

Report on a workshop on improving cooperation during prosecution of conflict-related sexual violence

12 and 13 September, 2016

Nuremberg, Germany

Introduction

The International Nuremberg Principles Academy (Nuremberg Academy) is a foundation dedicated to the advancement of international criminal law. It is located in Nuremberg, the birthplace of modern international criminal law, and is conceived as a forum for the discussion of contemporary issues in the field. The mission of the Nuremberg Academy is to promote the universality, legality and acceptance of international criminal law. The foundation's main fields of activity include interdisciplinary research, trainings and consultant services specially tailored to target groups, and human rights education. The Nuremberg Academy places a special focus on the cooperation with countries and societies currently facing challenges related to international criminal law. The Nuremberg Academy was founded by the German Foreign Office, the Free State of Bavaria and the City of Nuremberg.

In furtherance of its mission, the Nuremberg Academy organizes fora for knowledge exchange on contentious and contemporary issues in international criminal law, and conducts capacity building in investigation and prosecution of core international crimes for justice sector actors at the national and international levels. Inadequate cooperation, or the total lack thereof, between courts and civil society organizations (CSOs) is a major hindrance to prosecution of international crimes, particularly wartime/ conflict-related sexual violence.

Accordingly, for the above reasons, the Nuremberg Academy conducted a workshop to explore ways of strengthening cooperation between judicial mechanisms and CSOs during prosecution of conflict-related sexual violence, and to examine best practices in cooperation. Broad concepts of CSOs and judicial mechanisms were adopted to include all non-state actors working in the field of sexual violence on one hand, and all judicial or quasi judicial fora adjudicating conflict-related sexual violence in some way.

As such, the workshop underscored the role and potential contribution of local and international CSOs to criminal trials. Participants explored the strengths and limitations of cooperation and how it could be strengthened. For instance, in addition to participating in judicial processes themselves, CSOs may identify witnesses/victims and address difficult issues relating to stigma, local customs and practices in order to encourage participation in trials. Simultaneously, all stakeholders must understand the inherent limitations of cooperation and anticipate the challenges involved. To illustrate, not all organizations would be willing to disclose their sources of information due to ethical considerations, security risks and unfavourable regulatory frameworks. In addition, several CSOs are not trained criminal

investigators, and even if they do receive such training, it may vary from scenarios envisaged by criminal prosecutors.

To address these questions, the workshop brought together individuals from national and international courts, NGOs, victim groups, prosecuting authorities, government agencies and academia to ponder the following topics:

- i. The role of local and international organizations in prosecution of sexual violence crimes;
- ii. Judicial practice in cooperating with CSOs during prosecution of sexual violence crimes;
- iii. Strategies and mechanisms of cooperation;
- iv. Addressing challenges and limitations to cooperation; and
- v. Recommendations and emerging policy considerations.

The workshop took place between 12 and 13 September 2016 in Nuremberg, Germany. It was arranged over two days with plenary sessions each morning, followed by a breakout session on the first day and group work on the last day. In all, the workshop provided a forum for reflection on best practices of cooperation between CSOs and judicial mechanisms during, and in the aftermath of conflict. Participants shared success stories and representatives of local and international judicial mechanisms highlighted existing pathways to cooperation, policies and anticipated forms of cooperation with CSOs.

This report summarizes the presentations and discussions that took place during the workshop and in the conclusion presents some practical recommendations based on issues identified by participants during the discussions and group sessions.

Day One

Understanding the diverse roles and mandates of judicial mechanisms and CSOs during prosecution of conflict-related sexual violence crimes

Sessions on the first day were organized under the theme ‘Understanding the diversity of the roles and mandates of courts and CSOs in the prosecution of sexual violence crimes.’ Panelists explored the diverse roles/mandates of CSOs and their potential contribution to prosecution of conflict-related sexual violence. The aim was to primarily ascertain ways of strengthening the role of CSOs by juxtaposing their mandates with those of judicial mechanisms.

Summary of presentations

Session One: The role of local and international organizations during prosecution of sexual violence crimes

The first session focused on the role CSOs can play during prosecution of conflict-related sexual violence at the national and international levels, and examined the benefit of adopting a ‘holistic’ approach in depth.

The potential role of CSOs during prosecution of conflict-related sexual violence is as varied as the CSOs’ mandates, and ranges from documentation of sexual crimes and facilitating contact between judicial mechanisms and victims to psycho-social care, socio-economic reintegration services and advocacy campaigns.

