 of the Victim Protection Act, No. 17 of 2014, 14 September 2014, available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/VictimProtectionAct17of2014.pdf>.

⁵⁹ *Ibid.*

statement taking and investigations by the police and trial proceedings which may result in re-traumatization of victims involved in criminal proceedings.

23. In **Uganda**, at the level of the judiciary, efforts have been made to improve the gender balance at local council courts by requiring a minimum of one third of female judges.⁶⁰ However, gender-sensitive treatment of SGBV victims is not yet mainstreamed in the legal process. The Acting Commissioner of Police recently requested that Uganda adopt a “protocol on gender-sensitive proceedings when hearing cases of sexual and gender based violence” in addition to the existing laws on sexual offences.⁶¹ With regard to protection, there is no legal framework or an independent body in place.⁶² As a result, victims of sexual violence have no access to any form of protective measures.

Article 6(6), first limb, of the ICGLR Protocol on SV: Statutory limitations

24. In Article 6(6) of the ICGLR Protocol, member states accept that no statutory limitations shall apply to sexual violence crimes. CEDAW also recommended in their General Recommendation on access to justice to ensure that such limitations are in conformity with the interest of victims.⁶³ This has not been implemented in all three countries.
25. In the **DRC**, crimes against humanity and war crimes do not fall under any statutory limitation.⁶⁴ Thus, no statutory limitations apply for sexual violence which constitutes such crimes. For other sexual violence crimes, the general rule for statutory limitations as stipulated in Article 24 of the Congolese Penal Code⁶⁵ applies which does not exempt sexual violence from statutory limitations. For example, the crime of rape can only be prosecuted for a period of ten years.⁶⁶

⁶⁰ Report of the Office of the United Nations High Commissioner for Human Rights, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice*, A/HRC/27/21, 30 June 2014, available at http://webcache.googleusercontent.com/search?q=cache:Vz1MQ1AzU7AJ:www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_21_ENG.doc+&cd=1&hl=en&ct=clnk&gl=uk, para. 36.

⁶¹ New Vision, Michael Odeng and Barbra Kabahumuza, *Police seeks protection of sexually violated victims*, 19 August 2015, available at <http://www.newvision.co.ug/news/672386-police-seeks-protection-of-sexually-violated-victims.html>.

⁶² International Center for Transitional Justice, *Pursuing Accountability for Serious Crimes in Uganda – Reflections on the Thomas Kwoyelo Case*, January 2015, available at <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Kwoyelo-2015.pdf>, p. 2.

⁶³ CEDAW, *General recommendation on women’s access to justice*, CEDAW/C/GC/33, 23 July 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf, par. 51 (b).

⁶⁴ Law No. 24/2002 of 18 November 2002 on the Military Penal Code, Article 10.

⁶⁵ Congolese Penal Code, Decree of 30 January 1940 as modified and complemented on 30 November 2004.

⁶⁶ According to Article 24(3) of the Congolese Penal Code, offenses punishable by more than five years of imprisonment are subject to a statutory limitation period of ten years. Rape is punishable by at least 5 years of imprisonment according to Article 170 of the Congolese Penal Code.

26. In **Kenya**, there are no statutory limitations for the prosecution of sexual violence crimes.⁶⁷
27. In **Uganda**, there are no statutory limitations for sexual violence amounting to serious international crimes.⁶⁸ Similarly, for ordinary sexual violence offences statutory limitations do not apply as they are considered felonies which do not fall under any statutory limitations.⁶⁹

Article 6(6), second limb, of the ICGLR Protocol on SV: Compensation for victims

28. Under Article 6(6), member states assume responsibility for ensuring that victims and survivors of sexual violence are compensated by the perpetrators. The duty to afford compensation reflects obligations in a number of international instruments, including the Convention Against Torture⁷⁰ and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁷¹ The criteria set out in these instruments require any form of reparation, including compensation, to be adequate, effective, prompt, and proportionate to the gravity of the violations.⁷² With regard to sexual violence, they should take into account the multi-dimensional and long-term impact on victims.⁷³ The process of providing compensation like other forms of reparation should ensure that victims have access to information and proper assistance.⁷⁴ In the context of sexual violence, this process should also be empowering for victims by allowing them to participate in the decision-making.⁷⁵ Where compensation is awarded by domestic judgments, states have the duty to enforce these against those who are liable.⁷⁶ However, in none of the

⁶⁷ Limitation of Actions Act, Cap. 22, Article 42(1), available at <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2022>.

⁶⁸ Section 19 (1) (a) (vii) of the International Criminal Court Act, 2010, available at <http://www.ulii.org/files/International%20Criminal%20Court%20Act,%202010.pdf>.

⁶⁹ According to common law felonies have no statutory limitation, see R.A. Kok, *Statutory Limitations in International Criminal Law*, 2007, available at <http://dare.uva.nl/document/2/46883>, p. 60; all sexual crimes listed are felonies, see sections 124-134 of the Penal Code 1950 (as amended by Penal Code Act of 2007), available at <http://www.icla.up.ac.za/images/un/use-of-force/africa/Uganda/Penal%20Code%20Act%20Uganda%201950.pdf>.

⁷⁰ Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, available at <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>.

⁷¹ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 21 March 2006, available at <http://www.refworld.org/docid/4721cb942.html> (hereinafter “Basic Principles”).

⁷² REDRESS, *Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations*, July 2014, available at <http://www.redress.org/downloads/publications/Submission%20to%20Special%20Rapporteur%20on%20Reparations%20Programmes%20-%20public.pdf>, par. 7.

⁷³ Nairobi Declaration on Women’s and Girl’s Right to a Remedy and Reparation, 21 March 2007, available at <http://www.redress.org/downloads/publications/Nairobi%20Principles%20on%20Women%20and%20Girls.pdf>.

⁷⁴ Par. 12 (a) and (c) of the Basic Principles.

⁷⁵ Nairobi Declaration on Women’s and Girl’s Right to a Remedy and Reparation, 21 March 2007, available at <http://www.redress.org/downloads/publications/Nairobi%20Principles%20on%20Women%20and%20Girls.pdf>.

⁷⁶ Par. 17 of the Basic Principles.

three countries under review do victims of sexual violence have access to compensation.

29. In the **DRC**, victims of an alleged crime, including sexual violence, have the right to join criminal proceedings as Civil Parties in order to claim damages.⁷⁷ Such compensation can be awarded against the perpetrator⁷⁸ or, where the accused acted as an agent of the state, the Respondent State can be held jointly and severally liable to pay any damages awarded.⁷⁹
30. Despite numerous judgments awarding compensation to victims of sexual violence in recent years, payments are routinely not made.⁸⁰ For example, in 2011 the Military Court of South Kivu issued a judgment of conviction and compensation in favour of around ten victims.⁸¹ Up to today, none of the damages and interest awarded by the Court have been enforced, neither by the convicted individual nor by the state *in solidum* due to the obstacles described below. Payments are known to have been made by the state in the case of Songo Mboyo where 29 women raped by rebels were awarded compensation of \$5,000 and \$10,000 in 2006.⁸² However, the money was apparently fraudulently diverted to other persons and never reached the victims.⁸³
31. The obstacles for victims to obtain compensation awarded to them against the state are manifold. First, the enforcement procedure is complex and it is upon the victim to pursue additional steps after already having obtained a judgment, such as requesting the notification of the judgment and delivering the judgment to the Ministry of Justice.⁸⁴ Secondly, victims are obligated to pay excessive fees and are often asked to pay bribes.⁸⁵ In order to receive a certificate of indigence to waive the fees the victim has to request a certificate from the Ministry of Social Affairs and present the

⁷⁷ Law No. 023/2002 of 18 November 2002 on the Code for the Military Judiciary, Article 77(1).

⁷⁸ Decree of 30 July 1888 on Contracts and Obligations under Agreements, Article 260.

⁷⁹ Belgian Court of Cassation, 1st Chamber, City of Bruges v. Société La Flandria, 5 November 1920, available at <http://www.evematringer.fr/blog/2009/02/06/la-flandria/>. This decision is still applicable today since at that time the Belgian Court of Cassation was the Court of Cassation of Belgian Congo.

⁸⁰ Physicians for Human Rights, *Summary of Roundtable Discussion: Reparations for Survivors of Sexual Violence in the Democratic Republic of Congo*, June 2014, available at https://s3.amazonaws.com/PHR_other/reparations-for-survivors-of-sexual-violence.pdf, p. 4; UN Office of the High Commissioner for Human Rights, *Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights*, March 2011, available at <http://www.refworld.org/docid/4d708ae32.html>, pp. 20 and 38; FIDH, *DRC Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation*, August 2013, available at http://www.fidh.org/IMG/pdf/rapport_rdc.pdf, pp. 7 and 56; Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined sixth and seventh periodic report of the Democratic Republic of the Congo*, 30 July 2013, para. 9(e); International Center for Transitional Justice, *Judgment Denied: The Failure to Fulfill Court-Ordered Reparations for Victims of Serious Crimes in the Democratic Republic of the Congo*, May 2012, available at <http://www.ictj.org/sites/default/files/ICTJ-Briefing-DRC-Reparations-2012-ENG.pdf>, p. 4.

⁸¹ Judgment of the Military Court of South Kivu, RPA n°0180 & RMP n°0802/BMN/10.

⁸² Report of the Secretary-General on conflict-related sexual violence, S/2015/203, 23 March 2015, par. 25.

⁸³ Interview with local NGOs active in Equateur province conducted by TRIAL in May 2015.

⁸⁴ Individual communication submitted to the African Commission on Human and People's Rights, *S.A. v. DRC*, No. 502/14, 20 November 2014, available at <http://www.redress.org/downloads/engcommunication-sa-v-drc20-nov-2014.pdf>, par. 38 and 40.

⁸⁵ Individual communication submitted to the African Commission on Human and People's Rights, *S.A. v. DRC*, No. 502/14, 20 November 2014, available at <http://www.redress.org/downloads/engcommunication-sa-v-drc20-nov-2014.pdf>, par. 41-42.

document to the court.⁸⁶ Lastly, victims lack sufficient legal assistance to manage this procedure.⁸⁷

32. When it comes to enforcement of compensation awards against the perpetrator, in a good number of cases, convicted persons are able to escape prison and thus making it impossible to obtain any payment from this person at large.⁸⁸ It is noteworthy that in such circumstances, no efforts have been made on the part of Congolese authorities to locate the convicted.⁸⁹ Additionally, convicted perpetrators are often insolvent and cannot pay the awarded compensation.⁹⁰
33. Exacerbating these process-oriented obstacles is the fact that sexual violence survivors are only awarded monetary compensation as reparation. Survivors have expressed the need for other forms of redress, including public apologies or acknowledgement from the state for their injuries, adequate education and medical treatment for their children and themselves.⁹¹ But so far, the government has not established a reparation programme despite its commitment to do so in its Comprehensive Strategy on Combating Sexual Violence in 2009.⁹²
34. In **Kenya**, the Victims Protection Act of 2014 recognizes the right of victims of crimes to compensation by the offender for any material loss or damage incurred, or physical injuries resulting from the commission of a crime. Such compensation is to be provided in addition to and not as part of a sentence for the offence. Further while the order for compensation may be enforced through civil proceedings, it will not be a bar to further civil proceedings for other damages.⁹³ Besides awards against the offender, courts can order compensation for any loss or injury resulting from the offence to be paid from a victim protection trust fund.⁹⁴ Such a fund has, however, not been established to date. Also, even if the government is ordered by a court to pay damages,

⁸⁶ Yasmin Ergas et al., *Awarding and Enforcing Reparations in Mobile Courts Judgments in the Democratic Republic of the Congo*, 2013, available at: https://sipa.columbia.edu/sites/default/files/PHR_Report.pdf.

