

**Unpacking Compensation and Protection for Survivors of
Sexual and Gender Based Violence: A Regional Consultation**

Kampala, Uganda: 9 - 10 July 2008

ACORD in Partnership with Raising Voices – Uganda

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FOREWARD:

This meeting would not have been possible without the support of Raising Voices Uganda and the Gender Based Violence Network. I would like to specifically thank Lori Michau, Jean Kemitare and Evelyne Letiyo for their work in this regard.

To Ronald Kalyango who facilitated the process, a big thank you.

To ACORD staff, Ellen Banjenja, Zainab and the team at the Uganda office, I would like to say Asante.

To the workshop participants who engaged fully within the short time span, our sincere gratitude and we aim to continue these conversations and relationships.

This meeting was the first of many steps towards consolidating a Pan African platform on ending Impunity on sexual and gender based violence. The Conference that was held in Nairobi from July 21 – 23 2008 acted as distillation point by bringing together actors across three sectors (parliaments, regional blocs and CSO's) to begin engaging on tangible multi-sectoral work that is rooted in a feminist understanding of the factors that propel SGBV.

We see this as the first of many engagements and trust that an assault on the area of compensation and protection is the first in many layers of unpacking what an end to impunity on SGBV in Africa would mean.

We are committed to holding ourselves, government and regional institutions accountable to delivering on protocols, ratifications and policies that are in place. We are equally committed to ensuring that civil society processes in this area particularly at a Pan African level, emerge and grow in more concerted ways.

Sincerely,

Awino Okech

Gender & Conflict Thematic Manager - ACORD



1.0 Executive Summary

Across the continent multiple layers of activism exist to address sexual and gender based violence whether in situations that are deemed to be overtly in conflict or otherwise. The intersections with HIV/AIDS, land and agricultural policies as well as trade concerns have all been drawn in by civil society actors as critical factors to engage with, within the context of meeting gender equity on the continent.

Endeavors at a Pan African level exist that seek to institutionalize mechanisms of dealing with SGBV. The AU Protocol, The ICGLR protocol, in addition to international instruments such as UN Resolution 1325, BPFA and CEDAW have all been critical instruments that activists have rallied around to mobilize and put pressure on governments to act on the question of SGBV.

Regional institutions and mechanisms that operate independent of governments but are reliant on government's membership are in place and are equally geared towards addressing SGBV.

From the 21st to 23rd July 2008 Pan African activists, parliamentarians, policy makers, representatives of regional economic communities and civil society organizations will converge for the Pan African Conference on Ending impunity on sexual and gender based violence in Nairobi Kenya.

As part of regional preparations for this conference, ACORD and the Gender Based Violence Prevention Network organized a regional consultation from the 9th to 10th July 2008 as an opportunity to contribute to the outcomes of the forthcoming Pan African conference on SGBV. This consultation brought together practitioners from Burundi, Kenya, Tanzania, Rwanda and Uganda. This was an opportunity to engage civil society organizations working on these issues through various strands on ways to harmonize an advocacy agenda at a national and regional level and prepare recommendations and proposals on compensation and protection for survivors of SGBV especially in post conflict settings.

2.0 Process

The meeting was conducted in a participatory manner to ensure input from all participants. Over the course of two days, presentations, small group discussions, role plays, and facilitated group discussions allowed a sharing of ideas and knowledge about the needs of survivors of SGBV.

Objectives of the Meeting

1. To come to a shared understanding on compensation and protection by CSOs working on SGBV.
2. To develop a CSO stakeholder position on the question of compensation and protection for SGBV survivors based on organizational and national processes.
3. Conduct a mapping of actors, institutions and processes relevant to influencing regional bodies towards compensation and protection.



Expected Outcomes:

1. A shared understanding of compensation and protection by CSO working on SGBV for different entry points
2. A mapping of regional processes, networks and relevant institutions
3. A communiqué outlining a CSO position on the question of compensation and access to justice for survivors to be shared at the Nairobi Conference.

3.0 Meeting Proceedings

3.1 Introductory Remarks – Awino Okech (Gender Conflict Manager, ACORD)

Ms. Okech noted that women have become the main targets of violent conflict in Africa and this had been prioritized by ACORD since 2006 and have observed that not enough energy has gone into policy making with regard to protection and compensation for SGBV in conflict and post conflict settings with these issues being ‘quickly swept under the rug’. She called for a need to build regional and continental momentum around these issues in order to hold institutions accountable for what happened to women during struggles for democracy.

In order to facilitate this momentum there should be clear concepts and ideas for change. A regional consultation would therefore bring a few voices together to come to a shared understanding of what it means for compensation and protection. These recommendations and proposals will serve to drive the mobilizing during the Pan African conference.

3.2 Towards Eliminating SGBV: The Need for Compensation and Protection of SGBV Survivors- Aura Ruth Odhiambo (Legal Feminist Researcher-Kenya)

The goal of this presentation¹ was to present the current state of the justice system for survivors and perpetrators of SGBV, seeking to present the legal framework on SGBV and justify the need for compensation/reparation as a form of restorative justice to the survivors of SGBV. The presenter shared the laws, policies, and legal processes that survivors and perpetrators must go through. The issue of bias against women was a common theme and it was clear from many of the examples that the courts deliver unfavorable outcomes to survivors and generally neglect their needs. The presentation resulted in a shared understanding of the barriers that survivors must face in order to access justice. Conclusions were made that the government needs to improve the justice system and implement policies related to compensation for survivors.

¹ Power point presentation in Appendix I



Protection of Survivors of Sexual Violence

With regard to protection of survivors of SGBV, there are both national and supra-national legal regimes that seek to protect the rights and freedoms of the survivors of SGBV. Such regimes are, though, not sufficient to alleviate the pain and suffering of the SGBV survivors. International instruments include the CEDAW whose implementation by state parties has not been effective. This is because non-compliance by state parties does not carry a penalty, states are still entrenched in deeply retrogressive cultural practices like FGM, wife inheritance and domestic violence and state parties are responsible for submitting regular reports to the Committee on the Elimination of discrimination against Women on the measures they have taken to comply with CEDAW such reports are not binding, thus, offending States quite often invoke the sovereignty principle to evade their responsibility under CEDAW.

Other protocols like the Optional Protocol to the Convention on the Elimination of Discrimination Against Women which reinforces the provisions of CEDAW overlooks issues like, the poverty situation in Africa which hinders many individual survivors of SGBV from making report to the Committee on the violation of their rights by the State Parties, and Ignorance of most survivors of SGBV on the avenues available to them. Other international instruments include Declaration on the Elimination of Violence Against Women (DEVAW), Convention on the Rights of the Child (CRC), Vienna Convention and Programme Action, Beijing Declaration and Platform for Action, The Statute of International Criminal Court and the Universal Declaration of Human Rights that obliges state parties to hold as inviolable, the right to life, liberty and security of the person, protection from arbitrary interference with one's privacy, family, home, nor attacks upon his/her honor or reputation, and protection from inhumane or degrading treatment or punishment. These international instruments are however, crippled by a lack of enforcement mechanism within individual states and internationally.

Even African instruments whose provisions are homegrown and done within the African context and cannot be therefore considered as alien like the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa whose Article. 25 calls upon the State Parties to provide the survivors of SGBV with appropriate remedies determined by a competent tribunal or authority as by law provided, have no compulsory remedial measures against a State Party in cases of violation. In addition International instruments are capable of being invoked by Kenyan courts only if they are domesticated, as such instruments do not form part of regime of laws under section 3 of the *Judicature Act* (Cap 8) Laws of Kenya. This has raised questions on the relevance of even most of the International instruments that have been ratified by Kenya, but are yet to be domesticated.

At the national level Kenya has a legal framework that can be used to fight SGBV, though it is premised on the conservative criminal justice system, where crime is an offence against the state, and the survivor of SGBV can only recover damages through a civil suit. The framework includes, but is not limited to: the Kenyan Constitution that spells out fundamental rights and freedoms for all citizens, the penal code and criminal procedure code, the sexual offences act the witness protection act, the national gender and development policy, the Gender Equality and Development, Sessional Paper No. 2 of 2006 and the



Compensation and reparation of SGBV survivors

This includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. It was noted that various regimes, both National and International have provided for compensation of survivors of SGBV including The Convention Against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment and Art 75 of the Statute of the ICC. National legal regimes for compensation and reparation exist in the United Kingdom where The Secretary of State is empowered to a criminal injuries compensation scheme from which compensation of the survivors of criminal acts can be compensated, Northern Ireland which has a proposed criminal injuries compensation scheme, administered by the Secretary of State, and Sierra Leone which is yet to establish a Special Fund from which the survivors of the 1991-2002 conflicts can be compensated, however, the government has already approved National Commission for Social Action (NaCSA) as the implementing body of the reparation program.

There is urgent need for not only Kenya, but African states to embrace the concept of compensation of SGBV survivors in their criminal justice system to make it more responsive to the plight of the survivors. States should strive to improve data and statistics on sexual and gender based violence, adopt special legislation that guarantees equal protection of the law and enforce its provisions.

In the discussion that followed the above presentation participants agreed that most international documents like CEDAW were ineffective because they had 'no teeth'. In addition when women are violated, there is very little recourse available to them. In many cases cultural practices prevent them from reporting. Further more, they have little access to courts, police, etc and even when they have this access, many times courts are biased against women's rights. So women have less motivation to seek justice through legal means. The courts are supposed to be impartial, but their statements clearly show that they are not supportive of equal rights for women.

Participants noted that International tribunals have strengthened the concept of SGBV. For example, foreign diplomats are held responsible for rape accusations. The legal framework exists, but there is not enough in place for needs of survivors following violence, there is still a need for restitution and compensation. The discussion was concluded by a call for the African charter, to be better received and supported in Africa because it was created by Africans rather than being a foreign concept. Especially because the charter says that culture and tradition should not be used as an excuse to prevent the protection of women. It was also noted that states should be convinced to create a compensation system.

3.2 A National Engagement: Justice for Ugandan Survivors- Jane Okuo Kajuga (Principal State Attorney/ PRO Directorate of Public Prosecutions)



This presentation² focused on the legal codes and acts related to SGBV in Uganda. Of specific importance was the use of Police Form 3 necessary for survivors to access justice after an instance of violence and the barriers from the legal and medical sectors that prevent them from completing the form. The significant length of time that survivors are forced to wait before their trials was also presented as a problem to accessing justice. The presentation resulted in a shared understanding of the problems within the legal policies and processes that prevent survivors of SGBV from bringing their perpetrators to justice.

Legal Provisions in Response to Sexual and Gender-based Violence

In Uganda SGBV laws are scattered throughout different acts and codes, the Penal Code Act (amended 2007), the Trial on Indictments Act, the Criminal Procedure Code, the Evidence Act, the Magistrates Court Act. It is important to note that not all the forms of SGBV are reflected in the penal provisions of Uganda's laws as constituting criminal offences. In addition People are less likely to report when the person who committed violence has authority over them, for example teachers, police officers, and government workers.