Looking at the role of CSOs in the prosecution of conflict-related sexual violence, it was emphasized that CSOs can and are indeed already involved in a number of interventions that aid the prosecution of perpetrators of sexual violence. For instance, Heal Africa – an NGO based in the Democratic Republic of Congo (DRC), offers a wide range of services for victims of sexual violence. In addition to providing medical care, for example gynecological services such as fistula repair, the organization counsels victims and has a range of programs addressing gender based violence, including committees where women feel safe to speak about their experiences. Subsequent prosecutions supported or initiated by Heal Africa when successful, embolden more victims to seek justice. Civil society work in the DRC has also forced state agencies to prosecute perpetrators. Following advocacy efforts and other interventions, Military Operational Courts tried several service men for sexual violence. CSOs were therefore encouraged to offer a whole range of services whenever possible.

It was noted that while some CSOs, particularly NGOs working in difficult contexts such as Sudan, have a wealth of information that would enhance prosecution of conflict-related sexual

violence crimes, international politics prevents, and in many ways threatens, any meaningful cooperation with international courts. It was acknowledged that international criminal justice has its limits. Rwanda and Sudan offer were cited as good illustrations. It was pointed out that stalemates such as those witnessed in Sudan inadvertently cause victims to mistrust the justice system and processes. As a strategy, CSOs in such situations were implored to partner with high profile figures – this strategy has yielded results in several situations. In the DRC, the plight of women was propelled to the international stage partly due to visits by the former United States Secretary of State, Hillary R. Clinton and United Nations Secretary General, Ban Ki-moon.

At the national level, the wide disparity between the number of crimes reported and actual cases that proceed to trial was attributed to failings of national judicial mechanisms. In the DRC and Nigeria for instance, only a handful of cases of the hundreds reported result in prosecutions due to massive corruption in both judicial systems. Predictably, several victims withdraw from cases after perpetrators provide them with gifts or money. In several instances law enforcement officers double as perpetrators.

In all, the role of CSOs during prosecution of conflict-related sexual violence was deemed as primarily dependent on the needs and accessibility of judicial mechanisms. The role of CSOs is further determined by capacity in terms of infrastructure and expertise. The security situation on the ground is also a contributing factor.

It was therefore suggested that cooperation should be formalized by agreements that clearly spell out the roles of both parties – that is, CSOs and the judicial mechanism in question.

Session Two: Judicial practice in cooperating with CSOs during prosecution of sexual violence crimes

While a few entities have authored a number of best practices manuals on sexual violence, these only focus on prosecution and primarily target judicial actors. Existing literature is silent on the role of CSOs during prosecution of conflict-related sexual violence. It is therefore important to look into the role of CSOs from the courts' perspective to clarify underlying assumptions.

In the past, judicial mechanisms particularly the International Criminal Court (ICC) and the ad hoc tribunals, have come under heavy criticism for not prioritizing sexual violence crimes despite overwhelming evidence. Judicial mechanisms have often argued that the evidence for sexual violence charges is insufficient. This session explored ways in which CSOs can support sexual violence prosecutions in a manner deemed sufficient and acceptable by judicial mechanisms in an effort to promote prosecution of conflict-related sexual crimes.

From the courts' perspective, prosecutors and CSOs have different and sometimes conflicting mandates and interests. In light of this, judicial mechanisms approach cooperation with CSOs cautiously. While some CSOs may wish to maintain the anonymity of their sources, judicial mechanisms generally have a duty to provide defence teams with adequate information. Thus, CSOs gathering information and hoping to cooperate with judicial mechanisms need to be aware of this duty.

In addition, the complex political situations in which judicial mechanisms operate in the aftermath of war or conflict presents a unique set of challenges. In Kosovo for instance, former Kosovo Liberation Army fighters serve in police and hold various government positions. As such, investigation of certain crimes particularly crimes committed against women by Serbs, would most likely implicate government officials. Added to that, the social and political setup makes exchange of information extremely dangerous due to fear of victimization should names or sources become public.

The aforementioned obstacles notwithstanding, experience shows that CSOs have had a positive impact on prosecution of conflict-related sexual violence. In the International Criminal Tribunal for Rwanda (ICTR), CSOs influenced the Tribunal's investigation strategy by advocating for sexual assault teams (SAT) to specifically investigate sexual violence committed during the genocide in 1994. The Office of the Prosecutor (OTP) created SAT in response to civil society advocacy. Efforts of CSOs to ensure prosecution of conflict-related sexual violence in Cambodia were tremendous. CSOs filled evidentiary gaps which allowed for prosecution of sexual violence. In the Extraordinary Chambers in the Courts of Cambodia, the initial indictment did not include sexual violence counts. CSOs requested for an amendment of the indictment to include forced marriage charges. Evidence on forced marriage was subsequently provided by CSOs and included reports, studies and surveys on the impact of forced marriage.