⁸⁷ Individual communication submitted to the African Commission on Human and People's Rights, *S.A. v. DRC*, No. 502/14, 20 November 2014, available at <http://www.redress.org/downloads/engcommunication-sa-v-drc20-nov-2014.pdf>, par. 43.

⁸⁸ See report on escapes in US Department of State, *2014 Human Rights Report: Democratic Republic of Congo*, June 2015, available at <http://www.state.gov/documents/organization/236558.pdf>, p. 4; Al Jazeera, *Mass jail break as DR Congo violence worsens*, 19 October 2014, available at <http://www.aljazeera.com/news/africa/2014/10/mass-jail-break-as-dr-congo-violence-worsens-20141019843356169.html>.

⁸⁸ See overview of events in: Aids-Free World, *Submission to the external independent review panel*, 15 July 2015, available at <http://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/55b279d2e4b0981127c2b55b/1437759954603/External+Independent+Review+Submission+-+15+July+2015.pdf>.

⁸⁹ United Nations Office of the High Commissioner for Human Rights (OHCHR) and United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO), *Progress and Obstacles in the Fights Against Impunity for Sexual Violence in the Democratic Republic of Congo*, April 2014, available at https://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US, para. 50.

⁹⁰ Physicians for Human Rights, *Summary of Roundtable Discussion: Reparations for Survivors of Sexual Violence in the Democratic Republic of the Congo*, June 2014, available at https://s3.amazonaws.com/PHR_other/reparations-for-survivors-of-sexual-violence.pdf.

⁹¹ *Ibid.*

⁹² Comprehensive Strategy on Combating Sexual Violence in the Democratic Republic of the Congo, 2009, <http://stoprapenow.org/uploads/features/CsonDRCforweb.pdf>, p. 11.

⁹³ Sections 23 and 25 of the Victim Protection Act 2014, available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/VictimProtectionAct17of2014.pdf>.

⁹⁴ Section 24 of the Victim Protection Act 2014.

it can and often fails to execute the judgment while relying on effective immunity from enforcement provided by Article 21 of the Government Proceedings Act.⁹⁵

35. In **Uganda**, parliament unanimously adopted a resolution on 9 April 2014, which urges the government to establish a reparations fund and offer reparation to women and men that were affected by the Lord's Resistance Army Rebellion, specifically entitling it "gender-sensitive" which ensures the inclusion of sexual violence victims.⁹⁶ This resolution also calls upon the government to take robust action to remedy the plight of thousands of victims still in need of assistance. Following the adoption of this resolution, the Justice, Law and Order sector (JLOS) which is mandated by the Ugandan Government to institutionally guide Uganda's transitional justice process issued a report which includes recommendations on how to best provide reparation for victims.⁹⁷ Notwithstanding these steps the government has yet to take action to implement the resolution.⁹⁸
36. Independently of the implementation of this fund, local civil society organisations reported that some survivors of SGBV had received compensation from the perpetrators.⁹⁹ It is unclear under which circumstances or legal procedure these payments were made. They cannot in any event replace systematic funding allocation for reparations by the government which is still lacking.

Article 6(7) of the ICGLR Protocol on SV: Legal and medical procedures

37. According to Article 6(7) of the ICGLR Protocol on SV, member states shall establish legal and medical procedures for assisting victims and survivors of sexual violence. CEDAW requires such legal procedures to be available, accessible, of good quality and accountable.¹⁰⁰ This includes the state obligation to ensure that justice systems are competent, efficient, independent and impartial; and that investigations and evidentiary rules are not tainted by gender stereotypes.¹⁰¹ In line with the ICGLR Protocol, the World Health Organization in its Guidelines for Medico-Legal Care for Victims of Sexual Violence recognizes the importance of medical assistance, not only for the psychological and physical well-being of victims but also for the prosecution of

⁹⁵ Government Proceedings Act, Chapter 40, 2012, available at <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2040>.

⁹⁶ International Center for Transitional Justice, *My Healing Has Begun; Uganda Votes to provide Gender-Sensitive Reparations Fund*, 23 April 2014, available at: <http://bit.ly/1VEwWYw>.

⁹⁷ JLOS, *On the Path to Vindicate Victims' Rights in Uganda: Reflections on the Transitional Justice Process Since Juba*, June 2014, available at https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-TJProcess-2015_0.pdf, p. 6.

⁹⁸ Justice and Reparation Project, *For Ugandan Children born of war, the struggle continues*, 15 July 2015, available at <http://justiceandreconciliation.com/media/newsroom/in-the-news/2015/for-ugandan-children-born-of-war-the-struggle-continues/>.

⁹⁹ Center for Woman in Governance, *A briefing paper, 2014 Findings from Uganda CSO monitoring of UNSCR 1325*, 2014, available at http://www.cewigo.org/sites/default/files/publications/briefing_paper.pdf, p. 10.

¹⁰⁰ CEDAW, *General recommendation on women's access to justice*, CEDAW/C/GC/33, 23 July 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf, par. 14.

¹⁰¹ *Ibid*, par. 15 (d) and 18 (e).

such crimes.¹⁰² Among other points, it recommends that health service providers should prioritize the victim's health and well-being, obtain informed consent, work in close coordination with investigation bodies, document the findings in a standardized form, and conduct forensic and medical examinations at the same time.¹⁰³ The procedures practiced in the three countries fall short of these standards.

38. In the **DRC**, law enforcement officers must refer cases of sexual violence within 24 hours to the prosecutor (as opposed to the ordinary criminal procedure where there is no time limit for such referrals).¹⁰⁴ They have the obligation to conduct investigations on the facts reported.¹⁰⁵ However, cases investigated in rural zones are rarely shared with the prosecutor's office in a timely fashion due to inadequate coordination and the lack of means of communication. These challenges lead to infrequent prosecutions because of the loss of evidence or because investigations are not completed due to the lack of resources.
39. According to Article 14 bis of the Code of Criminal Procedure, "the Office of the Prosecution or the Judge shall *ex officio* request a medic and a psychologist in order to assess the state of the victim of sexual violence and to determine the appropriate care as well as to evaluate the importance of the harm suffered by him/her and the subsequent deterioration." Thus, the judge should on his own motion call for a medical and psychological assessment.
40. However, according to a study conducted by Avocats sans Frontières, "a medical attestation is only available in 35% of the cases analysed, whereas no decision mentions the calling of a psychologist."¹⁰⁶ Additionally, when a medical assessment is ordered, "the medical certificates [...] only rarely describe the physical or psychological consequences for victims, the necessary care or the victim's inability to work or to study".¹⁰⁷ Between 2012 and 2015, the experience of the authors confirms the systematic absence of medical and psychological assessments in cases of sexual violence.
41. One of the reasons for the insufficient use of medical assessments is the persistence of misconceptions about medical evidence among law enforcement, prosecutors and judges, and even in the medical and nursing field.¹⁰⁸ For example, many believe that

¹⁰² World Health Organization, *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, 2003, available at <http://apps.who.int/iris/bitstream/10665/42788/1/924154628X.pdf>, p. 1-2.

¹⁰³ Ibid, p. 17 and 30; see also US Department of Justice Office on Violence Against Women, *A National Protocol for Sexual Assault Medical Forensic Examinations*, April 2013, available at <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>, p. 4-6.

¹⁰⁴ Article 2 and 7bis of the Code of Criminal Procedure.

¹⁰⁵ Law No. 06/019 of 20 July 2006 modifying and complementing Decree f 6 August 1959 on the Code of Criminal Procedure, Article 7 bis.

¹⁰⁶ Avocat sans frontière, *La justice face à la banalisation du viol en République Démocratique du Congo – Etude de jurisprudence en matière des violences sexuelle de droit commun*, May 2012, available at http://www.uanet.org/sites/default/files/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf, p. 8

¹⁰⁷ Avocat sans frontière, *La justice face à la banalisation du viol en République Démocratique du Congo – Etude de jurisprudence en matière des violences sexuelle de droit commun*, May 2012, available at , p. 9.

¹⁰⁸ Susannah Sirkin, *Assembly of States Parties to the ICC Plenary Panel Session on Cooperation and Sexual and Gender Based Crimes*, December 11, 2014, available at https://s3.amazonaws.com/PHR_other/icc-plenary-remarks-by-susannah-sirkin-12.11.14.pdf.

no valuable evidence can be obtained more than 72 hours after the crime.¹⁰⁹ This is also a result of the lack of communication and coordination between medical staff and legal authorities.¹¹⁰

42. In addition, expert forensic evidence is difficult to obtain due to the lack of trained personnel. In the DRC, there is only one professionally trained forensic doctor and one forensic laboratory in the entire country, both of which are based in Kinshasa, far from the Eastern provinces where many if not most cases of sexual violence take place.¹¹¹ Since the Congolese Penal Code stipulates that investigations must be completed within 1 month after the complaint and judges must pronounce their judgments within 3 months after the police report is being handed over to the prosecutor,¹¹² it is difficult to get any forensic evaluations done in a timely fashion. As this type of evidence is often perceived by courts as the only valuable proof of the act of sexual violence the lack of forensic evidence frequently results in the rejection of rape allegations.¹¹³
43. Where forensic evidence is available, the medical reports take many forms, and the practice of admitting these medical reports as evidence varies between different courts.¹¹⁴ Some courts have rejected medical reports because the person issuing the report was not sworn in by the court even though the reports described signs and symptoms resulting from rape. Other jurisdictions accepted the admissibility of reports only when it was issued by a forensic medic although the Congolese law does not stipulate any qualifications for doctors to testify as experts in court.¹¹⁵ Then again, other courts admitted reports on the basis of the principle of free evidence. This shows the lack of a shared understanding of what evidence is required to prove sexual violence crimes, and demonstrates the need for a standardised medical report that outlines the required evidence together with rules on when such reports are admissible in court.
44. In **Kenya**, the use of the Kenya Police Medical Examination Form, so-called P3-Form, continues to pose a serious obstacle for victims of sexual violence to access justice.¹¹⁶ Although officially available free of charge, there have been instances in which police have asked victims of sexual violence for money for the P3-Form; when the victim

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Radio Okapi, *Congo-Kinshasa: Un médecin légiste réclame des laboratoires pour le test AND à Bunia*, 27 June 2014, available at .

¹¹² Article 7bis of the Code of Criminal Procedure.

¹¹³ Avocat sans frontière, *La justice face à la banalisation du viol en République Démocratique du Congo – Etude de jurisprudence en matière des violences sexuelle de droit commun*, May 2012, available at

http://www.uanet.org/sites/default/files/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf, p. 37.

¹¹⁴ Avocat sans frontière, *La justice face à la banalisation du viol en République Démocratique du Congo – Etude de jurisprudence en matière des violences sexuelle de droit commun*, May 2012, available at

http://www.uanet.org/sites/default/files/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf, p. 36-37.

¹¹⁵ Article 14bis of the Code of Criminal Procedure.

