

# Domestic accountability for sexual violence: The potential of specialized units in Kenya, Liberia, Sierra Leone and Uganda

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## **Abstract**

*From 2011 to 2014, the Human Rights Center at the UC Berkeley School of Law conducted qualitative research in Kenya, Liberia, Sierra Leone and Uganda to identify accountability mechanisms and challenges related to sexual violence committed during periods of conflict or political unrest. This article shares two aspects of that research: first, it presents key challenges related to the investigation, prosecution and adjudication of sexual violence committed during and after the periods of recent conflict. Second, it flags the emergence of specialized units tasked with investigating and prosecuting either sexual and gender-based violence or*

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*international crimes, noting the operational gap between these institutions. It notes that if not bridged, this gap may impede responses for the intersecting issue of sexual violence committed as an international crime. The article closes with recommendations for a more coordinated response and more accountability at the domestic level.*

**Keywords:** sexual violence, conflict-related sexual violence, international crimes, Rome Statute, complementarity, accountability, wartime rape, specialized units, Kenya, Liberia, Sierra Leone, Uganda.

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Despite increased attention to sexual violence in armed conflict since the adoption of United Nations (UN) Security Council Resolution 1325 in 2000, few perpetrators have been prosecuted at international tribunals for sexual violence as a war crime, crime against humanity or genocide. Even fewer have been convicted.<sup>1</sup> Prosecutors at the international tribunals have found evidence collection to be challenging due to distance, cultural or political sensitivities and the passage of time. Moreover, they must target those believed to bear the greatest degree of responsibility for the most egregious atrocities. Mid-level and low-level perpetrators are generally not in their crosshairs.

In truth, *national* legal systems play an increasingly crucial role in delivering accountability for most sexual violence violations, including sexual violence that occurs during conflict. In countries that have domesticated the Rome Statute, national courts not only have their normal jurisdiction to hear cases of “general” sexual violence (i.e. not related to armed conflict or other situations of violence), but can also adjudicate cases of sexual violence committed as an *international* crime – that is, as a war crime, crime against humanity or act of genocide.

In order to address the “accountability gap” that may arise where international tribunals cannot or will not reach, it is imperative to understand national legal systems and their capacity to respond to conflict-period sexual violence. This is essential when promoting the principle of complementarity, or the notion that national systems can and should take responsibility for the prosecution of international crimes.<sup>2</sup> Which national institutions are responsible for investigating and prosecuting the full spectrum of sexual violence that occurs

1 See useful early discussion in Kelly D. Askin, “Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status”, *American Journal of International Law*, Vol. 93, No. 1, 1999, pp. 97–123.

2 States signatory to the Rome Statute accept their obligations under the principle of complementarity: the concept that the International Criminal Court (ICC) has complementary jurisdiction to national criminal courts over serious crimes, with primacy resting in the national courts. Among other things, this means that national courts should prosecute crimes considered as such under international law (including sexual violence). See Lee Stone and Max du Plessis, “The Implementation of the Rome Statute in African Countries”, available at: [www.issafrika.org/cdromestatute/pages/document.pdf](http://www.issafrika.org/cdromestatute/pages/document.pdf) (all Internet references were accessed in December 2014). See also Elizabeth Muli, “The Domestication of the Rome Statute: A Case Study of the International Crimes Bill in Kenya”, *Moi University Law Journal*, Vol. 2, No. 1, 2008, pp. 50–53.

during periods of armed conflict and other situations of violence? And how able are they to do so?

From 2011 to 2014, researchers from the Human Rights Center at the University of California, Berkeley, School of Law undertook a study to examine national-level accountability systems serving survivors of sexual violence in four countries affected by armed conflicts or other situations of violence: Kenya, Liberia, Sierra Leone and Uganda.<sup>3</sup> The study was framed around the following questions:

1. What are the general challenges to reporting, investigating and prosecuting sexual violence in each of the four countries?
2. What conflict-specific challenges exist in reporting, investigating and prosecuting sexual violence during recent conflict periods?
3. What strategies have been used to respond to these challenges?

After the pilot study period in Kenya (2010–2011), our fieldwork trips to four countries resulted in 279 semi-structured qualitative interviews with representatives of government, civil society and UN agencies who worked in health care, law enforcement, prosecution, the judiciary, community-based organizations and traditional justice systems.<sup>4</sup> We conducted interviews both within capital cities and, where time and resources permitted, in rural areas directly affected by the conflict.

Our interviews broadly explored accountability and support systems benefiting survivors of sexual violence at the ground level in Kenya, Uganda, Liberia and Sierra Leone. To the extent that actors were also able to respond to sexual violence committed as an international crime, we also attempted to ask them about relevant challenges and strategies. Interview data were analyzed to identify key themes in the challenges and strategies related to sexual violence response during and after conflict periods.

In the course of our general enquiry, discussions with local judges, prosecutors and police revealed a fascinating emergence of separate legal institutions addressing any sexual and gender-based violence on the one hand

3 For the purposes of this study, we defined “conflict period” in our case studies as follows. Liberia: from 1989 to 1996 and from 1999 to 2003; Sierra Leone: from 1991 to 1999; Uganda: conflict in northern Uganda, lasting from 1986 to 2006 and running up to the end of the formal encampment period in 2008; Kenya: post-election violence period, late December 2007 through February 2008. We understood that Kenya’s 2007–2008 post-election violence may not constitute an armed conflict in the strict sense under international humanitarian law. However, we included Kenya as a case study because of the relatively recent nature of the conflict there, the diversity it provided in terms of length of duration of emergency period, and the potential for finding helpful response strategies in such a highly developed country. Also, the incidents of sexual violence reported to local and international investigators during Kenya’s 2007–2008 post-election violence were sufficiently similar to acts of sexual violence committed in other conflict contexts as to invoke the same questions of accountability and response.

4 Study participants were selected purposefully based on their involvement in and/or knowledge about responses to sexual violence during or after the conflict period. Sampling aimed to include both policy-makers and practitioners working in health care, law enforcement, the judiciary, prosecution units, civil society organizations and traditional justice systems.

and any international crimes on the other. Intrigued by the possible complications this bifurcation may pose for the investigation and prosecution of *sexual violence that amounts to an international crime*, we now explore these parallel structures and their practical implications.

Though the question of institutional structures may seem relatively mundane and administrative as compared to countless acute accountability challenges, it is nonetheless essential to address. Specialized units focused on either sexual violence or international crimes have potentially complementary roles to play. At a minimum, those focused on general sexual and gender-based crimes may contribute expertise in investigating and prosecuting acts of sexual violence that may later be understood to constitute the “crime base” in relatively complex international crimes. Bridging the disparate structures as they evolve should improve local actors’ ability to identify and respond to the intersecting issue of sexual violence committed as an international crime should these events arise again. Moreover, this disconnect may be relatively easy to remedy so early in its emergence.

This article presents a summary of the sexual violence that took place during the most recent period of armed conflict or other situations of violence in each case study country, as well as the reported challenges to its investigation and prosecution. It then summarizes research findings regarding the emergence of specialized police, prosecution and court units focused on sexual and gender-based violence—as well as a few new units focused on international crimes generally. The article closes with observations as to the implications of this two-track development and recommendations for bridging these tracks in order to improve accountability for conflict-period sexual violence at the domestic level.

## Conflict-period sexual violence

Some sexual violence that occurs during armed conflict is “connected” to the armed conflict (in the sense that the armed conflict played a role in the perpetrator’s decision or ability to commit it), and some is not. Recent data increasingly confirm substantial variation in the forms, perpetrators and motives of sexual violence committed during periods of armed conflict.<sup>5</sup> It may or may not be enacted by someone with a gun. The perpetrator is not always a stranger. The victim is not always a woman.<sup>6</sup> The spaces in which sexual violence occurs can

5 Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, United States Institute of Peace Special Report No. 323, United States Institute of Peace, Washington, DC, February 2013.