CSOs were also a great information resource for the ICTR during the drafting of indictments. In 1994, Médecins Sans Frontières renounced the violence in Rwanda, proclaimed its neutrality and departed. The information gathered during its field presence in hospitals was passed on to the OTP and formed an integral part of the indictments. Several other international organizations provided information to the ICTR which helped investigators to trace and identify victims. It was noted that while cooperation between courts and CSOs is important, particularly during evidence gathering, it is up to the courts to ultimately determine the admissibility of the information provided through verification.

CSOs could, and have previously played a significant role at the trial stage. At the ICTR, civil society representatives testified as expert witnesses and shared knowledge obtained during information gathering. This was helpful in providing the court with context. In addition, CSOs

furnished the Tribunal with reports from Human Rights Watch and International Federation for Human Rights which contained useful information. It was recommended that CSOs should go a step further in future by intervening in cases as *amicus curiae* to help shape jurisprudence on conflict-related sexual violence further as has been the case in the past.

Moving forward, it would be useful to clearly articulate the specific roles of CSOs during prosecution of conflict-related violence. This could for instance include informing investigators of the peculiar cultural and social norms of the community in question. The persisting beliefs and taboos surrounding sexual violence in many cultures warrant awareness and special attention to cultural norms prior to investigations. Failure to recognize societal beliefs and taboos could prejudice investigations and trials. At the ICTR, due to concerns about objectivity, Rwandans were only included as part of the prosecutorial team after 2004. As a result, the Tribunal missed an opportunity to gain firsthand insight of the context in which genocide occurred and Rwandan culture at an early stage. This threatened trial processes to some degree, particularly after victim associations withdrew cooperation with the Tribunal.

It was also acknowledged that psychological services offered by some CSOs is crucial to the overall success of judicial mechanisms in regard to conflict-related sexual violence. In addition to improving the overall health of victims and encouraging participation in trials, existence of counselling and other psychological service provides judicial mechanisms with some form of referral mechanism for victims since these are technically beyond the courts' competence.

Judicial mechanisms would also greatly benefit from regular updates to victims by CSOs. It is important to keep victims informed of the progress of their cases. While judicial mechanisms, particularly prosecutors, should maintain a relationship with victims and witnesses, the bulk and nature of work makes it difficult. It was proposed that this is a critical area for potential cooperation. CSOs should ensure that victims understand complex legal processes, and that courts can count on them to ensure active involvement of victims. Victims and communities in general need to be informed about the outcomes of each charge or count. In this way, victims can appreciate their role and understand that sexual violence formed part of the violent ethnic campaign or conflict. The ICTY made an attempt to cooperate with CSOs in communicating with victims although this was done in an *ad hoc* manner. On the whole, communication between local communities and judicial mechanisms has improved over time.

At the ICTY, the monitoring function of CSOs and concomitant criticism caused internal reflection and revision of policies and practices. This reflection resulted in initiatives such as capacity building to address gaps. In essence, as watchdogs, CSOs ensure that judicial mechanisms live up to international norms and ideals. For instance, CSOs have increasingly

brought to light the marginalization of conflict-related sexual violence against boys and men despite the gender neutral phrasing of statutes. As a result, courts have become conscious of this fact and are willing to look into factors that prevent male victims from testifying. Hence, courts now consider other forms of evidence which do not necessarily include testimonies of victims.

Both players have to be mindful of victim fatigue and retraumatization which may result from giving multiple statements to different actors. While statements may be taken for different purposes, coordination would ensure that victims are not subjected to the same form of interview multiple times. Courts should therefore be open to using statements and transcripts of CSOs. This could be achieved by taking measures to make their investigation procedures known so that they are followed by other actors. Prosecutors were cautioned to take statements obtained by CSOs into account even after they have conducted their own investigations. This practice highlights inconsistencies in victims' testimonies and allows for mitigation measures before a case goes to trial.

Breakout Session: Emerging Issues

The aim of the breakout session was to explore practical ways of strengthening the role of CSOs during prosecution of conflict-related sexual violence in light of the mandate of judicial mechanisms. Participants were divided into two groups, each with a fair number of representatives from both CSOs and judicial mechanisms.

Group A

In light of the varying mandates of judicial mechanisms and CSOs, as well as the disparate situations and jurisdictions in which they operate, a minimum standard of evidence gathering and documentation was recommended. This standard should be communicated to first responders who in many cases are local organizations especially because international courts overly rely on these groups. In Uganda, for instance, the ICC worked closely with local groups and communities during investigations.

Further, multidisciplinary and multisectoral trainings should be conducted and should target prosecutors, defence lawyers, civil society actors including victim groups and associations. These trainings are essential to building trust and delineating roles in terms of clarifying the mandates of stakeholders. The dilemma facing most actors during or in the aftermath of mass atrocities relates to the appropriate form of jurisdiction. It would therefore be useful to create awareness of the likely adjudicatory options and to highlight the importance of coordination amongst various players on the ground.

