

REDRESS

Ending Torture. Seeking Justice for Survivors

87 Vauxhall Walk, London, SE11 5HJ, tel: 020 7793 1777; email for follow-up: beini@redress.org

Written Evidence Submitted to the House of Lords Select Committee on Sexual Violence in Conflict

18 September 2015

INTRODUCTION

1. The Redress Trust (REDRESS) is an international human rights organisation whose mandate is to seek justice for survivors of torture and related international crimes. REDRESS' work is comprised of direct representation of and provision of support to survivors, advocacy to strengthen survivors' access to justice, capacity building and research. This has included making written submissions to United Kingdom (UK) parliamentary committees on matters concerning torture and related international law matters in the past years.
2. REDRESS has a long experience of working with local civil society organisations and grassroots victim groups to combat impunity for sexual violence in conflict (SVC) and obtain reparations for survivors. Together with our partners, we litigate cases at the domestic, regional and international levels. REDRESS also advocates for victim rights to be reflected in the procedures of national and international courts, including the International Criminal Court (ICC).
3. REDRESS welcomes the initiation of an inquiry into the UK's policy and practice of preventing sexual violence in conflict. In this submission, REDRESS responds to the Call for Evidence issued by the House of Lords Committee on Sexual Violence in Conflict (the "Committee").
4. Given the focus of REDRESS' field work, the evidence presented herein is mainly based on REDRESS' analysis of SVC issues in Kenya, Uganda and the Democratic Republic of the Congo (DRC). The submission also proposes recommendations to be made by the Committee to the Foreign & Commonwealth Office (FCO) to strengthen the on-going efforts to combat SVC.

EXECUTIVE SUMMARY AND SUMMARY OF RECOMMENDATIONS

5. The consequences of SVC on victims, their families and communities are wide-ranging. To enable victims to participate in a judicial process, their needs have to be addressed through a **holistic victim support scheme** which incorporates psycho-social support, financial assistance, translation, protective measures, free legal representation, and other necessary services before, during and after the trial. As part of its continuing support to the eradication of SVC, HMG should develop a best practice model and support the institutionalisation of such services.
6. At the end of a judicial process, judgments are issued awarding reparation and/or convicting the accused to a prison sentence. The **enforcement of such decisions** is essential to the lives of SVC victims. HMG should help states to identify the obstacles to effective enforcement and support them in overcoming them.
7. Despite numerous complaints against **international peacekeepers**, not all troop-contributing states are investigating and prosecuting suspects. Additionally, many states are not sufficiently reporting on the outcomes of their efforts. HMG should actively engage with the UN to work to remove all loopholes impeding investigations and prosecutions and promote compulsory audits of troop contributing countries. HMG should also ensure that the necessary legal and procedural frameworks are in place so that any allegations concerning UK troops operating abroad can be promptly investigated.
8. SVC can be **investigated and prosecuted** at the national level and/or international level. More needs to be done on both fronts. At the national level, the lack of capacity, resources and/or political will pose barriers to accountability for SVC. They reinforce the factors, such as social stigma, poverty, shame, and mistrust in authorities, which hinder victims from seeking justice. HMG should offer continuous training, support civil society and increase the pressure on states by setting relevant benchmarks for bilateral development aid.
9. At the international level, little progress has been made to carry forward the legacy of previous *ad hoc* tribunals in prosecuting SVC. The **International Criminal Court** has not yet issued a conviction for gender crimes due to the belated introduction of SVC evidence and for other related reasons. HMG should extend support to international mechanisms by providing resources, promoting cooperation of states and building capacity of local actors to document evidence of SVC as part of a holistic approach.

I. Needs of survivors

10. The consequences of SVC on victims, their families and communities are wide-ranging.¹ SVC affects victims' physical and psychological well-being and also impacts on their economic status and their standing in society.² As a result, victims have multiple needs, ranging from the need for medical treatment and counselling to vocational training and/or income-generating measures.
11. This submission focuses on victims' needs in the context of their participation in justice processes. Victims often have a strong interest to engage in the prosecution of the alleged perpetrators and/or in seeking reparations.³ However, certain pre-conditions must be met to enable them to participate meaningfully.

(1) Victims need holistic support throughout the justice process

12. Most of the victims interviewed by REDRESS in Uganda, Kenya and the DRC have limited education. Their financial situation is precarious and they live in remote areas far away from courts. Judicial processes, on the other hand, are complex and resource intensive barring many SVC victims from participating.⁴ To overcome these hurdles, SVC survivors who want to engage in judicial procedures need holistic support before, during and after the trial.
13. Many jurisdictions allow victims to be represented by a lawyer and some grant victims the right to legal aid.⁵ However, merely covering assistance in dealing with the legal aspects of the case is rarely enough. Being part of a judicial process can cause great stress to SVC victims, especially when they are called to testify.⁶ Additionally, many victims do not have the means to pay for the necessary costs, for example for travelling to the court, and some do not speak the language of the trial.⁷ SVC victims often fear for their security, especially in an instable post-conflict context where state structures are not in place.⁸ Therefore, a holistic support scheme needs to incorporate psycho-social support, financial assistance for court fees, transport, and other costs, support for child care, translation services, and protective measures, in addition to free legal representation.