¹¹⁶ Kenya Forum, *Being Raped in Kenya; Reluctant Doctors, Insensitive Policing and Crooked Courts*, 2 January, 2014, available at:

<http://www.kenyaforum.net/2014/01/02/being-raped-in-kenya-reluctant-doctors-insensitive-policing-and-crooked-courts/>; Claire McEvoy, *Battering, Rape and Lethal Violence – A Baseline of Information on Physical Threats against Women in Nairobi*, 2012, available at <http://www.smallarmssurvey.org/fileadmin/docs/F-Working-papers/SAS-WP13-VAW-Nairobi.pdf>, p. 52-55.

could not afford to pay this money the police reportedly refused to undertake investigations.¹¹⁷ In other cases medical officers require victims to pay them in order to fill out the forms, although they are supposed to fill in P3-forms for free.¹¹⁸

45. Another obstacle relating to P3-Forms lies in the unavailability of the form at police stations around Kenya.¹¹⁹ At many police stations, victims are either required to photocopy or print it, whilst at the same time being expected to pay for these costs. In a positive development, the number of government health care workers with the authority to complete P3-Forms was increased to include not only medical doctors and police surgeons, but also nurses and clinical officers.¹²⁰ This increase has expedited the process of lodging complaints.
46. In order to address the inadequacies of the P3-forms, a new medical examination form called the Post Rape Care Form (PRC Form) was introduced.¹²¹ This is a more comprehensive form for documenting sexual offences and marks an improvement compared to the P3-forms. The PRC Form is user-friendly and adopts a format which elicits comprehensive details from the victim, hence improving the evidence transferred to the police during investigations and to the court later on.
47. However, the P3-form continues to remain a compulsory document which must be completed following any physical assault.¹²² This reporting regime has therefore doubled the burden on the victim when lodging a complaint. The victim has to visit the hospital where the PRC Form is completed by a qualified medical professional. Additionally, the victim must visit a police station where the P3-Form is partly filled in. Then the victim has to present himself/herself to a designated government doctor or health care providers in order to have the medical examination section of the P3-Form completed.
48. Lack of adequate resources and technical capacity, and poor coordination between the law enforcement and health sectors pose significant challenges in the provision of medico-legal services to victims of sexual offences. Health facilities lack the most essential supplies for examination of victims and collection of evidence, such as gloves and specula, while police officers often lack basic items like stationery to record witness statements and transportation to access crime scenes. Both sectors do not have adequate space and equipment for proper storage of obtained samples. This

¹¹⁷ See for example, Claire McEvoy, *Battering, Rape and Lethal Violence – A Baseline of Information on Physical Threats against Women in Nairobi*, 2012, available at <http://www.smallarmssurvey.org/fileadmin/docs/F-Working-papers/SAS-WP13-VAW-Nairobi.pdf>, p.50.

¹¹⁸ Institute for War and Peace, *Kenyan Police Needs Sexual Crimes Unit – Experts*, ACR Issue 366, 16 October 2013, available at <http://www.refworld.org/docid/5261180e4.html>.

¹¹⁹ Human Rights Center, University of California Berkeley School of Law, *The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings*, 2015, available at <https://www.law.berkeley.edu/wp-content/uploads/2015/07/The-Long-Road-Accountability-Study-Executive-Summary.pdf>, p. 46-48.

¹²⁰ *Ibid*, p. 47.

¹²¹ National Guidelines on Clinical Management of Sexual Violence, 2014 edition, Annex 5, 52.

¹²² National Guidelines on Clinical Management of Sexual Violence, 2014 edition, Annex 8, 67-71. The form explicitly requires a medical examination for all cases of sexual assault.

situation is compounded by lack of personnel skilled in identification, collection, documentation and management of forensic evidence, and poor coordination between police officers and health care workers, particularly in the transfer of forensic evidence. These challenges have led to lack of substantial evidence to prove sexual offences and compromise of obtained evidence, leading to a high rate of acquittals during prosecutions.¹²³

49. In addition, both law enforcement and health workers are not trained on how to handle intellectually challenged victims who need extra care when it comes to reporting procedures. A lot of evidence is lost due to a communication barrier. This is also experienced when the matter is taken to court and they are unable to testify because required measures such as use of visuals have not been introduced by the court.
50. The existing procedures do not provide operational guidance for effective medical and legal response to sexual violence during conflict and emergency situations. The experience of survivors during the 2007-2008 post-election violence is a clear indicator of this reality. The Commission of Inquiry into the Post-Election Violence established that the government had failed to anticipate and prepare for effective response to the general violence and victims of sexual violence. As such, majority of victims of sexual violence were unable to access health facilities or police stations for medical assistance and to report their violations. In the few instances where victims were able to reach health facilities, there were no health care workers or supplies to respond to their needs.¹²⁴
51. In **Uganda**, the use of P3-Forms poses similar problems. As mentioned above, they are not readily available at all police posts and doctors are also reluctant to sign the form because this means they might have to testify in court.¹²⁵
52. The government announced an initiative that allows victims to receive free medical examinations in connection with the prosecution of the sexual assaults.¹²⁶ Uganda's Justice Law and Order Sector (JLOS) allocated 250 Million Ugandan Shillings to the 2012-2013 budget for the police force to implement this programme.¹²⁷ In practice, however, some victims are still being charged a fee for such examinations, sometimes under the pretext of using the money to go to court to give evidence although the

¹²³ Human Rights Center, University of California Berkeley School of Law, *The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings*, 2015, available at <https://www.law.berkeley.edu/wp-content/uploads/2015/07/The-Long-Road-Accountability-Study-Executive-Summary.pdf>, p. 39-57.

¹²⁴ Commission of Inquiry into the Post-Election Violence, Final Report, Chapter Six, available at http://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full_Report.pdf; see also Human Rights Center, University of California Berkeley School of Law, *The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings*, 2015, available at <https://www.law.berkeley.edu/wp-content/uploads/2015/07/The-Long-Road-Accountability-Study-Executive-Summary.pdf>, p. 42-43.

¹²⁵ See par. 12.

¹²⁶ IRIN, Uganda: Increasing support to survivors of sexual assault, 29 November 2012, available at: <http://www.irinnews.org/report/96926/uganda-increasing-support-to-survivors-of-sexual-assault>.

¹²⁷ *Ibid.*

court refunds such transport costs.¹²⁸ Additionally, they are required to pay for copying the form.

53. With regard to coordination among different actors in the process of investigations, there is a weak linkage between the health and the criminal justice system.¹²⁹ This is detrimental to prosecution as health workers are the best placed to collect and document the evidence necessary for corroborating the circumstances of SGBV and for prosecuting SGBV perpetrators.¹³⁰ There are virtually no forensic testing and medical examination of victims.¹³¹

IMPLEMENTATION OF THE KAMPALA DECLARATION

54. The obligations under the Kampala Declaration are structured under the four themes of prevention (A.), ending impunity (B.), victim support (C.), and general resolutions (D.). The information on the DRC, Kenya and Uganda are presented accordingly.

A. PREVENTION OF SGBV

Paragraph 4 of the Kampala Declaration: National level structures of prevention, protection and support

55. In paragraph 4 of the Kampala Declaration, the member states commit to establish national level structures for prevention, protection and support, including early warning mechanisms. This obligation reflects CEDAW's General Recommendation No. 6 which requires states to establish and strengthen effective national machinery, institutions and procedures, at a high level of government.¹³² At the Fourth World Conference on Women which led to the adoption of the Beijing Declaration and Platform for Action, such national machinery was defined as a coordinating unit inside the government with the main task to support government-wide mainstreaming of a gender-equality perspective in all policy areas.¹³³ It also requires such mechanisms to have sufficient resources and opportunities to influence government policies. Certain structures have been put in place on the national level in

¹²⁸ New Vision, Esther Namirimu, *Uganda commended for fighting gender based violence*, 30 September 2015, available at <http://www.newvision.co.ug/mobile/Detail.aspx?NewsID=650649&CatID=1>.

¹²⁹ School of Women and Gender Studies, *A Situational Analysis of the State of Sexual and Gender Based Violence in Uganda With Special Focus on Health Services*, 23 May 2013, available at <http://bit.ly/1LOIXHy>, p. 51.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² CEDAW, General Recommendation No. 6, adopted at 7th session (1988), available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_5828_E.pdf, par. 1.

¹³³ Beijing Declaration and Platform for Action, September 1995, available at <http://www.un.org/womenwatch/daw/beijing/platform/index.html>, par. 201.

the three countries under review but their effectiveness is still limited, mainly due to budget constraints.

56. In the **DRC**, the government has set up some national level institutions. Following a joint communique signed with UN Special Representative to the Secretary-General on Sexual Violence in Conflict, the President appointed Ms. Jeanine Mabunda as the Personal Representative of the President of the DRC in charge of sexual violence and child recruitment to guide the actions of the government, develop an implementation plan for the joint communique, and reinforce the Police Special Units for the Protection of Women and Children.¹³⁴ The Senate created a Special Commission on Sexual Violence in Conflict to advocate for preventive measures, to improve the response to sexual violence and to better adapt the legal framework where required.¹³⁵
57. All the above-mentioned initiatives intend to support the implementation of the National Strategy on the Fight Against Gender-Based Violence which was adopted in November 2009¹³⁶ and the Ministry of Justice's Roadmap on the Fight against Impunity in Matters of Sexual Violence.¹³⁷ However, the authors are of the view that the implementation of the National Strategy and of the roadmap so far has been inefficient. Only some isolated activities were implemented which do not feed into an overall implementation policy.¹³⁸ Additionally, it is important to note that the budget allocated to the implementation of the two policy documents is not made public. It is thus unclear if sufficient resources are dedicated to the realization of the objectives of prevention and ending impunity. The National Strategy also lacks a periodic evaluation mechanism which allows the detection of shortcomings and achievements.
58. In **Kenya**, the government established the National Gender and Equality Commission (NGEC) in August 2011 to promote gender equality and freedom from discrimination for all persons in Kenya.¹³⁹ Under its mandate, the NGEC developed the National Monitoring and Evaluation Framework towards the Prevention of and Response to

¹³⁴ UN News Centre, *DRCongo: UN hails appointment of senior adviser on sexual violence, child recruitment*, 14 July 2014, available at <http://www.un.org/apps/news/story.asp?NewsID=48268#.VgVVqZdRk71>.

¹³⁵ TRIAL et al., *Rapport de suivi sur les Observations finales du Comité pour l'élimination de la discrimination à l'égard des femmes sur la République démocratique du Congo en juillet 2013*, CEDAW/C/COD/CO/6-7, August 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGS_COD_21288_F.pdf, para. 33.

¹³⁶ DRC Ministry of Gender, Family and Children, *Stratégie nationale de lutte contre les violences basées sur le genre (SNVBG)*, Kinshasa, novembre 2009, http://monusco.unmissions.org/LinkClick.aspx?fileticket=RxbG_S-GaVo=.

¹³⁷ See UNDP, *Monitoring judiciaire 2010-2011 – Rapport sur les données relatives à la réponse judiciaire aux cas de violences sexuelle à l'Est de la République démocratique du Congo*, available at http://www.cd.undp.org/content/dam/dem_rep_congo/docs/demgov/UNDP-CD-Monitoring-Judiciaire-2011.pdf, p. 9-10.

¹³⁸ TRIAL et al., *Rapport de suivi sur les Observations finales du Comité pour l'élimination de la discrimination à l'égard des femmes sur la République démocratique du Congo en juillet 2013*, CEDAW/C/COD/CO/6-7, August 2015, available at, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGS_COD_21288_F.pdf, para. 38.