It was proposed that it would be useful to have a mechanism at the national level that offers advice and support to stakeholders such as lawyers litigating complex cases instead of relying on one-off trainings that are often far and in between.

It was noted that chances of successful cooperation between CSOs and international mechanisms in particular are determined by the level of engagement by the latter and field presence. A best practice of the ICC has been strengthening of its field presence by establishing bases in conflict areas. This best practice allows for closer cooperation and continuous meaningful engagement.

Finally, where cooperation is established, it should continue past the investigation and the trial stages, because cases seldom end at trial. Oftentimes at the appeals stage, new evidence may be required and restabilising/reestablishing cooperation with old allies many years later is not only time consuming but could potentially prejudice the outcome of the appeal.

Group B

Participants in this group felt that it was important to underscore the role of CSOs prior to prosecution, including how to trigger prosecution.

The role of CSOs prior to prosecution is critical and includes fighting stigmatization of sexual violence victims or children born of rape. Stigma is a major impediment to information gathering, reporting and documentation. CSOs should therefore engage in creating awareness on social media and through community education campaigns. CSOs can change social norms through identifying the change makers, such as religious and cultural leaders who have the ability to communicate new ideas to their communities. Once perceptions change, it is easier for victims of sexual violence to give statements and testimonies. This is a critical role that CSOs could play and should be acknowledged by courts.

The importance of minimum standards of data collection was reiterated. It is important for CSOs interested in working with judicial mechanisms to understand the acceptable court practices, procedures and methodologies of information gathering.

CSOs need to devise clear strategies of engagement with judicial mechanisms including national mechanisms, regional and international institutions.

Legal impediments to cooperation with judicial mechanisms are commonplace in countries undergoing or emerging from conflict. In Sudan for instance, it is a crime to cooperate with the ICC. CSOs in such situations can build alliances with non-state actors outside the country who are in position to cooperate with judicial mechanisms. Such CSOs could also work on bringing about law reform on the national level to promote a friendlier regulatory framework.

At the trial stage, CSOs should provide ongoing medical and psychosocial support to victims. However, it was noted that resources for providing this support significantly drops after judgment. It is therefore important for all stakeholders to understand the importance of offering psychosocial support to victims for as long as it is needed.

Finally, it was pointed out that the role of CSOs during prosecution of conflict-related sexual violence should be determined in consultation with judicial mechanisms. In that way, civil society interventions will be complementary and not duplicative. Hence, CSOs should maintain communication with both the affected communities and judicial mechanisms, particularly, national mechanisms.

Day Two

Strengthening cooperation between judicial mechanisms and CSOs during prosecution of conflict-related sexual violence

The aim of the second day was to explore ways of improving cooperation by highlighting existing cooperation mechanisms in the various judicial mechanisms, CSO strategies, challenges, gaps, and recommendations. Sessions were organized under the theme ‘Strengthening cooperation between judicial mechanisms and CSOs during prosecution of conflict-related sexual violence.’ The first session highlighted challenges and limitations of cooperation while the second explored ways of overcoming difficulties in cooperation. The last session focused on emerging policy considerations and recommendations.

Session Three: Overview of the challenges and limitations of cooperation

Judicial mechanisms face a fundamental dilemma between neutrality and confidentiality. From the courts’ perspective, particularly the ICC, cooperation is guided by the principle of objectivity, the need to not only be neutral but to also to be perceived as such. Since the Court does not always have field presence in conflict areas, the starting point is to determine who the key players are in terms of their allegiances who could be suspect groups, government (e.g., police, military) or victim groups. While it is not always easy to figure out allegiances, it is important to perform due diligence because allegiances determine whether the group can be trusted and relied upon to gather and preserve evidence, and to ensure that witnesses are protected and do not collude.

For CSOs interested in cooperating with judicial mechanisms, it is important to adhere to a credible methodology of data collection, including statistics and statements. Data needs to be strong enough to withstand the admissibility test and trial. As such, CSOs should be transparent about their methodology. If data is unreliable, courts have to find other ways of obtaining reliable data. Generally, court investigators, unlike CSOs, are under obligation to collect as much information as possible about perpetrators which is why CSO statements often leave out crucial information. This essentially explains why statements obtained from CSOs are never sufficient in terms of what is required by the courts although they provide a good lead for court investigators. Ultimately, while flexible, the judicial mechanisms particularly the ICC select partners very carefully.