6 Kirsten Johnston, Jennifer Scott, Bigy Rughita, Michael Kisielewski, Jana Asher, Ricardo Ong and Lynn Lawry, “Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo”, *The Journal of the American Medical Association*, Vol. 304, No. 5, 2010, pp. 553–562; Kirsten Johnson, Jana Asher, Stephanie Rosborough, Amisha Raja, Rajesh Panjabi, Charles Beadling and Lynn Lawry, “Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Postconflict Liberia”, *The Journal of the American Medical Association*, Vol. 300, No. 6, 2008, pp. 676–690.

vary during active conflict as well, ranging from border crossings to private homes, or from refugee camps to detention centres.<sup>7</sup> Violence is also reportedly perpetrated within social spheres – perhaps by male combatants against their female counterparts, or by relief workers, neighbours or spouses.<sup>8</sup>

The motivations may vary. Sexual violence during conflict periods may be committed in an attempt to control reproduction, to promote social cohesion and bonding among combatants, to destroy local communities, or for myriad other strategic reasons.<sup>9</sup> It may also occur for non-strategic reasons, or as part of an ongoing rhythm of gender inequality that to some extent existed before conflict, endures throughout it, and will likely persist after.<sup>10</sup>

For these reasons, we use the term “conflict-period sexual violence” to capture the full spectrum of sexual violence that occurs during a period of armed conflict – whether it is strategically motivated by that conflict’s existence or not.<sup>11</sup> Within “conflict-period sexual violence”, then, we assume two rough categories of harm for the purposes of this study: “general” sexual violence and sexual violence as an international crime.

For the purposes of this study, “sexual violence as a general crime” refers to an act of a sexual nature committed against someone through coercion or without consent, or an effort to force a person to commit such an act against another; this might include acts like rape, sexual torture or forms of domestic violence.<sup>12</sup>

- 7 Lynn L. Amowitz, Chen Reis, Kristina Hare Lyons, Beth Vann, Binta Mansaray, Adyinka M. Akinsulure-Smith, Louise Taylor and Vincent Iacopino, “Prevalence of War-Related Sexual Violence and Other Human Rights Abuses Among Internally Displaced Persons in Sierra Leone”, *The Journal of the American Medical Association*, Vol. 287, No. 4, 2002, p. 518; Recovery of Historical Memory Project (REHMI), *Guatemala: Never Again! The Official Report of the Human Rights Office, Archdiocese of Guatemala*, Orbis Books, Maryknoll, NY, 1999.
- 8 United States Office on Colombia, ABColombia and Sisma Mujer, *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process*, 2013, available at: [www.abcolombia.org.uk/downloads/ABColombia\\_Conflict\\_related\\_sexual\\_violence\\_report.pdf](http://www.abcolombia.org.uk/downloads/ABColombia_Conflict_related_sexual_violence_report.pdf).
- 9 Dara Kay Cohen, “Explaining Rape during Civil War: Cross-National Evidence (1980–2009)”, *American Political Science Review*, Vol. 107, No. 3, 2013, pp. 461–477; Tamara Tompkins, “Prosecuting Rape as a War Crime: Speaking the Unspeakable”, *Notre Dame Law Review*, Vol. 70, No. 4, 1994, pp. 845–890.
- 10 Tia Palermo, Jennifer Bleck and Amber Peterman, “Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries”, *American Journal of Epidemiology*, Vol. 179, No. 5, 2014.
- 11 Use of the term “conflict-related sexual violence” to describe some of these harms has gained substantial traction in recent years. Though inconsistently described by academics and policy-makers, this has foggly come to include acts such as rape, sexual slavery, coerced undressing, forced pregnancy, forced abortion, sexual mutilation, sexual exploitation and other non-penetrative sexual assault, usually by one or more armed actors. Thus the more private, perennial forms of sexual violence that are not unique to conflict periods but nonetheless occur during them – like intimate-partner violence – fall out of the lexicon and to the conceptual and political wayside. See Elizabeth Jean Wood, “Variation in Sexual Violence during War”, *Politics & Society*, Vol. 34, No. 3, 2006, pp. 307–341; Suk Chun and Inger Skjelsbaek, “Sexual Violence in Armed Conflicts”, PRIO Policy Brief, International Peace Research Institute, Oslo, January 2010; Michele Leiby, “State-Perpetrated Wartime Sexual Violence in Latin America”, Ph.D dissertation, University of New Mexico, July 2011.
- 12 The World Health Organization has described sexual violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work ... Sexual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object.” See Rachel Jewkes, Purna Sen and Claudia Garcia-Moreno, “Sexual

Domestic penal law determines which acts constitute “general” crimes of sexual violence in a jurisdiction; it also generally requires proof as to the perpetrator’s identity and intent, along with some showing of coercion or lack of consent on the part of the victim.

The latter, sexual violence as an international crime, increasingly refers to sexual violence as defined by the Rome Statute of the International Criminal Court (ICC), which explicitly proscribes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”.<sup>13</sup> Each of these acts may also constitute a “general” crime of sexual violence in certain jurisdictions. However, its characterization as an *international* crime requires several additional elements.

First, depending on the perpetrator’s motivation and the relationship of the action to the surrounding armed conflict or crisis, these acts may be recognized as one of three kinds of international crimes: war crimes, crimes against humanity or acts of genocide.<sup>14</sup> To properly categorize the “crime base” or act in question, a prosecutor must first understand who committed it, upon whom it was committed, why, and with what relationship to the ongoing conflict or crisis. For example, was the rape in question committed for a strategic or military purpose? Was it committed as part of a widespread or systematic attack on a civilian population? Second, to connect the crime committed to the accused party, a prosecutor charging an international crime must also charge the accused under a specific “mode of liability” (the type of direct or indirect responsibility a defendant bears).<sup>15</sup> This may require linking a commander or other superior to the acts of his or her subordinates.

## Investigating and prosecuting sexual violence

Researchers asked health-care staff, police officers, lawyers, judges and other key informants about critical challenges and strategies that arise in the documentation, investigation and prosecution of sexual violence – both during

Violence”, in Etienne G. Krug *et al.* (eds), *World Report on Violence and Health*, World Health Organization, 2002, available at: [http://whqlibdoc.who.int/publications/2002/9241545615\\_chap6\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_chap6_eng.pdf).

- 13 Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002) (Rome Statute), Art. 7(1)(g), “Crimes against Humanity”. See also Art. 8(2)(b)(xxii), Art. 8(2)(e)(vi) on “War Crimes”. Sexual violence could also constitute an act of genocide under Art. 6 (b), “Causing Serious Bodily or Mental Harm to Members of the Group”.
- 14 *Ibid.*; see also ICC, *Elements of Crimes*, Document No. ICC-PIIDS-LT-03-002/11\_Eng, The Hague, 2011, Art. 6 (p. 2), Art. 7 (p. 5) and Art. 8 (p. 13).
- 15 Rome Statute, Arts 25, 28 and 30. This may be “direct responsibility” if the accused committed (directly or indirectly), ordered, solicited, induced, aided and abetted or otherwise contributed to the commission of the crime (by action or omission). Direct responsibility is also borne where a group acted with a common purpose. Alternatively, an accused may be culpable via “command” or “superior” responsibility. Broadly speaking, this can be proven where the accused is a military or civilian commander who is shown to have had effective “command and control” or authority over subordinates; to have known or disregarded the fact that subordinates were committing the crimes in question; and to have failed to take reasonable measures to prevent their commission, punish the perpetrators or submit the matter to competent authorities for investigation.

periods of recent conflict and today. This section first summarizes what is known of sexual violence committed during those conflict periods. It then notes some of the main investigation and prosecution challenges that interviewees described.

## Conflict-period sexual violence in case-study countries

The earliest of the four case study conflicts arose in Uganda between 1986 and 2006. Sexual and gender-based violence was a significant aspect of the twenty-year conflict in northern Uganda. Observers of the conflict believe that both the Lord's Resistance Army (LRA) and the Ugandan People's Defence Force (UPDF) committed widespread sexual violence. From 1992 to 2005, it is reported that the LRA abducted between 60,000 and 80,000 children from northern Uganda.<sup>16</sup> Boys were used as child combatants and girls were often forced to be "wives" to the soldiers as soon as they attained puberty.<sup>17</sup> The women and girls in these forced marriages were required to have sex, which often led to forced child-bearing. Rape outside of these forced marriages was not widely reported. For their part, members of the UPDF are said to have raped both men and women, especially in operational areas.<sup>18</sup> There was a high incidence of sexual and gender-based violence in the displacement camps, including rape, defilement and physical assault. Perpetrators reportedly included family and community members within the camps as well as external actors such as LRA combatants and the UPDF.<sup>19</sup> In addition, women are believed to have engaged in "survival sex" with UPDF soldiers or camp leaders in order to protect their families or access resources.