¹ See overview of consequences in: Nicola Jones et al., Overseas Development Institute, *The fallout of rape as a weapon of war - The life-long and intergenerational impacts of sexual violence in conflict*, June 2014, available at http://cdn.basw.co.uk/upload/basw_100421-5.pdf.

² *Ibid.*

³ For example, at the Extraordinary Chambers in the Courts of Cambodia 3,866 victims are participating in the current war crimes case on trial, see statistics at <http://www.eccc.gov.kh/en/statistics-civil-party-applicants-case-file>.

⁴ See for example description of complex legal procedures in the DRC in: REDRESS communication to the African Commission on Human and People's Rights, S.A. v. DRC, No. 502/14, available at <http://www.redress.org/downloads/engcommunication-sa-v-drc20-nov-2014.pdf>.

⁵ REDRESS, *Victim Participation in Criminal Law Proceedings – Survey of Domestic Practice for Application to International Crimes Prosecutions*, September 2015, available at <http://www.redress.org/downloads/publications/1508Victim%20Rights%20Report.pdf>, pp. 82-83.

⁶ See for example experience of rape victims who testified at the International Criminal Tribunal for the Former Yugoslavia and before domestic courts in Bosnia and Herzegovina: Medica Mondiale, *The Trouble with Rape Trials – Views of Witnesses, Prosecutors and Judges on Prosecuting Sexualised Violence during the War in the former Yugoslavia*, December 2009, available at http://www.medicamondiale.org/fileadmin/redaktion/5_Service/Mediathek/Dokumente/English/Documentations_studies/medica_mondiale_and_that_it_does_not_happen_to_anyone_anywhere_in_the_world_english_complete_version_dec_2009.pdf, p. 56 ff.

⁷ See for example obstacles in the DRC: FIDH, *DRC – Victims of sexual violence rarely obtain justice and never receive reparation*, October 2013, available at: https://www.fidh.org/IMG/pdf/rapport_rdc.pdf, p. 49 ff.

⁸ On protection issues for SVC victims see: University of California et al., *Safety Denied: Victim and Witness Protection in Sexual Violence Cases*, May 2011, available at <http://www.aidsfreeworld.org/Our-Issues/Sexual-Violence/~media/Files/Sexual%20Violence/Witness%20Protection%20Paper%20for%20SOA%20Workshop.pdf>.

14. The participation in a judicial process starts long before the first day of trial with the filing of a complaint or claim for damages. Support schemes need to be accessible from the moment where victims decide to engage in the judicial process. Similarly, SVC victims need support after a judgment is issued, for example when it comes to enforcing the judgment.⁹ For their participation to be an empowering process, they should not be simply forgotten after the trial ends.¹⁰ Any holistic support scheme needs to factor in follow-up measures.

15. We encourage the Committee on SVC to call upon HMG to:

- ***As a complement to the PSVI tools, develop a best practice model for a holistic victim support scheme for criminal and/or civil judicial procedures:*** *The FCO has developed and published a comprehensive manual for practitioners: the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, which is based on best practices. Complementary to this manual which mostly targets investigators, police and prosecutors, there should be a manual for service providers on how to support victims in a coordinated fashion throughout legal procedures. Such a manual should collect the best practices with regard to service provision but also with regard to a holistic approach. Such a manual will at the same time serve the purpose of assisting governments to set up holistic support schemes.*
- ***Promote and support the establishment and institutionalisation of a holistic support scheme based on this model:*** *The FCO has promoted the use of the International Protocol by supporting trainings in various conflict-affected countries. Similarly, the holistic support scheme model could be used to train stakeholders in relevant countries. Additionally, technical assistance could be offered to governments which seek to establish and institutionalise the services for SVC victims based on the best practice model.*

(2) Victims need judicial decisions to be enforced

16. At the end of a judicial process, judgments are issued which may contain an order of reparations and/or a conviction and sentence. The enforcement of such judgments and orders is essential to the lives of SVC victims.

17. Survivors often find themselves in financially precarious situations because of their experience of SVC. For example, REDRESS spoke with a number of women in Uganda who were abducted as young girls and forced to become wives of rebel combatants. After years in captivity, they returned to their communities as single mothers without education and employment opportunities.¹¹ Court-awarded reparations, including monetary compensation, can help SVC victims rebuild their lives. However, in countries,

⁹ See below para. 11-13.

¹⁰ For example, lack of communication and follow-up with rape victims who testified at the International Criminal Tribunal for the Former Yugoslavia led to disappointment about the judgment, see: Nicola Henry, *Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence*, International Journal for Transitional Justice, Vol. 3, 2009, available at <http://ijtj.oxfordjournals.org/content/3/1/114.abstract>, p. 131.

