THE LONG ROAD
Accountability for Sexual Violence in Conflict and Post-Conflict Settings
KENYA • LIBERIA • SIERRA LEONE • UGANDA
EXECUTIVE SUMMARY

Tens of thousands of men and women were raped or sexually tortured during the war in Bosnia between 1992 and 1995. During the 100-day genocide in Rwanda in 1994, thousands of women were raped or had their breasts or genitals mutilated. From 1975–1979, Khmer Rouge cadres in Cambodia raped women and girls despite strict regulations against extramarital sexual relations and an entire generation of men and women were subjected to forced marriage.

Acts of sexual violence committed during periods of armed conflict or political unrest are, first and foremost, crimes against the individual survivor. As such, they may be investigated and prosecuted locally under domestic penal or gender-violence laws that criminalize offences against the person. However, where these acts are committed specifically because, or as part, of an armed conflict or larger attack on a civilian population or plan to destroy a particular group of people, they may also constitute an international crime.

Since the 1990s, international courts have made progress in prosecuting military commanders and civilian officials for their roles in perpetrating sexual violence as a war crime, as a crime against humanity, and as an act of genocide. However, these international tribunals often operate at significant geographic and historical distance from the events in question. Not surprisingly, they have faced serious challenges in collecting evidence, access to witnesses, and establishing defendants’ responsibility for acts they may not have personally committed. They may also have jurisdictional or practical constraints that limit the scope of events they can target.

For a host of reasons, accountability for international crimes of sexual violence depends largely on the response of national authorities. To address international crimes of sexual violence, domestic investigators and prosecutors must first be able to prove an underlying act of rape under the Rome Statue, for example, before they can be expected to establish the additional contextual elements that would make that act of rape a war crime, crime against humanity, or act of genocide.

Therefore, in order to appreciate the potential of local actors to provide accountability for international crimes of sexual violence, it is critical to first understand their day-to-day challenges in investigating and prosecuting sexual violence and the strategies used to overcome these challenges.

To this end, researchers at the Human Rights Center (HRC) at the University of California, Berkeley, School of Law, conducted a four-country study in Kenya, Liberia, Sierra Leone, and Uganda to identify key accountability barriers and strategies for reporting, investigating, and prosecuting cases of sexual violence. In addition to conducting desk research on the nature of sexual violence and accountability mechanisms in these countries, HRC researchers conducted a total of 279 semi-structured interviews with representatives of governments, UN agencies, and civil society organizations in Kenya (N=59), Liberia (N=115), Sierra Leone
(N=27), and Uganda (N=78). Researchers coded and analyzed the interviews to identify key themes related to the reporting, investigation, and prosecution of cases of sexual violence.

The Study
To improve understanding of domestic-level accountability for sexual violence, the HRC conducted a four-country study from 2011 to 2014, focusing on Kenya, Liberia, Sierra Leone, and Uganda. The purpose of the study was to identify and describe major barriers and approaches to basic legal accountability for sexual violence in these four countries. Researchers’ specific objectives were to

1. identify challenges and strategies related to reporting of sexual violence;
2. identify challenges and strategies related to investigation of sexual violence;
3. identify challenges and strategies related to prosecution of sexual violence; and to
4. gather relevant lessons learned during recent periods of armed conflict or political violence.

Findings
Researchers’ interviews resulted in the following findings on the reporting, investigation, and prosecution of sexual violence crimes.

Reporting Crimes of Sexual Violence
Informants indicated that stigma associated with sexual violence, pressure from community and family members to settle cases informally, and preferences for community-based resolution prevent many survivors from reporting these acts to the police and the formal legal system. Some conflict-related factors exacerbated the challenge of coming forward. For example, rape committed by a member of a particular rebel, military, or ethnic group reportedly caused even greater stigma and social isolation for some survivors.

In addition, fear and limited awareness of legal rights, systems and available services can further inhibit survivors from filing cases.