In Liberia, sexual violence was a prominent feature of two back-to-back civil wars (December 1989 to April 1996, July 1997 to August 2003). The Liberian Truth and Reconciliation Commission catalogued

brutal acts of rape, gang rape and multiple rapes, vaginal and anal rape and also with objects, guns, cassava plants, sticks, boots and knives. It overlapped with forced labor in that the women who were taken to wash and cook for the fighters were also sexually abused and kept as sexual slaves.<sup>20</sup>

Combatants also suffered greatly: a 2008 study found that 42.3% of female combatants and 32.6% of male combatants were exposed to sexual violence

16 Jeannie Annan and Morah Brier, "The Risk of Return: Intimate Partner Violence in Northern Uganda's Armed Conflict", *Social Science and Medicine*, Vol. 70, No. 1, 2010, p. 152.

17 *Ibid.*

18 Dyan Mazurana *et al.*, *Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda*, Feinstein International Center, August 2013; Amnesty International, *Uganda Doubly Traumatized: Lack of Access to Justice for Female Victims of Sexual and Gender-Based Violence in Northern Uganda*, AFR 59/005/2007, 2007, p. 3; anonymous interview with representative of international justice organization, Uganda, March 2013.

19 Moses Crispus Okello and Lucy Hovil, "Confronting the Reality of Gender-Based Violence in Northern Uganda", *International Journal of Transitional Justice*, Vol. 1, No. 3, 2007, p. 439.

20 Liberian Truth and Reconciliation Commission, *Report of the Liberian Truth and Reconciliation Commission*, Vol. 3: *Appendices*, Title 1: *Women and the Conflict*, 2009, p. 40.

during conflict.<sup>21</sup> According to the 2007 Liberian Demographic Health Survey, high rates of sexual violence also took place between intimate partners during conflict.<sup>22</sup>

In Sierra Leone, women and girls were particularly targeted in acts of widespread rape, sexual slavery and additional practices of sexual violence during the civil war (1991–1999). The exact number of individuals who were raped is unknown, but testimonies from survivors suggest thousands of victims.<sup>23</sup> Instances of rape and gang rape include women and girls being held at gunpoint or knifepoint as well as rape using objects, such as sticks. At times, rape occurred in front of family members, and in some instances, relatives were forced to rape their own kin. Women and girls who were kidnapped were referred to as “wives” and kept by members of the Revolutionary United Front (RUF). Some experienced rape or gang rape several times, and if they succeeded in escaping one RUF group, there was a risk they could be subsequently captured by another. Pregnant women were not immune: witnesses reported mutilated bodies of pregnant women with fetuses cut out of wombs as well as gunshot wounds targeting a pregnant woman’s abdomen.<sup>24</sup> According to local providers, boys and men were also raped by male and female fighters.<sup>25</sup>

Most recently, in the wake of the December 2007 elections, Kenya collapsed into waves of upheaval for approximately three months. According to the Commission of Inquiry into Post-Election Violence, over 900 cases of sexual violence were reported throughout the country during the emergency period, and evidence suggests that even more instances went unreported.<sup>26</sup> Between 27 December 2007 and 29 February 2008, as many as 322 cases of sexual violence and rape of women and girls were admitted to Nairobi Women’s Hospital alone.<sup>27</sup> Although sexual violence against women was more likely to be reported, men too experienced forms of sexual violence<sup>28</sup> including sodomy, forced circumcision and mutilation of their penises.<sup>29</sup> According to a 2011 survey, unlike the gang rapes generally seen in other conflicts, post-election sexual

21 Kristen Johnson *et al.*, “Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Post-Conflict Liberia”, *JAMA*, Vol. 300, No. 6, 2008, pp. 676–690.

22 Liberia Institute of Statistics and Geo-Information Services *et al.*, *Liberia Demographic and Health Survey 2007*, June 2008, pp. 231–241, available at: <http://dhsprogram.com/pubs/pdf/fr201/fr201.pdf>.

23 Human Rights Watch, *Sowing Terror: Atrocities against Civilians in Sierra Leone*, July 1998, available at: [www.hrw.org/legacy/reports/reports98/sierra/](http://www.hrw.org/legacy/reports/reports98/sierra/).

24 *Ibid.*

25 Forum for African Women Educationalists Sierra Leone treated fourteen boys between the ages of nine and fifteen who had been raped. Human Rights Watch, “‘We’ll Kill You If You Cry’: Sexual Violence in the Sierra Leone Conflict”, Human Rights Watch Short Report, Vol. 15, No. 1(A), 2003, p. 42.

26 Commission of Inquiry into the Post-Election Violence in Kenya, *Report of the Findings of the Commission of Inquiry into the Post-Election Violence in Kenya*, 2008 (Waki Report), pp. 237–271, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full_Report.pdf).

27 *Report from OHCHR Fact-Finding Mission to Kenya, 2–28 February 2008*, United Nations High Commissioner for Human Rights, available at: [www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf](http://www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf), p. 13.

28 Kirsten Johnson, Jennifer Scott *et al.*, “A National Population-Based Assessment of 2007–2008 Election-Related Violence in Kenya”, *Conflict and Health*, Vol. 8, No. 2, 2014, available at: [www.conflictandhealth.com/content/8/1/2](http://www.conflictandhealth.com/content/8/1/2).

29 Waki Report, above note 26, pp. 238–239.

violence in Kenya was most commonly “single-person rape, molestation and genital mutilation overwhelmingly perpetrated by men and, to a lesser extent, women who were affiliated with a government or political group(s)”.<sup>30</sup>

## Overview of challenges

The pursuit of legal accountability for survivors of sexual violence is rife with difficulty even under the best of circumstances. It is no wonder, then, that State and civil society actors in each of the four case studies experienced serious challenges in investigating and prosecuting sexual violence during the active conflict periods. This was largely due to myriad obstacles both in terms of survivors’ willingness and ability to come forward amid the chaos of conflict and the capacity of State institutions to receive them at the time. Strain on general infrastructure, resources and transportation complicated the collection of sufficient evidence to support prosecution.

### *Survivors’ willingness and ability to report*

Informants noted several ways in which survivors’ reluctance to come forward to report their experiences of sexual violence served as an initial challenge to accountability. First, many health-care providers, women’s rights advocates, police and prosecutors noted that one basic reason survivors of sexual violence during conflict did not seek justice through formal mechanisms was simply because they were not emotionally or psychologically able to. Given the dearth of psychosocial support available to survivors during periods of active conflict, this was often a difficult issue to remedy. As one Ugandan prosecutor noted, “[m]ost of the witnesses are traumatized and they need psychosocial support. The witnesses are left to deal with these issues and for many, it is too, too much for them.”<sup>31</sup>

Second, interviewees stressed the importance of stigma as a reporting barrier. As one informant in Liberia observed:

The stigma surrounding a survivor reduces as her age gets lower. You can’t blame a one-year-old or a five-year-old, but when you start to get to puberty, the blame starts to shift: “She was acting that way, showing her body off.” When you get to adult women, the stigma and shame shifts dramatically.<sup>32</sup>

Another interviewee in Kenya explained the general reluctance to speak of these issues: “We do not like to talk about sex in the first place. Can you imagine asking us to talk about rape?”<sup>33</sup>

30 K. Johnson *et al.*, above note 28, p. 8.

31 Anonymous interview with prosecutor, Uganda, September 2013.

32 Anonymous interview with a representative of a civil society organization, Liberia, September 2013.

33 Anonymous interview with a representative of a civil society organization, Kenya, May 2011.

Third, general insecurity and disruption of public transport during periods of active conflict often kept survivors in their homes and prevented them from seeking police or immediate medical care in all four countries. One woman in the heavily hit Kibera area of Nairobi described hiding in her house for days while the police were shooting in the streets after the 2007 election. Women who did eventually set out to seek health care or report to the police often did so days after the violation occurred – physical evidence of rape had often been washed away or discarded. Moreover, families and communities were often displaced from their homes during conflict periods, making it difficult for individual survivors to know how to access services or protection in their new or changing environs.

Finally, informants emphasized survivors' lack of safety and confidence in the legal system. According to these interviewees, it often seemed that perceptions of ineffectiveness, inefficiency and corruption bred a general reluctance on the part of sexual violence survivors to see the legal system as a viable avenue to justice – even in peacetime. As one interviewee explained with regard to the conflict period in Sierra Leone, “[t]he police were feared. They were and are corrupt. This was not the route to report. Communities reported to communities, not to systems.”<sup>34</sup> Several interviewees observed that these fears seemed heightened during periods of conflict, when political or ethnic divisions became more pronounced. They noted unwillingness to report sexual violence (or any violence) to the police or to public hospitals or clinics, particularly where the State – or the police force itself – was implicated in the violence.