¹¹ On needs of SVC survivors in Uganda see also: ICTJ, *Confronting Impunity and Engendering Transitional Justice Processes in Northern Uganda*, June 2014, available at <https://www.ictj.org/sites/default/files/ICTJ-Uganda-GenderBriefing-New-2014.pdf>.

such as the DRC, the state fails to pay damages despite court orders in favour of SVC victims.¹²

18. SVC victims' security, especially after having testified against an alleged perpetrator, is often highly dependent on the imprisonment of the convicted person. However, in DRC, for example, prison escapes are common due to a lack of security measures and corruption.¹³ If enforcement of the sentence is not guaranteed, many SVC victims will shy away from filing complaints and from participating in the process.

19. *We encourage the Committee on SVC to call upon HMG to*

- ***Engage in a dialogue about the obstacles to the effective enforcement of judicial decisions:** To be able to ensure effective enforcement, states need to first analyse why judicial decisions are not enforced and who the key players are to change this. As part of its foreign policy, HMG could encourage relevant states to embark on such an exercise and, where possible, provide technical support, for example for the establishment of a database to monitor enforcement.*
- ***Offer support to the relevant authorities on how to best overcome these obstacles:** Once the obstacles to the effective enforcement of judicial decisions are identified, states need to develop solutions to address them. HMG could provide advice during the process of finding solutions, for example by promoting learning exchange with countries which have developed necessary solutions. During the implementation of the solutions, HMG could help monitor the steps taken and, where necessary, offer additional technical support.*

II. Peacekeeping

20. As the Call for Evidence references in its question no. 8, SVC is not only committed by warring armed groups or local military forces but often involve peacekeeping forces. Current incidents of sexual violence allegations made against international peacekeepers confirm the continued prevalence of these crimes. As recent as April 2015, allegations of sexual abuse of children by (non-UN) peacekeepers in the Central African Republic have been made public.¹⁴ Later this year, Amnesty International raised allegations of rape of a 12-year old girl by the UN peacekeepers in the same country.¹⁵

21. The UN Secretary-General's report to the General Assembly on sexual abuse and exploitation in the UN system records a total of 51 new complaints against at least 60 civilian and military UN personnel in 2014 out of which 47% were filed against military

¹² See REDRESS communication to the African Commission on Human and People's Rights, S.A. v. DRC, No. 502/14, available at <http://www.redress.org/downloads/engcommunication-sa-v-drc20-nov-2014.pdf>.

¹³ US Department of State, *2014 Human Rights Report: Democratic Republic of Congo*, June 2015, available at <http://www.state.gov/documents/organization/236558.pdf>, p. 4; Al Jazeera, *Mass jail break as DR Congo violence worsens*, 19 October 2014, available at <http://www.aljazeera.com/news/africa/2014/10/mass-jail-break-as-dr-congo-violence-worsens-20141019843356169.html>.

¹⁴ See overview of events in: Aids-Free World, *Submission to the external independent review panel*, 15 July 2015, available at <http://static1.squarespace.com/static/514a0127e4b04d7440e8045d/t/55b279d2e4b0981127c2b55b/1437759954603/External+Independent+Review+Submission+-+15+July+2015.pdf>.

¹⁵ Amnesty International, *CAR: UN troops implicated in rape of girl and indiscriminate killings must be investigated*, 11 August 2015, available at <https://www.amnesty.org/en/latest/news/2015/08/car-un-troops-implicated-in-rape-of-girl-and-indiscriminate-killings-must-be-investigated/>; see also BBC, *UN inquiry into Central African Republic child rape claim*, 12 August 2015, available at http://www.bbc.co.uk/news/world-africa-33880414?utm_source=Saithru&utm_medium=email&utm_term=*Morning%20Brief&utm_campaign=New%20Campaign.

contingents.¹⁶ It should be noted, however, that sexual violence is usually underreported.¹⁷ Between 2008 and 2013, 62% of all allegations concerned military and police forces.¹⁸

(1) International peacekeepers are insufficiently prosecuted

22. According to the UN Model Memorandum of Understanding which is signed by troop-contributing countries as a bilateral contract with the UN, the authority and responsibility to prosecute suspect members of military contingents lies exclusively with the troop-contributing countries.¹⁹ As they enjoy immunity for their conduct in the course of their official duty, the host states cannot exercise criminal jurisdiction over such personnel.²⁰
23. More than one-third of the complaints recorded in 2014 allege sexual activities with minors or non-consensual sexual activities with an adult.²¹ Despite the fact that in most jurisdictions such conduct would constitute a criminal offense, such as rape or statutory rape, only 22 out of 65 proven perpetrators received prison sentences according to reporting by troop-contributing countries for the period of 2010 to 2012.²² Additionally, there is no consistency in the type of sanction imposed when allegations are proven, some of which are limited to salary cuts or demotions.²³
24. One of the challenges for investigations and prosecutions is the difficulty to obtain evidence in the host country where troop-contributing countries may not have the authority to undertake investigative measures.²⁴ The UN Office of Internal Oversight Services has found that another blockage for investigations and prosecutions lies in the lengthy referral process from the field missions to the decision-makers in the capitals of the member states.²⁵

25. We encourage the Committee on SVC to call upon HMG to

¹⁶ UN Secretary-General's report to the General Assembly, *Special measures for protection from sexual exploitation and abuse*, A/69/779, 13 February 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1504176.pdf>, para. 53 and Annex IV.