Structural factors such as transportation challenges, cost of services, and distance to adequate healthcare and police services are additional barriers to accessing health and legal systems. Conflict can create or exacerbate these barriers because of increased security and mobility challenges, damaged infrastructure, limited staffing at health facilities, and deprioritization of sexual violence cases by police and humanitarian organizations during emergencies.

Furthermore, informants across the study countries told researchers of their lack of confidence in law enforcement, which presumably hindered survivors’ willingness to report their experiences. Researchers noted this problem particularly where police and state security forces had been implicated in mass violence, which leaves survivors with few safe channels for reporting.

These findings indicate that survivors need an enabling environment to seek accountability through the legal system. Strategies include long-term community sensitization and awareness efforts; use of radio, theater, and billboards to educate communities about sexual violence; and the engagement of a broad range of community actors in survivor support. Safe shelter is essential to ensure that survivors are protected not only when reporting but throughout their engagement in the legal process.

In addition, improving the ways in which cases of sexual violence are handled by community justice systems is essential to ensure that survivors have access to justice, particularly in communities without a formal court presence. Relevant strategies include training community leaders to refer sexual violence cases
to police and healthcare centers, developing gender-sensitive community practices for conflict resolution and survivor support, and harmonizing customary and statutory law.

Finally, this research highlighted the need to design programmatic responses that take into consideration exacerbated access challenges in emergency settings. Some strategies are structural: for example, locating sexual violence services within or close to communities, providing safe transport to health facilities that offer comprehensive post-rape care, and offering hotel accommodation near hospitals or courts in the absence of safe shelters. Other key strategies include providing survivors with accessible channels for reporting and receiving referrals, such as free hotlines and community-based volunteers who act as first responders or advocates.

**Investigating Crimes of Sexual Violence**

Research highlighted the extent to which the collection of evidence in cases of sexual violence is a cross-sectoral effort beset with resource, capacity, and coordination challenges.

The health sector plays a crucial role in the collection of evidence, as healthcare workers are responsible for both documenting a survivor's physical condition and collecting physical evidence from the survivor's body. However, healthcare workers do not necessarily have an “evidence-collection” mandate and are often not sufficiently equipped or trained to do so. Healthcare workers’ coordination with the police to transfer information or evidence is sometimes a further challenge.

Police capacity and willingness to investigate and collect evidence of sexual violence vary depending on resources, mandates, and training. It can be particularly difficult to ensure adequate police response in rural areas, where law enforcement resources and expertise are often spread thinly over vast territories. Research indicates an increasing trend toward the establishment of police units specializing in sexual and gender-based violence crimes in order to improve police competence and sensitization to such cases. However, the relative advantages of adopting specialized units warrant further evaluation.

Finally, in three of the four countries studied, researchers observed substantial discussion about, and aspiration to, increased use of DNA evidence in cases of sexual and gender-based violence.

Findings indicate that many of these evidence-collection challenges may be exacerbated in periods of armed conflict. Police and healthcare providers are frequently overwhelmed with emergency response and are less able than during peacetime to manage the complicated examination and investigation processes that sexual violence cases require. Finally, when the sitting government is believed to be implicated in perpetration of conflict-related violence, domestic investigation of these cases is especially unlikely.

**Prosecuting Crimes of Sexual Violence**

According to interviewees, a primary challenge to prosecution of sexual violence crimes is rooted in the investigation stage: insufficient evidence—be it documentary, physical, or testimonial—hampers effective prosecution. This is true in all kinds of criminal cases, but it is particularly true in cases of sexual violence. Scarcity of evidence or eyewitness testimony to what is often a private crime, stigma and community pressures that dissuade survivors from cooperating with the prosecution, and lack of witness protection measures and in-court support—which permits survivors and expert witnesses to be intimidated—can all detract from prosecutors’ ability to secure convictions.

In addition to developing specialized police units focused on sexual and gender-based violence, some case study countries have developed specialized prosecution teams to varying degrees, ranging from a largely
autonomous unit in Liberia to ad hoc teams of expert attorneys in the Directorates of Public Prosecution (DPPs) in Kenya and Uganda.

