



GUIDELINES ON COMBATING SEXUAL VIOLENCE AND ITS CONSEQUENCES IN AFRICA



A representative of a network of Congolese civil society organisations specialised in the fight against sexual violence leads an awareness-raising operation for local populations in the village of Karuba, Democratic Republic of Congo. © Pierre-Yves Ginet, *Women here and else there*, October 20, 2010.

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FOREWORD



The *Guidelines on Combating Sexual Violence and its Consequences in Africa* (the *Guidelines*) were adopted by the African Commission on Human and Peoples' Rights during its 60th Ordinary Session held in Niamey, Niger from 8 to 22 May, 2017.

The goal of these *Guidelines* is to guide and support Member States of the African Union in effectively implementing their commitments and obligations to combat sexual violence and its consequences. Sexual violence continues to be a worldwide scourge and the African continent is no exception. It remains widespread both in time of conflict and crisis, and in times of peace. It takes place in public, in the street and on public transportation, but also in private, in the workplace or in intimate relationships. It mainly affects women and girls, but men and boys are also victims.

The statistics are alarming: in Sub-Saharan Africa almost 39 per cent of girls are married before the age of 18. In certain African countries, up to 95 per cent of girls are the victims of genital mutilation; more than 70 per cent of women report having been the victims of domestic violence, including sexual violence; and more than 90 per cent report having been the victims of sexual harassment and not feeling safe in public places. In addition, in several countries where conflict prevails, rape and other forms of sexual violence are used on a wide scale as a weapon of war.

Sexual violence has terrible consequences, both physical and psychological, for victims, those who are close to them, witnesses and society. All too often, the victims find themselves abandoned and stigmatized, and live in extremely difficult or even untenable conditions. They have trouble getting access to the medical, psychological and social services that they need, and they live in fear of reprisals. The majority are denied their right to protection, truth, justice and reparation - all violations that lead to the normalization and repetition of sexual violence.

To effectively combat such a plague, it is necessary to combine all our strength and initiatives; nevertheless, the primary responsibility lies with States. In recent years, several African States have made resolute undertakings on this front, strengthening their legislative and institutional framework and adopting innovative and efficient measures for prevention, awareness-raising, protection, suppression

and reparation. However, despite these efforts, numerous obstacles remain that hinder efforts to achieve a significant and long-lasting impact in eliminating acts of sexual violence and their consequences. Persistent discrimination and gender stereotyping; incomplete and ill-suited laws; a lack of appropriate training for personnel in the medical, forensic, policing and judicial fields; gaps in investigation and prosecution, which are harmful first and foremost to victims; and budgetary and human resources that are too limited to effectively combat sexual violence and its consequences have contributed to weaken the efforts made.

The Niamey *Guidelines* were designed as a tool to offer a methodology to African States, and to serve as the foundation for an adequate legal and institutional framework. They offer a set of practical, specific and concrete measures, and were developed pursuant to Article 45 (1) (b) of the African Charter on Human and Peoples' Rights, which gives the African Commission a mandate to create and draft the principles and regulations relating to human rights, which African governments may use as the basis for their domestic legislation.

The Niamey *Guidelines* represent the continuation of these many initiatives taken within the African Union and by several of its Member States to combat sexual violence. The Niamey *Guidelines* are the result of a broad consultation process throughout 2016, which was declared «African year of Human Rights, with a particular focus on the Rights of Women»; a process involving experts fighting a daily battle against sexual violence. Doctors, journalists, lawyers, professors, and human rights defenders contributed their experience and expertise to ensure that the text reflects the reality of the needs and problems encountered both by victims and by the organisations and practitioners who answer their call for help. In fact, our intention was for the *Guidelines* to be focused on survivors, to help States respond to their concerns and meet their needs. If implemented, we hope this text will make it possible to confront the scourge of sexual violence on our continent.

I would like to thank everyone who has contributed to the development of these *Guidelines*. In particular, I would like to thank the International Federation for Human Rights (FIDH) and Lawyers for Human Rights (LHR - South Africa) for their collaboration in the development of this tool.

I would also like to thank the following eminent African dignitaries who have long fought against sexual violence in Africa, and who have made great contributions to drafting these *Guidelines*: Mrs. Bineta Diop, African Union Special Envoy for Women, Peace and Security; Mrs. Mahawa Kaba Wheeler, African Union Commission Director for Women, Gender and Development; Mrs. Zainab Hawa Bangura, Special Representative of the United Nations Secretary-General on Sexual Violence in Conflict; Mrs. Rashida Manjoo, former United Nations Special Rapporteur on Violence against Women, its Causes and Consequences; and Dr. Mukwege, world renowned gynecological surgeon and founder and director of the Panzi hospital in Bukavu, the Democratic Republic of the Congo.

By forging partnerships, strengthening cooperation and uniting all our forces, we can create an effective defence against sexual violence and its consequences. The Niamey *Guidelines* have a role to play in that defence and should be used as a reference. I would like to encourage all actors, first and foremost the Member States of the African Union, but also regional economic communities, domestic human rights institutions, lawyers, magistrates and jurists, representatives of the medical and judicial field, security and defence forces, the media, civil society organisations, influential Africans and religious and traditional leaders, amongst others, to use this tool by broadcasting and popularizing it, and by supporting the implementation of its recommendations. As for the African Commission on Human and Peoples' Rights, it remains resolutely committed to supporting all related initiatives.



Honorable Lucy Asuagbor,
Special Rapporteur on the Rights of Women in Africa

PREAMBLE

The African Commission on Human and Peoples' Rights (the Commission), meeting during its 60th Ordinary Session held in Niamey, Niger from May 8 to 22, 2017:

Recalling its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Article 45 (1) (b) of the African Charter on Human and Peoples' Rights, which mandates the African Commission "to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations";

Recalling the mandate granted to the Special Rapporteur on the Rights of Women in Africa to draft the *Guidelines on Combating Sexual Violence and its Consequences in Africa* (ACHPR/Res.365);

Recalling the provisions of the African Charter on Human and Peoples' Rights; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol); and the African Charter on the Rights and Welfare of the Child;

Recalling the Resolutions adopted by the Commission on combating sexual violence and its consequences, as well as the General Comments on Article 14 (1) (d) and (e), Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Maputo Protocol;

Recalling the Banjul Declaration of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights under the theme "Women's Rights: Our Collective Responsibility";

Recalling the initiatives and strategies developed by the African Union to combat sexual violence and its consequences in Africa; **Supporting** in particular the «Girls Not Brides» campaign of the African Union and the implementation of the Maputo Plan of Action 2016 - 2030 on sexual and reproductive rights;

Recalling the Resolutions of the United Nations Security Council on Women, Peace and Security;