One interviewee from Uganda explained: “The women and girls are really at risk because the security officers, the rebels and other men just do it with impunity and the poor women have nowhere to report.”<sup>35</sup> Similarly, an interviewee in the Kibera district of Nairobi alluded to a related fear of law enforcement during the 2007–2008 post-election violence: “You must understand that Kibera is mostly [opposition party] territory. So it was the police themselves who were standing on the main road there, shooting into our homes. Who were we to report to?”<sup>36</sup> Another Kenyan interviewee working on police reform conceded that “[t]here was a lot of brutality from the police ... which included sexual and gender violence.”<sup>37</sup>

Lack of safe shelter or witness protection was also believed to be a major concern for those who feared reprisals for reporting violence. This was particularly true where the perpetrators were armed actors, affiliated with the State, or were at least still physically present in the community.<sup>38</sup> As one Ugandan prosecutor noted, “You can’t get the rebels; this would be a death warrant.”<sup>39</sup>

34 Anonymous interview with a representative of a civil society organization, Sierra Leone, November 2013.

35 Anonymous interview with a representative of a civil society organization, Uganda, January 2013.

36 Anonymous interview with shelter staff member, Kenya, March 2014.

37 Anonymous interview with government official, Nairobi, Kenya, March 2014.

38 Anonymous interviews with shelter staff members in Liberia, August 2012, and Kenya, March 2014.

39 Anonymous interview with prosecutor, Uganda, September 2013.

### *Limited resources, infrastructure and transportation*

Basic infrastructure necessary to respond to sexual violence either never existed or was broken down in the conflict-affected areas being studied. In all four emergency contexts, this meant that State functions were weak due to lack of reliable access to electricity, transportation, medical equipment and public services, particularly in rural areas. For three of the four conflicts occurring back in the 1990s, the issue of “sexual and gender-based violence” had not yet emerged in the political or legal vocabulary. A former aid worker in Sierra Leone explained:

Only after the war was rape given a name ... Although some may have said there was a way prior to the war to report rape, this would imply a systematic response or infrastructure to deal with rape which just didn't exist prior to or during the war.<sup>40</sup>

Post-rape care was often difficult to secure: even if local clinics were normally equipped to provide these specialized services (and in the vast majority of cases, they were not), their facilities were often overcrowded and under-stocked due to a high volume of injuries in the community. In addition, health-care facilities were often understaffed due to the flight of medical staff or their inability to travel to work due to surrounding violence. Access to psychosocial support services during active conflict periods was also extremely limited. As one health-care provider in Nairobi explained: “During the post-election violence, we had so many patients who were admitted, but we couldn't counsel all of them. Our staff were also suffering. Our staff could not even come to work because it was dangerous at that time.”<sup>41</sup>

Access to police was not much better in many cases: officers were often not at the police station during outbreaks of violence, so there was no one to receive and respond to survivor complaints. Further, police or medical follow-up with survivors was difficult because survivors and their families were often on the move. Investigations themselves were often hampered by insufficient resources. This is still the case today – for example, police in all four countries studied mentioned that basic transport can be an enormous challenge that limits their ability to reach a crime scene or reach survivors. In Gulu, Uganda, all fifty officers share a single motorcycle. Vehicles were similarly scarce in areas of rural Liberia that researchers visited:

Yes, this is our motorbike. Some days, it does not have fuel. On days when it *does* have fuel ... and the abuser is right in front of my nose, what shall I do to arrest him? Ask him to kindly get on my bike so we can return to the police station? I hope he and his friends do not beat me up and take it!<sup>42</sup>

40 Anonymous interview with former employee of an international aid organization, Sierra Leone, November 2013.

41 Anonymous interview with public hospital staff member, Kenya, March 2014.

42 Anonymous interview with WACPS unit police officer, Liberia, August 2012.

Police officers also reportedly lack basic items such as stationery for statement-taking and case management. In order to take notes or to print copies of the police report forms, officers may either rely on civil society organizations to provide paper or ask survivors to pay for it.

There was limited ability for civil society organizations to provide legal support in contexts where law enforcement and court systems were suspended during conflict periods. In Liberia, for example, the Association of Female Lawyers of Liberia attempted to provide legal aid outreach to rape survivors to help them navigate the legal system, but the courts were not consistently operational during the conflict period.<sup>43</sup>

Finally, where it addressed sexual violence at all, humanitarian aid was geared more towards the female-victim paradigm, and male survivors were thus generally excluded from any post-rape care services. Though they were less visible, men and boys suffering from sexual violence were often in dire need of care. As one provider working with communities in Northern Uganda reflected: “We saw a number of male victims of rape, including children [in the camps for internally displaced persons]. When we had cases of male survivors, it was really severe.”<sup>44</sup>

### *Evidence collection and prosecution*

The general collapse of infrastructure and public services in conflict-affected areas contributed to a near universal failure to collect evidence of crimes of sexual violence during the emergency and conflict periods in each of the four countries studied.

The health-care providers who were able to operate during periods of conflict in Kenya, Liberia, Sierra Leone or Uganda were often the first and only point of contact for a survivor of sexual violence. But at the time, few health-care providers had training in collection and management of forensic evidence – and even if they had, evidence gathering and preservation for possible prosecution later could simply not be priorities during an emergency period.<sup>45</sup> As described by a women’s rights advocate active in Monrovia during Liberia’s second civil war, no one delivering emergency medical services to sexual violence survivors ever stopped to ask a patient, “What happened?”<sup>46</sup>

Similarly, the likelihood of securing police investigation into a sexual violence claim was slim. Complaints of violence could often only be submitted in

43 Anonymous interview with staff member from civil society organization, Liberia, March 2013. For more information about legal support efforts during conflict periods, see Human Rights Center (HRC), University of California, Berkeley, School of Law, *The Long Road: Domestic Accountability for Sexual Violence in Conflict and Post-Conflict Settings*, forthcoming, 2015 (to be published on the HRC website, available at: [www.law.berkeley.edu/hrc.htm](http://www.law.berkeley.edu/hrc.htm)).

44 Anonymous interview with staff member of international aid organization, Uganda, October 2013.

45 Anonymous interview with nurse, Liberia, August 2012.

46 Anonymous interview with women’s rights advocate, Liberia, August 2012.

one's neighbourhood police district. This made reporting futile for survivors who had fled from home due to the armed conflict or crisis.

Moreover, the sheer task of documenting and investigating sexual violence as it can occur during conflicts is daunting – particularly when it involves armed actors. Several interviewees mentioned the great difficulty in identifying direct perpetrators if they were members of an unfamiliar group or otherwise foreign to a survivor's community. Similarly, it was often difficult for survivors to identify or provide information about indirect perpetrators or higher-level commanders who were not at the scene of the crime.

Even today, a primary challenge to effective investigation of sexual violence cases is inadequate police competence to handle such cases, as noted by many interviewees. In Kenya and Uganda, key informants frequently felt that members of the general police force are insufficiently trained on how to handle cases of sexual and gender-based violence, resulting in weak investigations and case files that are not useful in court.

Part of the challenge may be the way in which training is approached – often on an *ad hoc* basis, depending on which civil society group is able to provide a course. Also, training is often a one-time event for many officers in the general police force. There is rarely any building upon the initial course to deepen or refresh knowledge:

Yes, they get a training on gender-based violence at the police academy now. But when does that lesson come? It comes on the last day, when they are packing up and polishing their shoes for graduation. It's not a priority; it's not meaningful.<sup>47</sup>

Further, interviewees noted a gender bias within the police force that they felt affected police perceptions and treatment of sexual violence cases. In all four countries, despite recruitment of female officers, police forces remain overwhelmingly male-dominated. For example, in Liberia, only 19% of the investigating officers of the Liberia National Police are female.<sup>48</sup> Similarly, in Uganda, female officers represent only around 14% of the total Ugandan police force.<sup>49</sup> As one member of the Liberian police force put it,

there should be given some extra allowance to motivate and to encourage all of the officers, especially the females, to come. ... Females understand some things more. A female that has been to the war ... understands when a woman comes to speak to her, or when a child speaks to her. I am not saying men don't. Some

47 Anonymous interview with representative of a community-based organization, Kenya, March 2014.

48 Sabrina Karim, Ryan Gorman, C. Clarence Massaquoi, Abraham S. Kromah and William K. Mulbah, *Building a More Competent Security Sector: The Case of the Liberian National Police*, Working Paper, Emory University, 2014.