The following are the SGBV criminal offences and punishments provided for by the Penal Code Act of Uganda: common assault, assault occasioning actual bodily harm and assault causing grievous harm (from 1 to 7 years imprisonment), rape described as unlawful carnal knowledge of a women or girl without her consent if it is obtained by force threats intimidation, fear of bodily harm or by personating her husband (this is a capital offence), attempted rape (life imprisonment), defilement (sex with a person below 18 years, liable for life imprisonment) and attempted defilement (up to 18 years in prison), aggravated defilement (sex with a person under 14 years, if offender is infected with HIV, if offender is a parent, guardian or has authority, victim is a person with disabilities or if the offender is a serial offender). Other offences include indecent assault (18 years imprisonment), detention with sexual intent (a death penalty for those with authority to detain e.g. police, prisons, although no case has ever been reported). Other SGBV offences catered for by the penal code include incest, unnatural offences, and abduction.

Jurisdiction of Courts

In 2007 the law was amended to allow chief magistrates try cases of simple defilement, attempted rape, indecent assault and all other offences where the suspect is not liable to face death upon conviction while the high court tries cases of rape aggravated defilement and other capital offences like murder. In sexual offence cases medical evidence is vital the prosecutor has to lead evidence of the professional qualifications, experience and expertise of the medical personnel before court, in order to convince the court to admit and rely on his or her evidence. However, the court may convict, in the absence of medical evidence, if there is sufficient evidence to prove the ingredients. Collection of vital medical evidence and examination of the victims is currently done by the police surgeons or medical officers and

² Power point presentation in Appendix II



entered into form termed as PF 3 this means collection of evidence had to be done early to avoid loss of vital evidence.

Protection for Survivors

The courts may forbid questions that are indecent or scandalous according to Act S 150 and 151 (this usually depends on the judge or magistrate). When handling defilement cases the court may consider the interests of the child and exclude the public and the press, this also depends on the magistrate (S 40(1) (a) MCA) in addition the court may try the accused in their absence if they render proceedings impracticable.

Compensation for Survivors of SGBV

According to the Penal Code Act (as amended 2007, S 129 B), convicts **may** be ordered to pay compensation to the survivors of violence and in this case the court should determine the award depending on the extent of harm, degree of force used and medical expenses incurred by the survivor. In addition S 197 MCA and S 126 TIA allows for compensation of any criminal offence to any person.

Although protection and compensation are provided for by the law, challenges in implementation of the law are plenty including; lack of clarity on who can fill PF 3 and adduce evidence in court, the offence of rape has restrictive meaning and application, not all forms of sexual violence have been criminalized yet, there is very poor linkage between the medical and legal fields, poor reporting due to fear of consequences on the survivor and family, non-survivor friendly services e.g. police, prosecutors, courts, and general levels of poverty.

In conclusion there is a need to develop practice guidelines to be used by all actors in the criminal justice system, commitment of budgets for continuous training and facilitation of expeditious handling of sexual violence cases. Identify all channels and strengthen coordination channels within the justice law and order sector.

In the discussion that followed participants noted that, the length of time to acquire justice (partly cases by a back log of cases) discourages survivors from seeking justice, which leads to SGBV continuing with impunity. Furthermore, the justice system is not adequately protecting survivors during the legal processes. In court, lawyers may ask offensive, embarrassing, and unnecessary questions of the survivors. While the law protects against this, in practice it is not upheld. This is especially difficult for children, youth and women.

Both this presentation and the one on 'Eliminating SGBV: The Need for Compensation and Protection of SGBV Survivors' were noted to have been great food for thought on the legal regimes that protect the perpetrators instead of survivors, making it even hard for survivor of SGBV to report the cases to



relevant authorities.

3.3 Access to Justice: Compensating an Assault on Dignity- Awino Okech (Gender Conflict Manager, ACORD)

The goal of this participatory presentation was to address the question, “How do you compensate an assault on dignity?” and attempt to understand whether you can really put a price on assault and the subsequent loss of dignity. This session began with role plays during which the room was divided into three groups and each group was assigned to represent a particular justice system. While the morning sessions focused on retributive justice mechanisms, the goal of this session was to understand the restorative justice systems and their effect on survivors of SGBV.

The first group represented the *Gacaca* Committee. While this popular court was chosen by the people, the survivors were very worried about the knowledge of their rape becoming public and the community stigmatization that would follow. The witnesses were reluctant to share the names of the rapist because they feared for their lives.

The second group represented the Tutu led Commission. The first case brought forward was of former ANC members accusing their fellow combatants of rape while the ANC was underground. While the men admitted to committing rape, the commission decided to forgive the rapist because it would be better to move on from past events. The second case was brought forward by family members of survivors who are accusing the police of rape. The court decided that because the police were granted amnesty, they should be forgiven. Again, the court decided it was better for all involved to move forward.

The third group represented a traditional justice system. The case was brought forward by a mother whose daughter was raped by a neighbor. The court decided that because the girl was now “wasted” she was of no use to the family and was to be married to the perpetrator. The girl never appeared in court and the decision of her future was made by the elders and her mother.

These role plays highlighted the fact that the plight of the victims was ignored and they received no actual compensation. Many of the witnesses left the court without being satisfied and the decisions made reflected the needs of the community or government rather than the needs of the survivors. It was very difficult for the survivor to express their desires and begin a process of healing. This discussion elicited the question, “What is the role of the survivor in mapping out a way that they can bring justice and be compensated?” Participants noted that the courts treated the issue of sexual violence very lightly and decisions did not reflect the gravity of the crimes committed.

It was clear that very little of the national legal policies and codes were applied to the cases, rather an amicable resolution subjectively decided by the leaders of the courts was administered. Especially disconcerting was that survivors were often not present during the hearing and clearly this prevented their voices from being heard.

Corruption within legal institutions leads to no confidence in the justice systems. While the legal institutions are supposed to be a source of reconciliation, compensation, and protection, the current



system does not address any of these issues. One participant noted the need to train the judges on ways to manage conflicts and counsel victims in order to prevent the further victimization and traumatization of survivors.

Amnesty has both positive and negative consequences for survivors of SGBV. On one hand, amnesty creates an opportunity for people to talk and admittance of guilt is often a first step in the healing process for survivors. People fear that when they say what happened they will immediately go to prison, but with amnesty agreements the people are more likely to come forward. While this is an opportunity for the perpetrator, it is questionable what opportunities it provides for the survivor.

Amnesty can create short term stability, but this does not necessarily translate into the long term because many of the problems are merely covered without addressing the deep wounds within the social fabric. Amnesty sends the wrong signal to violators, especially within context of violence by saying that violence against women is acceptable as long as it is for a larger social cause, such as democracy. Amnesty creates a culture of impunity where people are not held accountable for what they have done.

Critiques of amnesty:

- Violate well established principles of international law that obligate a state to prosecute individuals responsible for certain gross violations of human rights.
- International conventions against torture, genocide, war crimes and terrorism explicitly state or strongly imply such an obligation (mentioned above).
- While amnesties may contribute to short term social stability in the long terms they undercut efforts to establish a stable democracy that honors human rights and the rule of law.
- Amnesties send a signal to would be violators that is they are powerful enough to create uncertainty or instability they may escape accountability.
- Giving into amnesties only creates a culture of impunity that only encourages further human rights violations.
- Amnesties violate a victim's fundamental right under international law.
- International tribunals that have addressed the legitimacy of amnesties have pointed to these violations:
 - Right to a fair trial.
 - Right to judicial protection
 - Right to justice
 - Right to a remedy
- The legislation that determined amnesty in South Africa was subject to a robust debate in parliament and also sought the opinions of survivors and their representatives as well as a cross section of civil society. One of the results of this was that amnesty hearings were heard in public as opposed to in camera as was before.

Compensation, Reparations or Accountability: Engaging the terms

'It is only when the bound perpetrator admits to his former victim that he did indeed rape and torture her that she agrees to let him free. His admission restores her dignity and her experience is confirmed as



real not illusionary'. - Ariel Dorfman – Death & the Maiden

Accountability speaks to full disclosure:

- It is about one associating oneself with a specific violation.
- It is with regard to disclosing and acknowledging specific involvement.
- It involves testifying publicly concerning their involvement.

There are tensions that exist between amnesty, justice and accountability. The possibility of amnesty may provide space for accountability; in the sense that perpetrators would find it easy to come out and 'confess' their crimes. In the context of post election violence in Kenya, one of the growing concerns by those intervening in affected areas is the possibility of increased psycho-social disorders amongst young people – especially the so call youth who committed various crimes including rape and other forms of sexual and gender based violence. The assertion is that the lack of a safe outlet due to fear of prosecution could result in a generation of socio and psychopaths.

However, this position leaves in question the possibility of justice for survivors. Which brings us back to the question, how does one compensate an assault on dignity – whether that compensation is viewed within the framework of the classical juridical system or through a TJRC or through a traditional justice system? What is sufficient?

Awino examined this through the South African TJRC and Gacaca in Rwanda.

South Africa:

- Set up 'in camera' procedures of women's testimonies.
- Finding bodies of victims.
- Memorialization – Sarah Baartman, Hector Petersen, Gugulethu Six, Robben Island
- Fair and adequate financial compensation provided for in international statutes. It was initially calculated at 26,000R for six years, the government later turned around arguing individual compensation was not just, complained about lack of money, went for communal compensation through the Reconstruction and Development Programme (RDP) which failed, final arguments that it was not its responsibility given that this was based on a previous regime.

Rwanda:

Anecdotal evidence from AVEGA indicates the existence of FARG Fonds d'assistances aux escapes du genocides – targets all vulnerable people and not only survivors.

These funds go towards:

- Basic household rehabilitations.
- Schools fees.
- Medical assistance.

Tensions:

- Women continue to be named as criminals – l'enfant de genocide or HIV. Thus the restitution is not real.



- Restorative justice difficult – knowledge of perpetrators exists but survivors desire to move on with new life deters such prosecution.
- The Arusha triumph of having Rape moved to the first category alongside the organizers, financiers of the genocide is currently being defeated with its move to the *Gacaca* court – where paralegals (gone through crash courses handle the cases, are not paid, susceptible to bribes, community shame). The other challenge with *Gacaca* is post articulation what next – services to survivors – counseling, protection, stigma etc. *Gacaca* officials say something different and it is clearly not enough consensus has been built on the matter
- Fear of rushed justice – government need to move on – it is fourteen years later

In both South Africa and Rwanda the question of perpetrators in government or leading better lives than survivors has been cited. What justice is there? In Rwanda major programmes have been developed to reintegrate *Interahamwe* but very few programmes targeted at women in particular outside of all those who are vulnerable.

The issue of compensation is quite contentious, as in actuality the situation prior to violence cannot be recreated for the survivors. Many government schemes have attempted to provide compensation. For example, the Reconstruction and Development Program in South Africa, which provided housing, school fees, public assistance, and memorials? This program eventually failed and little justice was actually received. While there was a focus on repatriating the perpetrators and reconciling the police, there was little focus on reintegrating the survivors into society.

It is clear that governments have failed to address the needs of survivors around the issues of compensation and protection. It is now the responsibility of the CSOs that work with survivors to set some minimum standards related to compensation and protection of survivors post conflict.

3.4 The Rwanda experience at the Arusha Tribunal- SEVOTA

This presentation³ began with the video, “The Rules of Silence”, a documentary about the survivors of FBGV in Rwanda from 1994 genocide. The stories in the film related the horrors committed to women during the genocide and the effects this had on women’s lives and the well being of families and communities. Girls testified about how they were stopped at road blocks and gang raped. One witness broke down and the whole audience joined in. We talk about human rights, development, and peace, but we have not gone very far. In 1998 they began dealing with SGBV in earnest, using CEDAW and rape as a first category offense. One measure of progress is sensitization of police. The video also shows a woman from civil society who spoke about the people who are still suffering from the 1994 genocide.