Recognizing the actions taken by several African States to combat sexual violence and its consequences through measures for prevention, awareness-raising, protection, suppression and reparation;

Concerned nonetheless that sexual violence remains widespread throughout Africa, in peacetime as well as in wartime, in public and in private; and **Regretting** that the perpetrators of this violence continue to enjoy almost complete impunity;

Concerned that these victims suffer very serious and long-lasting consequences, such as unwanted pregnancies, gynecological complications, sexually transmitted diseases, and social stigmatization; that victims struggle to get access to the necessary medical and psycho-social services, live in fear of reprisals, and most are denied their right to truth, justice and reparation;

Concerned by the absence of suitable domestic legislation to enable States to effectively and sustainably combat all forms of sexual violence and its consequences;

Recognizing the urgency and need to combat sexual violence and its consequences through concrete, cross-cutting and coordinated measures aimed at preventing these violations, by attacking their root causes, providing protection and support to victims and witnesses, bringing the alleged perpetrators to justice, and offering guarantees of non-repetition, in compliance with States' obligations under regional and international human rights instruments;

Decides to adopt the *Guidelines on Combating Sexual Violence and Its Consequences in Africa* and **Strongly Urges** the Member States of the African Union to take all necessary measures to incorporate the provisions of these *Guidelines* in their domestic legislation, ensure that they are promoted and disseminated as widely as possible and ensure their effective, rapid implementation.

EXPLANATORY NOTES

The *Guidelines on Combating Sexual Violence and Its Consequences in Africa* come with explanatory notes. These notes provide references on the sources used, which are the binding and non-binding African regional legal instruments; the jurisprudence of the Commission, its general comments, thematic resolutions and resolutions on specific situations in a given country; and other regional and sub-regional legal and regulatory texts, particularly those adopted by the African Union. The explanatory notes also refer to normative international instruments, such as human rights treaties; specific legislation on the promotion and protection of the rights of women; and the general recommendations of the Committee on the Elimination of Discrimination against Women; and relevant resolutions of the Security Council and General Assembly of the United Nations. They also refer to texts and tools produced by special human rights protection mechanisms at the international and regional levels, for example the special procedures of the United Nations and the Commission. Finally, these notes draw from the jurisprudence of international courts and other judicial and quasi-judicial mechanisms, and from texts on best practices in combating sexual violence and its consequences at the national, regional and international levels.

ABBREVIATIONS AND ACRONYMS

ACHPR or “the Commission”	African Commission on Human and Peoples’ Rights
AIDS	Acquired Immune Deficiency Syndrome
ART	Antiretroviral Therapy
AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
DEWV	Declaration on the Elimination of Violence against Women
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOWAS	Economic Community of West African States
FGM	Female genital mutilation
FIDH	International Federation for Human Rights
HIV	Human Immunodeficiency Virus
ICC	International Criminal Court
ICGLR	International Conference on the Great Lakes Region
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LHR	Lawyers for Human Rights – South Africa
NHRI	National Institutions for the Protection and Promotion of Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
PEP	Post-exposure prophylaxis
PKO	Peacekeeping operation
SADC	South African Development Community
SCSL	Special Court for Sierra Leone
SDGEA	Solemn Declaration on Gender Equality in Africa
STI	Sexually transmitted infection
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNSC	Security Council of the United Nations
WHO	World Health Organisation



2011 African Union Summit in Addis Ababa, Ethiopia on July 3, 2017. © Minasse Wondimu Hailu / Anadolu Agency / AFP.

PART 1. REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK

A. LEGAL FRAMEWORK AND DEFINITIONS

1. Regional framework

1. 1. The fight against sexual violence and its consequences in Africa is framed by a body of binding and non-binding legal instruments that apply at the regional level. First and foremost is the African Charter on Human and Peoples' Rights (hereinafter "the African Charter", 1981), which guarantees the principle of non-discrimination; the right to equality before the law and to equal protection from the law; the right to a hearing before competent national courts; the right to physical and integrity; the right to dignity; a prohibition on slavery, human trafficking, torture, and cruel, inhuman or degrading treatment or punishment; the right to freedom and security; the right to the enjoyment of the best possible physical and mental health; and the right to education. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (hereinafter the "Maputo Protocol", 2003) sets out these specific principles, and commits State Parties to the adoption of specific measures to combat violence against women, especially sexual violence (Article 3 (4); Article 4; Article 5; Article 6; Article 11 (3); Article 22 (b); Article 23 (b)), and authorizes medical abortions in situations involving sexual assault, rape and incest (Article 14 (2) (c)). The African Charter on the Rights and Welfare of the Child (1990) also guarantees the protection of children against sexual abuse and exploitation (Articles 16 and 27).

1. 2. The African Commission on Human and Peoples' Rights (hereinafter "the Commission") has adopted general comments that specify the obligations of states regarding sexual and reproductive health for women and adolescent girls (General Comments No. 2 of Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Maputo Protocol (2014)); and on the right to reparation for victims of torture and other cruel, inhuman or degrading treatment or punishment, including the victims of sexual violence (General Comments No. 4 of Article 5 on the right to redress for victims of torture and other punishments or cruel, inhuman and degrading treatment (2017)).

1. 3. The Commission also adopted topical resolutions (Resolution 110: on the Health and Reproductive Rights of Women in Africa (2007); Resolution 111: on the Right to a Remedy and Reparation for Women

and Girls Victims of Sexual Violence (2007); Resolution 260: on Involuntary Sterilization and the Protection of Human Rights in Access to HIV Services (2013); Resolution 275: on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (2014); Resolution 281: on the Right to Peaceful Demonstrations (2014); Resolution 283: on the Situation of Women and Children in Armed Conflict; Resolution 292: on the Need to Conduct a Study on Child Marriage in Africa (2014)). It also adopted resolutions condemning sexual violence committed in specific situations and countries (Resolutions 93 and 74 (2005) and 68 (2004) on Darfur (Sudan); Resolution 103: on the Situation of Women in the Democratic Republic of Congo (2006); Resolution 173: on the Crimes committed against Women in the Democratic Republic of Congo (2010); Resolution 284: on the Suppression of Sexual Violence against Women in the Democratic Republic of Congo (2014); Resolution 288: Condemning the Perpetrators of Sexual Assault and Violence in the Arab Republic of Egypt (2014)).