¹⁷ UN Expert Mission to Evaluate Risks to SEA Prevention Efforts in MINUSTAH, UNMIL, MONUSCO, and UNMISS, Final Report, 3 November 2013, available at http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/~/_media/Files/Peacekeeping/2013%20Expert%20Team%20Report%20FINAL.pdf, p.13; UN Office of Internal Oversight Services Inspection and Evaluation Division, *Evaluation Report – Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations*, 15 May 2015, available at <https://oios.un.org/page?slug=evaluation-report>, p.

¹⁸ UN Office of Internal Oversight Services Inspection and Evaluation Division, *Evaluation Report – Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations*, 15 May 2015, available at <https://oios.un.org/page?slug=evaluation-report>, p. 10.

¹⁹ Article 7 quinques (1) of the Revised draft model memorandum of understanding, A/16/10 (Part III), 12 June 2007, available at <https://cdu.unlb.org/Portals/0/Documents/KeyDoc8.pdf>.

²⁰ See Section 11(a) of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, available at https://treaties.un.org/doc/Treaties/1946/12/19461214%2010-17%20PM/Ch_III_1p.pdf.

²¹ UN Secretary-General's report to the General Assembly, *Special measures for protection from sexual exploitation and abuse*, A/69/779, 13 February 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1504176.pdf>, para. 20.

²² UN Office of Internal Oversight Services Inspection and Evaluation Division, *Evaluation Report – Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations*, 15 May 2015, available at <https://oios.un.org/page?slug=evaluation-report>, para. 39.

²³ *Ibid*, para. 39.

²⁴ Carla Ferstman, *Criminalizing Sexual Exploitation and Abuse by Peacekeepers*, September 2013, available at <http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf>, p.4.

²⁵ UN Office of Internal Oversight Services Inspection and Evaluation Division, *Evaluation Report – Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations*, 15 May 2015, available at <https://oios.un.org/page?slug=evaluation-report>, para. 10-12.

- *Actively engage with the UN Special Committee on Peacekeeping Operations and with the Secretary-General in order to ensure that an adequate framework is put in place so that loopholes currently impeding investigations and prosecutions are closed. In particular, the UN should be encouraged to work with states to institute better vetting processes so that only persons of the highest standing are selected for sensitive missions. Troop contributing countries should have adequate domestic legislation and procedures in place to deal with SVC incidents, prior to the UN agreeing to receive troops from those countries.*

- *If the UK deploys troops abroad, whether under the guise of a UN peacekeeping operation, under NATO or other multilateral or bilateral arrangements, it should include personnel with expertise on investigating SVC in the troop deployment so that timely investigations and prosecutions can occur when complaints are made:²⁶ Timely investigations by experts on investigating SVC increase the likelihood of collecting valuable and useful evidence. If troops deployed by the UK already have personnel with the required expertise, these individuals who are already in the country of the alleged crime can quickly reach the crime site and speak to victims or witnesses.*

(2) Troop-contributing countries are not sufficiently audited

26. One way of ensuring that offenders are investigated and prosecuted is through public scrutiny of their efforts. By signing the UN Model Memorandum of Understanding, states agree to report on the outcome of the measures taken to deal with complaints of sexual abuse and exploitation.²⁷ However, not all troop-contributing countries follow suit, prompting the UN Secretary-General to call on Member States to respect their reporting duties.²⁸

27. Once a rigorous reporting system is established, more pressure can be exerted on troop-contributing countries to fulfil their obligation to hold peacekeepers accountable for sexual violence. For example, countries with a bad prosecution record could be excluded from contributing troops in the future.²⁹ They could also be barred from receiving premiums for the contribution of implicated troops.³⁰ If bad prosecution records are made public, it would also shame the respective country and create public pressure.³¹ The UN Secretary-General has expressed his intention to provide country-

²⁶ Recommended by UN Secretary-General to member states in his report to the General Assembly, *Special measures for protection from sexual exploitation and abuse*, A/69/779, 13 February 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1504176.pdf>, para. 49; and by the UN Office of Internal Oversight Services Inspection and Evaluation Division in its *Evaluation Report – Evaluation of the Enforcement and Remedial Assistance Efforts for Sexual Exploitation and Abuse by the United Nations and Related Personnel in Peacekeeping Operations*, 15 May 2015, available at <https://oios.un.org/page?slug=evaluation-report>, para. 69.