The sexual violence within the framework of an armed conflict constitutes war crimes, or crimes against humanity and can, like in the case of the Rwandan genocide, constitute crimes of the genocide. The surviving women suffer, but they can also break the silence and testify to make everyone recognize what happened.

³ Power Point presentation in Appendix III

Many women were forced into marriages or prostitution. Many women underwent genital mutilation and the consequential stigmatization. Young children and girls were required to complete domestic tasks for the soldiers. The majority of these women were used like currency, and constrained to engage in sexual relationships in order to survive. Women were forced to exchange sex for food, or a shelter or “protection”, saved thus. These victims were located in all areas of Rwanda and there were four main areas of suffering: rape and mutilation, children born of hatred and the subsequent memories of sexual tortures, HIV/AIDS infection, and misery. These women continue to fight in order to receive justice, but also to claim repair personal repair for themselves.

SEVOTA was established in 1994 with the aim of reintegrating social relations and humans destroyed by genocide. The objective is to promote actions relating to peace, reconciliation and rights. Some of SEVOTA’s activities include counseling, sharing of experienced, group mobilization, and collection and diffusion of testimonies.

SEVOTA has prepared requests and recommendations of the victims of sexual violence for each sector involved in their justice process. From the police force they request a warm welcome, empathy, safety, comprehension, non coarse language, anonymity, and collaboration with other authorities. From judges they request empathy, discretion, recognition of emotions, and a policy of responsibility and follow-up. From the Gacaca committee they request a warm welcome, comprehension, listening, respect of anonymity, discretion, avoidance of source of trauma, and subjective interpretations. From the Ministry of Justice they request a reinforcement mechanism and greater attention to prevention. From ICTR and UN they request a policy of assumption of multidisciplinary responsibility, follow up, and protection of witnesses. From the governments of donor countries they request that countries recognize their responsibilities, sensitize the countries, mobilize technical support of experts and funds for the repair and the compensation, and help with rebuilding residences. From he international NGOs they request support of regional networks, sensitization of communities and authorities, provision of psychosocial assistance, legal accompaniment of victims to find lawyers, database of victims and newborns, and funds to help the victim with micro generating actions of incomes and professional courses.

The presentation concluded that the recognition of the wrongs must be accompanied by a repair and facilitation of reestablishment and reconciliation must be done by ensuring the respect of dignity and safety of the victims. The mechanisms of justice and social rehabilitation should take account of the characteristics of women who are living with HIV/AIDS. This should be done with the shared responsibility of all concerned actors and include strategy based on justice.

3.5 Engaging CSOs in responding to SGBV- Glory Mlaki (Tanzania)

This presentation⁴ focused on the multi-sectoral approach undertaken in Tanzania to provide compensation and protection to survivors of SGBV. The goal was to show how Tanzania has collaborated with many sectors to bring justice and compensation to survivors, especially those in the refugee camps.

⁴ Power Point presentation in Appendix IV



Glory outlined this process and the presentation resulted in a shared understanding of the situation in Tanzania and the possibility of recreating a multi-sectoral approach in other areas.

Questions were raised about the Police Form 3 and the entering of information at the community level. Survivors are escorted by Tanzanian police to obtain PF3 where it is filled at the station and then taken to medical doctors to complete the remaining information.

Another participant asked whether integrating many sectors was more challenging than they expected. The presenter explained that the process took two years and each sector was asked what they could accomplish and then follow up ensured that they were practicing.

3. 6 Transitional Justice: Questions related to female survivors of armed conflict from the Greater North of Uganda –Harriet Musoke (Isis WICCE)

This presentation highlighted the realities of women in situations of conflict and presented the practical realities of working in Northern Uganda. The goal of this presentation was to provide insight on the conflict situation in northern Uganda and raise specific areas of difficulty in working with issues of compensation and protection for sexual violence.

In Gulu the infant mortality rate is 172/1000 live births. Of the women interviewed by Isis WICCE, 14% of respondents were exposed to forced marriage when abducted and became pregnant. In many cases, husbands and families rejected women who had been raped by the rebels. It has been estimated that 25 thousand children have been abducted by LRA. This raises the key question, “Given this complex and interdependent nature of conflicts experienced by women, what can we do?” There are many mechanisms in place, but first we need to look at specifics of the crisis.

Women experience many consequences following sexual violence, among them are self blame, STIs, shame, unwanted pregnancy, traumatization, loss of family and loss of respect. Isis WICCE has documented experiences of survivors, many who have been exposed to unwanted pregnancies, HIV/AIDS, and vaginal damage. When young children are abducted and forced to become rebels and then forced to rape and kill, prosecution of these individuals becomes very complicated. Holding LRA soldiers responsible for the violence they have committed is difficult because so many of them are children.

Community attachment and community needs are another important issue as not all survivors have the same needs. Survivors include the elderly, youth, single mothers, IDP camp residents, and HIV positive women. A sustainable solution will include the needs of all these survivors and address the root causes of violence.

Following conflict, many issues of justice and peace building need to be raised. One conceptualization of peace includes issues of justice, mercy, reconciliation, and truth. All of these issues need to be addressed in order for sustainable peace to be established. This also brings up the issue of amnesty, particularly, who is granting this amnesty. While forgiveness creates space for ex combatants to be resettled and reconstituted, should it be the government or survivors of violence that grant this forgiveness?



On the issue of justice, we want to influence the International Criminal Court (ICC) to bring to justice to SGBV survivors. However, survivors are apprehensive because they have questions about victim-witness protection, compensation and reparation, and acknowledgement of basic needs and minimal resources to begin reparations. Women's involvement in communities, tribes, and regions further complicates issues of prosecution because when they prosecute, they feel like they are prosecuting a tribe or a religion which becomes a heavy burden to bare.

Raising these complications is not intended to undermine the legal justice system, but to highlight the fact that this system does not provide immediate remedy for survivors. Issues of time and money prevent many women from accessing the legal system. Regional complications such as continued conflict and lack of police personnel prevent many women from moving forward in the legal system.

Complicated personal relationships often deter women from pursuing justice; for example, children who are forced to rape their family members and women who refer to their perpetrators as husbands. In these situations, judicial mechanisms would not be appropriate and other mechanisms of justice should be pursued.

With the ongoing peace talks in Juba, reconciliation for survivors of sexual violence is not being adequately addressed. Women's issues are not being pushed because women are not present at these peace talks. Women should be present in both parties to raise the needs of women and survivors of violence as key players in reconstruction processes. During this reconstruction process, women's right to land ownership becomes another important issue. When women do not have the legal rights to own land they will be unable to rebuild their lives which will obstruct country development.

In summary, Uganda has embraced many systems in trying to address the challenges faced by survivors of sexual violence, but we need to understand how are women's issues are specifically attended to and how justice can be attainable for them. We need to ensure that the dignity of all survivors is respected within each mechanism for justice and that everyone's voices need to be heard. We should ensure the bodily integrity of women and address the loopholes that allow women's bodies to be a means of war. Human rights approaches should be complimented with value based approaches that focus on the humanness of people. We should not just be thinking of compensation and reparation, but the ways that we can prevent war in the first place. We have not addressed issues of peace building and conflict management, but these should be part of our educational system.

The discussion that followed included many participants. While the situation in northern Uganda raises many complicated issues, it is important to focus on the lowest common denominators that should not be compromised to ensure protection for survivors. When we speak of compensation, we also need to address the needs of children born from rape and others who may have been traumatized from the rape of wives and mothers. One participant noted that when perpetrators are family members, we need to think beyond criminal prosecution.

One common factor is the issue of amnesty. The government usually gives amnesty out of political interest, without considering other contextual issues. In all presentations, the government encourages survivors to reconcile when there has been no justice.

Another common factor



in all presentations is that even when countries have ratified international protocols, the translation of these into real actions is not occurring.

Other issues that need to be addressed are sexual violence committed by family members, relationships that develop as a result of sexual violence, the importance of involving survivors in all peace building processes, and the value of memorials as a way to remember atrocities committed.

Participants agreed that compensation needs to go beyond legal justice and address social, psychological, and health needs of survivors. For example, the availability of doctors and financial requirements to obtain Police Form 3 prevent women from accessing justice. This raises the need for an integrated approach to compensation and inclusion of sexual violence outside of conflict settings, poverty reduction, and HIV/AIDS.

3.7 Day One Conclusion

The moderator summarized the points from this discussion by outlining three of the common denominators for survivor compensation. Firstly, while women cannot be compensated for being raped, we can begin a process of getting her to self healing by having the perpetrator punished for what he has done. When the perpetrator accepts that a crime has been committed, she can forgive, but she will never be compensated. Secondly, the importance of ensuring that multisectoral support structures are provided including psychological, health, and legal aid. Thirdly, when a situation arises, there are multiple consequences for one survivor and one system cannot provide compensation.

The day concluded with a presentation by Evelyn Letiyo, reminding participants that the goal of the meeting is to develop a position paper on key issues in order to lobby policy makers for protection and compensation of survivors of SGBV.

Participants were also encouraged to think of the existing institutions, government structures, networks, and strategies in each of their countries that address SGBV. Questions to address the following day include, “What exists now? What is being done? What are the challenges? And what are the opportunities?”

3.8 Day Two

To summarize the events of yesterday, participants examined the gaps in women’s protection due to the lack of political will, resources, and capacity of states. The gaps within the states have resulted in failures of addressing the specific needs of women relating to violence, conflict, and HIV/AIDS. As we heard testimonies from different countries, we realize that failures are coming from all countries and the justice system has failed to deal with the compensation of women experiencing SGBV despite the fact that many international documents outline their needs.

One of the issues raised was how to engage policy makers to change policy at national and regional levels. There is a need for clear proposals for compensation that hold states accountable and help survivors to cope. In order to create these proposals we need to determine the minimum standards for



compensation and protection of SGBV survivors.

3.8.1 Challenges

- Legislators do not consider sexual violence a serious issue. SGBV is not taken as a serious issue by the government and is considered the responsibility of civil society organizations
- CEDAW is not enforced and states are not held accountable because there is no way to enforce it. International law requires exhaustion of local remedies before it can be applied, but local remedies are sometimes non-existent or impossible.
- Tribunals are not responsive to the needs of the survivor. Women have been failed as witnesses and survivors, even as they give evidence.
- State laws are not appropriate for specific rights of women, specifically providing access to land.
- There are limited structures to guarantee the protection of women, including police, health, legal, community response.
- Judges and magistrates are biased about women's issues and not even aware of women's rights. It remains a gap that needs to be addressed.
- Justice systems are inaccessible to women.
- Women are not involved in the peace building processes.
- Women have no legal access to land, preventing them from rebuilding their lives after experiencing violence.
- Protecting women from community stigmatization after they have served as witnesses.
- There is a need to link civil society to regional interventions and international movements.

