

**G8 Experts Meeting  
Preventing Sexual Violence in Conflict Initiative  
London, 12 February 2013**

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Thank you to the UK Foreign and Commonwealth Office for convening today's meeting and a special thank you to Vijay, Emma, and their team for the opportunity to participate in this very important conversation.

The Women's Initiatives for Gender Justice is an international women's human rights organisation that advocates for gender justice within peace processes and through the prosecution of gender-based crimes by the International Criminal Court and through domestic mechanisms. We work with women and communities most affected by the armed conflicts under ICC investigation. As such, we have a legal monitoring programme for each of the countries in which the Court has opened an investigation. We also have extensive country-based programmes working with local women's rights actors and peace advocates in Uganda, the Democratic Republic of the Congo (DRC), Sudan, the Central African Republic (CAR), Kenya and Libya.

With more than 6,000 grassroots members in armed conflicts situations - most of whom are gender justice advocates and victims/survivors - along with a large number of regional and international allies, we are together building a global constituency for gender justice and accountability.

**Rape as a 'weapon of war'**

It has been well documented that the commission of rape and other forms of sexual violence intensify and increase in both scale and brutality during times of violent civil unrest and armed conflicts. We often hear that rape is an effective weapon or strategy of war but we rarely hear why.

From our perspective, rape is an effective strategy because it relies on pre-existing norms, standards, and belief-systems regarding gender inequality to create a breakdown within the community; to fracture individual and family networks; to splinter social and cultural connections; and to assert ethnic and political supremacy through the use of acts already legitimised as the means of expressing dominance, that is – through sexualised violence, most commonly rape, predominantly against women.

The paucity of domestic prosecutions, the mixed results in the international courts for these crimes, and the sheer volume worldwide of crimes of sexualised violence - particularly in situations of armed conflict - continue to leave an impunity gap so distinct that in recent years it has become the focus of several United Nations Security Council resolutions. And, although the narrowing down of the women, peace,

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and security framework to issues of sexual violence is somewhat problematic and reductive, the attention this focus has brought to the issue is necessary and urgent, and with developments such as the UK Preventing Sexual Violence in Conflict Initiative, attention to this issue is also becoming increasingly strategic.

## **Challenges**

Challenges around prosecutions for sexual and gender-based violence (SGBV) are only partially about evidence. If we look at the domestic context, such crimes are enabled through the absence of effective legislation preventing such acts. The low number of convictions for rape, discriminatory corroboration requirements, and constructions of 'consent' also contribute to the ongoing impunity for gender-based violence. Similarly, inadequate police investigations, gender-biased attitudes on the bench, and the stigma associated with rape can at times conspire to drive down the reporting rates of such crimes, as well as limit the success of prosecutions when pursued.

Sexual violence is one of those rare crimes for which victims/survivors must prove that they did not collude in the commission of the acts and contribute to their own victimhood.

Unsurprisingly, some of these factors are also active within the Tribunals, the Special Court, and the International Criminal Court, given that these practitioners are drawn from domestic legal systems and bring with them the concepts and practices with which they are most comfortable and familiar.

## **Investigating sexual violence**

There are significant challenges when attempting to conduct investigations in the midst of ongoing armed conflict. Access, security, and witness protection issues are all magnified in such environments and have a direct impact on the ability to gather evidence. Widespread impoverishment common in contexts of long term conflict, compromised governance capacities, and fragile infrastructure may result in a limited national capacity to secure medical records documenting rape and other forms of sexual violence and reduce the availability of forensic services to store and preserve forensic evidence.

In addition, sexualised violence is often shrouded in assumptions, which can lead investigators to close off possible lines of inquiry before finalising the case hypothesis and the subsequent investigative priorities. Assumptions such as: women victims of sexual violence will be reluctant to speak to investigators because of the stigma associated with these acts; or the assumed vulnerability of female victims of these crimes make them something of an investigative liability; or assumptions about who is a victim of such crimes. For example, sexual violence is assigned as a crime committed almost exclusively against girls and women while the enlistment and conscription of child soldiers is a crime believed to predominantly affect only boys and young men. Both gender-based assumptions miss the real gender-dimensions embedded in each of these crimes.



## **The location and purpose of documentation initiatives**

I would like to now address the issue of strengthening the evidence and better supporting local and international actors working towards accountability and prosecutions. To reflect on these issues, I am drawing on our work since 2006 documenting gender-based crimes for the purposes of prosecution, particularly in eastern DRC.