Despite development of these specialized prosecution teams, researchers did not detect any successful efforts by state prosecutors to try conflict-period sexual violence in domestic courts. Although national truth commissions and commissions of inquiry in the four countries have retrospectively addressed sexual violence that occurred during conflict periods, they could not themselves prosecute and convict perpetrators. Thus far, the only observable efforts to bring conflict-period sexual violence into national courts have been initiated by civil society organizations. Their efforts include constitutional litigation in Kenya and the work of a Liberian human rights group to build cases for prosecution abroad.

**Considerations for International Crimes of Sexual Violence**

This research highlighted five key considerations for domestic accountability for sexual violence committed as an international crime.

1. **Improving survivors’ ability to report crimes of sexual violence committed during emergency periods can promote accountability for international crimes of sexual violence later.** This is because basic reporting barriers such as social perceptions of sexual violence, lack of security or mobility, and even fear of the authorities can impede not only survivor access to care, but also the collection of evidence for later prosecution, as well.

2. **Witness protection is a daunting, but essential, task that may require new approaches in cases of international crimes.** While providing safety to sexual violence survivors during peacetime is already a challenging proposition, sheltering them from armed groups during conflict periods can pose new levels of security risk. Moreover, risk may persist—or even increase—well into the future if there is later threat of prosecution. More thinking is needed about ways to protect survivors and other witnesses who testify about war crimes, crimes against humanity, and acts of genocide. Such cases may require specific shelter interventions because accused parties are likely to be armed or politically powerful. Also, in cases of mass atrocity, there may be multiple witness and survivors to protect at a time.

3. **The health sector plays a critical role in response to, and accountability for, conflict-period sexual violence.** Nurses, doctors, and other healthcare providers often treat survivors of sexual violence during periods of armed conflict; their documentation of these injuries are vital sources of evidence—even in cases of sexual violence committed as an international crime. For example, medical records can be aggregated to form a picture of the type of violence affecting an entire community. If patterns emerge, this may form valuable evidence of a crime against humanity. However, as discussed later in this report, the expectation that medical and humanitarian care providers act as evidence-collectors raises important ethical questions.

4. **The emergence of specialized health, police, prosecution, and judicial units has potential to optimize accountability for sexual violence as an international crime.** These units can produce a high degree of expertise among a small pool of practitioners, though their impact warrants further evaluation. Also, where units for sexual and gender-based violence exist on one hand and for international crimes on the other, collaboration should help address the intersecting issue of sexual violence as an international crime.

5. **Donors focused on sexual violence committed during conflict periods can help sow the seeds for long-term domestic response.** Research indicated a perceived need to fund programming for sexual
and gender-based violence support services and accountability efforts, generally, while also integrating civil society efforts into existing community and government structures, to promote their sustainability in case private donor support declines. Further, donors are well positioned to promote vital efforts to coordinate response across health, police, and legal sectors.

**Recommendations**

Though not all survivors of sexual violence wish to engage the formal justice system, it is imperative that the legal process work well for those who do seek accountability in this way. At a minimum, this requires sensitive, survivor-centered approaches that offer support and protection throughout the reporting, investigation, and prosecution stages. Domestic actors from across health, legal, judicial, and community sectors bear the greatest responsibility and potential for responding to survivors’ claims of sexual violence both during and after periods of armed conflict and other emergencies.

Based on these findings, the Human Rights Center makes the following recommendations:

**To Legislators:**

1. Domesticate the Rome Statute, if this has not already been done. Reconcile domestic gender-violence laws with Rome Statute definitions and provisions. Clearly designate a judicial venue to have jurisdiction over international crimes and facilitate that chamber’s operation.
2. Support legal aid for the indigent or otherwise marginalized. Allocate resources within national budgets for new and existing legal aid programs to increase access to justice, particularly in rural areas where services are often limited.
3. Pass legislation that mandates meaningful witness protection for those testifying in cases of sexual violence or international crimes. Kenya’s Witness Protection Agency is an example of one attempt to create a national witness protection program.