3.8.2 Summary of Key Points

- The context within which SGBV occurs should be taken into account
- Need to determine the lowest common denominators for compensation and the minimum standards to ensure compensation
- Need to determine who should be compensated and how, including children born of rape, husbands, etc.
- Operationalize and enforce existing national and domestic legislation
- Involvement of survivors in all compensation, rehabilitation, and peace building processes



- Ensure perpetrator receives legal justice
- Memorials for survivors
- Institutional and social restrictions in addressing needs
- Integration of NGOs and coordination of efforts

3.9 Mapping of Institutions, processes and platforms and strategies of Engagement- Evelyn Letiyo (Raising Voices)

All participants were grouped according to country of representation. Each group discussed the institutions, processes, and strategies that exist to address issues of compensation and protection to survivors of SGBV. They addressed the following questions, ““What is existing now? What is being done? What are the challenges? And what are the opportunities?”.

3.9.1 Kenya

Several governmental and civil society structures were outlined that provide opportunities for survivors of SGBV to receive compensation. These include the gender commission within the government, family division court, special courts for children, the gender desk at the police station, and a new scheme for legal aid. Other CSO organizations include FIDA, CRADLE, COVAW, CREAM, Kenya National Human Rights Commission, and Nairobi Women’s Hospital. They have implemented strategies that include raising awareness through pamphlets, creating a training manual for police, and empowering women through legal literacy. While structures are in place, it is clear that many of these do not address the legal barriers that women face during the justice process. Some of the challenges are the lack of resources to support all programs, slow response from government, and harassment of NGO staff who take up SGBV cases.

After the presentation, participants were interested in the Nairobi Women’s Hospital and the provision of special doctors for SGBV cases. This special doctor is more likely than a government doctor to fill out the PF 3 in way to ensure that prosecution goes through. Another participant asked about the funding and political independence of the Kenya Human Rights Commission. This commission has been bold and honest in revealing abuses and injustices committed by the government, especially during post election violence. However, Kenya does not have any mechanisms for compensation for survivors, and the system is geared towards the accused, rather than being survivor friendly.

The facilitator noted that attention should be paid to the gaps within each country and what effects those haps have on survivors. From these omissions a position can be developed to make demands.

3.9.2 Burundi

Burundi has many of the similar structures in place for survivors of SGBV including the Minister of Human Rights, Gender, and National Solidarity and a Department of Gender. There are many NGO and INGOs working on GBV and several UN organizations in addition to women’s organizations and



associations working from the grassroots to national levels.

There is currently a project of reforming the penal code to better address GBV, but the bill is not comprehensive and institutional problems are preventing the bill from being amended and passed. There is a draft of a national strategy on GBV that will involve government structures and NGOs which will produce results and if it is well articulated. Burundi has ratified many international instruments, including CEDAW and UN resolution 1325, but the land laws prevent any of these to actually allow women to rebuild their lives following conflict and violence. There are gender focal points in all ministries, but these are not very active. There has been a growing movement for regional collaboration on addressing SGBV and many projects and activities are focused on improving the economic situation of women.

Some of the challenges faced in Burundi are impunity, repetitive institutional problems, lack of implementation of ratified instruments, and lack of access to existing assistance structures. Many women are not sensitive to the agenda of women are not pushing for these issues to be addressed. Conservative customs and traditions prevent women from challenging the established norms such as women having no right to inherit land.

3.9.3 Rwanda

Rwanda has ratified many international and national instruments that continue to address SGBV. Significant efforts have been made to network among the CSOs and public institutions and advocate for parliamentarians to institute policies for compensation. Prosecutors and judges have trained on how to manage and lead GBV trials and media have been sensitized to the needs of survivors. Health providers are accessible for survivors and there is a plan to have nurse counselors available at each hospital. There has also been a movement to raise awareness among the youth.

Some of the challenges faced in Rwanda include poor coordination of activities, weak dissemination of existing national international instruments, ignorance of rights and laws, interventions that do not address the root causes of the problem, a culture of silence and patriarchy, and poor funding of programs. Some of the opportunities present in Rwanda include political good will, MIGEPROF, police gender desk, community policing, army gender desk, strong and committed CSOs, gender observatory, accessible health structures, and a pending law on GBV.

3.9.4 Tanzania

Tanzania has many institutions in place to address the needs of SGBV survivors including, Tanzania Women Lawyers Association, Tanzania Media Women's Association, Tanzania Gender Networking Programme, National Organization for Legal Assistance, Kivuli Women's Rights Organization, Legal and Human Rights Center, UNHCR, and the Gender Policy Forum. The implemented strategies are lobbying, advocacy, legal assistance, supporting survivors, legal counseling, psychological counseling, and community based research.

The challenges presented include financial problems, ignorance, cultural barriers, community protection



of perpetrators, violence committed by family members, traditional mechanisms, enforcement of international conventions, and contradicting legislation. The opportunities include a commitment by high governmental officials to address GBV, an organization advocating for inclusion of SGBV in school and training curricula, formulation of SGBV network at country and regional levels, and community and political good will.

3.9.5 Uganda

The institutions that exist include CARE, IRC, NRC, War Child, UNHCR, UNICEF, UNFPA, UNOHCR, UGHRC, and Ministry of Gender and Labor. Uganda also has strong police force, health centers, and hospitals. There is a national SGBV sub cluster led by UNFPA, a national SGBV reference group led by the Ministry of Gender, and Justice Law and Order Sector. Strategies include coordination and sharing of information, referral linkages for the survivor, partnerships among NGOs, advocacy and lobbying, capacity building and training, and direct service provision (PEP, meals, transport, counseling).

Challenges include poor coordination among stakeholders, cultural beliefs about the subordination of women, inadequate government doctors to complete PF 3, armed conflict that exposes communities to SGBV, lack of proper compensation packages, community ignorance about the needs of survivors, poverty, funding trends that do not provide resources to SGBV programs, and corruption in the system especially among the police. These challenges are not faced without several opportunities within the country, such as strong local governments committed to prevention and welfare, Ministry of Gender, NGOs, INGOs, and CSOs, working for survivors, Ministry of Health, gender desks at all police stations, and media outlets that raise awareness for many people.

3.10 Development of a Position: A common understanding

The remaining countries, Uganda, Rwanda, and Burundi, presented their recommendations of minimum standards for compensation and protection that should be provided to survivors of SGBV.

3.10. 1 Uganda

Related to protection, confidentiality and forensic training should be the main priorities. While survivors are telling their story, in legal or medical settings, they should have complete privacy. Additionally, CSOs should work directly with doctors to increase forensic training in the region to prevent the problems associated with completing Police Form 3.

Related to compensation, services should be provided to survivors at no cost (food, transport, PEP, healthcare, legal needs) and covered by the government. Survivors should be provided with income generating activities that will allow them to have a meaningful life and support themselves and their families. This can be achieved through free education, job training, and skill building. Survivors should be included in peace and amnesty coalitions. Women's issues should be included in



government services at both the policy and framework levels.

3.10.2 Rwanda

The minimum package recommended by Rwanda includes three main areas: full access to justice, medical assistance, and psychosocial assistance. Full access to justice includes representation before the courts, advocacy for amendments and laws related to SGBV, and dissemination of laws and national and international instruments to the population at the grassroots level. The aim of dissemination is to make sure people are aware of their rights and options for legal recourse. Medical assistance is an urgent need and should ensure easy access to medical services. Local authorities and police should be aware that survivors need to be transferred directly to the hospital in order to benefit from medical services (PEP, injury assessment, etc) and to collect evidence in order to prosecute. Psychosocial assistance should be composed of counseling service by clinical psychologists and assistance with meals, clothing, housing, and education. These social problems can be solved by proposing income generating activities for survivors and equipping them with skills such as conceiving and managing projects and professional education. Addressing these social needs will reduce their vulnerability resulting from poverty.

3.10.3 Burundi

Burundi has proposed an appropriate judiciary framework for survivors that include text implementing all national and international instruments that have been signed or ratified and a mechanism for follow up of implementation and application. This judiciary framework should also include specific structures within the system to address SGBV. In regards to compensation, there should be socio-economic integration of victims in order to address their needs. Survivors should receive assistance by increasing the medical and psychosocial structures that can help the victims.

3.11 Lowest Common Denominators

In the final discussion, the moderator outlined and summarized the main areas of compensation and protection outlined by the countries. After each point, all participants agreed that this should be included as a minimum standard for survivors of SGBV.

1. Privacy and Confidentiality

- Survivors should be able to tell their stories privately in the court, medical settings, and police stations. The media should also respect privacy and confidentiality by not revealing names and identities of survivors to the public.

2. Forensic Training

- CSOs and medical establishments should widen the scope of forensic training. Collection of evidence is necessary for prosecution proceedings and CSOs should proactively engage doctors and health workers to pursue medico-legal training.

3. Medical, Legal, and Psychological Services



- These services should be provided at no cost the survivors and witnesses of SGBV. All costs should be covered by the government. Of particular importance is working with police to make sure that these cases are taken as a priority. This raises the issue of privatized health care and the importance of keeping some services public so that they can be provided at no cost to survivors.

4. Inclusion of Women on Amnesty and Peace Building Committees

- The barriers to achieving this have been patriarchal cultures that prevent women's needs from being addressed. Until women's groups were pushed as a coalition, they were not adequately represented within these committees. Women should be present at these committee negotiations to ensure that women's needs are being represented and gender issues are included in the budget for peace building. Governments send the powerful people that are already represented in the government to partake in these negotiations and these people have traditionally been men.

4.0 Conclusion

The regional consultation meeting was successful in coming to a shared understanding of compensation and protection, developing a CSO stakeholder position on issues of compensation and protection, and conducting a mapping of institutions and strategies relevant to influence policies of protection and compensation. Each country presented recommendations and the joint communiqué summarized the minimum standards for survivors of SGBV. This report will represent the CSO position on the question of compensation and protection to be shared at the Pan African Conference.

Appendices

1. Towards Eliminating SGBV: The Need for Compensation and Protection of SGBV Survivors- Aura Ruth Odhiambo (Legal Feminist Researcher-Kenya)
2. A National Engagement: Justice for Ugandan Survivors- Jane Okuo Kajuga (Principal State Attorney/ PRO Directorate of Public Prosecutions)
3. The Rwanda experience at the Arusha Tribunal- SEVOTA
4. Engaging CSOs in responding to SGBV- Agnes Kanyonyi (PA UNHCR TZ)
5. Joint Communiqué- Kalyango Ronald
6. Existing Networks by Country
7. Participants List

Appendix I

Towards Eliminating SGBV: The Need for Compensation and Protection of SGBV Survivors- Aura Ruth Odhiambo (Legal Feminist Researcher-Kenya)

INTRODUCTION

- Sexual and Gender Based Violence (SGBV) has been defined to mean any act of violence that results in physical, sexual or psychological harm or suffering to women, including threats of such, coercion or arbitrary deprivation of liberty whether occurring in public or private life.
- The Beijing Declaration and Platform for Action defines SGBV to include dowry related death, sexual abuse of female children, marital rape, FGM and other harmful traditional practices to women, as well as physical, psychological or sexual violence occurring within the general community including women rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and trafficking in women and forced prostitution, including violence perpetrated or condoned by State, wherever it occurs.
- These definitions envisage the deeply-rooted attitudes in the African cultures, customs and practices that hold women subservient to men, thereby perpetuating violence against them.

Introduction Continued...

- Compensation and reparation can be used inter-changeably.