1. 4. The importance of combating sexual violence and its consequences is also underscored in other regional texts, such as the African Platform for Action Adopted by the Fifth Regional Conference on Women, held at Dakar from 16 to 23 November 1994; the Declaration of the South African Development Community (SADC) on Gender and Development (1997) and its Addendum on the Prevention and Eradication of Violence against Women and Children (1998); the Solemn Declaration on Gender Equality in Africa (SDGEA) (African Union, 2004); the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children of the International Conference of the Great Lakes Region (ICGLR, 2006); the Continental Policy Framework for Sexual and Reproductive Health and Rights created by the Commission of the African Union (2006) and its Plan of Action for the 2007-2010 period and for 2010-2015; the SADC Protocol on Gender and Development (2008); the Kampala Declaration of the Heads of State and Government of the Member States of the ICGLR on the prevention of sexual and gender-based violence (ICGRL, 2011); the Kigali International Conference Declarations initiated by African security organisations in support of the UN Secretary-General's UNiTE to End Violence against Women campaign (2008-2015).

1. 5. These *Guidelines* are also based on a variety of judicial or quasi-judicial decisions and recommendations promoting the rights of victims of sexual violence, in particular recommendations of the Commission (see explanatory notes below).

Explanatory Notes: ACHPR Communication 323/06, Egyptian Initiative for Personal Rights and INTERIGHTS vs. Egypt (2011); ACHPR, Communication 341/2007, Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia (2015); CEDAW Committee, *Vertido vs. the Philippines*, CEDAW/C/46/D/18/2008 (2010).

2. International framework

2. 1. The fight against sexual violence and its consequences is also governed by various international human rights instruments, such as the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966), which in particular protects the right to health (Article 12), including sexual and reproductive health, pursuant to the interpretation provided by the Committee on Economic, Social and Cultural Rights in its General Comment No. 22 (E/C.12/GC/22, 2016); the OHCHR Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1994); the Convention on the Rights of the Child, which protects children against all forms of violence, including sexual violence, according to the interpretation provided by the Committee on the Rights of the Child in its General Comment No. 13 (CRC/C/GC/13, 2011); and its Optional Protocols on the Involvement of Children in Armed Conflict (2000) and on the Sale of Children, Child Prostitution and Child Pornography (2000). The Geneva Convention governs the prevention of and fight against sexual violence committed during armed conflicts (fourth Geneva Convention (1949) and its Additional Protocols I and II (1977)).

2. 2. The fight against sexual violence and its consequences is further governed by specific texts for the promotion and protection of the rights of women, such as the Declaration of the General Assembly of the United Nations on the Elimination of Violence against Women (1993); the Beijing Declaration and Programme of Action (1995); the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the “CEDAW Convention”, 1979), as interpreted by the Committee for the Elimination of Discrimination against Women (hereinafter the “CEDAW Committee”). In particular, the latter has adopted general recommendations on the following topics: on violence against women (General Recommendation No. 12 (1989) and General Recommendation No. 19 (1992)); on non-discrimination against women in strategies to prevent and combat AIDS (General Recommendation No. 15 (1990)); on women and conflict (General Recommendation No. 30 (2013)); on women’s health (General Recommendation No. 24 (1999)); on harmful practices (Joint General Recommendation/General Comment No. 31 of the CEDAW Committee and No. 18 of the Committee on the Rights of the Child, CEDAW/C/GC/31/CRC/C/GC/18 (2014)); and on women’s access to justice (General Recommendation No. 33, CEDAW/C/GC/33 (2015)).

2. 3. The United Nations Security Council has also adopted a number of resolutions on women, peace and security requiring that States adopt measures to protect women and girls in conflicts, including protecting them from sexual violence, also requiring States to strengthen their position in conflict prevention and resolution (Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013) and 2242 (2015)).

2. 4. These *Guidelines* have also drawn from applicable regional instruments from outside the continent, which are particularly relevant in fighting against sexual violence and its consequences. These include the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter “the Istanbul Convention”, 2011) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter the “Belém do Pará Convention”, 1994).

3. Definitions

3. 1. Sexual violence

a. Sexual violence means any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone else to perform such an act on a third person. These acts are considered as non-consensual when they involve violence, the threat of violence, or coercion. Coercion can be the result of psychological pressure, undue influence, detention, abuse of power or someone taking advantage of a coercive environment, or the inability of an individual to freely consent. This definition must be applied irrespective of the sex or gender of the victim and the perpetrator, and of the relationship between the victim and the perpetrator.

Explanatory Notes: Declaration of the General Assembly of the United Nations on the Elimination of Violence against Women (1993); Istanbul Convention, Articles 36, 37, 38, 39, 40 (2011); International Criminal Court, Office of the Prosecutor, General Policy Document on sexual and sexist crimes, p. 4 (2014); United Nations Division for the Advancement of Women (DAW) and United Nations Department of Economic and Social Affairs (DESA), UN Handbook for Legislation on Violence against Women ST/ESA/329, pp. 26 et seq. (2010).

b. Sexual violence is not limited to physical violence and does not necessarily involve physical contact. It takes many forms, and includes but is not limited to:

- sexual harassment;
- rape (including gang rape, marital rape or “corrective”¹rape), which includes penetration of the vagina, anus or mouth by any object or part of the body;

1. Corrective rape is defined as the use of rape against women because of their real or alleged homosexuality supposedly in order to “cure” them of this sexual orientation.

- compelled rape (committed by a third person compelled to do so);
- attempted rape;
- sexual assault;
- anal and vaginal virginity tests;
- violent acts to the genitalia (such as burning, electrical shocks or blows);
- forced marriage;
- forced pregnancy;
- forced sterilization;
- forced abortion;
- forced prostitution;
- forced pornography;
- forced nudity;
- forced masturbation and any other forced touching that the victim is compelled to perform on himself/herself or a third person;
- human trafficking for sexual exploitation and slavery;
- castration, forced circumcision and female genital mutilation (FGM);
- threats of sexual violence used to terrorize a group or a community.

Explanatory Notes: Special Court for Sierra Leone (SCSL), Trial Chamber II, Prosecutor v. Charles Taylor, Judgment, 18 May 2012, SCSL-03-01-T, in which Charles Taylor was sentenced for having subjected the civil population to a campaign of terror, and particularly for using sexual violence as an instrument of terror; Republic of South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 (2007).

c. Sexual violence can constitute an international crime. Certain acts of sexual violence can constitute war crimes, crimes against humanity or crimes of genocide, such as rape, sexual slavery, forced prostitution and sterilization, or forced pregnancy.

d. Certain international crimes can be committed in times of peace, although they are more frequent in armed conflicts and/or in crisis situations. In armed conflicts or crisis situations, sexual violence can be used as a strategy to serve military goals or for the purpose of repression, and as a means to terrorize, punish and exact reprisals against a presumed enemy in order to force that enemy to flee, or to destroy it. In spite of the fact that sexual violence is extremely frequent in armed conflicts and crisis situations, the perpetrators of these crimes are rarely held responsible for their actions.