49 Robinah Rubimbwa and Maude Mugisha, *Security Council Resolution 1325: Civil Society Monitoring Report*, Global Network of Women Peacebuilders, Civil Society Monitoring, 2010, p. 119, available at: [www.gnwp.org/wp-content/uploads/2010/02/Uganda.pdf](http://www.gnwp.org/wp-content/uploads/2010/02/Uganda.pdf); anonymous interview with police official, Uganda, January 2013.

men do. But not all men have passion. I think it would be better to have more women.<sup>50</sup>

In terms of prosecution, it was rare to hear of sexual violence cases proceeding to court during periods of active conflict. In addition to the reporting and infrastructural challenges noted above such as court closures, interviewees also noted a lack of sensitization on the part of judges to issues of sexual and gender-based violence that persist today to some degree. Interviewees remarked upon many judges' lack of familiarity with relevant laws and their failure to understand the nature and limitations of evidence in these cases. One stated, "[I] get very angry at the magistrate when he asks a 9-year old whether she was raped at 4 or 5pm."<sup>51</sup> Another said:

[T]here is a perception: if you're sexually active no one can rape you. And I've heard magistrates in the court of law saying, "Did you scream when this man was raping you? Who heard her scream? If no one heard her scream then there isn't a problem. There was no crime committed."<sup>52</sup>

Some interviewees noted ruefully that judges are not immune to the myths and stereotypes about sexual violence that exist in the outside community. Even those who are sensitized and sympathetic to survivors may struggle to acknowledge "proof" of the alleged act.

## Specialized units to address sexual violence

As noted, many challenges to the investigation and prosecution of sexual violence exist even in the pre- and post-conflict periods: access barriers, limited resources, lack of prioritization, and insufficient capacity and competence. These obstacles require multifaceted and sustained intervention that is beyond the scope of this article.

Research did point to one discrete and interesting strategy to improve the handling of "general" sexual violence: the creation of specialized entities that focus on gender-based violence, including sexual violence. This includes the increasing establishment of specialized police units focused on sexual and gender-based violence. To a lesser degree, researchers learned of similarly specialized prosecutorial units and even specialized courts. Though they are not generally trained or equipped to handle *international* crimes of sexual violence, these special units may have relevance for the investigation, prosecution and adjudication of such crimes in the future.

50 Anonymous interview with police inspector, Liberia, August 2013.

51 Anonymous interview with representative of women's rights organization, Kenya, March 2013.

52 Anonymous interview with civil society organization representative, Liberia, August 2013.

## Specialized police

The establishment of specialized police units to respond to crimes of sexual and gender-based violence has emerged as a strategy to improve investigation of these matters in three of the four countries studied. On the more mainstreamed end of the spectrum, Kenya does not have a specialized police force, but “gender desks” have reportedly been established at all police stations in the country to provide an entry point for survivors seeking to open a case.<sup>53</sup>

### *Diverse models*

In terms of specialized police units, researchers observed diversity in unit type, mandate, and relationship to the larger police force. They ranged from police teams focused mainly on supporting victims of sexual violence to dedicated corps with exclusive mandate over sexual and gender-based violence case investigation.

Within the Uganda Police Force (UPF), cases of sexual and gender-based violence have typically been handled by two law enforcement entities: the Child and Family Protection Unit (CFPU) and the Criminal Investigations Directorate (CID).<sup>54</sup> CFPU officers support victims of sexual and gender-based violence in arbitration, networking, guidance and counselling. General officers from the CID typically conduct the investigations, calling upon colleagues from the CFPU for support with interviewing or survivor care as needed. In 2013, a special Gender-Based Violence Department was established within the CID to strengthen its competence in investigating these crimes.<sup>55</sup>

In Sierra Leone, Family Support Units (FSUs) were established within the Sierra Leone Police Force as early as 2001. Once thought of as just an access point for women and girls to report domestic violence, FSUs now respond to a broader range of cases related to sexual and gender-based violence. FSU officers register claims and conduct investigations when a survivor of sexual and gender-based violence reports to a police station. Moreover, they also conduct countrywide outreach about these crimes through media and other educational programmes.<sup>56</sup>

The most permanent and specialized police unit observed was in Liberia, where a dedicated Liberian police unit called the Women and Children’s Protection Service (WACPS) was established in 2005.<sup>57</sup> Housed under the

53 These gender desks are staffed by regular police officers who rotate duty. The officer at the gender desk may not have specialized training or experience in handling cases involving sexual or gender-based violence, but all of Kenya’s police recruits receive basic training on sexual and gender-based violence while at police academy; it is unclear whether systematic training is available after that.

54 In 1995, the UPF created “gender desks” – reception desks in police stations for women filing complaints of gender-based violence. In 1998, the UPF broadened the mandate to include children and the family and changed the name to the Child and Family Protection Unit.

55 The Gender-Based Violence Department of the CID was not functional at the time of fieldwork (September and October 2013).

56 For example, in cooperation with social workers of the Ministry of Social Welfare, Gender and Children’s Affairs, FSU officers also run a phone hotline to assist survivors calling in for support.

57 UNICEF, “News Note: New Women and Children Protection Section for Liberia’s Police”, 1 September 2005, available at: [www.unicef.org/media/media\\_28159.html](http://www.unicef.org/media/media_28159.html).

Criminal Investigations Division of the Liberia National Police, the WACPS is mandated to “investigate all forms of violence disproportionately affecting women, such as domestic violence, sexual abuse, prostitution, illegal adoption and child abandonment, and human trafficking”.<sup>58</sup> In practice, whenever a complaint involves a woman or a child, WACPS is expected to respond.<sup>59</sup> It is seen as more approachable and better sensitized to do so – in comparison to 19% of the overall national police force, 33% of WACPS officers are female.<sup>60</sup>

### *Training and competence*

The specialized police units observed in Sierra Leone, Liberia and Uganda receive focused training on the investigation of sexual and gender-based violence, relative to the general police forces in which they are embedded. For example, the initial certification course for members of Liberia’s WACPS included instruction in the creation of case reports, investigation of sexual offence cases, collecting evidence and maintaining confidentiality.<sup>61</sup> WACPS officers are also trained to take survivors to a health-care facility for treatment and examination.

Similarly, in Uganda, after finishing general police training, CFPU officers take an additional “induction course” focused on topics relating to domestic violence, child abuse, and sexual and gender-based violence. They must pass written exams and their performance is reportedly monitored on a regular basis. Interviewees also noted that CFPU officers receive some exposure to international legal frameworks regarding sexual and gender-based violence.

In Sierra Leone, training on responding to sexual and gender-based violence recently became mainstreamed: the specialized course originally reserved for the FSUs became mandatory for all new recruits in the uniformed services in 2005.

### *Challenges*

Unfortunately, the creation of specialized police units for sexual and gender-based violence crimes does not, in and of itself, guarantee successful investigation of these crimes. In addition to myriad challenges faced more broadly by law enforcement

58 Cecil Griffiths (ed. Anike Doherty and Aiko Holvikivi), *Mapping Study on Gender and Security Sector Reform Actors and Activities in Liberia*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2011.

59 Anonymous interview with police official, Liberia, August 2013.

60 Laura Bacon, *Building an Inclusive, Responsive National Police Service: Gender-Sensitive Reform in Liberia, 2005–2011*, Innovations for Successful Societies, Princeton University, available at: [http://successfultsocieties.princeton.edu/sites/successfultsocieties/files/Policy\\_Note\\_ID191.pdf](http://successfultsocieties.princeton.edu/sites/successfultsocieties/files/Policy_Note_ID191.pdf); anonymous interview with police representative, Liberia, August 2012. Note that interviewees mentioned that even within this specialized unit, it can be hard to recruit and retain female officers. In Liberia, police rotations require years of service out in the rural counties, and there is not always separate living space for female officers. Also, informants explained that it is very difficult to move for each assignment when one has children, so not many women apply to join the police force.

61 L. Bacon, above note 60.

officers, the creation of specialized units raised a few specific challenges; three in particular are worthy of emphasis.

