

Notes on my Intervention

Expert Panel 4

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Access to Justice and Reparations for Victims of SGBV, including Conflict Related Sexual Violence, as key component of Fight Against Impunity

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1- Introduction

It can be called Gender Based Violence (GBV), Sexual Violence (SV), Violence Against Women (VAW) or Sexual and Gender based Violence (SGBV)- they are different but not mutually exclusive. My intervention is hinged on ICGLR Instruments on SV- ICGLR Instruments on Sexual Violence.

The major problem is that the criminal justice system's response to gender-based violence falls short of international and regional obligations to prevent violence against children, women (and men) and to ensure their access to justice. **Perpetrators still escape prosecution and punishment for their crimes.**

This is due to a number of factors including: having no relevant law, delays in the investigation, prosecution and adjudication of SGBV crimes, poor case handling methods including exhibit mishandling, poor statement recording, outdated evidential admission requirements to name but a few, lead to poor case outcomes.

In most of our countries, cases related to SGBV are highest in court and so are the numbers of perpetrators of SV in prisons, successful prosecution and conviction is not impressive. Reports on SV show disturbing statistics. Each Newspaper in each country shows a case of SV almost every day .

2- On Fighting Impunity:

- (a) The ICGLR Pact (2006) committed member states to **Prevent, Criminalize and Punish** Sexual violence, both in **conflict and peaceful time** (art 11)-

NOTE: public, police, prosecutors, judicial officers and even prisons officers plus the military (specially in conflict situations) are essential institutions/stakeholders in fighting impunity. Parliament is also crucial in the criminalization process- No law against, no crime committed

- (b) A specific Protocol on SGBV (2006) is integral to the Pact and it is equally binding to Member states. (it is short instrument with only 7 articles)
- (c) There is the Kampala Declaration of 2011 which provides more meaning and elaborates further with more commitments
- (d) Earlier there was the Goma Declaration of 2008 (which was actually intended to influence the UN Security Council Resolution 1820)
- (e) The Kinshasa communique of 2012

The above instruments are all to prevent, to fight impunity and to support victims of SGBV

3 On Access to Justice,

- (a) The ICGLR Protocol identifies aspects that need to be **criminalized**: such as *rape, sexual assault, grievous bodily harm, assault or mutilation of female reproductive organs, sexual slavery, enforced pregnancy, enforced sterilization, Harmful practices, sexual exploitation or coercion, trafficking in or smuggling of women and children for sexual slavery, enslavement, forced abortions or forced pregnancies, infection of women and children with sexually transmitted diseases, or any other act of comparable gravity* (see Art 1 of the ICGLR Protocol on SV).

- (b) **The objective (Art 2) of the Protocol includes:**

- protection of women and children from **impunity** of crimes of sexual violence
- providing a framework for **prosecution and punishment of perpetrators** of crimes of SV;
- provides **legal basis for surrender persons and fugitives charged with offences** of SGBV (without prejudice to judicial cooperation)

Recommendation: Member states have taken steps in compliance but the steps are not homogenous and much more work needs to be done by all countries to criminalize all the crimes listed by the protocol in one law on Combating Sexual Violence, where it is not yet done.

4 Special Courts / Special Court Sessions and Special

These are intended to fast track prosecution (Res 8 of KD) , Some member states have taken steps towards this obligation. The case of Special Court Sessions / special Courts (in Uganda) , Fast track courts (in Zambia and South Sudan) , Mobile courts (DRC), Special Chamber (Burundi) and many are can follow

5 On Reparation Vs Compensation – The Protocol mentions **compensation**

- Member states to provide legal , medical , material and social assistance including counselling and **compensation** to women and children who are victims and survivors in the GLR
- Art 6(5) requires that *Victims and survivors of Sexual Violence are compensated by perpetrators (???)* – we wanted this to shift to state responsibility -because these perpetrators are usually financially incapable of compensating – this was during the Kampala Declaration negotiations but it was shot down by Ministers of Gender in Arusha .

Recommendation: We can reintroduce state responsibility to compensate (or repair / reparation) for Ministers of Justice consideration and adoption

6 On Funding the Struggle against SGBV-

- Create special facility under the Special Fund for Reconstruction and Development whose purpose is to provide :

- (a) social and legal assistance
- (b) medical treatment
- (c) counselling
- (d) training ,
- (e) rehabilitation and intergration of victims including those who might not be able to identify the perpetrators (art 6(8))
- (f) Art 6(7) Have a fund for sensitising the perpetrators on the wrongfulness of their sexual behavior

Recommendation – Ask member states and Development partners to contribute to the fund – the Fund exists at the AfDB but little money is there now. Development

7- Training and Sensitization of Professionals (judicial officers, social workers, police, medical officers, prisons, military officers etc Art 6(9) plus Resolution 14 of KD

- The RTF is established in Kampala in 2014
- It is a centre of excellence that the AU has commended and would want it to serve the whole continent –
- There are Master Trainers (10) and National Trainers (10 in each country except DRC with 20)- We have more than 140 professionals available to train and sensitise
- The training deepens the understanding of the SGBV, provides skills to enhance successful prosecution and also changing attitudes
- Have contributed to influencing policy eg special courts in Uganda, Omnibus law domestication the Pact
- We have training manual and training curricula is specific to needs to each country and
- Training will be cascading nationally to all professions -starting with police, judicially medical officers and psychosocial workers -thanks to the support from the World Bank and Dutch Government so far and now GIZ/EU plus UNwomen and OSE are supporting

Recommendation: Support and Equip RTF to facilitate training of professionals including officers who will be managing Special courts/ sessions on SGBV and the Great lakes Network of Prosecutors in effective management of SGBV cases

8- Victim /Survivor Vs Perpetrator Rehabilitation

Most interventions have been victim/survivor centered – It is high time we combined the intervention with perpetrators –

Art 5(2) requires member states to **subject perpetrators to social correction and rehabilitation while servicing their sentences** (even when on remand)

9. General Recommendations

- 1- Members states, that have not done so, to be encouraged enact or ammend the law related to SV so that all aspects of the crimes listed under ICGLR Protocol are criminalised ;
- 2- Mmember states and Development partners to be urged to contribute to the ICGLR Special Fund for Reconstructiopn and Development in oder to be able to partly use the find to combat SGBV ;
- 3- Support and equip RTF ,as a training centre of Excellece, to facilitate training of professionals including officers who will be managing Special courts/ sessions on SGBV and the Great lakes Network of Prosecutors in effective management of SGBV cases ;
- 4- Disseminate the ICGLR Instrumentrs, Pact and Protocols, widely for stakeholders to popularise and utilise them in the fight against SV and other crimes -targeting parliamentarians , media/journalists , civil scosociety and state institutions including universities
- 5- Take steps to establish spacial courts or special courts session and have special court procedures on SGBV, where they do not exist and share experiences and best practices ;
- 6- Combine victim and perpetrator based initiatives to comprehensively address the challenge of SGBV and cause fundamental changes esp in men’s attitude