²⁷ Article 7 sexiens of the Revised draft model memorandum of understanding, A/16/10 (Part III), 12 June 2007, available at <https://cdu.unlb.org/Portals/0/Documents/KeyDoc8.pdf>.

²⁸ UN Secretary-General's report to the General Assembly, *Special measures for protection from sexual exploitation and abuse*, A/69/779, 13 February 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1504176.pdf>, para. 53; see also UN Expert Mission to Evaluate Risks to SEA Prevention Efforts in MINUSTAH, UNMIL, MONUSCO, and UNMISS, Final Report, 3 November 2013, available at http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/~/_media/Files/Peacekeeping/2013%20Expert%20Team%20Report%20FINAL.pdf, p.20.

²⁹ See Carla Ferstman, *Criminalizing Sexual Exploitation and Abuse by Peacekeepers*, September 2013, available at <http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf>, p.12.

³⁰ See UN Secretary-General to member states in his report to the General Assembly, *Special measures for protection from sexual exploitation and abuse*, A/69/779, 13 February 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1504176.pdf>, para. 54.

³¹ See Carla Ferstman, *Criminalizing Sexual Exploitation and Abuse by Peacekeepers*, September 2013, available at <http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf>, p.12.

specific information on prosecution rates in his future public reports to the General Assembly.³²

28. We encourage the Committee on SVC to call upon HMG to

- **Record, report and publish information about any complaints made against UK forces operating overseas and the outcomes of the cases:** *The UK should aspire to be a model for other states on recording and reporting complaints and adequately responding to them.*
- **Promote and support compulsory and public audits of troop-contributing countries by the UN:** *Being a weighty member of the UN, the UK should use its influence to push for compulsory and public audits in order to ensure zero tolerance of sexual violence.*

III. Accountability

29. SVC can be investigated and prosecuted at the national level by the respective domestic judicial systems and/or at the international level by international or hybrid courts, including the International Criminal Court (ICC). REDRESS has found that more needs to be done on both levels.

(1) Little progress is made at the national level

30. Whereas some international and hybrid courts, such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda, have issued ground-breaking convictions on gender crimes in the past,³³ many states have yet to live up to their obligation to investigate and prosecute SVC at national level as enshrined in the UN Security Council Resolution 1325 (2000)³⁴ and reiterated again in the latest UN Security Council Resolution 2122 (2013)³⁵ on this issue.

31. In Kenya, for example, despite widespread sexual violence committed during the post-election violence in 2007/2008, only a very limited number of cases were investigated and prosecuted.³⁶ REDRESS is supporting a constitutional petition which presents evidence for the failure of the Kenyan Government to take action against prevailing impunity.³⁷

32. In the DRC, on the other hand, some progress has been made in bringing perpetrators of SVC to justice.³⁸ However, between January and September 2014 alone, 11,796

³² See UN Secretary-General to member states in his report to the General Assembly, *Special measures for protection from sexual exploitation and abuse*, A/69/779, 13 February 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1504176.pdf>, para. 55.

³³ See overview of jurisprudence in: K. Alexa Koenig et al., Human Rights Center University of California Berkeley, *The Jurisprudence of Sexual Violence*, May 2011.

³⁴ UN Security Council Resolution, S/RES/1325 (2000), 31 October 2000, para. 11.

³⁵ UN Security Council Resolution, S/RES/2122 (2013), 18 October 2013, para. 12.

³⁶ Sosteness Franci Materu, *The Post-Election Violence in Kenya – Domestic and International Legal Responses*, 2015, p.111; ICTJ, *The Accountability Gap on Sexual Violence in Kenya: Reforms and Initiatives Since the Post-Election Crisis*, April 2014, available at <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Kenya-SGBVAccountability-2014.pdf>, p. 10f.

³⁷ COVAW et al. v. Attorney General of the Republic of Kenya et al., see <http://www.redress.org/cases/kenyan-sgbv-petitiona>.

³⁸ MONUSCO and OHCHR, *Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo*, April 2014, available at http://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US.

complaints of sexual violence were recorded in four provinces.³⁹ In view of this staggering number of incidents, the UN Special Representative to the Secretary-General on Sexual Violence in Conflict continues to call for systematic prosecution of such crimes.⁴⁰