First, the relationship between a specialized sexual and gender-based violence unit and the rest of the police force was not uniformly easy. Interviewees in both Uganda and Liberia noted initial tensions and institutional sensitivity, particularly where officers from separate corps perceived competition for resources.<sup>62</sup> Also, some general administrative practices like routine transfers of officers between units or locations were seen as undermining the stability and effectiveness of specialized units.

Second, specialized sex crimes units suffered from limited mobility that hindered their ability to make use of their special training. For example, FSU officers in Sierra Leone noted that they did not have the transportation needed to collect crime scene evidence – on rare occasions, they had even asked victims to provide funds for public transport so their cases could be investigated.<sup>63</sup> Similarly, WACPS officers in Liberia faced severe resource constraints that limited their ability to travel to crime scenes, especially in rural areas.<sup>64</sup> While most police in these contexts may face similar resource constraints, there are compounded implications where members of a specialized force are seen as having an exclusive mandate to respond to sexual offences but also cannot get around. Interviewees noted that if members of the smaller specialized team cannot travel to a survivor or crime scene, it is not always clear how effectively the more local “regular” police will respond.

Finally, these specialized teams may not have the competence or capacity to respond to sexual violence committed as an *international* crime. Though the CFPU in Uganda does receive training on relevant international legal frameworks surrounding gender-based violence, this is an exception and is available primarily on an *ad hoc* basis, when civil society actors are able to provide training.<sup>65</sup> Also, it was unclear to researchers whether the training specifically addresses sexual violence as an international crime, not only as a human rights violation.

## Specialized prosecution

In theory, members of a specialized prosecution team can be trained intensively and continually on sexual and gender-based violence, and they can build legal competence by repeatedly trying cases under a closed set of relevant substantive and procedural laws. They may also develop superior skills in interviewing survivors of sexual violence, preparing them for trial, assessing evidence of sexual and gender-based crimes, and conducting effective witness examinations in court.

In terms of prosecution models for sexual offences, there were fewer specialized units than researchers found among police forces. Approaches ranged

62 Anonymous interviews with police officers in Uganda, September 2013, and Liberia, August 2012.

63 Anonymous interview with police investigator, Sierra Leone, February 2014.

64 Anonymous interview with police official, Liberia, August 2012.

65 Anonymous interview with prosecutor, Uganda, September 2014.

from the delegation of sexual and gender-based violence cases to specific prosecutors who also handled other kinds of cases, to one intensive, fully dedicated prosecution unit.

A semi-mainstreamed approach was found in Kenya and Uganda, where most sexual offence cases have traditionally been handled by general “police prosecutors” at courts of first instance. These “police prosecutors” are not lawyers, but senior police officers who present cases at the magistrate court level. Lacking specific training in either courtroom procedure or the prosecution of sexual or gender-based violence cases, police prosecutors are unlikely to master the evidentiary complexity of sexual and gender-based crimes.

As a partial remedy, the directors of public prosecutions in both countries have identified specific prosecutors to act as point persons to advise police prosecutors on cases of sexual and gender-based violence, and handle any that move up on appeal. Though it was not operational at the time of fieldwork, Uganda’s Directorate of Public Prosecution has created a Sexual Offences Section in Kampala, consisting of four full-time prosecutors who also handle other kinds of cases.<sup>66</sup> In Kenya, the Office of the Director of Public Prosecutions has a small gender-based violence unit whose prosecutors work on a variety of other cases as well.<sup>67</sup>

Liberia, on the other hand, has adopted a more intensive approach to specialized prosecution. Liberia’s Sexual and Gender-Based Violence Crimes Unit (known locally as the Crimes Unit or SGBVCU) was established in 2009. The SGBVCU’s mandate is to improve prosecutorial response to complaints of sexual offences, based on a victim-centred approach.<sup>68</sup> The staff includes not only prosecutors but also case support staff, as well as staff focused on the welfare of the survivor engaging the formal legal system. In terms of operations, the SGBVCU exclusively prosecutes cases before Liberia’s special criminal court for sexual and gender-based crimes. Its four prosecutors are guided by a comprehensive *Sexual Assault and Abuse Prosecution Handbook* issued in 2009 by the Ministry of Justice and its civil society partners.<sup>69</sup>

Finally, a few creative *ad hoc* prosecution efforts were found in Kenya. First, the Office of the Director of Public Prosecutions established a team of “special prosecutors” from civil society organizations who could be called upon on an *ad hoc* basis. It was unclear from interviewees, however, whether civil society attorneys on this roster had been actively engaged. Second, a special task force was rolled out in 2012 as a result of pressure from civil society, which demanded enquiry into sexual violence cases from the 2007–2008 post-election violence period. This task force was given six months to determine which cases might be actionable and whether additional suspects could be identified.

66 Anonymous interview with prosecutor, Uganda, September 2013.

67 Anonymous interview with prosecutors, Kenya, March 2014.

68 Emmanuel Saffa Abdulai, *Evaluation: Strengthening of Prosecution of SGBV Offenses through support to the Sexual and Gender Based Violence Crimes Unit (SGBV CU)*, UNFPA, Monrovia, November 2010, p. 14.

69 See [www.cartercenter.org/resources/pdfs/peace/conflict\\_resolution/liberia/SGBV-ProsecutionHandbook-v1.pdf](http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/SGBV-ProsecutionHandbook-v1.pdf).

The task force reviewed approximately 6,000 files. In cases of sexual and gender-based violence, the task force found no forensic evidence and only witness statements that were late, incomplete or vague. As the head of the task force noted: “We are not saying that people were not raped, gang raped ... but the files were brought to us four years down the line, the reports were written one year [after the crimes].”<sup>70</sup> The insufficiency of evidence in the files led Kenya’s director of public prosecutions to conclude that the cases must unfortunately be closed. This decision invoked a fundamental prosecutorial challenge: hundreds of cases of rape and sexual torture could not be tried either as a general or international crime because of police failure to properly document and investigate these acts of sexual violence. Would a specialized police unit have been more successful in collecting evidence? Or was any investigation of any of the violence impossible at the time?

## Specialized courts

Adjudication of sexual and gender-based crimes is handled differently across the four countries. In Kenya and Uganda, these cases are heard in the general magistrates’ courts and appealed through regular judicial channels along with other kinds of crime. In contrast, Liberia and Sierra Leone have taken a specialized approach to adjudication of sexual and gender-based violence cases. The former has established a dedicated court for sexual offence cases; the latter has carved out a dedicated hearing time. A brief look at these two specialized mechanisms is warranted.

Liberia’s Special Court E, also known as Criminal Court E, was created by the Act Establishing Court E (2008). The Act not only established a Sexual Offences Court in Monrovia but also provided for a Sexual Offences Division in every county’s circuit court.<sup>71</sup> Until these divisions are operational, however, general circuit court chambers continue to exercise original jurisdiction over sexual offences.<sup>72</sup> Part of the impetus to establish a specialized forum for these cases was to minimize the number of rape cases that were being “compromised”, or settled, in the community. Also, cases of sexual violence were reportedly not being handled well or prioritized by the magistrates who saw them at the time. Moreover, it was hoped that a dedicated court would shed some light on the crisis of rape in particular, which had until that time been “the silent crime”. As one Liberian judge noted, “This was civil society moving the government. This was driven by the women.”<sup>73</sup>

70 See news coverage such as Athran Amran, “Post-Election Violence Suspects May Face International Law”, *Standard Digital*, 18 August 2012, available at: [www.standardmedia.co.ke/?articleID=2000064300&story\\_title=post-election-violence-suspects-may-face-international-law&pageNo=1](http://www.standardmedia.co.ke/?articleID=2000064300&story_title=post-election-violence-suspects-may-face-international-law&pageNo=1); quotation cited in Tom Maliti, “Kenya Prosecutor: Insufficient Evidence Has Made Prosecuting Post Election Violence Difficult”, *International Justice Monitor*, 26 October 2012, available at: [www.ijmonitor.org/2012/10/kenyan-prosecutor-insufficient-evidence-has-made-prosecuting-post-election-violence-cases-hard/](http://www.ijmonitor.org/2012/10/kenyan-prosecutor-insufficient-evidence-has-made-prosecuting-post-election-violence-cases-hard/).

71 Act Establishing Court E, 2008, Section 25.1.

72 *Ibid.*, Section 25.2(3).