Explanatory notes: Statute of the International Criminal Court (hereinafter the "Rome Statute"), Articles 6, 7 and 8, especially 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi) (1998); International Criminal Court, Office of the Prosecutor, General Policy Document on sexual and sexist crimes, p. 4, par. 25-35 (2014); United Nations Security Council Resolutions S/RES/1325 (2000); S/RES/1820 (2008); S/RES/1888 (2009); S/RES/1889 (2009); S/RES/1960 (2010); S/RES/2106 (2013); S/RES/2122 (2013); S/RES/2242 (2015); 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 (hereinafter the "International Protocol on the Investigation of Sexual Violence in Conflict, 2014); International Criminal Tribunal for Rwanda (ICTR), Akayesu case, ICTR-96-4; International Criminal Tribunal for the former Yugoslavia (ICTY), Kunarac case, IT-96-23; International Criminal Court, Jean-Pierre Bemba Gombo case, ICC-01/05-01/08; Extraordinary African Chambers, Judgment of Public Prosecution v. Hissène Habré, par. 1527, p. 341 and par. 1538, p. 344 (2016).

e. It has been acknowledged that under certain circumstances, sexual violence can be a form of torture (rape, female genital mutilation, forced abortions and sterilizations), or can constitute cruel, inhuman or degrading treatment.

Explanatory Notes: Committee against Torture, General Comment No. 2, application of Article 2 by States Parties, CAT/C/GC/2, par.18 (2008); United Nations Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment, A/HRC/7/3, par. 69 (2008); United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, "15 Years of the Special Rapporteur on Violence Against Women, Its Causes and Consequences" (2009); UNHCR Guidance Notes on Refugee Claims Related to Feminine Genital Mutilation (2009); ICTR, the Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Judgment on 2 September 1998, par. 597; Rome Statute of the International Criminal Court, Articles 8 (2) (a) (iii) and 8 (2) (b) (xxi).

3. 2. Victims

a. Victims of sexual violence are persons who individually or collectively have been harmed or injured, through physical, psychological or economic loss, or serious infringements to their fundamental rights, caused by an act of sexual violence. The term “victim” must also apply to the close family and persons in whose care the victim is, especially to children born from rape and persons who have been harmed as a result of providing assistance to victims or attempting to prevent their victimization. A person is considered to be a victim, irrespective of whether the perpetrator of the violence has been identified, arrested, prosecuted or sentenced.

Explanatory Notes: General Assembly of the United Nations, Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, A/RES/60/147 (hereinafter “UN Principles on the Right to a Remedy”, 2005); Rules of Procedure and Evidence of the International Criminal Court, ICC-ASP/1/3 (Part. II-A), Rule 85 (2002); Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Situation: Situation in the Democratic Republic of the Congo, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, ICC-01/04-01/06-1432, par. 30, 32, 38 (11 July 2008).

b. Women and girls are particularly vulnerable to sexual violence due to ongoing discrimination against them. Entrenched inequality in legislation, that is perpetuated by customs, traditions and religious texts, contributes to patriarchal attitudes, gender-based stereotypes and violence. As a consequence, sexual violence is gender-based violence. Gender-based violence against women is defined as any act of violence against a woman because of her sex or gender, or any act of violence that disproportionately affects women.

c. Sexual violence also affects men and boys, and may take specific forms intended to affect the masculinity or virility of the victim as perceived by the perpetrator. Like sexual violence against women and girls, sexual violence against men and boys is often used as a means of dominating, subordinating or humiliating the victim and/or the group to which the victim belongs. Due to stereotypes associated with masculinity, men and boys who are victims of sexual violence face particular challenges in reporting such violence and receiving appropriate assistance. This phenomenon remains largely under-documented.

Explanatory Notes: Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict; Report on the work of the United Nations Workshop on Conflict-Related Sexual Violence Against Men and Boys (2013).

d. Children are particularly vulnerable to sexual violence, and girls are subject to double discrimination. Every human being below the age of 18 years is a child. Sexual violence against children includes the sexual abuse and exploitation of children, including all acts of sexual violence listed in the preceding paragraphs as well as child prostitution, using children in pornographic activities and scenes or publications, and producing, disseminating, broadcasting, importing, exporting, offering, selling or possessing pornographic materials involving children. Sexual violence is particularly common in marriages involving child brides. Sexual violence can be perpetrated against a child by anyone, even a family member or other children.

Explanatory Notes: African Charter on the Rights and Welfare of the Child, Articles 2 and 27 (1990); ICGLR, Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (2006) ; Convention on the Rights of the Child, Articles 19 and 34 (1989), its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) and its Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000); the Committee on the Rights of the Child, General Comment No. 13, par. 25 (2011); Interagency Working Group on Sexual Exploitation of Children, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (2016).

e. Factors other than a person’s sex can increase the vulnerability of individuals or groups of individuals to sexual violence. These include race, colour, national origin, citizenship, ethnicity, profession, political

opinions or other opinions, health including HIV status, disability, age, religion, culture, socio-economic or matrimonial status, refugee or migrant status, or any other status, sexual orientation, identity or gender expression².

Explanatory Notes: Istanbul Convention, Article 3 (c); International Criminal Court, Office of the Prosecutor, General Policy Document on sexual and sexist crimes, p. 4 (2014); Report of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, Mrs. Rashida Manjoo, A/HRC/17/26, par. 51 (2011). politique générale relatif aux crimes sexuels et à caractère sexiste, p. 4 (2014) ; Rapport de la Rapporteuse spéciale sur la violence à l'égard des femmes, ses causes et ses conséquences, Rashida Manjoo, A/HRC/17/26, para. 51 (2011).

3. 3. Consequences

Sexual violence has serious consequences for victims. These consequences include but are not limited to long and short-term physical damage, such as unwanted pregnancies; gynecological complications and genital lesions; vaginal and anal tears, such as traumatic and obstetric gynecological fistula; miscarriages; forced abortions; stillborn children; chronic pain; and sexually transmitted infections (STI) such as HIV. These consequences can also include psychological consequences such as post-traumatic stress disorder; denial; fear; lack of trust; low self-esteem; shame; guilt; anxiety and mood disorders, sleep disorders, loss of appetite; depression; drug abuse; self-harm and high-risk behaviour, including suicidal behaviour; isolation; decrease in or loss of sexual enjoyment; relationship problems with family, friends and partners; "honour" crimes³; trauma that is passed down through generations; the destruction of communities; as well as death. Sexual violence also has social and financial consequences which can include abandoning schooling, job loss, loss of training opportunities, financial difficulties, social exclusion, stigmatization, and difficulty in forming romantic and other personal relationships.