(2) Barriers to accountability at the national level persist

33. There are a multitude of reasons why accountability for SVC is lagging behind at national level. The main obstacles can be found at the institutional level on the one hand and at the individual level on the other hand.
34. Looking at the state institutions mandated to investigate and prosecute SVC, there is often a lack of investigation skills. In countries such as Kenya the relevant bodies, including police and prosecutors, are not specifically trained on how to deal with sexual violence.⁴¹ The FCO's *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* is a useful and welcome tool for organisations such as REDRESS which train local actors. However, its impact needs to be reinforced with follow-up coaching after one-off trainings to allow for continued capacity building.
35. Additionally, state institutions often lack the necessary resources to investigate and prosecute SVC crimes. In the Eastern DRC, for example, the prosecution of cases is very much dependant on external funding from the UN or other organisations.⁴² The cases which eventually proceeded to a judgment were all backed by international organisations.⁴³ Sometimes the insufficient allocation of funds can be traced back to the lack of political will to ensure accountability for conflict-related violence in general. In Kenya, for example, previous commissions⁴⁴ mandated by the government to examine past mass atrocities called for the investigation and prosecution of crimes committed in the context of post-election violence but their recommendations have so far been ignored by the government whose members are suspected of having been involved in the violence.⁴⁵
36. Looking at the individual sphere of SVC victims, many factors, including social stigma, poverty, shame, mistrust in authorities, offers of out-of-court settlements, prevent women from reporting the crime and/or testifying at trial. In the DRC, for example, perpetrators can evade criminal prosecution by offering a goat or other material benefits to the family of the victim.⁴⁶ In statements taken by REDRESS and local

³⁹ Report of the Secretary-General to the UN Security Council on conflict-related sexual violence, S/2015/203, 23 March 2015, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_203.pdf, para. 23.

⁴⁰ *Ibid*, para. 27.

⁴¹ See for Kenya: ICTJ, *The Accountability Gap on Sexual Violence in Kenya: Reforms and Initiatives Since the Post-Election Crisis*, April 2014, available at <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Kenya-SGBVAccountability-2014.pdf>, p. 10.

⁴² ICTJ, *The Accountability Landscape in Eastern DRC – Analysis of the National Legislative and Judicial Response to International Crimes (2009-2014)*, July 2015, available at <https://www.ictj.org/sites/default/files/ICTJ-Report-DRC-Accountability-Landscape-2015.pdf>, p. 23 ff.

⁴³ See table of cases in: ICTJ, *The Accountability Landscape in Eastern DRC – Analysis of the National Legislative and Judicial Response to International Crimes (2009-2014)*, July 2015, available at <https://www.ictj.org/sites/default/files/ICTJ-Report-DRC-Accountability-Landscape-2015.pdf>, p. 41 ff.

⁴⁴ The Commission of Inquiry into Post-Election Violence released a report on 15 October 2008, available at http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf; the Truth, Justice and Reconciliation Commission released its report in May 2013, available at <http://www.kenyamoja.com/tjrc-report/>.

⁴⁵ Amnesty International, *Crying for Justice – Victims' Perspectives on Justice for the Post-Election Violence in Kenya*, July 2014, available at <https://www.amnesty.org/en/press-releases/2014/07/kenya-victims-still-seeking-justice-post-election-violence/>, p. 24 ff.; ICTJ, *For All Kenyans to Be Equal, Kenyatta Must Move Beyond Words on Justice*, 5 August 2015, available at: <https://www.ictj.org/news/all-kenyans-be-equal-kenyatta-must-move-beyond-words-justice>.

⁴⁶ FIDH, *DRC – Victims of sexual violence rarely obtain justice and never receive reparation*, October 2013, available at: https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf, p. 55.

partners with 26 SVC survivors in three regions in Kenya, some women who wanted to report were sent away while others were discouraged from reporting by the disrespectful behaviour of the police towards them. Some of the SVC survivors interviewed by REDRESS in Kenya also stated that they refrained from reporting their experience of rape because either the perpetrator was a member of the police/special forces or because they would risk to be abandoned by their husbands.

37. We encourage the Committee on SVC to call upon HMG to:

- ***Offer training and follow-up coaching on investigation and prosecution of SVC to investigative or judicial bodies specialized in dealing with international crimes:*** Capacity building requires long-term engagement by those who provide training and those who receive training. Building on the previous achievements in capacity building, the FCO should shift its current approach of one-off trainings to a more durable approach of supporting specific institutions over a period of three to five years. During this time, different methods of capacity building, such as mentoring or coaching, can be used depending on the needs of the counterpart.
- ***Use the level of implementation of Security Council Resolution 1325 (2000) and its sister resolutions as a benchmark for providing bilateral development aid:*** HMG is an important provider of development aid to many conflict-affected countries. Setting benchmarks for the achievement of certain goals as a requirement for funding is a common tool used by donor countries. The UK Government should use this leverage to ensure that partner states are complying with their obligation to investigate and prosecute SVC which are set out in the Security Council Resolution 1325 (2000) and its sister resolutions.
- ***Fund local civil society organisations and victims groups which assist victims to file complaints and participate in legal proceedings:*** Civil society organisations and victims groups are often the first point of contact for victims of SVC and sometimes the sole providers of support services. Through funding programmes such as through the Department for International Development (DFID), HMG should make sure that victims can continue to resort to such organisations where governmental structures are inadequate. This should be complementary to the assistance provided to the states as recommended above.