73 Anonymous interview with member of the judiciary, Liberia, August 2013.

Criminal Court E has gained some fame due to its protective measures. Most famous among them is the use of relatively sophisticated technology to provide *in camera* testimony to protect the testifying witness, who is able to sit in a private room at the rear of the courtroom, where he/she can view the proceedings and speak through a microphone. A camera planted high on a rear wall transmits a contemporaneous visual of the back of the witness's head onto a large screen behind the judge. In this way, the judge, lawyers and jury can view the witness in real time, though they cannot see her/his face. Dedicated trial space allows for the centralization of expertise: the judge and prosecutors are well versed in the relevant law, and victim support measures are in place. A victim support officer from the prosecutor's office sits nearby for the duration of the hearing.

Despite its clear role as Liberia's "sexual violence court", though, it was unclear among interviewees whether Criminal Court E would have jurisdiction to hear sexual violence cases brought under international criminal law.

In Sierra Leone, special "Saturday courts" for crimes of sexual and gender-based violence were established in February 2011, with support from the United Nations Development Programme (UNDP). However, rather than being a special court, these are simply a special hearing time: Saturdays, when the criminal court is not otherwise in session. According to a justice in the Supreme Court of Sierra Leone, this extra day was created not only to clear the backlog of cases but also to protect victims by offering a hearing on a day when the court was quiet and private.<sup>74</sup>

The Saturday courts are mandated to hear all cases that arise from three gender-violence laws passed in 2007: the Devolution of Estate Act, the Domestic Violence Act and the Recognition of Customary Marriage and Divorce Act.<sup>75</sup> Cases brought under the more recent Sexual Offences Act (2012) can also be heard in special Saturday court proceedings. Aside from their scheduling, the Saturday courts operate like a regular court. They have reportedly been effective in cutting down the time required to hear a case from several months to a few weeks. Further, UNDP notes that a total of fifty-three convictions had been obtained as of June 2012 by the Saturday courts in Freetown and Bo.<sup>76</sup>

## Specialized units to address international crimes

While all four countries studied have signed and ratified the Rome Statute, there was great variety in the extent to which the domestic accountability process for

74 Anonymous interview with a judge, Sierra Leone, February 2014.

75 UNDP, "Saturday Courts Help Tackle Sexual and Gender-Based Violence in Sierra Leone", 2012, available at: [www.sl.undp.org/content/sierraleone/en/home/ourwork/democraticgovernance/successstories/Saturday\\_Courts\\_Help\\_Tackle\\_SGBV/](http://www.sl.undp.org/content/sierraleone/en/home/ourwork/democraticgovernance/successstories/Saturday_Courts_Help_Tackle_SGBV/); UN Women, "Sexual Offences Law, 'A Victory for Sierra Leoneans' Says Minister Gaojia", August 2012, available at: [unwomenwestafrica.blog.com/2012/08/21/%E2%80%9Ca-victory-for-sierra-leoneans%E2%80%9D-says-minister-gaojia-of-sierra-leone%E2%80%99s-enactment-of-sexual-offences-law/](http://unwomenwestafrica.blog.com/2012/08/21/%E2%80%9Ca-victory-for-sierra-leoneans%E2%80%9D-says-minister-gaojia-of-sierra-leone%E2%80%99s-enactment-of-sexual-offences-law/).

76 UNDP, *Improving the Rule of Law and Access to Justice Programme*, available at: [www.sl.undp.org/content/sierraleone/en/home/operations/projects/democratic\\_governance/improving-the-rule-of-law-and-access-to-justice-programme/](http://www.sl.undp.org/content/sierraleone/en/home/operations/projects/democratic_governance/improving-the-rule-of-law-and-access-to-justice-programme/).

international crimes had developed.<sup>77</sup> In general, there was far less development of international crimes institutions than there was for sexual and gender-based crimes institutions.

While investigations of international crimes remain within the general Criminal Investigations Directorates of their respective national police forces, Uganda and Kenya have established distinct specialized units to manage the prosecution of international crimes. In Uganda, prosecution of international crimes is the responsibility of the International Crimes Unit within the Directorate of Public Prosecutions. This unit is staffed with prosecutors who have received specific training on international criminal law, though they do not work exclusively on international crimes cases. In Kenya, the Office of the Director of Public Prosecutions contains two relevant sub-units: the International Crimes Division and the Human Rights Division. Again, the attorneys belonging to these specialized units are not exclusive; they also participate in the Directorate's general caseload.

Among the four studied countries, Uganda also features the only judicial venue exclusively focused on international crimes: the International Crimes Division of the High Court. Originally established in 2008 as the War Crimes Division, the new International Crimes Division has exclusive jurisdiction over genocide, war crimes, crimes against humanity, terrorism, human trafficking, piracy and any other claims prescribed by law.<sup>78</sup> The International Crimes Division has handled only one case so far.<sup>79</sup>

There is ongoing discussion about the creation of a similar court in Kenya, tracing back to a recommendation by the Commission of Inquiry on Post-Election Violence in 2008 which was never enacted, leading to the initiation of cases by the ICC.<sup>80</sup> More recently, the Judicial Service Commission of Kenya renewed the idea of creating a division in the High Court of Kenya to try international crimes. This proposal has been revived in recent months, with political desire to expand the scope of the envisioned court to include transnational crimes like trafficking and piracy as well. However, some worry that such an expansion will dilute the ability of the court to focus on war crimes, crimes against humanity and acts of genocide.

77 Kenya signed the Rome Statute on 11 August 1999 and ratified on 15 March 2005. Liberia signed the Rome Statute on 17 July 1998 and ratified it on 22 September 2004. Sierra Leone signed the Rome Statute on 17 October 1998 and ratified it on 15 September 2000. Uganda signed the Rome Statute on 17 March 1999 and ratified it on 14 June 2002. See the list of States party to the Rome Statute: "Rome Statute of the International Criminal Court", United Nations Treaty Collection, available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en).

78 As profined by Legal Notice No. 10 in 2011. See "International Crimes Division", on the website of the Judiciary of the Republic of Uganda, available at: [www.judicature.go.ug/data/smenu/18/International\\_Crimes\\_Division.html](http://www.judicature.go.ug/data/smenu/18/International_Crimes_Division.html).

79 That of Thomas Kwoyelo, which is currently on hold due to deliberations about Kwoyelo's ability to be prosecuted as a beneficiary of an amnesty grant. For a glimpse of the amnesty-related aspects of the Kwoyelo trial, see [www.judicature.go.ug/files/downloads/THOMAS%20KWOYELO%20ALIAS%20LATONI%20RULING.pdf](http://www.judicature.go.ug/files/downloads/THOMAS%20KWOYELO%20ALIAS%20LATONI%20RULING.pdf).

80 For an excellent discussion of the proposal for an International Crimes Division of the High Court of Kenya, see Kenyans for Peace with Truth and Justice and the Africa Centre for Open Governance, *A Real Option for Justice? An International Crimes Division of the High Court of Kenya*, July 2014, available at: [http://kptj.africog.org/wp-content/uploads/2014/08/A\\_Real\\_Option\\_for\\_Justice\\_The\\_International\\_Crimes\\_Division.pdf](http://kptj.africog.org/wp-content/uploads/2014/08/A_Real_Option_for_Justice_The_International_Crimes_Division.pdf).

## Observations on parallel specialization

Special police, prosecutorial units and courts focused on crimes of sexual and gender-based violence and international crimes have begun to emerge to different degrees in the four countries studied.<sup>81</sup> The impetus behind their creation and the various challenges they face in their day-to-day operations are beyond the scope of this article.<sup>82</sup> Moreover, they are still relatively new and data are lacking as to their effectiveness. However, because of the importance of domestic legal systems to future efforts to address conflict-period sexual violence, including that which is committed as an international crime, it is critical to understand the coexistence of these otherwise disconnected paths.

This article has highlighted a two-track implementation system (corresponding to two distinct legal frameworks):<sup>83</sup> one set of implementing institutions focuses on sexual violence generally speaking (whether connected to surrounding conflict or not), while another specializes in international crimes (including but not limited to sexual violence crimes). This increasingly bifurcated approach may complicate the investigation and prosecution of *international crimes of sexual violence*, which may fall right between the tracks. A few of the main reasons for this are presented below.

### Incongruent definitions of common offences

Separate “special units” for sexual and gender-based violence on one hand and international crimes broadly on the other are generally trained in two specific and separate legal frameworks. This may pose challenges to accountability for sexual violence as an international crime because while there are a few forms of sexual violence that are named in both laws defining gender-based violence and laws defining international crime, their actual definitions or elements may be incongruent in significant ways.