It was noted that the ICC has recognized the role of CSOs in several documents. The Office of the Prosecutor has highlighted the importance of cooperation and its limitations. The prosecution of conflict-related sexual crimes was prioritized as a matter of policy. The

elevation of sexual crimes is outlined in the policy on sexual violence as a strategic goal.¹ The policy acknowledges the role of CSOs and the importance of building partnerships through liaisons with all actors and players.² It was emphasized that partnership means cooperation and not subordination. However, cooperation requires oversight. When the ICC engages intermediaries, it must provide some form of oversight to ensure that its mandate and procedural rules are adhered to. Unfortunately, this is sometimes perceived as subordination and an unequal relationship between the cooperating parties.

It was pointed out that the International Protocol on Documentation and Investigation of Sexual Violence in Conflict recommends vetting and selecting the right intermediaries.³ However the ability to select and vet intermediaries is a best case scenario. ICTR investigators for instance were not in position to choose the right intermediaries due to pressure to gather evidence in a very limited period of time.

It was observed that while steps taken by the ICC are critical and commendable, implementation has been weak. It is important to conduct outreach to impart knowledge, clarify the mandate of the Court and enforce mutual respect. In the past, it has been assumed that the Court's mandate and factors determining its intervention are well known. On the contrary, the varying levels of jurisdiction at the domestic level warrant efforts to create some form of common ground at the international level. It is therefore crucial to address perceptions and misperceptions about the Court.

It was proposed that in order to ensure that policies and strategies on partnership are effective, CSOs should be involved in the formulation process. Co-opting CSOs in the process would enrich policies with rich experiences and lessons learned on the ground. For instance, field presence as a matter of policy could enhance cooperation at an early stage of the investigation.

Despite its policy on partnership, the ICC lacks a formal mechanism for cooperation with CSOs. Due to a lack of standardization, CSOs are unaware of the parameters of cooperation and what exactly is required by the Court. Having cooperated with the Court for twelve (12) years on all three situations in the DRC, the League for Peace, Human Rights and Justice (LIPADHOJ) still has an ad hoc relationship with the Court. This has prejudiced the

¹ International Criminal Court, Policy Paper on Sexual and Gender-Based Crimes, June 2014, para. 2, available at: <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>, last accessed 6 October 2016.

² Id., Policy Paper on Sexual and Gender-Based Crimes, 2014, para. 14

³ International Protocol on the Documentation and Investigation of Sexual Violence in Conflict Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law, First Edition, June 2014 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf, last accessed 6 October, 2016.

prosecution of conflict-related sexual violence in many ways. For instance, CSOs gathered a lot of evidence on sexual crimes in the *Lubanga* and *Katanga* cases. The groups tried unsuccessfully to provide the Court with evidence. The ICC investigator was unable to meet with the groups to obtain evidence as expected. It therefore appears that despite the hard work and vigilance of CSOs to ensure prosecution of sexual crimes, the ICC ultimately determines the counts to be included in the indictment much to the prejudice of victims and disappointment of CSOs that have gathered evidence of the counts left out. Having a transparent and formalized process will enhance prosecution of international crimes.

Not all judicial mechanisms fully embrace cooperation with CSOs. For instance, while CSOs initiated the prosecution of conflict-related sexual violence in the ECCC, evidence submitted by CSOs has a very small probative value. In addition, there is no cooperative framework and agreement between the ECCC and CSOs thereby rendering it ad hoc and unguided.

In the past, cooperation between CSOs and judicial mechanisms was by default. When the tribunals first became operational, UN staff were posted to foreign conflicts with little training and experience, and thus dependence on CSOs was inevitable. The UN generally intervened late in conflict. As such, there was need to consult with players on the ground. This created a swathe of inconsistencies in evidence, particularly statements. It is against that background that the ICTR best practices manual on investigation and prosecution of sexual violence perceives CSO gathered information as useful for mostly lead purposes.

One of the major challenges of cooperation is a lack of protection of witnesses on the ground. International mechanisms tend to relegate protection of witnesses to states parties without any guidelines. The threshold of witness protection is generally very high. For protection to be triggered, a credible or actual threat must exist. In addition, only a few countries can relocate or accept witnesses. CSOs therefore have to pressure states to accept witnesses. It is otherwise a huge sacrifice for witnesses to uproot completely and move to a place where they have no job and might not speak the language.

Session Four: Addressing challenges and limitations to cooperation including underlying assumptions of sexual violence crimes, victim apathy, structural/legal impediments and lack of capacity

The premise for addressing challenges must be acknowledgment that several national and local mechanisms have jurisdiction over international crimes. This cognizance will in turn lead to interventions geared towards strengthening national judicial mechanisms and enhancing cooperation with civil society. The widespread criticism and disappointment with the ICC can in part be addressed by focusing on local institutions in post conflict zones with potential to deliver justice. By way of example, NGOs in France including ‘We are not Weapons of War’ have had successful cooperation with the War Crimes Unit. This cooperation resulted in a victim’s relative killed in a Syrian prison being recognized as a direct victim in France.