Explanatory Notes: Mental health outcomes of rape, mass rape and other forms of sexual violence, Produced by the Human Rights in Trauma Mental Health Laboratory, Department of Psychiatry and Behavioral Sciences, Stanford University School of Medicine, the Case of ICC Prosecutor vs. Jean Pierre Bemba Gombo, Annex A, ICC-01/05-01/08-3417-Conf-AnxA; Ethiopian Society of Obstetricians and Gynecologists, Synergie des Femmes pour les Victimes des Violences Sexuelles, Addis Ababa Fistula Hospital, EngenderHealth/The ACQUIRE Project, Traumatic Gynecologic Fistula: A Consequence of Sexual Violence in Conflict Settings (2006).

B. GENERAL PRINCIPLES AND OBLIGATIONS OF STATES

4. The non-discrimination principle

States must take the necessary measures to ensure that the rights of the victims of sexual violence are guaranteed, irrespective of their race, colour, national origin, citizenship, ethnicity, profession, political opinions, and any other opinions, and health including HIV status, disability, age, religion, culture, marital status, socio-economic status, status as a refugee, migrant or any other status, sexual orientation and identity, gender expression or any other factor that could lead to discrimination against them.

2. "Gender" can be defined as the roles, behaviours, activities and traits corresponding to a social representation that is deemed appropriate for women and men in a given society. Gender identity is the gender that a person perceives that he or she belongs to and with which he or she identifies. This gender may not be the gender that was assigned at birth. As for gender expression, this means the way that a person expresses his or her gender by making use of a variety of social, behavioural, or physical codes (such as clothing, body language, or tone of voice) usually attributed to a specific gender. Gender identity and gender expression are not necessarily related.

3. According to the definition of CEDAW, "Crimes committed in the name of so-called honour are acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence." CEDAW/C/GC/31/CRC/C/GC/18, par. 29.

Explanatory Notes: African Charter, Articles 2 and 3; Maputo Protocol, Articles 3 (4), 4 (a-d, f) and 8; ACHPR, Resolution 275: on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (2014); Convention on the Prevention and Punishment of the Crime of Genocide, Article 1 (1948); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2 (1984); Geneva Conventions of 1949, Article 1 and Additional Protocol I, Articles 4, 5, 6, 7 and 8.

5. The “do no harm” principle

States must take legislative measures and all other necessary measures to guarantee the well-being and security of the victims and witnesses of sexual violence, and to minimize the negative impact that actions to combat sexual violence and its consequences can have on victims and witnesses. In particular, States must ensure that the potentially negative consequences for victims and witnesses, of procedures to investigate acts of sexual violence and efforts to prosecute perpetrators, are reduced as much as possible.

6. The due diligence principle

States must ensure that agents acting on their behalf or under their effective control refrain from committing any acts of sexual violence. States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide a remedies to victims.

7. Obligation to prevent sexual violence and its consequences

States must take the necessary measures to prevent all forms of sexual violence and its consequences, particularly by eliminating the root causes of that violence, including sexist and homophobic discrimination, patriarchal preconceptions and stereotypes about women and girls, and/or preconceptions and stereotypes based on gender identity, real or perceived sexual orientation, and/or certain preconceptions of masculinity and virility, irrespective of their source (in accordance with the Part 2 of these *Guidelines*).

8. Obligation to provide protection against sexual violence and its consequences

States must adopt the necessary measures to guarantee that victims are protected from any new act of sexual violence and are protected from the consequences of sexual violence, particularly by guaranteeing that victims have access to all types of assistance that they need (in accordance with the Part 3 of these *Guidelines*).

9. Obligation to guarantee access to justice and investigate and prosecute the perpetrators of sexual violence

9. 1. States must take measures to guarantee access to justice for all victims of sexual violence, including in rural areas. States must ensure that investigations into acts of sexual violence and the prosecution of the perpetrators are carried out:

- without unjustified delays
- independently, impartially and effectively
- in a manner that will lead to the identification and sentencing of the perpetrators.

9. 2. Investigations and prosecutions must consider the rights of victims throughout the proceedings and guarantee the well-being and safety of victims and witnesses (in accordance with the Part 4 of these *Guidelines*).

9. 3. States must also adopt measures to promote compliance with regional and international standards of protection for the rights of women and girls within traditional justice systems, to guarantee the rights of the victims of sexual violence and to eliminate the discrimination that persists in these systems. States must raise awareness and provide training for traditional authorities and other stakeholders, the majority of whom are men, who are involved with traditional justice mechanisms with a view to encouraging respect for equality between women and men as well as broader representation for women in these systems.

9. 4. States must take measures to prohibit the use of alternative methods of conflict resolution, such as mediation or conciliation, in dealing with cases involving sexual violence before and during civil and criminal proceedings, when those methods do not respect the rights of victims, especially women and girls.


Explanatory Notes: Maputo Protocol, Article 25 b); Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights and Traditional Justice Systems in Africa, HR/PUB/16/2 (2016). See also the Organic Law on Integrated Protection Measures against Gender Violence (2004), Spain, which prohibits the use of mediation in cases of sexual violence. See the United Nations guidelines, "Good Practices and Challenges in Legislation on Violence Against Women", EGM/GPLVAW/2008/EP.10, which advises against using mediation in cases of domestic violence and other forms of violence against women (2008).

10. Obligation to provide effective remedy and reparation for the victims of sexual violence

States must adopt legislative measures and any other measures required to guarantee effective, sufficient and timely remedies, including reparation, to the victims of sexual violence. Remedies must be affordable and accessible without unjustified delays. This includes: effective access to justice; a guarantee of fair and equitable treatment that is adapted to the legal proceedings undertaken; adequate, effective and timely reparation for any damages sustained; and free access to information regarding remedies and the methods for obtaining reparation. Reparation must include individual and collective measures, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (in accordance with the Part 5 of these *Guidelines*).

Explanatory Notes: Maputo Protocol, Article 25 (a) and (b); General Assembly of the United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (2006); Report of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, A/HRC/14/22 (2010).

PART 2. PREVENTING SEXUAL VIOLENCE AND ITS CONSEQUENCES

A woman in a yellow patterned dress is speaking at a community meeting. Behind her is a banner with text in French: 'SYNERGIE DES FEMMES POUR LES VICTIMES DE VIOLENCES SEXUELLES' and 'APPLICATION DES EGLISES DANS LA PREVENTION DES VIOLENCES SEXUELLES & PROTECTION DES VICTIMES'. The banner also features logos for 'AMNESTY INTERNATIONAL' and 'SFVS'. Other people are seated in the background.

A representative of a network of Congolese civil society organisations specialised in the fight against sexual violence leads an awareness-raising operation for local populations in the village of Karuba, Democratic Republic of Congo.
© Pierre-Yves Ginet – Women here and elsewhere, Octobre 20, 2010.