Under the Nairobi Declaration on Women's and Girls' Rights, Reparation has been defined in the context of effective reparation to mean:

“(that which) drives post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that re-integration and restitution are themselves not sufficient goals of reparation, since the origins of violations of women's and girls' human rights predate the conflict situation.”

- Whereas most legal, policy and administrative framework provide a mechanism for addressing SGBV, the level to which such frameworks are responsive to the plight of SGBV Survivors is debatable.
- Most of the frameworks focus on bringing the accused person to justice, without necessarily alleviating the conditions of the survivor of SGBV.



- This paper, therefore, seeks to present the legal framework on SGBV and justify the need for compensation/reparation as a form of restorative justice to the survivors of SGBV.

PROTECTION OF SURVIVORS OF SGBV

- There are both national and supra-national legal regimes that seek to protect the rights and freedoms of the survivors of SGBV. Such regimes are, though, not sufficient to alleviate the pain and suffering of the SGBV survivors.

International Instruments

- These seek to oblige states to preserve, protect and guarantee the full enjoyment by their citizens of the rights and freedoms stipulated there under.
- The guarantee of such rights and freedoms is not dependent on the economic convenience of the state parties as the case of third generation rights of most state constitutions.
- Some of the instruments such as the Rome Statute of the International Criminal Court address individual persons as the bearers of the human rights obligations, thereby establishing individual criminal responsibility.
- Examples of the instruments include, but are not limited to:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- Whereas CEDAW does not explicitly mention SGBV in its provisions, over the years, standards and procedures have been developed to address violence against women.
- Art. 5 requires State Parties to strive to eliminate prejudices and other forms of customary practices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women.
- As a follow-up mechanism of the State Parties' conformity with CEDAW, Art. 17 establishes a Committee on the Elimination of Discrimination Against Women, with the mandate to consider the State Parties' report on the Legislative, Judicial, Administrative or other measures they have adopted to demonstrate compliance with CEDAW.
- Implementation of CEDAW by State Parties has not been effective because:-
- States connivance to the deeply entrenched retrogressive cultural practices such as FGM, wife disinheritance or forceful inheritance, domestic violence, marital rape, which practices exacerbate SGBV.
- Lack of corresponding penalty for non-compliance with CEDAW by State Parties.
- Because it is the State Parties that submit regular reports to the Committee on the Elimination of against Women on the measures they have taken to comply with CEDAW, quite often, the States Discrimination only submit such reports that do not prejudice



their reputation and standing in the Committee of Nations.

- Even where the reports made to the Committee on the Elimination of Discrimination Against Women is adverse to the State Party, such reports are not binding, thus, offending States quite often invoke the sovereignty principle to evade their responsibility under CEDAW.

The Optional Protocol to the Convention on the Elimination of Discrimination Against Women

- The Protocol reinforces the provisions of CEDAW.
- Art. 2 empowers individual survivors of Human Rights violations by State Parties to report such violations either by themselves or by their representatives to the Committee on the Elimination of Discrimination against Women.
- Art. 11 provides that such individual survivors of Human Rights violations by State Parties should be protected against intimidation or ill-treatment.
- The Protocol, though, overlooks the following factors in its objectives:
 - i. Poverty situation in Africa, which hinders many individual survivors of SGBV from making report to the Committee on the violation of their rights by the State Parties;
 - ii. Ignorance of most survivors of SGBV on the avenues available to them, such as the Committee on the Elimination of Discrimination against Women, that can address their plight.
 - iii. Thus, the Committee should make effort to move on a rational basis among the State Parties to gather information on the human rights violation by State Parties
 - iv. There is also need for obligating State Parties to disseminate information on the available avenues for addressing the plight of SGBV survivors.

Universal Declaration on Human Rights (UDHR)

- The Declaration obliges state parties to hold as inviolable, the right to life, liberty and security of the person, protection from arbitrary interference with one's privacy, family, home, nor attacks upon his/her honour or reputation, and protection from inhumane or degrading treatment or punishment.
- Art. 17 guarantees every person the right to own property, either alone, or in association with others, and such a person shall not be deprived of her property.
- Women property rights in Africa, and particularly in Kenya, are not guaranteed. Kenyan courts have on several occasions disinherited women of their rightful shares of the deceased estates, just because they are women. For instance, in *Mary Rono Vs. Jane Rono William Rono*, Eldoret High Court, Probate and Administration Cause No. 40 of 1998, the presiding female judge stated:

“The situation prevailing here is rather peculiar though not uncommon that one house has sons while another has only daughters. Statute Law recognises both sexes to be legible for inheritance. I also note that it is on record that the deceased treated his children equally...However, due to the fact that daughters have an option to



marry, the daughters will not get equal shares to boys...”

- Women have suffered deprivation of even the matrimonial property to which they are major contributors. In *Beatrice Wanjiru Vs Evanson Kimani* (1999) e-KLR, the High Court Judge showed outright disregard of International Law when he stated in part:

“Many a married woman...travels to Beijing in search of ideologies and a basis for rebellion against her own culture...Perhaps apart from procreation and occasional cooking, a number of important wifely duties, obligations and responsibilities are increasingly being placed on the shoulders of the servants...the husbands pays for these and more...”

The United Nations International Covenant on Civil and Political Rights (ICCPR)

- Art. 3 entitles men and women equal enjoyment of the Civil and Political Rights set forth in the Covenant.
- Noteworthy, though, is the lack of enforcement mechanism of the said entitlements; it is discretionary upon State Parties to observe the provisions of ICCPR, without a corresponding penalty against the offending State Party.

Convention on the Rights of the Child (CRC)

- Art. 38 obligates states to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or negligent treatment, as well as exploitation, including sexual violence
- Art. 19 provides that State Parties have the responsibility to put in place appropriate measures, such as social programmes, to promote the physical and psychological re-integration of a child who has suffered acts of SGBV.

Declaration on the Elimination of Violence Against Women (DEVAW)

- DEVAW strengthens CEDAW.
- Art. 1 defines ‘violence against women’ to mean any act of gender- based violence that results in physical, sexual or psychological harm or suffering to women. The violence includes battering, sexual abuse of female children, marital rape, dowry related violence, FGM and other traditional practices harmful to women, rape, sexual abuse, sexual harassment and intimidation, women trafficking and forced prostitution.
- Art. 4 prohibits states from invoking customs, traditions or religious consideration to avoid performing their obligations under the Declaration.
- The Declaration appoints a Special Rapporteur on Violence Against Women with the duty to collect and analyse instances of violence against women and recommend measures to be taken at all levels to address the problem.

Vienna Convention and Programme Action

- The Declaration calls for the elimination of all forms of sexual harassment, gender bias in administration of eradication of harmful traditional practices, exploitation and trafficking of



women.

- In Paragraph 23, the Convention affirms the concept of individual criminal responsibility for persons who perpetrate acts of ethnic cleansing.

Beijing Declaration and Platform for Action

- Reinforces the provisions of CEDAW and DEVAW
- Paragraph 114 defines violence against women as any act of Gender-based violence that results in, or likely to result in, physical, sexual or psychological harm or suffering to women, including threats of public or private life.
- It broadens the definition of SGBV to cover dowry related death, sexual abuse of female children, marital rape, FGM and other harmful traditional practices to women.

CEDAW Recommendation No. 19

- Paragraph 24(a) implores state parties to take appropriate and effective measures to overcome all forms of SGBV, whether in private or public life.
- Paragraphs 24(g), (i) and (t) calls upon state parties to impose preventive and punitive measures, including compensation, against perpetrators of SGBV even within the family context.

CEDAW Recommendation No. 12

- Obliges State parties to report to the Committee on the Elimination of Discrimination Against Women on the existence of support services for victims of family violence, relevant legislation, statistical data and measures adopted to eradicate violence against women in the family.
- Arts. 2(f), 5 and 10(c) acknowledges that traditional practices by which women are regarded as subordinate to men deprive women of the equal enjoyment exercise and knowledge of their fundamental rights and freedoms.

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

- Its provisions are homegrown and done within the African context and cannot be therefore considered as alien.
- It recognises that culture, traditions and customs are impediments to the realisation and full enjoyment of human rights of women. It thus obligates State Parties to modify social and cultural patterns of conduct of both men and women through public education, information and communication strategies to eliminate harmful, cultural and traditional practices which discriminate against women.
- In case of the violations of the rights stipulated under the Protocol, Art. 25 calls upon the State Parties to provide the survivors of SGBV with appropriate remedies determined by a competent tribunal or authority as by law provided.

African Charter on the Rights and the Welfare of the Child



- Art. 4 obliges State Parties to adopt such measures that are in the best interest of the child.
- Because there are no compulsory remedial measures against a State Party in cases of violation of the Charter, it remains at the discretion of the state to conform to the Charter.
- ❖ Noteworthy is that an International instruments are capable of being invoked by Kenyan courts only if it is domesticated, as such instruments do not form part of regime of laws under section 3 of the *Judicature Act* (Cap 8) Laws of Kenya. This has raised questions on the relevance of even most of the International instruments that have been ratified by Kenya, but are yet to be domesticated. The Court of Appeal stated as follows in *Okunda V. Republic* (1970) EALR:

“The provisions of a treaty entered into by the Government of Kenya do not become part of the municipal law of Kenya, save in so far as they are made such by the law of Kenya. If the provisions of any treaty, having been made part of the municipal law of Kenya, are in conflict with the Constitution, then, to the extent of such conflict, such provisions are void”

- A number of International Tribunals have also added a new impetus to the concept of SGBV.
- Art. 75 of the *Statute of International Criminal Court* empowers the ICC to order reparation of the survivor of the crimes stipulated there under. Under Art. 79 thereof, the statute establishes a Trust Fund into which voluntary state contributions and punitive damages awarded by the court against convicts can be paid.
- Art. 5 of the *Statute of the International Criminal Tribunal for the former Yugoslavia* (ICTY) includes in its definition of crimes against humanity, the offences of rape, torture and other inhumane acts. In *The Prosecutor V. Tadic a/k/a “DULE”*, the court held that diplomatic immunity is immaterial in absolving an accused person from committing offence under the Statute. In *Prosecutor V. Dragoljub Kunarac*, the court stated that as long as it can be proved that the accused person coerced the survivor of rape into carnal knowledge, the requirement for lack consent by the survivor is deemed proved.
- Just like the ICTY, The *Statute of the International Criminal Tribunal for Rwanda* (ICTR) recognises as crimes against humanity, the acts of rape, torture and other inhumane acts. In *Prosecutor V. Jean Paul Akayesu*, the Trial Chamber opined that as long as rape and sexual violence are committed specifically to destroy, in whole or in part, a specific group identified as such, such acts constitute genocide, notwithstanding the number of repetitions of the acts. In *Prosecutor V. Sylvestre Gacumbitsi*, the court defined rape to include any penetration of the victim’s vagina, however slight it may be, by either the rapist’ genitalia or with any object.

National Legislations

Kenya has a legal framework that can be used to fight SGBV, though it is premised on the conservative criminal justice system, where crime is an offence against the state, and the survivor of SGBV can only recover damages through a civil suit. The framework includes, but is not limited to:

The Kenyan Constitution

- Chapter V of the Constitution spells out the Fundamental rights and freedoms that every Kenyan is entitled to, inclusive of right to life, property, privacy, protection from torture, inhumane or degrading treatment and non-discrimination.