The first thing that I would like to say in this regard is the importance of locating a SGBV documentation programme within a larger, more comprehensive approach to these issues and to the victims/survivors of these crimes. Over the years, and through trial and error, our documentation programme has evolved and is now embedded within a framework that includes: a victims' assistance programme assisting victims/survivors to access urgent medical care; a victims' participation programme for those who wish to apply to be formally recognised as victims before the ICC; a women's human rights defenders' programme to assist those who have been threatened or harassed by militia or armed forces as a result of their work for gender justice and accountability; and finally, the documentation programme is also a part of our accountability programme for more and better quality domestic and international prosecutions for sexual and gender-based crimes.

International investigations for sexual violence, and therefore a protocol of expertise in this area, must be based on a framework that recognises the human experience, and the rights, agency, and leadership of victims/survivors whose calls for accountability are both loud and urgent.

The second critical consideration in strengthening the availability of information and evidence relates to the purpose of the documentation programme because the purpose of the programme will determine the methodology and the utilisation of the data. The UN, NGOs, and human right actors undertake documentation initiatives for a variety of reasons: to create an accurate historical record, to raise awareness and magnify the visibility of certain conflicts or specific crimes, and to bring to the attention of the UN and others humanitarian crises so that interventions are mobilised where they are most needed.

Since the objectives of documentation programmes vary so widely, at times UN and NGO reports have been used for purposes beyond their original mandate and therefore beyond the scope of the data and outside of the quality and type of information collected.

Documentation programmes, generally speaking, may be intended to support accountability in the broadest sense, but I think that the UN and NGOs were not expecting their reports to play such a prominent and critical role as evidence in formal prosecution processes. This is a relatively new development and one that now provides the opportunity for re-conceptualising the purpose and the methodologies of such documentation efforts, making the development of an international protocol on the investigation and documentation of sexual violence in conflict timely and strategic.



As we have heard from the international courts, particularly the International Criminal Court, the use of UN and NGO reports on their own will not suffice as primary evidence. However, good quality, substantive and accurate reports as open source material could be used to provide leads and context for investigators whose deployment may be slower than a local documentation initiative; it can be used to supplement, support, and add description and weight to the charges of sexual violence.

From our experience and the lessons we have learned in implementing our documentation programme, we have noted some differences between prosecution-related documentation efforts and documentation programmes with other objectives. These differences centre around four key areas to which prosecution-related documentation initiatives bring greater attention and focus. These are:

1. The context of the attack.
2. Issues of command.
3. Reporting on harm, injury, and impact of the sexual violence on victims/survivors because these issues are also relevant to sentencing considerations and reparations.
4. A focus on conducting firsthand interviews with victims/survivors, and as many as possible, bearing in mind the security considerations.

In our own documentation programme we have tended not to publish public reports, instead electing to use the material in advocacy with domestic and international prosecutors to support investigations.

We describe the data we gather as information, not as evidence. We describe it as data providing possible leads for trained domestic and ICC-related investigators and as material of potential interest for prosecutors.

It is the role of trained professional investigators to gather evidence. But the more accurate the information generated by local documentation programmes, the better the quality of the information and the more the claims asserted in a UN or NGO report can be substantiated, the greater the prosecutorial value of such data for both domestic and international accountability processes.

### **International Protocol**

Given that most UN or NGO documentation programmes are generally not intended to support formal prosecutions or have this as only one of their objectives, there is a need for clarity by NGOs and by prosecutors about when information gathering and interviews with victims/survivors are intended to support accountability and when these programmes have other intentions. And this is where I think that the development of an international protocol is going to be of great importance. For human rights organisations that undertake documentation, the protocol will provide standards to aspire to in order for the documentation to be able to be considered for prosecutorial purposes. Those that would like to contribute to this can opt to adapt their methodology towards these standards. Buy-in from these actors

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will be critical for the protocol to have meaning, while at the same time *respecting* the breadth of reasons that organisations undertake to document violations, *recognising* the diversity of mandates, and *understanding* that for many organisations, formal accountability may not be one of their goals.

### **Women's Organisations**

In terms of conflict-related sexual violence, women's organisations are often overlooked and largely underestimated. In our experience, the ability of local women's organisations (with the necessary training, technical skills, and support) to access victims/survivors of gender-based crimes, to conduct interviews and move safely amongst the community, and the willingness of victims/survivors to trust these actors, make such organisations valuable partners in justice and truth-telling mechanisms.

Finally, the interplay between justice-related actors, including women's organisations, from multiple vantage points, can contribute in positive, reliable, and material ways to the documentation of sexual violence and to describing with greater human voice the form and extent of the suffering and harm, as well as the agency and perseverance of communities until justice is satisfied.