A. AWARENESS-RAISING STRATEGIES

11. Awareness-raising campaigns

11. 1. States must conduct campaigns to raise awareness – paying particular attention to the most vulnerable populations – about the causes of sexual violence, the different forms it take and its consequences. These campaigns must address the root causes of sexual violence, combat gender-based stereotypes, raise awareness of the unacceptable nature of this violence, and help people to understand that it represents a grave violation of the rights of victims, especially those of women and girls.

11. 2. These campaigns must be targeted towards informing people about the laws enacted to combat violence against women and/or sexual violence, their provisions and the remedies available to victims under these laws. These campaigns must underscore that sexual violence is a criminal offence and specify the corresponding penalties (according to Part 4 of these Guidelines) to deter people from committing these violent acts and send a clear message of zero tolerance. They must also provide information on the mechanisms available to report acts of sexual violence as well as the measures to protect, assist and support victims (according to Part 3 of these *Guidelines*).

11. 3. These awareness-raising campaigns must also focus on preventing the consequences of sexual violence. They must combat the perception that such actions represent an offence to the honour of a person, their family or community, and must combat so-called “honour crimes” committed against victims. These campaigns must also provide information on the negative effects of settlements between the family of the victim and the attacker, and on the dramatic consequences of having the victim marry the perpetrator of the violence.

11. 4. These campaigns must be disseminated throughout the entire national territory, including rural areas; public places, especially public transportation; hospitals; military bases and police stations; educational institutions, including schools; and businesses. States must also carry out awareness-raising

activities with stakeholders in the private and informal sectors. States must conduct these awareness-raising activities through all appropriate means and channels: poster campaigns, social media campaigns, through advertising and on television, in radio broadcasts, including on community radio, in newspapers, at events at educational establishments and others.

12. Target groups of the campaigns

12. 1. These awareness-raising campaigns must make men and boys responsible for their actions and encourage them to be involved in combating sexual violence and its consequences. The campaigns must also include information on sexual violence against men and boys, and focus on deconstructing stereotypes about masculinity, promoting a non-violent concept of virility that respects gender equality, and encouraging men and boys who are the victims of sexual violence to report and denounce the violence.

12. 1. States must educate advertising professionals, journalists, and other communications specialists, including personnel working in pop culture media and community radio, to combat sexual violence, its causes and consequences. States must encourage information professionals to establish partnerships with public authorities to implement and/or strengthen independent regulations to combat discriminatory stereotypes and depictions, especially those presenting a degrading image of women and girls. These partnerships must also promote women's voices in the media and advertising. The creation of independent self-regulation mechanisms responsible for setting out ethical guidelines and monitoring their application must also be strongly encouraged. These measures must be taken in strict compliance with freedom of expression and freedom of the press.

Explanatory Notes: See Articles 29 and 30 of the SADC Protocol on Gender and Development (2008), which urge States Parties to take all necessary measures (including adopting codes of conduct, policies and procedures) to discourage the media from broadcasting violent and degrading images of women, encourage it to give an equal voice to women and men, and play a constructive role in combating gender-based violence. See DAW, DESA, United Nations Handbook for Legislation on Violence against Women, ST/ESA/329, p. 26 (2010). See also the "Plan of Action to End Violence Against Women and Children" in Tanzania (2001-2015), which provides measures to raise awareness in those working in the media to ensure that they refrain from promoting sexist stereotypes and to involve them in preventing and eliminating violence against women (Section 5.2.3). See also the "National Plan to Prevent and Combat Violence Against Women" in Mozambique (2008-2012), which considers advertising, education and awareness-raising as means to prevent and combat violence against women, and provides for broad distribution of the plan and of the information on existing legislation to promote women's rights. See the "National Action Plan to Combat Gender-Based Violence" in Cap-Verde (2006), which provides for the signing of agreements with public and private sector communications bodies regarding the depiction of women and reporting on violence committed against them.

B. EDUCATION

13. Educational programmes

13. 1. States must create educational programmes and materials that promote gender equality, combat discrimination and violence against women, and challenge sexist and gender stereotypes. These programmes and materials must include specific modules on sex education, all forms of sexual violence, its causes and consequences and sexual and reproductive health.

13. 2. These educational programmes and materials must be developed by specialists and be age-appropriate, and adapted to the learning capabilities of young people. They must also include methods to evaluate the programmes and its materials. They must be provided at all educational levels in all schools and universities and in other educational settings such as training institutions, sports centres and culture and leisure centres.

C. TRAINING PROFESSIONALS

14. Target groups of the training

14. 1. States must have appropriate and sufficiently funded training to combat sexual violence and its consequences in different professional and state settings and communities. Many groups must receive this training, including but not limited to personnel from police, all state security forces, customs agents and intelligence units, firefighters, and personnel deployed in peacekeeping operations; judges, magistrates, court staff (including clerks, interpreters, and other support staff), paralegals and lawyers; teachers, instructors and others who work in the education sector; medical personnel (including emergency staff), psychologists and social workers; traditional and religious leaders and other stakeholders in religious institutions; personnel in community, sports and cultural organisations; and the private sector.

14. 2. States that are involved in peacekeeping operations must provide mandatory training to all military and civil personnel deployed in these operations before deployment and during missions.

15. Content of the training

This training must focus on human rights, including the rights of women and girls; equality in the context of sex and gender; the different types of sexual violence and how to detect and prevent them; the consequences of sexual violence; and the rights and needs of the victims of sexual violence, including those of children and other groups of particularly vulnerable people such as prostitutes and migrant women.

Explanatory Notes: African Charter, Articles 2, 3 and 18 (3); Maputo Protocol, Articles 2 (1) and (2) and 4 (2) (d); SADC Protocol on Gender and Development, Article 24 (2008); CEDAW, General Recommendation No. 25, Articles 2 and 5 (a); International Convention on Civil and Political Rights (ICCPR), Article 3; United Nations Human Rights Committee, General Comment No. 18.

D. URBAN AND RURAL PLANNING

16. Urban and rural planning policies and measures

States must cooperate with local authorities to create and implement policies and measures, especially urban and rural planning measures, to prevent and combat sexual violence in both public urban and rural areas (for example, in public transportation, schools and universities, shopping areas, sports complexes and playgrounds, in the streets and on roads and highways, and in any other public place where people meet).

17. Identifying unsafe areas

States must conduct evaluations to identify areas that are not safe for women and girls, and to establish where they are more susceptible to becoming victims of a sexual attack. States must take the necessary measures in spatial planning, public development and security (increasing police presence and improving public lighting, filling in vacant lots, etc.), to reduce the risk of violence and encourage women and girls to take ownership of public spaces.