- Vide section 3 thereof as read together with section 3(2) of the *Judicature Act* (Cap 8) Laws of Kenya, customs and cultural practices in contrast with the Constitution are void.

The Penal Code & Criminal Procedure Code

- Sections 250 & 251 of the *Penal Code* have been used as the basis for prosecuting against Domestic Violence, as the act is yet to be specifically codified as an offence.
- *Criminal Procedure Code* acts as the Procedural Law for prosecuting SGBV offences.

Sexual Offences Act

- The Act stipulates minimum sentences for all the offences there under
- Section 38 of the Act which imposes corresponding sentences on persons who make false allegations about SGBV has scared off many survivors of SGBV from reporting genuine cases of SGBV in fear of losing the case and eventually being sentenced for the term that the accused would have served if he were convicted.

Witness Protection Act

- Pursuant to section 3, the Act puts in place mechanisms that guarantee protection to the witness who give evidence on behalf of the state in criminal proceedings.
- Protective measures include establishment of a new identity, relocation of the witness, provision of accommodation means, means of transporting witness property, counseling and vocational training services, and such measures adopted by the Attorney General.
- Section 29 of the Act vests unlimited discretion with the Attorney General to make any payment to the witness.
- Considering that the Attorney General's Office, particularly the Police, is notorious in the commission of SGBV, it raises concern whether the AG's office is best suited to manage the witness protection fund to the exclusion of everyone else.

National Gender and Development Policy

- The Policy recognises wife beating and other gender related crimes to warrant codification as criminal offences.
- Recommends that survivors of SGBV should be heard in camera by a Family Court.
- Proposes sensitisation of Legal Professionals to handle SGBV cases.

Gender Equality and Development, Sessional Paper No. 2 of 2006

- Paragraph 45 proposes an integrated and practical approach to combat SGBV by incorporating all stakeholders
- Proposes criminalization of the intra-familial SGBV cases such as marital rape and domestic violence.



Kenya National HIV/AIDS Strategic Plan 2005/6-2009/10

- Paragraph 3.3.6 advocates for prompt health-care services to victims of rape and sexual violence
- Advocates for PEP services and stigma fighting strategies.

TOWARDS COMPENSATION/REPARATION OF SGBV SURVIVORS

- The concept of reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- In *Chorzow Factory Case*, the court stated that effective reparation should wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed.
- The need for reparation is justifiable on a number of factors:
 - i. As a form of the criminal justice system acknowledging the pain and suffering of SGBV survivors;
 - ii. As a form of alleviating the survivors of SGBV from the desperate conditions that they find themselves as a result of SGBV perpetrated against them by the assailants.
 - iii. As a penalty against governments that either instigate or connive at violence at a state of insecurity or retrogressive cultural practices that exacerbate SGBV.
 - iv. As a mechanism for checking SGBV, considering that perpetrators of SGBV are eventually condemned to pay punitive damages to the survivors.
- Contemporarily, various regimes, both National and International have provided for compensation of survivors of SGBV, Viz:

International Legal Regime

- Principle 4 of the Basic Principles and Guidelines obligates State Parties to effectively respond to rape, sexual slavery and violence amounting to crimes against humanity by implementing the rights of the survivors.
- Art. 14 of The Convention Against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment obliges state parties to ensure that in their legal systems, the survivors of the acts of torture obtain fair and adequate compensation, including means of full rehabilitation as possible. In the event of death of the survivor, her dependents are entitled to compensation.
- Art 75 of the Statute of the ICC provides for reparation vide a Trust Fund established under Art. 79 of the Statute.

National Legal Regimes

United Kingdom

- The Secretary of State is empowered to a criminal injuries compensation scheme from which compensation of the survivors of criminal acts can be compensated.



- The scheme, though, does not cover instances where there is a continual relationship between the survivor of a criminal act and the assailant.

Northern Ireland

- Has a proposed criminal injuries compensation scheme, administered by the Secretary of State;
- Individual criminals are responsible for the compensation of the survivor of the violence, and this raises the concern of instances where the convict has no property from which compensation can be offset.
- Where the Government grants amnesty to the criminal, the government is responsible for the compensation.

Sierra Leone

- Whereas the Government of Sierra Leone is yet to establish a Special Fund from which the survivors of the 1991-2002 conflicts can be compensated, already the government had already approved National Commission for Social Action (NaCSA) as the implementing body of the reparation programme.
- However, the Special Court has the power to order forfeiture of property taken from the survivors of SGBV.

Chile

- The 1990 National Truth and Reconciliation proposed a tripartite concept compensation scheme envisaging revealing the truth about the deaths and the disappearances under the Pinochet Regime; recognition of the dignity of the survivors of the violence and the pain suffered by their relatives; and material compensation to improve the quality of the lives of the survivors or their relatives.
- The 1992 National Corporation for Reparation is responsible for co-coordinating the material compensation of the SGBV survivors.

In summary, there is urgent need for not only Kenya, but African states to embrace the concept of compensation of SGBV survivors in their criminal justice system to make it more responsive to the plight of the survivors.

- ✓ The States should strive to improve data and statistics on violence against women, adopt special legislation that guarantees equal protection of the law and enforce its provisions.
- ✓ The states should allocate resources for, support research on, and document on causes and consequences of Sexual and Gender Based Violence.
- ✓ They should conduct public education and campaign awareness on SGBV prevention programmes to increase community responsibility and women empowerment.
- ✓ African Governments should create partnerships with Non-Governmental Organisations in their efforts to make information on women's rights readily available, and in the management of reparation schemes.

Appendix II

A National Engagement: Justice for Ugandan Survivors- Jane Okuo Kajuga (Principal State Attorney/ PRO Directorate of Public Prosecutions)

LEGAL PROVISIONS IN RESPONSE TO SEXUAL AND GENDER BASED VIOLENCE.

There are marked differences in the legal regimes of states in respect of SGBV. In Uganda, laws relating to SGVB are spread through;

- The Penal Code Act (as amended in 2007).
- The Trial on Indictments Act.
- Criminal Procedure Code.
- The Evidence Act.
- The Magistrates Court Act.

Not all the forms of SGBV are reflected in the penal provisions of our laws as constituting criminal offences. GBV Includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. People are less likely to report when the person who committed violence has authority over them, for example teachers, police officers, and government workers. While the laws for such reporting are in place, there is very little reporting.

CRIMINAL OFFENCES AND PUNISHMENTS UNDER THE PENAL CODE ACT

- Assaults -common assaults (1 years imprisonment).
 - Assault occasioning actual bodily harm section 236 (5 years imprisonment.)
 - assault causing grievous harm section 219 (up to 7 years imprisonment)
- Rape –unlawful carnal knowledge of a woman or girl without her consent, or with her consent if it is obtained by force, threats, intimidation, fear of bodily harm or by personating her husband.

(Capital offence)



- Attempt to commit rape (liable to imprisonment for life)
- Defilement “any person who performs a sexual act with another person below the age of 18 years.” (liable for life imprisonment)
- Attempted defilement “any person who attempts to perform a sexual act with another person who is below 18 years (up to 18 yrs imprisonment)
- Sexual act is a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ)
- The unlawful use of any object or organ by a person on another’s sexual organ.
- Aggravated defilement : applies where a person performs a sexual act with another below 18 in either of the following circumstances
 - where the victim is below 14 yrs.
 - where the offender is infected with HIV.
 - Where offender is a parent or guardian of or a person in authority over the victim.
 - where the victim is a person with disability (functional limitation of daily life activities owing to physical, mental or sensory impairment).
 - where the offender is a serial offender.
- Indecent assaults- convict liable to up to 18 years in prison. Involves the use of words and gestures or objects exhibited with the intention of insulting the modesty of a woman. Also refers to unwelcome or offensive touching.
- Detention with sexual intent- applies where a person detains another for the purpose of sexual intercourse. Fetches a sentence of up to 7 years.

A death penalty is prescribed for those who having authority to detain a person in custody, procures, participates in , compels, facilitates or has unlawful sexual intercourse with the detainee.

- The death penalty is prescribed for those who having authority to detain a person in custody, procures, participates in , compels, facilitates or has unlawful sexual intercourse with the detainee. It also applies to other inmates who facilitate or participate in having unlawful sexual intercourse with the detainee. S 134(5).
- **Threatening violence.** S 81.
- **Incest.** S 149. having sexual intercourse with another person who falls within the relationship described in the section.
- **Unnatural offences.** S 145.It covers having carnal knowledge of any one against the order of nature or of an animal.
- **Abduction.** S 126. a person who with intent to marry or have sexual intercourse takes that person away and detains him or her against his or her will.



JURISDICTION OF COURTS

- The law was amended in 2007 to allow the Chief magistrates to try cases of simple defilement. They also try all cases of attempted rape, indecent assaults and other offences where the suspect is not liable to suffer death upon conviction.
- The High Court tries cases of rape, aggravated defilement and other capital offences e.g. murder

MEDICAL EVIDENCE

- Vital for proving essential elements of sexual offences and other cases involving violence. i.e.
 - 1) Proving penetration.
 - 2) S.T.I.'s.
 - 3) Assaults (abrasions, injuries, bruises)
 - 4) Age
 - 5) Mental capacity
 - 6) D.N.A. links.
- The evidence Act.-S43 provides for admission of medical evidence from experts.

“when the court has to form an opinion on a....a point of science, the opinions upon that point of persons specially skilled in that science are relevant facts. Such persons are called experts.”

- The prosecutor has to lead evidence of the professional qualifications, experience and expertise of the medical personnel before court, in order to convince the court to admit and rely on his or her evidence.
- Opinions of the expert is not binding on the court. It may consider or disregard the evidence for any justified reasons. The court may convict, in the absence of medical evidence, if there is sufficient evidence to prove the ingredients.
- Opinions of the expert is not binding on the court. It may consider or disregard the evidence for any justified reasons. The court may convict, in the absence of medical evidence, if there is sufficient evidence to prove the ingredients.
- Collection of vital medical evidence and examination of the victims is currently done done by the police surgeons or medical officers and entered into PF 3.
- Need for early reporting so that vital evidence is not lost.
- Need for keeping the chain of evidence of exhibits collected.

Right of Privacy of Accused Person

- Evidence Act S.150 and 151.

The court may forbid questions that are indecent or scandalous and those intended to insult or annoy or which appear needlessly offensive.

- S 40(1)(a) MCA.

The court shall, when handling defilement cases, consider the need, in the interests of the child to exclude the press and the public from the proceedings before the court for reasons of morality and to protect the victim.

- S 123(1)and(2) MCA.

The court may decide to try accused in his absence where he conducts himself in a manner which makes further proceedings in his presence impracticable.

Sexual Violence and HIV

- The penal code (as amended 2007) creates the offence of aggravated defilement in circumstances where offender is infected with HIV.
- Compare with legal provisions in other jurisdiction which criminalise “deliberate transmission of HIV”

Where a person is charged with defilement, he must undergo a medical examination as to his immune deficiency (HIV) status

Compensation to Survivors of SGBV

- S 129 B – Penal Code Act (as amended 2007)

convicts of defilement or aggravated defilement, may in addition to receiving any sentences, be ordered to pay compensation to the survivor

- The court shall determine the amount of compensation to award, taking into consideration, the extent of harm on the victim, the degree of force used by the offender and medical and other expenses incurred by victim as a result of the offence.
- S 197 MCA allows for compensation by a convict of any criminal offence, to any person, who has suffered material loss or injury because of the criminal offence and the person would have been awarded compensation under the civil law.
- S 126 TIA makes a similar provision for compensation where a person is convicted by the high court.