Strategies and practical solutions to challenges preventing cooperation during prosecution of conflict-related sexual violence should be devised collectively. Strategies could also include proven and successful best practices. Physicians for Human Rights (PHR) – an NGO that has over the past thirty (30) years used medicine and science to document human rights violations, deploys different models of evidence gathering depending on the context. PHR recognises that it is unproductive to deploy international models in very local contexts. As such, there is a deeper investment in building the capacity of locals and understanding their culture.

At the national level, existing structures and laws should be synchronized. This will allow for the enforcement of new laws –particularly laws implementing the Rome Statute, to be enforced. Many victims are failed by the justice system in their communities. Cases fail because of lack of adequate evidence which results from incomplete and illegible medical charts. Oftentimes doctors do not understand their role in the judicial process and make no effort to coordinate with justice actors. In order to improve data collection, PHR conducts trainings for stakeholders which have resulted in medical and legal networks that work as a team by coordinating their efforts on a case by case basis.

Medical personnel are encouraged to conduct thorough examinations, document and share findings with the justice sector. For instance, in DRC, there was no standard medical intake form for sexual violence and consequently, no documentation of sexual violence crimes. In 2012, PHR worked with partners in hospitals, police academies and lawyers in South Kivu to create a medical intake form. The form is currently being used in parts of the DRC and was

adopted as a template in the International Protocol on Documentation and Investigation of Sexual Violence in Conflict.⁴

It was also suggested that national and international norms should be synchronized. The definition of rape and its core elements at the national level should be inspired by the Rome Statute and the Elements of Crimes. This will ensure not only the same treatment for persons prosecuted at the national and international levels for the same crimes, but also their victims. In Uganda, both national and international judicial mechanisms are prosecuting members of the Lord's Resistance Army (a rebel group operating in Uganda, the DRC and the Central African Republic). The *Kwoyelo* case is before the International Crimes Division of the High Court in Uganda while the *Ongwen* case is before the ICC. CSOs in Uganda are working on both cases and cooperating with both mechanisms. However, the two systems are entirely different in terms of support provided for victims. Victims and witnesses before the ICC receive more support than victims in the *Kwoyelo* case. This has caused resentment amongst victims because it creates a form of hierarchy between them and affects their willingness to participate or continue participating in the national trial process.

CSOs should work hard at building their credibility. A starting point is to ensure that information provided to several players and institutions is consistent. In similar fashion, CSOs should be more transparent as a means of gaining the confidence of justice actors at the national level. In Cambodia and Uganda, CSOs are viewed with suspicion by state actors. In the DRC, the government perceives CSOs as political opponents.

⁴ Id.

Session Five: Recommendations and Emerging Policy Considerations

The workshop focused on two broad themes, that is, the role of CSOs during prosecution of conflict-related sexual violence and how cooperation between judicial mechanisms and CSOs can be strengthened. The last session was an attempt at highlighting the most significant issues, recommendations and policy gaps. Participants were divided into groups of four (4) to five (5) and asked to address three (3) main issues: thus far, what gains have been made in as far as cooperation between CSOs and judicial mechanisms is concerned (achievements)?; what gaps exist?; and what needs to be done (recommendations)?

i. Achievements

Over the past several years, CSOs and judicial mechanisms have made attempts to cooperate during prosecution of conflict-related sexual violence. Dating back to the early 1990s, CSOs have had tremendous influence on international criminal justice specifically, the establishment of accountability mechanisms, investigation and trials. CSOs are specifically credited with mainstream recognition of widespread conflict-related sexual violence in contemporary conflicts. But for CSOs, prosecution of these crimes might arguably have never taken place in international tribunals.

Against that background, participants noted the following achievements:

- a. Owing to their contribution to international criminal justice, CSOs are now recognized by judicial mechanisms as critical to the success of trials and victims' welfare. Consequently, justice actors understand the need to know who the local players on the ground are, their mandates and affiliations.
- b. CSOs have successfully established a practice of positively impacting judicial processes relating to international crimes including charging, sentencing and reparations.
- c. CSOs particularly NGOs, have caused a paradigm shift regarding conflict-related sexual violence. These crimes have over the years taken on a new meaning – from inevitable consequences of war to unacceptable and punishable crimes.
- d. Access of judicial mechanisms to affected communities is largely due to the work of CSOs on the ground. This includes mobilization of victims, data collection, psychosocial support services including counselling and pre/post rehabilitation, mass awareness/education programs to fight stigma, legal representation in individual cases, outreach on sexual and gender based violence and justice mechanisms, among others. In this sense, CSOs have promoted a holistic approach to justice.