18. Training urban designers and architects

States must ensure that urban designers and architects are trained in designing public spaces to prevent sexual violence. Steps should also be taken to increase the participation of women in these professions.

Explanatory Notes: See the “National Action Plan on Gender Based Violence” in Lesotho (2008), which provides for the creation of a code of conduct for taxi drivers and for lighting to be installed in the streets and in public places to decrease the risk of violence for women in these areas.

E. COOPERATION WITH LOCAL STAKEHOLDERS AND CIVIL SOCIETY ORGANISATIONS

19. Participation of civil society organisations in preventing sexual violence

Local authorities and civil society organisations, including community organisations, play a particularly important role in preventing sexual violence and its consequences, especially in remote or marginalized areas. States must ensure that these organisations directly participate in an ongoing manner in prevention activities and in all stages of the development, implementation and monitoring of national action plans (see Part 6, Section B. of the *Guidelines*).

20. Support to civil society organisations

States must support civil society organisations that conduct programmes preventing and addressing sexual violence and its consequences, including awareness-raising measures, and providing training and support to the victims of sexual violence. Any barriers that hinder their work, including legal barriers, must be removed, and they must be protected against attack or recriminations.



PART 3. PROTECTING AND SUPPORTING THE VICTIMS OF SEXUAL VIOLENCE

A. REPORTING SEXUAL VIOLENCE

21. Emergency numbers

21. 1. States must create toll-free national emergency numbers that are available 24 hours a day, seven days a week, to make it possible for victims or any other person to report cases of sexual violence, obtain information on how to access protection and support services for victims, and get referrals to the appropriate services. These emergency help lines must be confidential and must guarantee the anonymity of those reporting the violence. They must also be linked up with all relevant services (police, gendarmerie, medical, social, legal, etc.) in order to facilitate and hasten the intervention of the authorities and the provision of services to victims and to increase reporting rates for cases of sexual violence.

21. 2. States must increase financial and human resources for these emergency help lines in times of political instability; before, during and after elections; and in situations conflict and crisis.

22. Day centres, counselling and referral

States must create, strengthen and/or maintain programmes and counselling and support centres for the victims of sexual violence. These places of safety must provide support and advice to victims on how to access appropriate services. They should provide a welcoming space, a listening ear and free, confidential and anonymous support provided by specially trained personnel.

23. Social workers in police stations

States must also take the necessary measures to ensure that specially trained social workers have permanent offices at police stations and gendarmerie outposts to provide care and guidance to the victims of sexual violence, referring them to the appropriate services and ensuring that they do not experience re-victimization.

B. MEASURES TO PROTECT AND SUPPORT VICTIMS

24. General principles

States must adopt legislative, regulatory and all other measures necessary to protect the victims of sexual violence from any act of violence and to provide, timeous, efficient, comprehensive, accessible and free service at a reasonable distance from where the victims are located, which is adapted to the needs of victims and witnesses, after the violence takes place. Protection and support for the victims of sexual violence should be provided, regardless of whether they wish to engage in legal proceedings or testify against the perpetrator. This support must include services such as legal assistance, medical assistance (including access to a forensic medical examination), sexual and reproductive health care, and care for the prevention and treatment of HIV. It must also include psychological and financial support, housing assistance, training, education and support in finding employment. These services must have adequate human and financial resources and enough well-trained personnel, as recommended by the guidelines 14 and 15.

25. One-stop centres

All protection and support services must be available at one location, and these centres must be specifically designed to provide all related services in an integrated manner. These services must be accessible, comprehensive, and of a high quality. In particular, centres must have a toll-free help line; be permanently staffed with counselors and support staff; provide medical care (including access to a forensic medical examination) and legal assistance; and enable victims to access police services. These centres must guarantee the safety of victims and their children.

Explanatory Notes: See the Isange One Stop Center in Rwanda, established by the Minister of Gender and Family Promotion, the Rwanda National Police, and the Ministry of Justice in 2009. See also Rwanda National Police, Isange One Stop Center Model, <http://darpg.gov.in/sites/default/files/Rwanda.pdf>. See the Coordinated Response Centers (CRC) in Zambia, especially Care, “One-Stop Model of Support for Survivors of Gender-based Violence” (2013).

26. Shelters

States must take the necessary measures to create or fund, and improve, shelters for the victims of sexual violence and their children. These centres must be accessible to all victims, including those who reside in rural areas. They must guarantee the absolute safety of victims and their children and respect for their privacy and for the confidentiality of their case. The victims and their children must be welcomed and given temporary shelter at the centres and when they leave, they must be guided towards the appropriate housing services, if necessary. There must be enough of these centres to enable all victims to find refuge, especially those who are forced to leave their homes because of domestic violence. These structures must be sufficiently funded and staffed. Their personnel must be appropriately trained to welcome and care for the victims of sexual violence.

Explanatory Notes: Maputo Protocol, Article 16; Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011). See also “Away from violence: Guidelines for setting up and running a women’s refuge”, developed by Women Against Violence Europe (WAVE) (2004).

27. Protection orders

27. 1. States must take the legislative and regulatory measures required to enable the relevant authorities to hand down protection orders, for victims in situations of immediate danger, imposing protection measures for the victims and different restraints on the person subjected to the order. These measures must ensure the prevention of acts of sexual violence or the protection of the victims of sexual violence and their children in emergency situations of imminent harm, and when the source of the violence is an intimate partner, former partner or ex-spouse.

27. 2. These protection orders must be provided at no cost, and should be available for immediate protection, for a specified period, regardless of whether a complaint is lodged, legal prosecution takes place, or the perpetrator of the violence is sentenced. Protection orders should be issued on an ex parte basis, where necessary. To make it easier for victims of sexual violence to access this type of measure, forms to apply for protection orders must be available at police stations, courts, legal aid or public defender offices, law firms, legal associations, and at the premises of any other relevant stakeholder.

27. 3. Protection orders may require the perpetrator and the victim to maintain separate residences; the perpetrator to stay away from the victim or certain places where the victim regularly attends (workplace, children's schools, etc.) or refrain from contacting the victim. Protection orders may also prohibit the perpetrator from possessing firearms and ordering that any firearms or other weapon be surrendered and/or seized; as well as authorize the victim to conceal the location of her residence, or to have correspondence for her attention sent to her lawyers' firm or the Office of the Public Prosecutor.

27. 4. States must take legislative measures or any other measures necessary for all breaches of protection orders issued under previous paragraphs to be punished, including by criminal sanctions that are effective, deterrent and proportionate.