¹³⁹ See website of the NGEC: <http://www.ngeckenya.org/>.

Sexual and Gender Based Violence in Kenya in December 2014 with the aim to coherently monitor and evaluate prevention efforts and responses to SGBV.¹⁴⁰

59. The NGEK also launched a 3-year campaign geared at preventing SGBV, protecting and supporting victims and survivors, called “Keeping the Promise to end GBV Campaign”. The campaign is meant to be implemented in three phases, including year one for engaging the relevant governmental agencies (duty bearers), year two for engaging victims and survivors and year three for training and development of advocacy and other strategies on SGBV in emergencies, which is especially pertinent since it will be an election year in Kenya at that time with the potential of violent conflict leading to an emergency situation. Currently, the government has not, however, endowed the NGEK with the required financial resources to fulfil its functions and to implement its activities as noted in its annual report.¹⁴¹ The NGEK thus calls on the government to provide funds for the establishment of regional and county offices and to appoint the two remaining commissioners.
60. The NGEK also has the mandate to investigate complaints of victims and where appropriate offer redress by pursuing public interest litigation or Alternative Dispute Resolutions on behalf of the victim or by requesting public inquiries.¹⁴² Due to the lack of publicly accessible information, it is unclear in how far the NGEK has received individual complaints and whether or not the NGEK has been effectively dealing with them.
61. In **Uganda**, the Government reiterated its commitment to create central and local government structures and mechanisms, to prevent and respond to gender-based violence in the 2015/2016 Social Report.¹⁴³ Currently, there is however no public information available as to whether this has been implemented. The last Concluding Observations issued by CEDAW on Uganda’s periodic report in 2010 expressed concerns about the functioning of the Ministry of Gender, Labour and Social Affairs as well as the Equal Opportunity Commission because of their limited human and financial resources.¹⁴⁴
62. In 2008, Uganda adopted a National Action Plan for the implementation of UN Security Council Resolution 1325¹⁴⁵ and 1820¹⁴⁶ for the period of 2008 to 2014.¹⁴⁷ It

¹⁴⁰ Available at <http://www.ngeckenya.org/Downloads/National-ME-Framework-towards-the-Prevention-Response-to-SGBV-in-Kenya.pdf>.

¹⁴¹ National Gender and Equality Commission, Annual Report 2012-2013, available at <http://www.ngeckenya.org/AR2014/NGEC-FINAL-ANNUAL-REPORT-24TH-FEB-2014.pdf>, p. 36.

¹⁴² See website of the NGEK: <http://www.ngeckenya.org/program/25/legal-investigation>.

¹⁴³ Ministry of Gender, Labour and Social Development, *The social development sector strategy investment plan (SDIP 12) – 2011/12-2015/16*, June 2011, available at <https://extranet.who.int/nutrition/gina/sites/default/files/UGA%202011%20The%20Social%20Development%20Sector%20Strategic%20Investment%20Plan%20%28SDIP%20%29.pdf>, p.41.

¹⁴⁴ CEDAW, Concluding observations of the Committee on the Elimination of Discrimination Against Women – Uganda, CEDAW/C/UGA/CO/7, 22 October 2010, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-UGA-CO-7.pdf>, par. 15-18.

¹⁴⁵ Security Council Resolution 1325 (2000), S/RES/132 (2000), 31 October 2000, available at <http://bit.ly/1CHZ3ik>.

assigns responsibility to different government bodies, civil society organisations and private sector organisations.¹⁴⁸ A briefing paper on the implementation of the National Action Plan dated 2014 found that not all the assigned tasks were achieved which could be due to the insufficient budget allocation for its implementation.¹⁴⁹

B. ENDING IMPUNITY

Paragraph 8 of the Kampala Declaration: Special courts and procedures

63. Under paragraph 8 of the Kampala Declaration, the member states commit to establish and strengthen special courts, sessions and procedures to fast-track SGBV cases in the police and judiciary (with adequate financing, facilities and gender sensitive officers). This corresponds to CEDAW's call on states to establish specialized gender units in the justice system.¹⁵⁰ This has been done to some extent in the three countries.
64. In the **DRC**, the use of mobile courts to prosecute cases of sexual violence has allowed the trials to take place in remote areas and thus provided access to justice for many victims.¹⁵¹ With the support of the international community, these courts consisting of judges, prosecutors, police officer, lawyers, interpreters and registrars have been travelling to rural areas to hear cases *in situ*.¹⁵² However, their deployment is based on an ad hoc approach and there is no national strategy on their continuation without external support.¹⁵³ Coupled with the high costs of each mobile court session of around 25,000 USD, this raises doubts as to whether the government will be able to sustain this initiative in the future.¹⁵⁴
65. In October 2013, President Joseph Kabila expressed his support for the creation of specialized chambers within the national judicial system to try war crimes, crimes

¹⁴⁶ Security Council Resolution 1820 (2008), S/Res/1820 (2008), 19 June 2008, available at

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf>.

¹⁴⁷ Government of Uganda, *The Uganda Action Plan on UN security Council Resolutions 1325 & 1820 and the Goma declaration*, December 2008, available at http://www.mindef.gov.ug/mindef_equidad_genero/pdf/plan-uganda.pdf.

¹⁴⁸ *Ibid*, p. 24 ff.

¹⁴⁹ See Center for Women in Governance, Rubimbwa and Komurembe, *Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration*, 2012, available at http://www.peacewomen.org/sites/default/files/uganda_nap_monitoring_report_2012_0.pdf.

¹⁵⁰ CEDAW, *General recommendation on women's access to justice*, CEDAW/C/GC/33, 23 July 2015, available at

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf, par. 51(c).

¹⁵¹ Human Rights Watch, *Etat Généraux of the Justice System in the Democratic Republic of Congo – Recommendations on the Fight Against Impunity for Grave International Crimes*, April 2015, available at

https://www.hrw.org/sites/default/files/related_material/2015_DRC_Etats_Generaux_of_the_Justice_system%281%29.pdf, p. 2.

¹⁵² UNDP, *Evaluation of UNDP's Support to Mobile Courts in Sierra Leone, Democratic Republic of the Congo, and Somalia*, May 2014, available at

http://www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP_ROL_Mobile%20CourtsEvaluation_Nov2014.pdf, p. 9.

¹⁵³ *Ibid*, p. 11.

¹⁵⁴ *Ibid*.

against humanity and genocide.¹⁵⁵ After a draft bill was presented to the National Assembly on 2 May 2014, the parliament rejected the bill for technical mistakes.¹⁵⁶ The government authorities undertook to correct the technical errors and submitted a new amended draft bill to parliament,¹⁵⁷ but this amended draft bill has not yet been approved. Thus, these Special Mixed Chambers have not yet been established. According to the latest version of the draft bill, the special chambers would be composed of military and civil judicial personnel with international staff to help national personnel strengthen their expertise in the matters of investigations and prosecution of serious international crimes, witness protection and respect for the rights of the accused.¹⁵⁸

66. Were the Special Mixed Chambers to be established, it would have the jurisdiction over forms of sexual violence which amount to war crimes, crimes against humanity or genocide. Given the fact that sexual violence in the DRC is often committed in the context of an armed conflict and/or on a widespread or systematic scale against civilians, many cases would fall under the jurisdiction of the Special Mixed Chambers which would in turn have to be equipped with adequate financing, facilities and gender sensitive staff. It should be noted, however, that there would still remain the need to address gender crimes committed outside of the context of international crimes.
67. In **Kenya**, the Office of the Director of Public Prosecution (ODPP) has established a specialized division for sexual offenses.¹⁵⁹ For this division, the ODDP appointed and gazetted special prosecutors whose mandate is solely focussed on SGBV prosecutions. However, there are no guidelines on the involvement and retention of the special prosecutors. For instance, it is not clear whether special prosecutors can be called for further investigations, prosecute on their own or call on the police to submit a dossier. Often, support needs be secured from NGOs to facilitate the activities of the special prosecutors. In addition, the ODPP is reliant on police investigators who have not undergone training or special qualifications to investigate sexual violence.
68. Since 2012, efforts have been made to establish an International and Organized Crimes Division (IOCD) at the High Court originally with the intention to try post-

¹⁵⁵ Human Rights Watch et al., *Democratic Republic of Congo: No More Delays for Justice*, 1 April 2014, available at <http://www.hrw.org/news/2014/04/01/democratic-republic-congo-no-more-delays-justice>.

¹⁵⁶ Human Rights Watch et al, *Etats Généraux of the Justice System in the Democratic Republic of Congo*, 27 April 2015, available at <https://www.hrw.org/news/2015/04/27/etats-generaux-justice-system-democratic-republic-congo>.

¹⁵⁷ Human Rights Watch et al., *Democratic Republic of Congo: No More Delays for Justice*, 1 April 2014, available at <http://www.hrw.org/news/2014/04/01/democratic-republic-congo-no-more-delays-justice>.

¹⁵⁸ *Project de loi modifiant et complétant la loi organique No. 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire en matière de répression des crimes de génocide, des crimes contre l'humanité et des crimes de guerre*, April 2014, on file with authors.

¹⁵⁹ ICTJ, *The Accountability Gap on Sexual Violence in Kenya: Reforms and Initiatives Since the Post-Election Crisis*, April 2014, available at <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Kenya-SGBVAccountability-2014.pdf>, p. 10, see also Republic of Kenya, *Universal Periodic Review of the UN Human Rights Council*, September 2012, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KE/Kenya_mid-term_UPRReport.doc. p. 31.

election violence related serious crimes, including sexual violence.¹⁶⁰ However, public remarks of the Attorney General have cast doubt on whether its jurisdiction will cover past international crimes.¹⁶¹ The authors are aware that victim representatives have expressed their concerns about the lack of public participation in the discussions on the establishment of the IOCD and stated their desire to see the prosecution of past international crimes by the IOCD. To date, the IOCD has not been established without any public information as to the reasons or the envisioned timeframe.

69. Gender desks at police stations around the country were introduced in 2010.¹⁶² The intention was to ensure that police officers of the preferred gender and with the requisite training to sensitively handle a sexual violence victim are available to receive and record complaints of sexual violence at any time of the day. However laudable, the desks are rarely manned, are staffed with police officers who are unaware of the sensitivities demanded when dealing with a sexual violence victim and/or case, and they are not present at all police stations and posts. This may be attributed in large part to lack of government funding in this area.¹⁶³
70. In **Uganda**, the Child and Family Protection Unit was set up within the police in 1998 with the mandate to prevent and respond to cases of SGBV.¹⁶⁴ Members of the unit are obliged to take a compulsory induction course on SGBV and child abuse and their performance is reported on a regular basis.¹⁶⁵ The Directorate of Criminal Investigation also set up a special unit department for SGBV in 2013.¹⁶⁶ The unit is lacking funding to conduct its work efficiently.
71. In the following years, the reporting of SGBV cases by survivors and their families seemed to have increased, especially since the Child and Family Protection Unit has partnered with the Criminal Investigation Directorate.¹⁶⁷ Victims seem to prefer to report cases to the Child and Family Protection Unit because they work on the grassroots level and do not charge fees unlike local authorities.¹⁶⁸
72. However, police officers, including those attached to the Child and Family Protection Unit, are not adequately trained on how to handle SGBV cases, especially those

¹⁶⁰ Kenyans for Peace with Truth & Justice, *A Real Option for Justice – The International Crimes Division of the High Court of Kenya*, July 2014, available at <http://kptj.africog.org/a-real-option-for-justice-the-international-crimes-division-of-the-high-court-of-kenya/>, p. 7.