**To Ministries of Health:**

1. Allocate sufficient resources within the ministry budget to address sexual violence to reduce donor dependence and ensure sustainability. To assess resource needs, include sexual violence in the ministry’s national data collection efforts, and incorporate sexual violence into health sector strategic plans.
2. Train healthcare providers in the provision of comprehensive clinical care for sexual violence. Training should be based on national guidance where available, should include specific evidence-collection skills, and should be integrated into regular curricula at health training institutions. Strengthen efforts to train providers at local health centers to increase access to care beyond hospitals.
3. Coordinate with local organizations and groups providing assistance to sexual violence survivors to develop appropriate training materials and adequate response and referral mechanisms to and from health care facilities.
4. Develop special clinical management and psychosocial support protocols that respond to the needs of child and male survivors of sexual violence. Integrate these procedures into national guidance, training materials, and program design.
5. Address barriers to health providers’ participation as expert witnesses in trials, including coverage of transportation costs, necessary time off, and adequate preparation to testify and understand court processes.

6. Facilitate dialogue among health policymakers, healthcare providers, prosecutors, and law enforcement to identify mechanisms and measures that healthcare providers can take to collect, document, and store evidence in emergency contexts. Develop context-specific, survivor-centered protocols regarding priority evidence that should be collected and stored for future investigations. The provision of post-rape care in emergency settings should be integrated into the ministry’s national guidelines, training, and planning.

To Ministries of Justice:
1. Develop and implement witness protection and support measures, including in camera testimony, name redaction, and victim accompaniment. Improve court practice through judicial guidance where necessary. Allocate sufficient resources within the Ministry budget to support implementation of these procedures. Address specific support needs of particularly vulnerable victims and witnesses, such as children.

2. Support the evaluation of specialized courts or chambers that adjudicate crimes of sexual violence. Develop reasonable metrics that do not focus exclusively on numbers of convictions.

3. Identify the appropriate domestic venue for the adjudication of international crimes and provide relevant judges with ongoing training in international criminal law, including that relevant to sexual violence as an international crime.

To Ministries Responsible for Gender Affairs:
1. Organize and support cross-sectoral training for healthcare providers, law enforcement, and prosecution units on the sensitive collection of evidence required to prove crimes of sexual violence, including sexual acts committed as a war crime, a crime against humanity, and an act of genocide. Training curricula and materials should address and clarify any disparities between current gender-violence laws and Rome Statute provisions on sexual violence.

2. Allocate specific budget lines to support development of safe shelter programs to meet the protection needs of survivors, particularly those who agree to report and follow through with the legal process.

3. Improve referral and coordination by mapping available services within communities and by identifying and/or developing clear referral pathways for medical care, psychosocial support, police, legal aid, safe shelter, and other support services. Disseminate this information to key actors and the public and hold convenings that strengthen cross-sectoral partnerships.

To Heads of Law Enforcement:
1. Improve police capacity and sensitization to respond to domestic and international crimes of sexual violence by incorporating both topics into the core curricula at police academies, monitoring for competence, and providing periodic refresher courses to all ranks of officers.

2. Develop clear guidance tools on the sensitive investigation of crimes of sexual violence, including international crimes of sexual violence.
3. Allocate funds for basic materials and equipment required for the investigation of sexual violence and other crimes.
4. Facilitate processes through which officers in specialized gender-based violence police units can support non-specialized police officers in responding to cases of sexual and gender-based violence in areas beyond the reach of the specialized units.
5. Cross-train specialized police units that focus on either sexual and gender-based violence or international crimes. Establish mechanisms that enable joint investigations and consultation between such units in future emergency periods. Establish guidelines by which non-specialized police officers can refer possible sexual and gender-based crimes or international crimes to relevant specialized units.
6. Develop guidance for investigation of sexual violence committed against members of specific populations, including children (boys and girls), men, and refugees and other forcibly displaced persons. Guidance should include sensitive interviewing techniques and should be incorporated into police training institutions to improve competence.
7. Facilitate evaluation of the role, capacity, and impact of specialized police units focused on sexual and gender-based violence. Review the ways in which specialized police units relate to the rest of the national police force to identify points of collaboration and mutual support.