Challenges Faced in Implementing the Law

- Lack of clarity on who can fill PF 3 and adduce evidence in court.
- Challenges in practical application of legal provisions on child to child sex.
- The offence of rape has restrictive meaning and application. It doesn't cover woman to woman rape. Does not recognise the use of other objects in executing the rape e.g. sticks.



- The law on defilement of imbeciles and idiots, in the very least is insensitive and should be amended.
- Not all acts constituting forms of SV have been criminalised yet.
- There is poor linkage between the medical and legal fields yet access to emergency healthcare for victims is crucial.
- Poor reporting due to fear of victimisation or blame or consequences on family welfare.
- Poor handling by police or prosecutors or courts.(non-victim friendly services).
- Poor facilitation of police and inadequacy of police posts translates into extra expenses being borne by the survivor.
- Lack of awareness by the public on the legal or medical services available.
- Out of court settlements of criminal cases.
- Poor mechanisms for post – conviction monitoring of repeat offenders.
- General levels of poverty.

Current Endeavors for further legislation on SGBV

- Domestic Violence Bill 2008: “provides for avenues of civil action for survivors against perpetrators. Jurisdiction is with LC courts.”
- HIV Aids Bill (private members’ Bill): To cater for issues relating to HIV Aids.
- Domestic Relations Bill 2008.
 - 1st tabled in Parliament in 2005.
 - 1st and 2nd reading, but resistance faced from Muslims and Christians.
 - Parliament directed the UHRC to split the bill into two to cater for Muslims, Christians and others.
 - Bill currently before Parliament.

The bill

- a) Introduces Criminal liability for non consensual sex in marriage.
- b) Prohibits widow inheritance.
- c) Makes it an offence to demand for the return of marriage gifts.
- d) Sexual perversion, cruelty, incestuous defilement as grounds for divorce.

Sexual perversion relates to sodomy, homosexuality, pornography.



- The anti-human trafficking Bill. (Private Members Bill).
- Administration of Muslim Personal Law Bill
- The Sexual offences Bill.
 - Some of the issues raised within this Bill have already been passed under the 2007 amendment to the penal Code Act and MCA.
 - Pending issues are better definition of rape, marital sexual assaults, indecent assaults etc.

Necessary Partnerships and Lobbying Processes

- The need to develop practice guidelines that will be used by all actors in the criminal justice system. This should provide clarity on category of medical personnel to fill PF 3. MOH to provide input on this.
- Creation of awareness of new practice guidelines amongst all stakeholders.
- Identify and mandate focal point persons for SGBV in agencies in criminal justice
- Commit budgets for continuous training and facilitation for expeditious handling of SV cases. This will lead to victim friendly services at all levels of CJS and streamlined referral pathway.
- Use chief Magistrates / JLOS District Coordination committees to identify all stakeholders, strengthen coordination Channels.
- Use of the national GBV sub cluster and reference group headed by the Ministry of gender to do massive sensitisation and ensure standardised and coordinated training
- Work with the Uganda Law reform commission and the 1st parliamentary Counsel of Ministry of Justice and Constitutional Affairs on law reform.

Factors Affecting Conviction Rates

- Case backlog/long periods of remand before trial
- Migrant population
- Loss of interest by complainants
- Accused granted bail abscond.
- Out of Court settlements



Appendix III

CRIMES OF SEXUAL VIOLENCE IN RWANDA.

WHICH JUSTICE FOR THE SURVIVORS?

Case of SEVOTA Association

CONTENTS

Introduction

1. **SEVOTA and its experience with the victims of sexual violence.**
2. **SEVOTA and testimonies with the ICTR/ARUSHA.**
3. **Ideas of justice/waiting of surviving of sexual violence**
4. **Justice of the ICTR**
5. **Process of Justice in Rwanda**
6. **SGBV in Rwanda**
7. **Requests and recommendations of the victims of sexual violence in terms of justice.**

Conclusion

INTRODUCTION

- The sexual violence within the framework of an armed conflict constitute war crimes, and or crimes against humanity and can, like in the case of the Rwandan genocide, to constitute crimes of the genocide.
- The surviving women suffer, but also break silence and testify to make recognize the consequences of the undergone rapes and their impact and



fight against impunity, by the farmhouses media, administrative authorities and legal, coalitions of the women's rights...

- Others imposed by force on the marriages, or the prostitution.
- Others with the ablation of the genitals, mutilations to be thereafter to undergo stigmatization.
- Children, young girls and young girls subjected to the domestic tasks.
- The majority of these women were been used like currency as exchange, constraints to grant sexual relationships to survive, in exchange of food, of a shelter or “protection”, saved thus of an unquestionable death but reducing them to sexual slavery.

These victim women are located in the 4 corners of Rwanda and endure of the 4 following fates:

- Rape and mutilation
- Children of hatred, memories of sexual tortures
- Infections with the VIH/AIDS
- Misery
- Continue the fight so that justice is made, but also claim repair

Attackers

- In Rwanda, during the genocide, 47.6% of sexual violence were made by men, 9.2% by women, and 24.7% by the fact of children and others jointly by men and women,
- And Interahamwe militiamen, Soldiers, and neighbors in isolated corners, individually or collectively by the unknown ones...
- Also during, the exile of the refugees and moved ones, violence were gangsters, frontier guards, frontier runners as by men-at-arms or sometimes by other refugees or persons in charge of camps.
- Some of the women in exile, had also non eager pregnancies follow-up of the births of non beloved children.

SEVOTA AND ITS EXPERIMENT WITH THE VICTIMS OF SEXUAL VIOLENCE.

Created in December 1994, like Structure of framing of the widows and orphans at Taba district, with an aim of reintegrating the social relations and human destroyed by the genocide.

Having the mission of contributing to the improvement of the position and living conditions, social, economic, and cultural of the widows and profit orphans and community.

Having the objective to promote the actions relating to peace, reconciliation and rights.

It becomes Solidarity association for the Blooming of the widows and the orphans aiming at Work and the self-promotion in 2005 and opting for the extension of its activities with fight against violence.



Activities in favor of the victims of sexual violence.

- Framing of the victims through the URUNANA/Network of the women for peace.
- Counseling.
- Exchanges on their lived experiences, abuses and atrocities undergone.
- Organization in groups (of action and exchanges of dialogues according to the victimization).
- Collection and diffusion of testimonies.
- Legal accompaniment.

Mobilization to denounce the violence undergone near:

- Mass media to make known the tortures incurred by the Rwandese women and to influence the laws, programs and policies.
- Administrative authorities to make known the extent of the problem.
- Legal authorities for justice.
- Organizations and institutions of promotion of the women's rights for plea at the national and international level.

Are organized in groups of the women:

- Remained only/ Incike
- Victims of rape and having been infected HIV/AIDS
- Victims of other abuses based on the gender giving effects to chaos psycho- social.

In partnership with Kanyarwanda Association / since 2005

- Qualitative study on the situation of the victims of rape, 12 years after the Genocide, to learn from the impact of their sufferings on the relations with their newborns of the rape as well as the community.
- Organization of their Forums ABIYUBAKA/in rehabilitation.
- Moral support based on the dyad of the lived experiences.
- Counseling
- Plea for acceptance and the assumption of responsibility of the children.
- Process of good relationships mother - child:
- Say to them the truth, Identity
- Respect of the rights



- Plays/sketches which by after translated into films of plea, presented to the workshop Women special panorama at the time of 3rd and 4th festival of films at the time of the meeting of the members of the Network of the African Women for Peace:
 - **To love my child**
 - **This one is also ours.**
- Days of blooming of the newborns of rape (during the 16 days of activism)

WOMEN VICTIMS AND TESTIMONIES IN TPIR/ARUSHA

- To mobilize the women for discussions with the investigators of the TPIR/Kigali.
- Preparation of the pilot women to bring up to date their vital and human forces
- To be used as relay between witnesses, their children and court.
- Testimonies in the lawsuit with ARUSHA.
- Accompaniment of the forced witnesses and to seek houses of asylum to them.
- Follow-up in residence to support them and encourage them.
- Testimonies in the lawsuits of the soldiers concerning the rapes perpetuated by the soldiers in refuge in the surrounding city Kabgayi (diocese and buildings)

Results

- Participation in the legal affairs.
- Recognition of the rape like crime against humanity.

IDEAS OF JUSTICE/WAITING OF THE SURVIVORS

- For the surviving ones, justice it is:
- The covering of their dignity, like human but also like woman.
- Recognition of the extent of the atrocities of rape.
- Restitution of their rights by holding account of the specificity of gender
- Application of the laws like the organic law of 30 /08 /96 on the organization of the continuations of the constitutive infringements of the crimes of the genocide or crimes against humanities, committed from October 1, 1990 to December 31, 1994.
- But also to ensure them of the services: social, medical, psychological, economic, legal... appropriate to specificities of the women to the lives broken due to the genocide.
- Thus should be applied the multimode/multidisciplinary method:
- Prevent the syndrome of retraumatization by the assumption of responsibility of the pilot



victims to the legal authorities.

- Help to position like victim and witnesses/incompatible coexistence.
- Rights to legal defense.
- Psychological accompaniment after testimony

JUSTICE AND TPIR

- In years 1995, 1996, Women's right/Right and democracy pled so that sexual violence holds the attention of the court. Justice is made to the women by the former adviser near the clerk of the TPIR /Mme Francoise, Pled for a prospect for justice, which, without pouring in humanitarian aid,
- extending its intervention also in medical help and psychological particularly to ensure the physical rehabilitation and psycho - social of the witnesses for the victims of sexual violence and the AIDS.
- It is from this point of view that a “program of assistance to the potential witnesses and witnesses” was launched in Taba in 2000; by the former clerk of the TPIR, Agwu Okali. Who in this speech during the installation of the first stone of construction of the residences at Kamonyi, estimated that for the future, international criminal justice was going to be directed towards a restitutive justice whose objective would be to restore the victim with the original situation which existed before the violation of the international law, based more on the needs for the victim that on the culpability with not of the defendant.
- This program was not a program of economic aid and social generalized for the Rwandese people, but the program of assistance for the physical and psychological readjustment with the victims and witnesses rise with 379.000 American dollars (year 2000) at summer shared with the organization of the women in Rwanda of which:
- Rwanda Women' S Network, ASOFERWA, HAGURUKA, AVEGA and COLLECTIVE PROFEMMES Twese Hamwe.

Let us note that, which is the victims of sexual violence, especially those which contracted the HIV /SIDA, restitution with the situation of before the violation is impossible.

JUSTICE-ICTR-REPAIR

- Here the right of the victims to recourse to repair intervenes, a well established principle.
- A full and effective repair on all its forms includes/understands the restitution, the compensation for any damage result for the violation which lends itself to a financial estimate, the readjustment, the satisfaction and guarantees of no repetition and prevention.
- In Rwanda faced with crimes which, following the example of sexual violence and AIDS, carried a physical and psychological damage driving to death, the victims should have the right to be prevailed of the principle which states clearly that “the readjustment should comprise a medical and psychological assumption of responsibility as well as the access at legal departments and social.