¹⁶¹ See Sosteness Franci Materu, *The Post-Election Violence in Kenya – Domestic and International Legal Responses*, 2015, p.114.

¹⁶² Institute for War & Peace Reporting, *Kenya Police Needs Sexual Crimes Unit – Experts*, October 2013, available at <https://iwpr.net/global-voices/kenyan-police-needs-sexual-crimes-unit-%E2%80%93-experts>.

¹⁶³ *Ibid.*

¹⁶⁴ Maria Burnett, 'Where Do You Want Us To Go?' *Abuses against Street Children in Uganda*, 17 July 2014, available at: <http://bit.ly/1Oij29E>, p. 24.

¹⁶⁵ Kim Thui Seelinger, *Domestic Accountability for sexual violence: The potential of specialized units in Kenya, Liberia, Sierra Leone and Uganda*, 2015, available at <https://www.icrc.org/en/download/file/12253/irrc-894-seelinger.pdf>, p. 554-555.

¹⁶⁶ *Ibid.*, p. 553.

¹⁶⁷ Center for Women in Governance, Rubimbwa and Komurembe "Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration", 2012, available at <http://bit.ly/1WvAcYJ>, p. 7.

¹⁶⁸ *Ibid.*, p. 23.

involving men and children.¹⁶⁹ This may be associated with the fact that SGBV against men is an under-researched topic, and much remains unknown about the patterns and dynamics of such crimes.¹⁷⁰ Also, due to the poor funding allocated to the department, the unit was only staffed with 400 trained officers instead of the desired 2600, with very few female officers.¹⁷¹ An additional impediment to the work of these specialized units lies in the difficult relationship with the other police and investigators caused by the competition for resources.¹⁷²

73. In July 2008, the International Crimes Division was established at the Ugandan High Court to try crimes against humanity, war crimes, genocide and transnational crimes.¹⁷³ Cases related to international crimes were stalled until March 2014 awaiting a Supreme Court decision on the applicability of the Amnesty Law.¹⁷⁴ Currently, one case against Mr Thomas Kwoyelo is on-going but does not include charges of SGBV despite the fact that sexual violence was rampant during the conflict in the North as stated by multiple sources describing the militia's practice of assigning abducted girls to commanders for sexual purposes.¹⁷⁵

Paragraph 9 of the Kampala Declaration: Investigation and Prosecution of SGBV

74. Under paragraph 9 of the Kampala Declaration, the member states commit to establish appropriate mechanisms to investigate and prosecute SGBV, including crimes that amount to international crimes. This corresponds to the ACHPR's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,¹⁷⁶ according to which states have the obligation to investigate and punish all complaints of violence against women, committed by state officials or private persons.¹⁷⁷ Such procedures must be fair, effective and accessible to the victims.¹⁷⁸ This includes creating a supportive environment that encourages victims to actively participate in

¹⁶⁹ *Ibid.*, p. 7.

¹⁷⁰ Philipp Shulz, *Conflict-related sexual and gender-based violence against Males in Uganda and Beyond*, 23 July 2015, available at <http://bit.ly/1LXrzyW>.

¹⁷¹ Uganda Human Rights Commission, *15th Annual Report to the Parliament of the Republic of Uganda*, 2012, available at <http://bit.ly/1L3EQt8>, p. 145.

¹⁷² Kim Thui Seelinger, *Domestic Accountability for sexual violence: The potential of specialized units in Kenya, Liberia, Sierra Leone and Uganda*, 2015, available at <https://www.icrc.org/en/download/file/12253/irrc-894-seelinger.pdf>, p. 555.

¹⁷³ See official website at <http://bit.ly/1pFfZAV>.

¹⁷⁴ International Center for Transitional Justice, *Pursuing Accountability for Serious Crimes in Uganda's Courts –Reflections on the Thomas Kwoyelo Case*, January 2015, available at <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Kwoyelo-2015.pdf>.

¹⁷⁵ Women's Initiative for Gender Justice, *June 2015 Special issue of Women's Voices*, June 2015, available at <http://4genderjustice.org/publications/eletters/june-2015-special-issue-of-womens-voices/>.

¹⁷⁶ Available at <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>.

¹⁷⁷ Section P(e).

¹⁷⁸ *Ibid.*

criminal justice processes.¹⁷⁹ In all three countries more needs to be done to ensure accountability and access to justice for victims.

75. In the **DRC**, the mechanisms in place to investigate and prosecute SGBV are not operating appropriately for various reasons. Interviews with police officers and prosecutors have revealed serious shortcomings in funds and resources such as transport and logistics for crime scene investigations, basic equipment and materials, such as means of communication, digital cameras, printers, notebooks, paper and pens, and the lack of specialized equipment necessary for investigations.¹⁸⁰ This situation is intensified by the persistent insecurity in many areas in the East of the country and victims' fear of reporting rapes due to the presence of perpetrators in the region.
76. In March 2015, the leaders of the DRC military signed a declaration to combat the use of rape as a weapon of war according to which the commanders commit to take measures against all acts of sexual violence committed by soldiers under their command, to ensure that accused persons appear before courts, to facilitate access for military prosecutors to areas under their command and to take disciplinary measures against all soldiers suspected of having committed acts of sexual violence.¹⁸¹ However, it is unclear how the fulfilment of this commitment will be monitored.
77. Another issue of concern in the Congolese judicial system relates to the use of military courts. According to the Congolese legislation, military courts have exclusive jurisdiction in relation to sexual violence crimes committed by the military or police and crimes which constitute war crimes, crimes against humanity and genocide.¹⁸² The only exception was added in 2013 by allowing ordinary courts to deal with international crimes "committed by persons under their jurisdiction and that of the District Court."¹⁸³ This wording is unclear and has not produced any cases before the civilian courts to date.
78. A worrying feature of the military justice system is its lack of impartiality and independence as the judges are integrated into the military hierarchy and thus susceptible to pressure and influencing from higher ranks.¹⁸⁴ The categorization of

¹⁷⁹ CEDAW, *General recommendation on women's access to justice*, CEDAW/C/GC/33, 23 July 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf, par. 51(d).

¹⁸⁰ Results of interviews by PHR with stakeholders in the law enforcement and legal sector in August 2015.

¹⁸¹ UN Multimedia, *RDC : Les FARDC signent une « déclaration historique » pour combattre l'utilisation du viol comme arme de guerre*, 31 March 2015, available at <http://www.unmultimedia.org/radio/french/2015/03/rdc-les-fardc-signent-une-declaration-historique-pour-combattre-lutilisation-du-viol-comme-arme-de-guerre/>.

¹⁸² Article 76 of Law No. 23/2002 of 18 November 2002 on the Military Judiciary Code.

¹⁸³ Article 91 of Law No. 13/011-B of 11 April 2013 on the Organisation, Operation and Jurisdiction of the Judiciary.

¹⁸⁴ International Center for Transitional Justice, *The Accountability Landscape in Eastern DRC – Analysis of the National Legislative and Judicial Response to International Crimes (2009 – 2014)*, July 2015, available at <https://www.ictj.org/publication/accountability-landscape-eastern-drc-analysis-national-legislative-and-judicial-response>, p. 10.

serious human rights violations, including sexual violence, as military offences and their prosecution through military courts also contradicts international standards.¹⁸⁵

79. In addition to the overall reluctance by military courts to investigate and prosecute sexual violence in an independent manner, perpetrators of higher ranks are often shielded from prosecution.¹⁸⁶ In these cases, local NGO seeking investigation and prosecution are subjected to pressure by political and military leaders.¹⁸⁷ One of the reasons lies in the failure of military prosecutors to examine the command responsibility of high-ranking officers for the sexual violence committed by the units under their control.¹⁸⁸
80. Recent statistics issued by the UNHCR in South Kivu show that 37 percent of the SGBV crimes between January and June 2015 have been committed against children and minors.¹⁸⁹ The 63 rape cases of girls of 12 years or younger in the Kavumu area in South Kivu are particularly disturbing.¹⁹⁰ Girls, the youngest being 6 months old, were taken from their houses at night, and raped in areas around the airport, military camps and police stations. A critical feature of those cases is that the girls' genital parts were destroyed in the sexual assault, and in a large number of those cases, it is not sure that the girls will ever physically recover from their injuries.¹⁹¹ Few of the assaults have been investigated individually; only in five cases was the perpetrator prosecuted, and the judicial procedures regarding thirteen cases were ongoing as of November 2015.¹⁹²
81. With regard to the length of proceedings, the law requires that preliminary investigations in matters of sexual violence are undertaken within a time limit of one

¹⁸⁵ UN General Assembly Resolutions No. 50/199, 54/179, 55/177, 56/173 on the situation of human rights in the Democratic Republic of the Congo; ACPHR's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, Principle L; UN Commission on Human Rights, *Impunity - Human Rights Resolution 2005/81*, E/CN.4/RES/2005/81, April 21, 2005, Principle 29, available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=11120; Committee Against Torture, *Concluding Observation of the Committee Against Torture on Turkey*, CAT/C/TUR/CO/3, 20 January 2011, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/TUR/CO/3&Lang=En, para. 5; Inter-American Court of Human Rights, *Castillo Petruzzi et al v. Peru*, Judgment of 30 May 1999, available at http://www.univie.ac.at/bimtor/dateien/iachr_1999_castillo-petruzzi_vs_peru.pdf, para. 128.

¹⁸⁶ United Nations Office of the High Commissioner for Human Rights (OHCHR) and United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO), *Progress and Obstacles in the Fights Against Impunity for Sexual Violence in the Democratic Republic of Congo*, April 2014, available at https://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US, para. 44.

¹⁸⁷ TRIAL et al., *Rapport de suivi sur les Observations finales du Comité pour l'élimination de la discrimination à l'égard des femmes sur la République démocratique du Congo en juillet 2013*, CEDAW/C/COD/CO/6-7, August 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGS_COD_21288_F.pdf, para. 55.

¹⁸⁸ United Nations Office of the High Commissioner for Human Rights (OHCHR) and United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO), *Progress and Obstacles in the Fights Against Impunity for Sexual Violence in the Democratic Republic of Congo*, April 2014, available at https://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US, para. 44.

¹⁸⁹ UNHCR, *Tendances SGBV Janvier-Juin 2015*, August 2015, on file with Authors.

¹⁹⁰ Coopera, *Note Conceptuelle pour le Task Force Kavumu – Prise en Charge Juridique pour les Cas de VVA de Kavumu et Katana*, October 2015, on file with Authors.

¹⁹¹ Lauren Wolfe, *A Miserable Mystery in Congo*, April 9, 2015, in Foreign Policy, available at <http://foreignpolicy.com/2015/04/09/a-miserable-mystery-in-congo/>.

¹⁹² Coopera, *Note Conceptuelle pour le Task Force Kavumu – Prise en Charge Juridique pour les Cas de VVA de Kavumu et Katana*, October 2015, on file with Authors.

month, and the prosecution and pronouncement of the judgment must be done within a time limit of three months from the referral to the judicial authorities.¹⁹³ However, a study conducted in 2012 found that “the total length of the process takes in average 10.6 months: 6.1 months between the facts and the prosecution’s request, 2.5 months between the prosecution’s request and the first hearing and 2 months between the first hearing and the pronouncement.”¹⁹⁴ According to the authors’ experience on the ground, no disciplinary measures are taken against the authorities for exceeding the time limits.