To Chief Prosecutors and Directors of Public Prosecution:
1. Work closely with investigators to plan sexual violence investigations according to evidentiary requirements and provide immediate feedback on initial dossiers. Provide ongoing feedback on the quality of witness statements and forms completion to help police officers and healthcare providers improve their future statement-taking and case documentation.
2. Consider collaboration with civil society attorneys with expertise in sexual violence cases, possibly permitting them to co-counsel with state prosecutors or otherwise support sexual violence trials.
3. Facilitate cross-training of specialized units focused on sexual and gender-based violence crimes and international crimes, and enable resource sharing. Establish mechanisms that enable joint prosecution of future international crimes of sexual violence.
4. Enable specialized prosecution units, where they exist, to interface regularly with non-specialized prosecutors for training and exchange on sexual violence and international crimes, particularly in rural areas.
5. To the extent permitted, support expert witnesses by preparing them to testify in court.

To Non-Governmental Organizations and Civil Society Organizations Addressing Sexual Violence
1. Seek out domestic and international partnerships to build coalitions and maximize resources and political momentum when seeking innovative litigation and prosecution of conflict-period sexual violence.
2. Implement programs, campaigns, and activities aimed at changing social norms to reduce stigma and otherwise create an enabling, supportive environment for survivors to report sexual violence.
3. Develop creative strategies to overcome structural barriers to reporting sexual violence. In conflict settings, given additional security and mobility challenges, sexual violence responses should focus on facilitating immediate access to care and support.
4. Work closely with community leaders, elders, and other community justice actors to develop gender-sensitive community justice processes; establish clear referral pathways to healthcare, police, and legal services; and clarify the relationship between the formal and informal justice systems.

Recommended Cross-Sectoral Actions

To Civil Society and Government Entities Focused on Sexual and Gender-Based Violence:

1. Develop standard operating procedures and cross-sectoral training based on procedures that address survivor support, collection of evidence, and legal process requirements for healthcare providers, forensic analysts, police, prosecutors, and judges within communities. Training and procedures should include special measures for response during periods of conflict or other emergency.

2. Harmonize healthcare and police processes related to documentation of sexual violence and clarify relevant procedures for their completion and use. Disseminate information and raise awareness among key actors about who can conduct a forensic examination, complete the examination forms, and testify in court.

To Humanitarian Actors and National and Local Governments:

1. Develop closer collaboration and coordination on work plans, budgeting, and activities related to sexual violence response to ensure adequate coverage, reduce duplication of services, and build long-term capacity.

2. Humanitarian actors should partner with local government authorities and community leadership structures to ensure sustainability of sexual violence response mechanisms.

To Donors and United Nations Agencies:

1. Support cross-sectoral convenings and trainings that improve maintenance of the “chain of custody” of evidence in sexual violence cases, inviting representation from health, law enforcement, forensic, prosecution, and judicial sectors.

2. Support training on domestic and international sexual violence crimes for both specialized and non-specialized investigators, prosecutors, and judges, since any of these groups may be called upon to respond to these crimes in times of emergency.

3. Fund further research on the following topics:
   a) The use of evidence in sexual violence cases brought both under domestic penal or gender-violence laws or under international crimes laws.
   b) The rigorous evaluation of specialized units focused on sexual and gender-based violence and international crimes.
   c) The need for, and availability of, witness support and protection measures in cases of sexual violence.
   d) The identification of service needs of specific groups of sexual violence survivors, including children and men.
   e) The evaluation of interventions to prevent sexual violence in humanitarian settings.