- e. One of the most critical successes of CSOs has been effective advocacy for national prosecution of international crimes – what has come to be known as positive complementarity. CSOs have worked tirelessly in conflict and post-conflict countries to ensure that states not only domesticate the Rome Statute, but also set up prosecuting mechanisms for international crimes.
- f. Over the years, CSOs have supported extradition requests by helping to draft and provide legal arguments and advice. This intervention has resulted in the extradition and prosecution of fugitives.
- g. At the international level, CSOs have helped in the development of protocols, manuals and agreements (Memoranda of Understanding) to set up referral mechanisms and systems in courts.

ii. Gaps

- a. There is a lack of coordination on two levels: first, amongst CSOs on the ground; and second, between CSOs and judicial mechanisms at the national and international levels. As such, there is a lack of proper cooperation due to the absence of a framework or guidelines that formalize and standardize the relationship between judicial mechanisms and CSOs. Whatever cooperation currently exists is sporadic, ad hoc and not victim centered.
- b. Related to (a) above, there is a communication gap between CSOs and judicial mechanisms on one hand (on several occasions, CSOs are uncertain of where or how to submit information/evidence to courts) and judicial mechanisms and victims, witnesses and communities on the other.
- c. There seems to be no effort to address the challenges and limitations of CSOs. Most CSOs particularly those at the local level, lack capacity in data collection, documentation and investigation. CSOs would therefore largely benefit from education on court processes and procedures and precisely, the kind of information courts would find useful. It is only after building the capacity of CSOs that meaningful cooperation can ensue.
- d. In addition, there is a general lack of understanding amongst CSOs regarding the limits of confidentiality and disclosure of information, as well as the likely repercussions if such information were to be passed on to a judicial mechanism. Simultaneously, there is general reluctance by judicial mechanisms to explain the potential risks cooperating CSOs and their sources might face. Open dialogue and transparency on both sides would greatly improve the role of CSOs and ultimately prosecution of conflict-related sexual violence.

- e. Court investigators and prosecutors have on occasion displayed a lack of capacity to investigate and prosecute conflict-related sexual violence. This is manifest in the lack of social skills, lack of understanding of local customs and a lack of sensitivity toward victims' needs and experiences.
- f. Judicial mechanisms generally lack prosecutorial strategies for conflict-related sexual violence. Despite adequate and conclusive medical and forensic evidence, prosecutors still seek other forms of evidence.
- g. In similar fashion, despite being trained, some judges have demonstrated an inability to effectively assess evidence of sexual violence crimes. Many blame victims during questioning and erroneously disallow some forms of evidence.
- h. Where perpetrators hold positions in police, the military and other government agencies, prosecution of sexual crimes is more or less impossible. It is unclear what needs to be done in such situations especially where the state in question boasts of an ability and willingness to prosecute international crimes.

iii. Recommendations

To All:

- a. All stakeholders should develop guidelines, minimum standards or a uniformed framework of cooperation in order to standardize the relationship between judicial mechanisms and CSOs during prosecution of conflict related sexual violence.
- b. All stakeholders should implement the International Protocol on Documentation and Investigation of Sexual Violence in Conflict.⁵
- c. Stakeholders should work together to ensure regular dialogue particularly between CSOs and judicial mechanisms. It is important to continuously assess the relationship between CSOs and judicial mechanisms and how it could be improved.

To States:

- a. States should build the capacity of national accountability mechanisms. Positive complementarity calls for effective and independent institutions. As such, it is important to invest in capacity building initiatives for police, investigators, prosecutors and judges.

⁵ Supra, note 3.

- b. In addition to domesticating the Rome Statute and setting up special accountability mechanisms, states should establish an enabling legal framework. This could for instance mean, setting up a reparation fund and/or enacting victim and witness protection laws which would afford witnesses protection and thereby allow them to participate in trial processes.
- c. States should actively promote cooperation between CSOs and judicial mechanisms by establishing a friendly regulatory framework for CSOs to facilitate their work in affected communities. CSOs should be able to cooperate with international judicial mechanisms without unnecessary restrictions.
- d. States should establish national shelters for victims of sexual violence especially those shunned and shamed by their communities.