- However, the TPIR carried out only some actions compared to waiting of the victims. In the section of assistance to the Witnesses and victims, the concerned ones await more assistance than received.
- Since 2002, the Court provides legal, psychological and medical assistance to the witnesses.
- It actually allots medical care and to the infected witnesses of the HIV/AIDS recently the ARV.
- But certain witnesses died of the AIDS without adequate treatment (a witness woman from Taba).

Challenges

- Only one handle of the women violated at the time of the Rwandan genocide testified in front of the TPIR less still those infected to the AIDS because they do not have the necessary criteria to belong to the witnesses.
- However supposed genocide perpetrators are well treated. **Thus, the victims are often treated with less dignity and of compassion that the authors of the acts accused in these proof and rules of procedure.**
- In the proof and rules of procedure, the TPIR recognizes the right of the victims to the compensation, but at the same time discharge of the execution of this responsibility, while returning the victims with a national jurisdiction or very another qualified institution to obtain repair; cases where the victims which have need for an assumption of psycho healthy responsibility which can see their right respected within this framework of the compensation are rare. The TPIR was recommended that : The compensation for the victims for the Rwandan genocide and their dependent perhaps ensured by special funds on assistance to the victims.

It should approach the Member States of UNO, as well as the backers, in order to create such found (The Right to survive: Women, sexual violence and HIV/AIDS/ Right and democracy, 2004)

PROCESS OF JUSTICE IN RWANDA

The Government is invited to support directly the victims of violations even if this one were not any responsible as for the violation. The method to create by the Rwandan Government, offers to assist the survivors of the genocide has created funds of assistance to the survivors of genocide (FARG) and runs some basic needs, in particular the schooling of the orphans, the housing of the widows, and some health care.

The question of compensation and interests granted to the victims, after judgment, by Rwandan courts, are not spent in the facts following the indigence of the defendant.

ON THE LEVEL OF JURISDICTIONS GACACA

In the renewed law, the people of the first category will appear in jurisdictions GACACA on the level of



the administrative sectors. Thus, the people who made acts of sexual torture, are also concerned

The lawsuits will be led by the chosen honest people, and behind closed doors. That from July 1, 2008. The majority of the victims deplore this legislative decision and some declare even their nonparticipation in the lawsuit for not being traumatized and declare as their disinterests then as there is no compensation

- To influence to become it, in their history of self-rebuilding, the women pursuing a vital goal, want a justice positioned like symbol of the truth and humanity.
- They challenge the activists of women's rights to plead so that justice in their connection respects the international law which stipulates the legal assistance. So not, the legal system would be hostile for them.

The Police force on the level of the administrative sector and Parquet floor of the district.

- Warm welcome, Empathy, Safety , apathetic Comprehension, non coarse language, anonymity, Collaboration with other authorities.
- To facilitate the entry of charge and the expression

ICTR

Judges

- empathic, discretion , to recognize and manage the emotions
- To set up a policy of assumption of responsibility sexual and follow-up of the victims

Protection services of the witnesses

- To take care of the anonymity of the victims of sexual violence during the lawsuit, in particular while avoiding confronting them with supposed genocide and restitutive justice.

Gacaca jurisdictions

- Warm welcome, empathic Comprehension, active Listening,
- To take care to respect anonymity, Discretion,
- to avoid the source of the traumatism and discouragement of the victims, subjective interpretations and corruption. .

Ministry for Justice

- To reinforce the mechanism of setting pursuant to the relative laws with violence, prevention and fight against sexual violence.

At the International Court Tribunal for Rwanda (ICTR) and the United Nations (UN).

- Policy of assumption of multidisciplinary responsibility, follow-up and protection of the



witnesses.

- Agencies of the UN : UNFPA and UNIFEM; to take measures of coordination and technical support of associations in the area.

Governments of the Donor countries.

- To require the countries having recognized their responsibilities in the genocide in Rwanda, to compensate
- To sensitize the countries, not having admitted their responsibility to carry out the compensation for the caused damages.
- Mobilize the technical support of the experts and funds for the repair and the compensation by taking account of the characteristic of the women.
- Rebuilding of the residences
- reception centers and protection of the victims of violence.

International ONG:

- To support the regional networks, national associations and local with:
- Sensitization of the community and the authorities the base.
- Psychosocial assistance ,
- Legal accompaniment of victims and to find to them legal lawyers and defenders.
- To hold a database of the women victims of rape, newborns of the rape.
- Forum in the houses of reception and framing.
- A bottom of repair and compensation.
- Funds to help the victims of which micro generating actions of incomes and courses professionals.

The SGBV situation:

- In 2007 the police recorded 2,935 cases of SGBV including 2,436 cases of rape (occurrence rate of 8 women per day)
- Only 1181 were taken to the courts, 29.5% judgments handed down:

SENTENCES

- Capital punishment 1
- Life imprisonment 86
- Over 10 years 125



- Between 5-10 yrs 370
- Less than 5 yrs 287
- Acquittals 387
- Total 1,256
- Measures undertaken by the state regarding SGBV
 - -Law on child rights and protection against violence
 - -Gender sensitive constitution
 - -Marriage and succession
 - -Gender desk etc.....

Conclusion

- One would not have to drown sexual violence of during the genocide to the GBV, today to the one and not to drop the victims violated in the lapse of memory and the indifference.
- The recognition of the wrong must be accompanied by a repair and consequently facilitate their re-establishments.
- The reconciliation must be done by ensuring the respect of dignity and the safety of the victims.
- The mechanisms of justice and social rehabilitation should take account of the characteristics of the women in the misery whose majority are the victims of rape live with the HIV/AIDS and avoid the economic consequences enabling them to deal with it.
- The assumption of responsibility of the victims of sexual violence must be assured with a multi-modal approach; therefore, all the authorities and all the services must direct their work in synergy and would be coordinated by Welfare workers to ensure his effectiveness for restitutive justice.
- Thus justice and the right to the repair, must take account of the consequences of the undergone violations; implying a shared responsibility of all the concerned actors :
- The government, community international, international organizations, courts, humanitarian organizations and co-operations as well as the organizations of human rights to allow the pleasure and the exercise of the women's rights.
- The envisaged sanctions by the law must be allotted to the attackers. The known culprits should make to the recognition of their newborns of rape and consequently right heirs.

With this intention, It requires the specific strategies being able to raise the challenges regarding to the 4 fates which the survivors women live :

- Rape and mutilation



- Newborns of hatred, memories of sexual tortures
- Infections with the VIH/AIDS
- Misery.

Strategy Based on justice.

Appendix IV

ENGAGING CIVIL SOCIETY ORGANAZATIONS (CSO) IN RESPONDING TO SGBV

By: Agnes Kanyonyi, PA UNHCR TZ

SGBV AND MULTI-SECTORAL APOOACH TANZANIA EXPERIENCE

- The Tanzanian Sexual Offences Special Provisions Act-(SOSPA-1998), coincided with the need to address SGBV issues in the camps.
 - Law friendly to victims; cases to be held in camera.
 - PF3 be filled by a Registered Tanzania Medical Doctor

Steps towards a multisectoral approach:

- Called/designed a multisectral workshop aiming at creating awareness and empowering all actors to address SGBV issues.
- Establishment of the Guiding Protocol that
- Mainstreamed SGBV Program into other program in the refugee camps as well as in the government departments,
- This resulted into extending SGBV program in villages surrounding the camps.
- Additional resources (human and material)
- SGBV Lawyers, additional Social workers, supporting courts, magistrates and prison, additional of structures for counseling and follow up (Drop In Centers)
- Counseling the perpetrators, combating predisposing factors, integrating perpetrators released from the prison



SGBV PROGRAM AND ON GOING REPATRIATION

In the camps SGBV survivors were well taken care of, as we approach repatriation pick several issues were brought to our attention and they call for collaborative intervention.

- Increased number of single parent women-polygamist families
- High number of children born out of extra marital affairs
- Reluctant to prosecute the perpetrators survivors fearing revenge from escaped perpetrators and/or family members of perpetrators who are in jail/will be jailed.
- SGBV program well established/supported in the refugee camps not the local communities.

Appendix V: Lowest Common Denominators

Common Challenges in the Region

- Culture and tradition
- Limited coverage of services for GBV
- Limited resources for GBV
- Land and property laws are biased towards women
- Failure to implement existing laws
- Poor communication among stakeholders
- Problems in filling out Police Form 3 for survivors of violence.
- Limitations in health responses to GBV in all countries apart from Rwanda.
- No proper compensation package for survivors of GBV
- Women fail to claim their rights due to ignorance of their rights
- Delayed reporting to health units after an act of GBV
- Civil society should be following global trends to be able to include our issues in on going debates e.g. active to engage ongoing debates taking place in ACCRA and DOHA on AID effectiveness

Common Opportunities

- International Instruments that have been ratified
- Limited services for survivors in Urban areas



- Existence of local and International NGOs working on GBV
- Gender Focal Point Persons in ministries

PROTECTION

Judiciary

- Respect the right to privacy and confidential handling of information regarding survivors of violence. State institutions such as the police should be made more responsive to survivor rights and needs
- Advocacy for amendments of laws or new legislations that are gender responsive
- Community awareness campaigns relating to GBV and the rights of women.
- Psychosocial assistance to victims of violence such as counselling services.
- Social economic integration of survivors of survivors of GBV

Health care response

- Medical workers should be trained in Forensic medicine to better assess GBV cases;
- Civil society should develop synergies with the health sector

COMPENSATION

- Income Generating Activities for survivor of violence
- Inclusion of survivors of violence in processes such as peace negotiations, AMNESTY commissions among others.
- Inclusion of women issues in government policies and programmes
- Engendering policy frameworks;
- Unlimited access to medical services for survivors of violence

Common Demands

- Inclusion of survivors of violence in processes such as peace negotiations, AMNESTY commissions among others.
- Social and economic integration of survivors of survivors of GBV
- Psychosocial assistance to victims of violence such as counselling services.

Appendix VI

Regional Networks by Country

Uganda

Existing Networks:

- WOUGNET- Uganda Women's Network
- UNASA- Uganda Network Against Small Arms
- UNFPA- National GBV Sub Cluster
- Human Rights Network

Regional Alliances:

- FEMNET- membership of AU
- Strategic Initiative for the Horn of Africa
- Femmes Africa Solidarite
- Gender Based Violence Prevention Network
- SWAA
- SOWAR- Solidarity for African Women's Rights
- EASSI- Eastern African Sub Regional Support Initiative
- Amanitary- African network on sexual and reproductive health and rights



- Great Lakes Advocacy Group
- Amani Forum- has a linkage with the African parliament

Burundi

- National Coordination of Intervening in GBV- coordinated by the Ministry of Solidarity, Human Rights, and Gender
- Regional gender based violence task force

Rwanda

- CCF- GL - umbrella organization of women in great lakes area
- GBV Prevention Network
- SVS- Solidarity organization to fight against sexual violence

Participants for the SGBV Regional Consultation

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5	Victor Ben Kwame	Health Integrated Development Organization (HIDO) Gulu	Uganda
6	Akello Betty	IRC (Kitgum)	Uganda
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