82. In **Kenya**, there is no centralised data collection system which would allow for the proper monitoring of SGBV investigations and prosecutions.¹⁹⁵ This makes it almost impossible to track the success of investigations and prosecutions of SGBV cases in Kenya.
83. Due to the fact that the different forms of SGBV as criminalized in the Sexual Offences Act 2006 are not always categorized as sexual violence by the police,¹⁹⁶ data collected on SGBV crimes is not truly reflective of the number of cases reported and investigated. For instance, an ‘indecent act’ or ‘sexual assault’ may be erroneously classified as a regular or typical (non-sexual) assault. With such imprecision in documentation, it proves difficult to ascertain how many and how far SGBV crimes are properly classified, investigated as such and finally, prosecuted.
84. It is evident that there still remains an uphill battle to secure the evidence necessary to ensure successful prosecution of SGBV cases.¹⁹⁷ Not only is there a lack of coordination between prosecutors and investigators which may affect the due course of the process,¹⁹⁸ but the police is also ill-equipped to conduct investigations and collect evidence because of a lack of resources.¹⁹⁹
85. Two recent studies show that sexual violence was widespread during post-election violence in 2007/2008.²⁰⁰ These reports indicate that in a large number of cases the

¹⁹³ Article 7 bis of the (modified) Code of Criminal Procedure.

¹⁹⁴ Avocat sans frontière, *La justice face à la banalisation du viol en République Démocratique du Congo – Etude de jurisprudence en matière des violences sexuelle de droit commun*, May 2012, available at http://issuu.com/avocatssansfrontieres/docs/asf_rdc_banalisationviol_etudejurisprudence_2012, p. 10.

¹⁹⁵ National Gender and Equality Commission, *National and Evaluation Framework towards the Prevention of and Response to Sexual and Gender Based Violence in Kenya*, available at <http://www.gbvhivonline.com/wp-content/uploads/2014/12/National-SGBV-ME-Framework.pdf>, p. 2.

¹⁹⁶ See for example: The Guardian, *Sexual violence isn’t a crime in Kenya: To the police rape wasn’t a crime*, October 2015, available at <http://www.theguardian.com/global-development-professionals-network/2015/oct/01/sexual-violence-in-kenya-to-the-police-wasnt-a>.

¹⁹⁷ Human Rights Center University of California Berkeley, *The Investigation and Prosecution of Sexual Violence*, May 2011, available at <http://www.usip.org/sites/default/files/missing-peace/seelinger-the-investigation.pdf>, p. 16-17, para IV.

¹⁹⁸ *Ibid.*

¹⁹⁹ Institute of Economic Affairs (Kenya), *Status of Gender Desks at Police Stations in Kenya*, September 2009, available at <http://www.worldcat.org/title/status-of-gender-desks-at-police-stations-in-kenya-a-case-study-of-nairobi-province/oclc/757723856?referer=di&ht=edition>.

²⁰⁰ Anastario, et al., *Time Series Analysis of Sexual Assault Case Characteristics and the 2007-2008 Period of Post-Election Violence in Kenya*, PLoS ONE 9(8), 2014, available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0106443>; Johnson et. al.,

perpetrators were state agents; police officers reportedly committed more than one quarter (26 per cent) of the recorded rapes. Interviews with female rape victims have shown a series of obstacles for access to justice, including the insufficient gender-sensitivity, unwillingness of investigating bodies to register complaints against police as well as a hostile environment in victims' families and in communities.

86. There have been almost no prosecutions for sexual violence committed during post-election violence in 2007/2008.²⁰¹ From scant and often inconsistent data,²⁰² it is clear that the success rate for prosecution and convictions is low. The ODPP has failed to provide any credible, comprehensive and consistent data on which cases were successfully prosecuted, especially those leading to conviction of perpetrators. The State's inaction in this regard has been challenged in a constitutional petition by a number of victims together with some of the authors (case no. 122/2014).
87. In **Uganda**, SGBV crimes are not adequately investigated and prosecuted due to a number of obstacles. Consequently, conviction levels remain low; only 3.5% of the reported cases of rape and defilement resulted in a conviction in 2013.²⁰³ The insufficiency of evidence is one of the main challenges impeding effective prosecutions.²⁰⁴ Police reports are often incomplete because of the use of an inappropriate P3-Forms and the refusal to fill them in without bribes.²⁰⁵ State attorneys and prosecutors lack the resources to carry out further investigations and many cases are thus dropped.²⁰⁶ Victims sometimes withdraw their statements after initially reporting the crimes because they are stigmatised and harassed to not continue the proceedings.²⁰⁷ Communities tend to isolate the victim instead of the perpetrator.²⁰⁸
88. In addition, the institutions dealing with such cases are not sufficiently equipped and trained. Lower courts are plagued with corruption and the High Court often takes a

A national population-based assessment of 2007-2008 election-related violence in Kenya, Conflict and Health 2014, 8:2, available at <http://www.conflictandhealth.com/content/8/1/2>.

²⁰¹ Human Rights Watch, *Turning Pebbles – Evading Accountability for Post-Election Violence in Kenya*, 2011, available https://www.hrw.org/sites/default/files/reports/kenya1211webwcover_0.pdf, p.20-22.

²⁰² See Director of Public Prosecution, *A Progress Report to the Hon. Attorney General by the Team on Update of Post Election Violence Related Cases in Western, Nyanza, Central, Rift-Valley, Eastern, Coast and Nairobi Provinces*, March 2011, available at <http://www.icc-cpi.int/iccdocs/doc/doc1062628.pdf>.

²⁰³ Center for Women in Governance, *A briefing paper, 2014 Findings from Uganda CSO monitoring of UNSCR 1325*, 2014, available at http://www.cewigo.org/sites/default/files/publications/briefing_paper.pdf, p.3.

²⁰⁴ UC Berkeley School of Law, Human Rights Center, *The Long Road, accountability for Sexual Violence in Conflict and Post-Conflict Settings*, 2015, available at: <https://www.law.berkeley.edu/wp-content/uploads/2015/07/The-Long-Road-Accountability-Study-Executive-Summary.pdf>, p. 3.

²⁰⁵ Center for Women in Governance Rubimbwa and Komurembe, *Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration*, 2012, available at <http://bit.ly/1WvAcYJ>, p. 7.

²⁰⁶ Justice and Reconciliation Project, *Voices. Sharing victim centered views on justice and reconciliation in Uganda*, Issue 4, May 2014, available at <http://justiceandreconciliation.com/wp-content/uploads/2014/07/Voices-Issue-07-WEB.pdf>, p. 7.

²⁰⁷ NewVision, Esther Namirimu, *Uganda commended for fighting gender based violence*, 30 September 2015, available at <http://bit.ly/1FHIW9U>.

²⁰⁸ Center for Women in Governance, Rubimbwa and Komurembe, *Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration*, 2012, available at http://www.peacewomen.org/sites/default/files/uganda_nap_monitoring_report_2012_0.pdf, p. 22.

long time to render a judgment.²⁰⁹ At the level of the police, recent reports indicate that SGBV cases still benefit from a comparatively lower priority compared to other offences.²¹⁰ Existing police posts lack equipment as well as facilities; their staff is poorly trained, and have little legal knowledge of the legal framework to carry out effective investigations.²¹¹

89. Although the state is obligated under the law to bear the costs of investigations, victims are in practice often expected to pay the costs since the state lacks or does not allocate enough resources to cover these expenses.²¹² Other practical impediments to the success of a sexual violence complaint include the fact that enforcement institutions do not spend resources to perform some of the basic investigative functions such as visiting the crime scenes or interrogating the key witnesses.²¹³ In view of these factors, it is not surprising that survivors still prefer to settle matters outside formal legal institutions due to fear of backlash from family members, communities, as well as prolonged court processes that are considered cumbersome and protracted.²¹⁴

C. PROVIDING SUPPORT

90. In the Kampala Declaration, the member states commit to take certain measures to ensure that victims have access to support services. This is also reflected in CEDAW's General Recommendation No. 19 on violence against women which calls on states to establish support services for victims of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling.²¹⁵ According to the ACPHR's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, state services should include material, medical, psychological and social assistance through state, voluntary, non-governmental and community-based means.²¹⁶ The treatment of sexual violence victims in the DRC, Kenya and Uganda, however, is still lagging behind these requirements.
91. In the **DRC**, "many women and girls who were raped suffer from medical complications and serious mental trauma but do not always have access to medical or

²⁰⁹ ACORD, *Protection and restitution for survivors of SGBV in Uganda*, September 2010, available at <http://bit.ly/1Mb3gSp>, p. 7.

²¹⁰ School of Women and Gender Studies, *A Situational Analysis of the State of Sexual and Gender Based Violence in Uganda With Special Focus on Health Services*, 23 May 2013, available at <http://bit.ly/1LOIXHy>, p. 38.

²¹¹ ACORD, *Protection and restitution for survivors of SGBV in Uganda*, September 2010, available at <http://bit.ly/1Mb3gSp>, p. 7.

²¹² FIDA Uganda, Vahida Nainar, *In the Multiple Systems of Justice in Uganda, Whither Justice for Women?*, 2011, available at http://www.entwicklung.at/fileadmin/media/Projektbeispiele/FIDA-Uganda_Publications/FIDA_Publication_Whither_Justice_for_women.pdf, p. 27.

²¹³ REDRESS, *Litigation strategy for sexual violence in Africa*, September 2012, available at <http://bit.ly/1ajeNOQ>, p. 10.

²¹⁴ Center for Women in Governance, Rubimbwa and Komurembe, *Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration*, 2012, available at http://www.peacewomen.org/sites/default/files/uganda_nap_monitoring_report_2012_0.pdf, p. 21.

²¹⁵ CEDAW, *General Recommendation No. 19: Violence against women*, 1992, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en, par. 24 (k).

²¹⁶ Section P (m) (i).

psychological assistance.”²¹⁷ Despite their need for treatment, there are no comprehensive support services accessible, especially in the Eastern parts of the country where the infrastructure is weak.²¹⁸ Those services that are available are virtually all financed by the international community through specific projects implemented by international organisations or NGOs. For example, the Joint Program to Fight Against Impunity, Support for Victims of Gender-Based Violence and Empowerment of Women in the DRC which was launched by UNDP and UNFPA in 2013 includes a component on victim support.²¹⁹ Despite a proposed draft bill on the creation of an assistance fund for victims of sexual violence in 2004, the government has not yet established a national fund for the assistance of direct and indirect victims of sexual violence.²²⁰

92. In **Kenya**, the government has so far failed to abide by its obligation to offer any form of reparation, including support services, to victims of sexual violence committed in the wake of post-election violence in 2007/2008. The Truth, Justice and Reconciliation Commission (TJRC) Report recommendations on reparations which prioritize victims of sexual violence are yet to be implemented.²²¹ Statements taken with female victims of sexual violence in four regions in Kenya have shown that these women have not been able to access rehabilitation services and are still in need of reparative measures, in particular socio-economic, medical and psychological services.
93. Following continued calls by NGOs and recommendations contained in the TJRC Report, in March 2015 the President of Kenya promised the establishment of a fund of 10 Billion Shillings “over the next three years to be used for restorative justice”.²²² There has been no indication on how much of the fund will be put towards implementing assistance and support programmes for victims of SGBV. The fund is still just a promise; it not clear where the funds shall be drawn from. Challenges for the implementation of such a fund include the lack of a proper database of all victims in Kenya, the lack of consultation and involvement of victims, especially SGBV victims are not given special and extra attention, and corruption.