For example, the Ugandan penal code contains a gender-specific definition of rape as “the unlawful carnal knowledge of a woman or girl without her consent or with consent, if obtained by force, threats or intimidation”.<sup>84</sup> Not only does the provision not anticipate male victims of rape, but a subsequent provision on “Unnatural Offences” creates the risk that a male survivor could himself be prosecuted for “carnal knowledge ... against the order of nature” if his lack of consent is not established.<sup>85</sup>

81 Study data indicate possible advantages and disadvantages to this specialized approach, especially where “regular” police forces may then abdicate responsibility for sexual violence crimes, as was reportedly once the case in Liberia. For more details, see HRC, above note 43.

82 For more details regarding these specialized units, see *ibid.*

83 All four countries have recently adopted substantial legislation criminalizing various forms of sexual and gender-based violence. Similarly, all four have ratified the Rome Statute, with only Kenya and Uganda having passed domestic implementing legislation.

84 Uganda Penal Code, para. 123.

85 *Ibid.*, para. 145.

In contrast, the Rome Statute definition of rape – absorbed by State parties in their domestic legislation – is gender-neutral as to the perpetrator and the victim.<sup>86</sup>

This difference can have significant implications for the on-the-ground response. A local police officer's understanding of the definition of rape will dictate what cases he responds to and how he investigates them. Officers trained to think of rape as only involving "carnal knowledge of a woman or girl" under local penal law – even specialized sexual and gender-based violence officers – will be unlikely to recognize or respond to a male rape survivor who may have suffered an international crime of sexual violence.

### Disparate evidentiary requirements

As noted earlier, crimes of sexual violence under domestic penal law and crimes of sexual violence under international criminal law also trigger different evidentiary burdens.

In the case of the former, a prosecutor must usually prove that the act itself occurred (meeting any elements of the crime laid out in relevant domestic laws criminalizing rape) and that the accused person is the direct perpetrator. Under most domestic criminal law definitions of rape, this would ordinarily require physical evidence of penetration, lack of consent on the part of the victim, and identity and intent of the perpetrator. This is frequently attempted via sworn personal testimony, and occasionally through forensic evidence (e.g., from rape kits that collect semen, saliva or blood samples to generate a DNA profile).

In the case of the latter, a prosecutor has the additional task of proving the contextual elements for a war crime, crime against humanity or genocidal act (e.g., whether the act was committed in the context of and associated with an armed conflict, whether the attack was part of a widespread or systematic attack against a civilian population). In cases where the accused is allegedly guilty due to command responsibility, the prosecutor must typically offer extensive "linkage evidence" tying the accused to the specific act committed by his/her subordinates. This can involve detailed information about military structure, reporting procedures, official or private communications and even troop movement.<sup>87</sup> These forms of evidence may be unfamiliar to police focused on investigating general crimes of sexual violence, which usually have a single direct perpetrator, a single victim and a single set of circumstances to establish.

Local prosecutors skilled in taking general sexual violence cases forward under domestic penal provisions may excel in establishing a crime base for what may ultimately emerge as an international crime of sexual violence. However, they may still be unfamiliar with the additional contextual elements required to prove the international crimes, and with the adequate modes of liability.

<sup>86</sup> Rome Statute, Art. 7(1)(g).

<sup>87</sup> Xabier Agirre Aranburu, "Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases", *Leiden Journal of International Law*, Vol. 23, No. 3, 2010, pp. 609–627.

## The silo effect

There is also a risk that, once a specialized unit or process for cases of sexual and gender-based violence or international crimes is established, other actors may abdicate responsibility for responding to that type of crime. This is particularly problematic where specialized responders are limited in number and not present everywhere, particularly in rural areas. General police officers must at least be able to detect and refer sexual and gender-based violence cases that arise in their jurisdictions.

Similarly, where one unit is focused on sexual and gender-based violence and another is focused on international crimes, their members may be blinded to the fact that some sexual violence may manifest as an international crime and vice versa. Without seeing themselves as potentially responsible for that *kind* of sexual violence or that *kind* of international crime, otherwise skilled experts may be blind to a very real kind of harm that falls within their mandates.

Finally, several units focused on sexual and gender-based violence rely on support from foreign donors or UN agencies. As such, they may be perceived as somehow outside the regular force or department. This can lead to exclusions from general benefits such as salary ranges, promotions and trainings. In addition, while foreign investment has enabled impressive work by some specialized units, it may not be as sustainable as funding derived from the usual State budgets. The cultivation of expertise on an issue like sexual and gender-based violence may then be lost, should the external funding disappear.

## Conclusion

With the limited ability of the ICC to target mid- and low-level perpetrators, domestic legal systems face increasing expectations to address war crimes, crimes against humanity and genocide due to the principle of complementarity. However, fundamental competence, resource and political challenges continue to plague the pursuit of national-level accountability for sexual violence, including that which occurs during armed conflict and other situations of violence.

Where part of a State's strategy has been to create specialized institutions to improve competence around sexual and gender-based violence on the one hand and international crimes on the other, one discrete step towards improving accountability for sexual violence as an international crime is the enhancement of coordination and collaboration between units. This study indicates three potential strategies for consideration: (a) cross-thematic training across specialized units, (b) the development of clear mechanisms for cross-unit consultation and exchange, and (c) independent evaluation of specialized units to assess and improve capacity to respond to sexual violence as an international crime.

### *Cross-thematic training and competence*

First, the development of cross-thematic training and competence for sexual and gender-based violence officers in particular would be helpful for three reasons.

Police units tasked with sexual and gender-based violence are “first responders”. They are often known at the community level due to their day-to-day work on gender violence cases and their inclusion in local “referral” pathways. They are the law enforcement actors to whom health-care providers, legal aid workers and community advocates are trained to send survivors of sexual or gender-based violence. Though referral and reporting of sexual violence cases are likely more challenging during periods of active conflict, specialized police units may still be the first “eyes and ears” and even “hands” of law enforcement when it comes to reports of sexual violence at these times. As such, they are physically and operationally well placed to contact other relevant actors, including government institutions responsible for responding to international crimes.

Police units tasked with sexual and gender-based violence response are also likely to have received more training on relevant laws, interview techniques, evidence collection and documentation standards than other police. Such units are increasingly being trained to engage with health-care providers to secure necessary certification of sexual assault medical examinations, as well as any available physical or forensic evidence. Even though there are certainly countless challenges, specialized sexual and gender-based police units have relative expertise in capturing evidence of crimes of sexual violence generally. This may improve the chances of later establishing the crime base for future acts of international crimes of sexual violence.

Finally, it is critical that police, prosecutors and judges understand the different scope, definitions and evidentiary requirements for sexual violence crimes under domestic penal law provisions and under the Rome Statute or domesticated international law. Existing gender violence laws should be assessed for possible conflict with Rome Statute provisions and definitions, so that these discrepancies can be resolved or at least addressed in training.

### *Coordination between specialized units*

In terms of developing improved coordination between specialized units, directors of public prosecution, police commissioners and ministries of justice should establish mechanisms that enable joint investigation and consultation across units for future emergency periods, in order to recognize and respond to international crimes of sexual violence that may occur. This includes the development of clear and accessible guidance on the investigation of crimes of sexual violence and international crimes; it may also be useful to produce a simplified, pocket version of such guidance that newer officers can refer to easily while on duty. These resources would be useful to specialized units and general officers and prosecutors alike.

### *Evaluation of specialized units*

Finally, more evaluation of these specialized units is necessary. Donors should fund rigorous assessment of units specializing in sexual and gender-based violence and international crimes, to evaluate both their individual effectiveness and their familiarity with the legal and practical aspects of the intersecting issue of sexual violence as an international crime.

Increased national-level response to sexual and gender-based violence on the one hand and international crimes on the other is a promising development despite the persistence of myriad practical challenges. Given appropriate resources and political support, the establishment of specialized units focused on each kind of crime may certainly be an effective strategy to improve accountability. However, this also runs the risk of paradox: too much specialization in one type of crime without awareness of the other may create a mutual blind spot of international crimes of sexual violence, whose investigation and prosecution requires the skills of both kinds of experts. Improved cross-training, exchange and evaluation now can help bridge the widening gap between institutions and enhance responses to sexual violence as a war crime, crime against humanity and act of genocide in the future.