(3) Insufficient progress is made at the international level

38. On the international level, much progress has been achieved by the international tribunals in the Balkans and in Rwanda in holding perpetrators accountable for SVC with convictions of rape as a crime against humanity and as a form of genocide.⁴⁷ The International Criminal Court (ICC), however, has not convicted an accused of rape or other forms of SVC to date. The reasons for this differ depending on the case.
39. In the case against Thomas Lubanga for crimes committed in the DRC, the indictment did not include any allegations of sexual violence.⁴⁸ In the course of the trial, however,

⁴⁷ See overview of jurisprudence in: K. Alexa Koenig et al., Human Rights Center University of California Berkeley, *The Jurisprudence of Sexual Violence*, May 2011.

⁴⁸ Pre-Trial Chamber I, *Decision on the confirmation of charges*, ICC-01/04-01/06-803-tEN, 29 January 2007, available at <http://www.icc-cpi.int/iccdocs/doc/doc266175.PDF>.

former child soldiers testified about their experience of sexual violence which prompted the victims' lawyers to request the addition of gender crimes to the trial.⁴⁹ This request was eventually rejected by the Appeals Chamber because it was of the view that the applicable law at the ICC did not allow the Trial Chamber to add and try factual allegations not contained in the indictment.⁵⁰ As a result, Mr. Lubanga was not convicted of gender crimes.⁵¹

40. The Lubanga case shows the importance of including SVC at the outset of investigations and incorporating gender crimes in the prosecutorial strategy. In view of the fact that in the majority of past and current conflicts sexual violence incidents were and are reported, investigations need to be conducted on the assumption that some form of SVC occurred. In an effort to learn from this experience, the ICC Office of the Prosecutor developed a policy paper on sexual and gender-based crimes which sets out the strategies for incorporating these crimes during investigation and prosecution.⁵² REDRESS welcomes the paper as a first step to improve accountability for SVC before the ICC but at the same time notes that success can only be measured by the level of implementation of the policy.
41. In the other DRC case against Germain Katanga, the Trial Chamber found that during an attack on a village in Eastern DRC, the attackers raped a number of women and held them in sexual slavery over a period of time.⁵³ However, the accused was acquitted of aiding and abetting these acts of sexual violence because the Trial Chamber was of the view that sexual violence did not form part of the common plan concocted by Katanga and the direct perpetrators before the attack.⁵⁴ Other crimes committed by the direct perpetrators, such as murder and pillaging, were considered to form part of the common plan and, consequently, Katanga was convicted to aiding and abetting these crimes.⁵⁵
42. At the 2014 Global Summit to End Sexual Violence in Conflict, the Women's Initiative for Gender Justice criticized the Katanga judgment's differentiation between sexual violence and other forms of violence as a bias against gender crimes:

“[...] what we see in this judgement, emblematic of so many cases, is a perhaps subconscious but clear bias requiring sexual violence to be a more explicit component of a common plan; that the preparation considered necessary to commit rape and sexual slavery is different from the preparation necessary to commit other crimes which occur simultaneously;

⁴⁹ See summary of events in: AMICC, *Deconstructing Lubanga, the ICC's First Case: The Trial and Conviction of Thomas Lubanga Dyilo*, 7 September 2012, available at http://www.amicc.org/docs/Deconstructing_Lubanga.pdf, p. 12 ff.

⁵⁰ Appeals Chamber, *Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court"*, ICC-01/04-01/06-2205, 8 December 2009, available at <http://www.icc-cpi.int/iccdocs/doc/doc790147.pdf>; for suggestions on possible legal avenues to amend the indictment see: Carla Ferstman, 'Limited charges and limited judgments by the International Criminal Court - who bears the greatest responsibility?', *International Journal of Human Rights* (2012) vol 12(5).

⁵¹ See final judgment issued by the Appeals Chamber, *Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction*, ICC-01/04-01/06-3121-Red, 1 December 2014, available at <http://www.icc-cpi.int/iccdocs/doc/doc1876833.pdf>.

⁵² Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014, available at <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

⁵³ Trial Chamber II, *Judgment pursuant to article 74 of the Statute*, ICC-01/04-01/07-3436-tENG, 7 March 2014, available at <http://www.icc-cpi.int/iccdocs/doc/doc1963464.pdf>, para. 958-1023.

⁵⁴ *Ibid*, para. 1663-1664.