²¹⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR) and United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO), *Progress and Obstacles in the Fights Against Impunity for Sexual Violence in the Democratic Republic of Congo*, April 2014, available at

https://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US, para. 5.

²¹⁸ Report of the UN High Commissioner for Human Rights, *Situation of human rights and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo*, A/HRC/30/32, 27 July 2015, available at

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>, para. 21.

²¹⁹ See summary of the results of the program as of October 2014 at:

http://www.cd.undp.org/content/dam/dem_rep_congo/docs/Gender/UNDP-CD-Article%20cliniques%20juridiques.pdf.

²²⁰ TRIAL et al., *Rapport de suivi sur les Observations finales du Comité pour l'élimination de la discrimination à l'égard des femmes sur la République démocratique du Congo en juillet 2013*, CEDAW/C/COD/CO/6-7, August 2015, available at

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGS_COD_21288_F.pdf, para. 102.

²²¹ Report of the Truth, Justice and Reconciliation Commission, Volume IV, 2013, available at <http://www.kenyamoja.com/tjrc-report/>, p. 103 and 105.

²²² State of the Nation address by President Uhuru Kenyatta, 26 March, 2015, available at

<http://m.news24.com/kenya/MyNews24/Full-State-of-the-Nation-address-by-president-Uhuru-Kenyatta-20150326>, para 83.

94. In **Uganda**, the government has reiterated its commitment to promote integrated services like medical and psychological care.²²³ However, access to health facilities is still hampered by poor infrastructure, lack of medicines and other supplies and shortage of human resources, low salaries, lack of staff accommodation at health facilities among others especially in the rural areas where the majority of the survivor population lives.²²⁴ In a lot of rural areas, there is no specialized training of medical workers to handle SGBV although the Ministry of Health had developed a training manual on SGBV for health workers and had conducted training of trainers across the districts but these trainers are yet to train others.²²⁵
95. The health sector facilities now provide emergency contraceptives, post exposure prophylaxis (PEP) to prevent HIV/AIDS and general treatment to survivors. However, these PEP kits continue to be concentrated at referral/regional hospitals but are not available at health centres at the community level where most SGBV cases are reported.²²⁶ The limited awareness about the availability of PEP affects its accessibility and due to fear of stigma, survivors opt not to request PEP kits.²²⁷ Also, hospitals are not accessible in some areas.
96. Overall, there is little support available to SGBV victims. The police are poorly trained and do not have the skills and attitude to support traumatized victims.²²⁸ The support available seems to be largely provided by international actors such as the International Criminal Court's Trust Fund for victims but with a focus on specific victim groups.²²⁹ The National Health Policy, the National Adolescent Health Policy and the Health Sector Strategic Plan are all silent on providing services to survivors of SGBV cases.²³⁰

²²³ Ministry of Gender, Labour and Social Development, *The social development sector strategy investment plan (SDIP 12) – 2011/12-2015/16*, June 2011, available at

<https://extranet.who.int/nutrition/gina/sites/default/files/UGA%202011%20The%20Social%20Development%20Sector%20Strategic%20Investment%20Plan%20%28SDIP%20%29.pdf>, p. 41.

²²⁴ Center for Women in Governance, Rubimbwa and Komurembe, *Monitoring Implementation of Uganda Action Plan (NAP) for UNSCR 1325, 1820 and the Goma Declaration*, 2012, available at

http://www.peacewomen.org/sites/default/files/uganda_nap_monitoring_report_2012_0.pdf, p. 7.

²²⁵ *Ibid*, p. 25.

²²⁶ *Ibid*, p. 7.

²²⁷ *Ibid*.

²²⁸ ACORD, *Protection and Restitution for Survivors of Sexual and Gender Based Violence in Uganda: The legal peculiarities, the possibilities and the options*, September 2010, available at <http://www.acordinternational.org/silo/files/uganda-protection-and-restitution-for-survivors-of-sexual-and-gender-based-violence.pdf>, p. 7.

²²⁹ See for example *The Trust Fund For Victims Launches New Assistance Projects In Northern Uganda*, 3 July 2015, available at: <http://www.trustfundforvictims.org/news/trust-fund-victims-launches-new-assistance-projects-northern-uganda>.

²³⁰ School of Women and Gender Studies, Makerere University, *A Situational Analysis of the State of Sexual and Gender Based Violence in IPPF Uganda With Special Focus on Health Services*, 23 May 2013, available at <http://www.rhu.or.ug/assets/sgbv-situational-analysis-report-by-rhu-may2013.pdf>, p. XV.

Paragraph 12 of the Kampala Declaration: Income-generating programmes

97. According to paragraph 12 of the Kampala Declaration, the member states commit to establish and strengthen income generating programmes and initiatives targeting survivors of SGBV. This obligation addresses the needs of victims for socio-economic rehabilitation. Many victims find themselves in a situation where they are no longer capable to provide for themselves and their family as a consequence of the sexual assault.²³¹ Economic empowerment is therefore an important contribution to their recovery.
98. In the **DRC**, victims of sexual violence have tried to set up their own income generating initiatives, e.g. by establishing peer support groups.²³² Many NGO projects also include a component of economic assistance.²³³ However, these programs lack any contribution or coordination from the government.
99. In **Kenya**, there are currently no specific government-run income generating programmes for SGBV victims. General funds and programmes such as the Women Enterprise Fund, the National Fund for the disabled of Kenya, and the Youth Enterprise Development Fund do not have a specific focus on benefitting SGBV victims. There are, however, economic empowerment programmes which are run by NGOs in Kenya, for example Sustainable Livelihood Programme run by the Women Empowerment Link.²³⁴
100. In **Uganda**, victims of sexual violence in conflict continue to call on the government to provide income-generating activities.²³⁵ Civil society organisations on the other hand, have been offering income generating activities to help SGBV survivors become economically independent.²³⁶ For example, Women's Advocacy Network has initiated a project to ensure that economic empowerment for victims in Northern Uganda.²³⁷

²³¹ United Nations, *Guidance Note of the Secretary-General – Reparations for Conflict-Related Sexual Violence*, June 2014, available at <http://www.unwomen.org/~media/headquarters/attachments/sections/news/stories/final%20guidance%20note%20reparations%20for%20crsv%203-june-2014%20pdf.ashx>, p. 17.

²³² International Campaign to Stop Rape & Gender Violence in Conflict, *Women of Congo Speak Out – Briefing Paper*, 2014, available at <http://nobelwomensinitiative.org/wp-content/uploads/2014/09/Congo-Women-Speak-Briefing-Paper.pdf>, p. 6.

²³³ See overview in Nynca Douma and Dorothea Hillhorst, *Fond de commerce? – Sexual violence assistance in the Democratic Republic of Congo*, 2012, available at http://www.wmm.com/filmcatalog/study/justice_report.pdf, p. 33-44.

²³⁴ For more information, see <http://wel.or.ke/women-economic-empowerment/>.

²³⁵ Justice and Reconciliation Project, Lindsay McClain Opiyo and Claire Jean Kahunde, *Establishing the Extent of SGBV Revictimisation among Female Survivors of Conflict SGBV in Northern Uganda, Report Summary on a Baseline Study and Pre-Project Assessment on Redress for SGBV on Conflict-Related Wrongs*, November 2014, available at <http://justiceandreconciliation.com/wp-content/uploads/2014/11/SGBV-Baseline-Report-Summary-WEB.pdf>, p. 7.

²³⁶ School of Women and Gender Studies, Makerere University, *A Situational Analysis of the State of Sexual and Gender Based Violence in IPPF Uganda With Special Focus on Health Services*, 23 May 2013, available at <http://www.rhu.or.ug/assets/sgbv-situational-analysis-report-by-rhu-may2013.pdf>, p. XV.

²³⁷ Justice and Reconciliation Project, *Increasing Redress for Female Victims of SGBV in Northern Uganda through economic empowerment*, September 2014, available at <http://justiceandreconciliation.com/initiatives/redress-for-sgbv/>.

RECOMMENDATIONS

To the DRC:

On prevention

- Provide special training to eliminate stereotypes and discriminatory practices against women and conduct outreach campaigns to eliminate the stigmatisation of victims of sexual violence (Ministry of Interior and Ministry of Gender).
- Establish a mechanism to vet Congolese security forces in order to identify and exclude perpetrators of serious human rights violations in the ranks (Ministry of Defence).
- Guarantee the effective implementation of the National Strategy on the Fight Against Gender-Based Violence of 2009 and allocate human and financial resources to the realisation of the principal objective of this strategy. Provide a mechanism for periodic evaluation of the implementation (Presidential Adviser).

On ending impunity

- Hold all perpetrators of sexual violence to account for their crimes, regardless of their position and status in the government, their role in the security sector or armed forces, or their wealth or influence in society.
- Build strong evidentiary capacity by allocating sufficient financial resources to doctors, nurses, police officers, lawyers, prosecutors and judges and provide specialized training, including on how to collect, document, analyze, and preserve forensic medical evidence for existing and future prosecutions.
- Foster cross-sectoral collaboration among the medical, law enforcement, and legal sectors, ensuring that responses to sexual violence are effective and coordinated in their efforts toward achieving higher prosecutions rates.
- Immediately adopt legislation on the protection of victims and witnesses, including specific regulations which sanction the threatening or intimidation made against victims or witnesses involved in judicial procedures. Provide security and protection for survivors and witnesses as well as the medical staff, police, lawyers, and judges investigating and presiding over these cases in the justice process.
- Guarantee the appropriate use of protective measures in court, in particular judicial measures such as in camera hearings, to ensure the security, physical and psychological well-being, dignity and respect for privacy of victims and witnesses in the context of sexual violence cases.
- Ensure that courts implement the required procedure of calling a medic or psychologist in trials of sexual violence cases for a medical assessment of the victim.

- Ensure the respect of time limits for judicial procedures of cases of sexual violence and sanction those responsible exceeding these limits.
- Immediately adopt the law on the establishment of the Special Mixed Chambers and ensure adequate financial, material and human resources to the future Special Mixed Chambers.

On providing support

- Ensure that all victims of sexual violence crimes have access to justice free of charge and guarantee the elimination of all illegal costs requested by judicial actors and administrative services in the context of judicial procedures and sanction those who make such requests.
- Fund legal representation for sexual violence survivors throughout the entire judicial process, from the pre-trial to the post-trial phases, including the enforcement of judgments and court-ordered reparation (Ministry of Justice).
- Allocate necessary resources to guarantee free access for victims to comprehensive medical treatment, including mental health care and psychological support provided by health professionals who are trained and competent in detecting signs of sexual violence and treating its consequences. Develop and implement a national program intended to provide adequate reparation to victims of sexual violence (Ministry of Health).
- Enforce judicial decisions and pay damages awarded to victims of sexual violence where the state was considered responsible *in solidum*. Make sure that victims can access court-awarded compensation without incurring additional costs (Ministry of Justice).
- Ensure the implementation of all forms of reparation for victims of sexual violence, including measures of restitution, rehabilitation, satisfaction (public excuses, official statements) and guarantees of non-recurrence.