To judicial mechanisms:

- a. Judicial mechanisms should be responsive to CSOs that request investigation in particular communities even when a decision not to pursue the case has been taken. As a court of last resort, the ICC should be transparent and provide detailed reasons for not opening an investigation in a particular situation.
- b. Judicial mechanisms should clearly communicate their expectations, procedures during investigation/data collection, evidence gathering techniques, policies and cooperation strategies and mechanisms, if any. This information should be provided to CSOs earlier on.
- c. Judicial mechanisms should conduct multisectoral trainings for stakeholders in conflict and post-conflict situations. In this way, better coordination can be achieved and expectations can be well managed.
- d. Judicial mechanisms should establish a contact point for CSOs wishing to contact, provide information or engage with the court in some form.
- e. Judicial mechanisms should train their staff particularly investigators, prosecutors and judges on cultural sensitivity.

To CSOs:

- a. CSOs should ensure that their interventions on ground are well coordinated. This is crucial in preventing retraumatization of victims and witnesses.
- b. CSOs should pursue alternative means of obtaining justice for victims. They should cooperate with local, national and international judicial mechanisms.
- c. Build trust in national and international judicial mechanisms through transparency.
- d. Invest in building organizational capacity.

Workshop on improving cooperation in the prosecution of conflict-related sexual violence

A workshop with representatives from judicial mechanisms and civil society organizations

September 12-13, 2016

Program

	<p>DAY ONE: September 12, 2016 Theme: Understanding the diversity of the roles and mandates of courts and CSOs in the prosecution of sexual violence crimes Participants will discuss how CSOs can foster criminal investigations and prosecutions during, and in the aftermath of conflict.</p>
08:30-09:00	Registration at the Hotel Motel One lobby
09:30-09:45	Introduction to the International Nuremberg Principles Academy and the sexual violence project Dr. Josephine Ndagire, International Nuremberg Principles Academy
09:45-11:15	<p>1. The role of local and international organizations in prosecution of sexual violence crimes Chair: Dr. Philip Grant, TRIAL International Speakers:</p> <ul style="list-style-type: none"> i. Dr. Jonathan Muhindo Lusi, Heal Africa ii. Ms. Hilarie Mukamazimpaka, Genocide Widows Association iii. Ms. Alix Vuillemin Grendel, Coalition for the ICC <p>Q & A</p>
11:15-11:30	<i>Coffee break</i>
11:30-13:00	<p>2. Judicial practice in cooperating with CSOs during prosecution of sexual violence crimes Chair: Prof. Anne-Marie de Brouwer Speakers:</p> <ul style="list-style-type: none"> i. Ms. Diana Wilson, former EULEX Special Prosecutor ii. Ms. Inneke Onsea, ICTR/MICT iii. Ms. Najwa Nabti, OTP, ICTY/MICT <p>Q & A</p>
13:00-14:00	<i>Lunch</i>
14:00-16:00	<p>Breakout sessions: After lunch, participants will be divided into two working groups to explore practical ways of strengthening the role of CSOs during prosecution of sexual violence in light of the mandate of courts and other judicial mechanisms. Chairs: Ms. Carrie Comer, FIDH and Ms. Rajany Chandrasegaram, Women's Action Network</p>
16:00-16:15	<i>Coffee break</i>
16:15-17:00	Presentations from Working Groups
17:30	Reception at Pellerhaus



	<p>DAY TWO: September 13, 2016 Theme: Strengthening cooperation between judicial mechanisms and CSOs during prosecution of sexual violence in conflict Participants will discuss existing cooperation mechanisms, gaps, challenges, limitations and how cooperation can be improved.</p>
09:30-11:00	<p>3. Strategies and mechanisms of cooperation Chair: Erin Gallagher, ICC Investigator Speakers: i. Dr. George William Mugwanya, ICC ii. Ms. Beini Ye, REDRESS and ECCC iii. Mr. Serge Ngabu Kilo, LIPADHOJ, DRC iv. Mr. Gregory Townsend, ICTY</p> <p>Q & A</p>
11:00-11:15	<i>Coffee break</i>
11:15-13:00	<p>4. Addressing challenges and limitations to cooperation Chair: Dr. Sigall Horovitz, International Nuremberg Principles Academy Speakers: i. Ms. Céline Bardet – We are Not Weapons of War ii. Ms. Karen Naimer, Physicians for Human Rights iii. Ms. Heng You Leng, ECCC</p> <p>Open discussion on practical solutions to overcoming challenges and limitations to cooperation including underlying assumptions of sexual violence crimes, victim apathy, structural / legal impediments, capacity and awareness, etc.</p>
13:00-14:00	<i>Lunch</i>
14:00-15:30	<p>5. Recommendations and emerging policy considerations Prof. Jean-Marie Kamatali Ohio Northern University</p>
15:30-16:00	<p>6. Evaluation 7. Launch of Sexual Crimes in Conflict Database Ms. Farah Mahmood and Dr. Josephine Ndagire International Nuremberg Principles Academy</p>