⁵⁵ *Ibid*, para. 1657-1662.

and that the scale and volume of sexual violence may be rendered invisible by an incomplete assessment of the evidence.”⁵⁶

43. Following the judgment convicting Mr. Katanga, the Prosecution filed an appeal against the acquittal of the sexual violence charges but decided to discontinue this appeal after Katanga’s defence counsel withdrew their appeal.⁵⁷ It is unfortunate that the Prosecution eventually refrained from challenging this judgment which can potentially set a negative precedence for future trials involving gender crimes. The absence of SVC charges also pre-empts those victims from being eligible for reparations through the ICC.
44. Apart from the two aforementioned cases, nine on-going cases in five African countries include charges of gender crimes but these have not yet reached the stage of judgment.⁵⁸ In the case against Dominic Ongwen from Uganda, it was recently announced that the Prosecution is considering expanding the charges to include gender crimes.⁵⁹
45. The prosecution of SVC as war crimes or crimes against humanity has also been considered by several hybrid courts which are based on national laws but also apply international law. The Special Court for Sierra Leone which completed its mandate in 2013 is widely acknowledged as having contributed tremendously to the prosecution of gender crimes.⁶⁰ So far, the Extraordinary Chambers in the Courts of Cambodia has yet to fully address sexual violence committed by the Khmer Rouge.⁶¹ Earlier this year, the Central African Republic also decided to establish a hybrid court to prosecute international crimes.⁶² It remains to be seen how far this latest mixed tribunal will incorporate gender crimes.
46. In conclusion, insufficient progress has been made at the international level to carry forward the legacy of previous tribunals in prosecuting SVC. It is important that the UK which is a state party to the ICC and a major donor to hybrid courts support these mechanisms to advance SVC prosecutions as part and parcel of their mandates.

47. We encourage the Committee on SVC to call upon HMG to:

- ***Engage with and support the ICC and other mechanisms to prosecute international crimes, to ensure they have sufficient resources for the investigation and prosecution of SVC: As a state party to the ICC, a current donor to***

⁵⁶ Speech of Brigid Inder, Executive Director of Women’s Initiative for Gender Justice, at the Global Summit to End Violence in Conflict, *A critique of the Katanga Judgment*, 11 June 2015, available at: <http://iccwomen.org/documents/Global-Summit-Speech.pdf>, p.7.

⁵⁷ Office of the Prosecutor, *Prosecutor’s Appeal against Trial Chamber II’s “Jugement rendu en application de l’article 74 du Statut”*, ICC-01/04-01/07-3462, 9 April 2014, available at <http://www.icc-cpi.int/iccdocs/doc/doc1759535.pdf>; Office of the Prosecutor, *Notice of Discontinuance of the Prosecution’s Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga*, ICC-01/04-01/07-3498, 25 June 2014, available at <http://www.icc-cpi.int/iccdocs/doc/doc1794475.pdf>.

⁵⁸ These include the cases against Bosco Ntaganda in the DRC, Joseph Kony et al. in Uganda, Ahmad Muhammad Harun et al., Omar Hassan Ahmad Al-Bashir and Abdel Raheem Muhammad Hussein in Sudan, Simone Gbagbo et al. in Côte d’Ivoire, see list of charges for each case at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx.

⁵⁹ The Observer (Kampala), *Uganda: Dominic Ongwen Could Also be Charged with Sexual Crimes – ICC*, 3 August 2015, available at <http://www.observer.ug/news-headlines/39044-dominic-ongwen-could-also-be-charged-with-sexual-crimes-icc>.

⁶⁰ See Valerie Oosterveld, *Lessons from the Special Court of Sierra Leone on the Prosecution of Gender-Based Crimes*, in *Journal of Gender, Social Policy & the Law*, Volume 17 Issue 2, 2009, available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1029&context=jgspl>, p. 407-430.

⁶¹ See overview in Silke Studzinsky, *Victim’s Participation before the Extraordinary Chambers in the Courts of Cambodia*, in *Zeitschrift für Internationale Strafrechtsdogmatik*, Issue 10/2011, available at http://www.zis-online.com/dat/artikel/2011_10_627.pdf, p. 890-891.

⁶² See FIDH, *New Special Criminal Court: A Key Step Toward Justice*, 24 April 2015, available at <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/central-african-republic/new-special-criminal-court-a-key-step-toward-justice>.

the Extraordinary Chambers in the Courts of Cambodia and a potential future donor of the Special Court in the Central African Republic, HMG should continue funding efforts to investigate and prosecute gender crimes on the international level.

- ***Promote cooperation by other states parties with the ICC on SVC investigations:*** *Successful investigations of SVC by the ICC often relies on the willingness of national authorities to share evidence or allow ICC investigators to access sources of evidence. Consequently, states parties to the ICC have an obligation to cooperate with the ICC. In international forums and in bilateral meetings, HMG should continuously remind states parties to comply with this duty.*

- ***Build capacities of local actors in investigating and documenting SVC, in particular in areas the ICC or hybrid courts have little or no access to:*** *In areas which are difficult to access for investigators due to security reasons, language barriers, limited resources, or other reasons, local actors, such as civil society organisations or community leaders, are often ready to help collect evidence on SVC. In order to ensure that the process meets the necessary standards and the evidence can be used in court later on, their capacities need to be strengthened. Using the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, HMG should ensure training and mentoring of local actors in addition to the national authorities as recommended above.*