To Kenya:

On prevention

- Allocate sufficient financial resources to the National Equality and Gender Commission to implement the campaign “Keeping the Promise to End GBV” and to implement the National Monitoring and Evaluation Framework.

On ending impunity

- Hold all perpetrators of sexual violence to account for their crimes, including those committed during the 2007/2008 post-election violence.

- Ensure that all victims of sexual violence crimes can lodge complaints free of charge and guarantee the elimination of all bribes requested by police and medical professionals in the context of judicial procedures and sanction those who make such requests.
- Facilitate the procedure to lodge complaints by harmonizing the P3 and PRC forms into one medical examination form and ensure both complainants and health care workers are educated and informed on the correct use of these forms (Ministry of Justice, Director of Public Prosecution and Ministry of Interior).
- Fill the gaps in the procedural rules for dealing with sexual offences by requiring psycho-social support services for victims who testify in court (Ministry of Interior and Ministry of Health).
- Provide security and protection for survivors and witnesses as well as the medical staff, police, lawyers, and judges investigating and presiding over these cases in the justice process.
- Allocate sufficient financial resources to any special mechanism set up to investigate and prosecute SGBV, including the ODPP's special division and the Special Crimes Unit of the Criminal Investigation Department. Establish a nationwide data collection system to record incidents of SGBV and the prosecution and conviction rate, and publish the results. Establish a national registry of sexual violence victims and an administrative process for them to secure reparations.
- Provide resources for capacity building of law enforcement officers and health workers on proper collection, documentation, preservation and handling of forensic evidence of sexual violence.
- Ensure availability of essential supplies to facilitate examination of victims, and collection, documentation and preservation of forensic evidence in health facilities and police stations across the country.
- Initiate policies, guidelines and sustainable structures for enhanced cross-sectoral coordination between the health, law enforcement, legal and judicial sectors in the collection, transmission and management of victims and forensic evidence of sexual violence.
- Establish early warning systems and rapid response mechanisms, including mobile clinics, to ensure access to medico-legal services in conflict and emergency situations.
- Ensure that intellectually challenged victims as well as disabled persons are handled with the sensitivity they require from the moment they report their cases in health institutions all the way to when their cases are heard in court.

On providing support

- Ensure that victims of SGBV can obtain compensation from the perpetrators through the formal justice system (Ministry of Justice and Director of Public Prosecution).
- Ensure that SGBV victims of past injustices benefit meaningfully from the Fund for Restorative Justice, including prioritization of their urgent health needs.
- Ensure the implementation of all forms of reparation for victims of sexual violence, including measures of restitution, rehabilitation, satisfaction (public excuses, official statements) and guarantees of non-recurrence.

To Uganda:

On prevention

- Fully implement the National Action Plan on the implementation of UN Security Council Resolution 1325 and 1820.

On ending impunity

- Develop a protocol for gender-sensitive criminal proceedings, train relevant authorities on its use and ensure its application in practice.
- Ensure that all victims of sexual violence crimes can lodge complaints free of charge and guarantee the elimination of all illegal costs requested by police and medical professionals in the context of judicial procedures and sanction those who make such requests.
- Foster cross-sectoral collaboration among the medical, law enforcement, and legal sectors, ensuring that responses to sexual violence are effective and coordinated in their efforts toward achieving higher prosecutions rates.
- Allocate sufficient financial resources and continued capacity building to any special mechanism set up to investigate and prosecute SGBV, including the Child and Family Protection Unit.
- Develop and implement a policy on investigation and prosecution of sexual violence at the International Crimes Division to ensure the inclusion of SGBV crimes in the prosecutorial strategy.

On providing support

- In consultation with victims, implement the parliamentary resolution on the establishment of a gender-sensitive reparation fund and JLOS' recommendation on reparation.
- Allocate necessary resources to guarantee free access for victims to comprehensive

medical treatment, including mental health care and psychological support provided by health professionals who are trained and competent in detecting signs of sexual violence and treating its consequences. Establish one-stop-service centres that are easily accessible for victims.

To the ICGLR Secretariat:

- Compile examples of how obligations under the ICGLR Protocol on SV and the Kampala Declaration have been implemented in all ICGLR member states.
- Engage in a discussion with member states to develop an action plan for implementation of the ICGLR Protocol on SV and the Kampala Declaration.
- Invite submissions from civil society organisations in member states to feed into reports presented to the ICGLR.
- Publish reports on the progress of the member states in implementing the ICGLR Protocol on SV and the Kampala Declaration.
- Support and encourage advocacy efforts of civil society organisations in member states on the implementation of the ICGLR Protocol on SV and the Kampala Declaration, for example by facilitating discussions.

ANNEX A: ORGANISATION PROFILES

Coalition on Violence Against Women (COVAW)

COVAW has been instrumental in placing violence against women as a crime and a human rights violation. COVAW works to promote and advance women's rights through working towards a society free from all forms of violence against women.

FIDA Uganda

The Uganda Association of Women Lawyers (FIDA Uganda) was established in 1974 by a group of women lawyers with the primary objective of promoting their professional and intellectual growth. FIDA Uganda established its first legal aid clinic in Kampala in 1988, with the objective of providing legal services to indigent women to enable them access justice.

Today, FIDA Uganda has over 300 members, and offices in cities and towns across the country. While the provision of legal aid remains a core function of FIDA Uganda, the Association has adopted a broad range of strategic functions to pursue gender equality. FIDA Uganda is a much respected founding entity in the advocacy for women's rights in Uganda, and a well-renowned voice for the women of Uganda.

Independent Medico-Legal Unit (IMLU)

IMLU promotes the rights of torture victims and survivors, and protects vulnerable groups from all forms of state perpetrated torture. IMLU primarily achieves this through forensic medical documentation, advocacy, monitoring government adherence to human rights, comprehensive rehabilitation of torture survivors, legal redress and capacity building of key stakeholders, including doctors, lawyers and trauma counsellors.

International Refugee Rights Initiative (IRRI)

IRRI is dedicated to promoting human rights in situations of conflict and displacement, enhancing the protection of vulnerable populations before, during and after conflict. IRRI accomplishes this by tackling the exclusion and human rights violations which are the root causes of flight, enhancing the protection of the rights of the displaced, and promoting policy solutions which enable those affected by conflict to rebuild sustainable lives and communities.

IRRI grounds its advocacy in regional and international human rights instruments and strives to make these guarantees effective at the local level. Focusing primarily on Africa, IRRI works with networks of advocates to identify the key challenges facing vulnerable communities and collaborates to advance changes in law, policy and practice. IRRI accomplishes these objectives by developing and implementing innovative legal and advocacy strategies, conducting policy-oriented legal and field-based research and leveraging African regional and sub-regional governance structures. Partnership with networks of civil society and NGOs across the continent is a hallmark of our work, including through IRRI stewardship and development of the Sudan Consortium. Our offices in Uganda, the US and the UK position us to act as a bridge between local advocates and the international community, enabling local knowledge to infuse

international developments and helping integrate the implications of regional and international policy at work on the ground.

Kenyan Section of the International Commission of Jurists (ICJ-Kenya)

ICJ Kenya works on the promotion of human rights, the rule of law and democracy in Kenya and around Africa. ICJ Kenya executes its mandate through the application of legal expertise and international best practices. To achieve its mandate, ICJ Kenya has on various occasions used litigation as a means of advancing access to justice in Kenya and the region.

Kituo Cha Sheria (KITUO)

KITUO's programmes deal with issues of legal aid education, forced migration, advocacy, governance and community partnerships. In addition, KITUO will strengthen its work around research, communication and documentation and strategic leadership and governance. All the programmes aim at empowering poor and marginalised people to effectively access justice and enjoy human and people's rights.

KITUO has reported major landmarks in its growth. These include: institutionalization of the planning process; shift in orientation from legal aid to legal empowerment; focus on public interest litigation; expansion into marginalized areas through satellite offices; designing of innovative and responsive programmes and establishment of a proactive board that represents the interests of poor and marginalized groups. KITUO's strategic priority areas for the next 5 years beginning 2009 will include legal education and empowerment for the poor and marginalized; transitional justice and institutional reforms in Kenya with a view to focusing on the various commission reports like the Commission of Inquiry into the Post Election Violence (the Waki report), the Independent Review Committee (the Kriegler report), and The Commission of Inquiry into Irregular/Illegal Land (the Ndungu report); design of innovative and responsive programmes/products to its constituencies; space for KITUO in policy and decision making platforms/levels; visibility of KITUO through research, media, partnership and networks; organizational growth, sustainability and development towards a professional, sound and viable organization; functional strategic leadership and governance; enhanced institutional memory; partnerships with academic and research institutions.

Physicians for Human Rights

Since 1986, Physicians for Human Rights (PHR) has used medicine and science to document and call attention to mass atrocities and severe human rights violations. PHR was founded on the idea that physicians, scientists, and other health professionals possess unique skills that lend significant credibility to the investigation and documentation of human rights abuses. PHR's specialized expertise is used to advocate for persecuted health workers, prevent torture, document mass atrocities, and hold those who violate human rights accountable. PHR's work focuses on the physical and psychological effects of torture and sexual violence, the forensic documentation of attacks on civilians, the unnecessary and excessive use of force during civil unrest, and the protection of medical institutions and health professionals working on the frontline of human rights crises.

PHR has come to occupy an important position in the human rights movement. PHR focuses on the critical role of forensic science, clinical medicine, and public health research in ensuring that human rights abuses are properly documented using the most rigorous scientific methodologies possible. PHR experts use epidemiology, medical and psychological evaluations, autopsies, forensic anthropology, and crime scene analysis to document serious abuses, including murder, torture, rape, starvation, forced displacement, and civilian attacks.

REDRESS

REDRESS is a human rights organisation based in London with the mandate to support victims of torture and other international crimes in their quest for justice and reparations. It was established on 10 December 1992 and was founded to ensure survivors' rights to justice and reparation would be capable of being enforced in practice. REDRESS accomplishes this through a range of activities which it implements in the United Kingdom and in countries around the world in partnership with a range of counterparts.

REDRESS prioritises the interests and perspectives of survivors in all aspects of its work. The highest priority in decisions and interventions is given to promoting survivors' well-being and the avoidance of further traumatising. Collaborating with like-minded organisations is at the centre of REDRESS' ethos. More can be achieved when forces are joined. Sharing of expertise within and between cultures and continents is a value that REDRESS seeks to promote as a goal in and of itself and as a means to maximise impact.

TRIAL

TRIAL (Track Impunity Always) is an association under Swiss law based in Geneva. It is apolitical and non-confessional and has consultative status before the United Nations Economic and Social Council. Comprising lawyers, NGO leaders and victims, the association was founded in 2002, right at the moment when the Rome Statute establishing the International Criminal Court entered into force and four years after the arrest of General Pinochet in London, which had inspired the founders of the NGO. The main objective of TRIAL is to put the law at the service of the victims of international crimes (genocide, crimes against humanity, war crimes, torture and forced disappearances). In this sense, TRIAL fights against the impunity of the perpetrators and instigators of the most serious international crimes and their accomplices, defends the interests of the victims before Swiss tribunals, international or regional human rights organisms and the International Criminal Court, and raises awareness among the authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of international crimes.