Explanatory Notes: Maputo Protocol, Article 16; Istanbul Convention, Article 53; CEDAW Committee, General Recommendation 33, par. 51; United Nations Resolution on Strengthening crime prevention and criminal justice responses to violence against women, A/RES/65/228, par. 16 (h), 20 (c) (2011)..

C. MEDICAL SUPPORT AND ACCESS TO SEXUAL AND REPRODUCTIVE RIGHTS

28. Type of care

States must provide the victims of sexual violence with medical services to mitigate and/or remedy the consequences of the violence they have suffered. These services must include but are not limited to treatment provided by gynecologists, proctologists, and urologists for potential injuries suffered, especially to treat infections and other sexually transmitted infections (STIs), including HIV and traumatic and obstetric gynecological fistula; and access to pregnancy tests, contraception (including emergency contraception that prevents conception), medical abortions, post-abortion care, and psychological support. States must not require victims to have lodged a complaint or reported the violence to the police before these services are provided.

Explanatory Notes: Panzi Hospital and Physicians for Human Rights (PHR), Bukavu, Democratic Republic of the Congo; Doctors without Borders, Untreated Violence: The Need for Patient-Centred Care for Survivors of Sexual Violence in the Platinum Mining Belt (2016).

29. Contraception

States must guarantee that women and girls victims of sexual violence have access to emergency contraception to enable them to avoid pregnancy (emergency contraception pill (ECP) or IUD), within no more than five days after the violence occurs. These methods prevent or delay ovulation or prevent the fertilization of the ovum and are therefore not abortive methods.

Explanatory Notes: World Health Organisation (WHO), Emergency contraception Fact sheet No. 244 (February 2016).

30. Voluntary interruption of pregnancy (VIP)

30. 1. States must ensure that the victims of sexual violence have access to medical abortions, as set out in the Maputo Protocol and the International Covenant on Economic, Social and Cultural Rights. States must adopt the appropriate laws, regulations and programs to ensure the de jure and de facto exercise of the right to obtain a medical abortion in cases of sexual violence. States must ensure that women who have had abortions are not criminally prosecuted. Women who wish to obtain a medical abortion or emergency medical care after having undergone a clandestine abortion must not be questioned or prosecuted.

30. 2. States must adopt the necessary measures to enable adult women victims of sexual violence to make a decision to have an abortion without the need for permission from any third party, especially their spouse or partner.

30. 3. States must create favourable conditions to enable and facilitate access to medical abortion for minors who are victims of sexual violence. These conditions must be guaranteed without the need for prior approval from parents or guardians, where there are valid reasons to believe that these minors could suffer reprisals, violence, threats, coercion, abuse or abandonment.

30. 4. Health professionals must not fear that they will suffer sanctions for having provided abortion services in cases of sexual violence. States must eliminate unnecessary or irrelevant restrictions on the profile of service providers authorized to perform medical abortions and should not require multiple signatures or approvals from health professionals for the cases set forth in the Maputo Protocol. Providers of intermediate care, such as midwives and other healthcare professionals, must be trained to perform risk-free abortions. Health care providers must not be obliged to report cases of clandestine abortions that they witness. States must ensure that these healthcare services and healthcare providers do not refuse access to information and services on medical abortion because of opposition from a third party or conscientious objection.

Explanatory Notes: Maputo Protocol, Article 14 (2) (c); ACHPR, General Comment No. 2 of Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter (2014); Declaration of the Special Rapporteur of the ACHPR on the rights of women during the celebration of the Global Day of Action for Access to Safe and Legal Abortion (September 2016). See also the Report of the Secretary-General of the United Nations, Framework of Actions for the follow-up to the Programme of Action of the International Conference on Population and Development after 2014, E/CN.9/2014/4, par. 81 (2014); Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 on the Right to sexual and reproductive health, E/C.12/GC/22 (2016); Committee on the Rights of the Child, General comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, par. 60 (2016); Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, Article 24, CRC/C/GC/15 (2013); Provisional Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254 (3 August 2011); Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Juan E. Méndez, A/HRC/22/53, par. 46-50 (2013); Committee Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture, par. 16, CAT/C/NIC/CO/1 (2009), where the Committee acknowledges that torture and cruel, inhuman or degrading treatment can include a refusal or failure to provide access to abortion in the event of rape. See also the continental Campaign for the Decriminalization of Abortion in Africa of the ACHPR Special Rapporteur on the Rights of Women.

31. Post-abortion care

States must ensure that women victims of sexual violence who seek post-abortion care are not accused or detained on suspicion of clandestine abortion, and that those who have received post-abortion care are not prosecuted.

Explanatory Notes: Maputo Protocol, Article 14 (2) (c); ACHPR, General comment No. 2 of Article 14.1 (a), (b), (c) and (f), and Article 14.2 (a) and (c) of the Maputo Protocol.

32. Maternal health care

When women victims of sexual violence have been unable to seek, or have not wished to seek, access to medical abortion services, States must guarantee their access to pre- and postnatal and nutritional services during pregnancy and lactation.

Explanatory Notes: Maputo Protocol, Article 14 (2) (b).

33. Prevention and treatment of HIV

33. 1. States must take all necessary measures for victims of rape to have access to prophylaxis within 72 hours, especially post-exposure prophylaxis (PEP), including in rural areas, to prevent the transmission, spread and proliferation of STIs, especially HIV. High-quality test kits for HIV and all other STIs must be accessible and available to victims of rape at no cost.

33. 2. States must also take the necessary measures for victims of rape to have access to antiretroviral therapy (ART) programmes and prenatal care to reduce the risk of transmitting HIV and certain other STIs from mother to child.

33. 3. States must take the necessary measures for specific short and long-term support to be provided to victims who were infected with HIV after a rape, including ongoing, free, high-quality medical and psychological care.

Explanatory Notes: Maputo Protocol, Article (1) (d) and (e); ACHPR, General Comments on Article 14 (1) (d) and (e) of the Maputo Protocol (2012); SADC Declaration on Gender and Development (1997); General Assembly of the United Nations, Resolution A/RES/S-26/2, Declaration of Commitment on HIV/AIDS (2001); WHO/Office of the United Nations High Commissioner for Refugees, Clinical Management of Rape Survivors: Developing protocols for use with refugees and internally displaced persons (2005).

D. SOCIAL SUPPORT

34. Empowerment of victims

States must provide social support to victims to aid them in achieving autonomy, especially by facilitating access to (new) housing; care services for their children (access to daily supervision, education and healthcare), especially children born from rape; access to financial assistance; and helping them return to work or obtain work as needed. States must work together with civil society organisations, private sector stakeholders and technical partners who support the victims of sexual violence by offering appropriate support services and helping them to regain control of their lives, especially by assisting them to gain new skills and access new opportunities, for example through income-generating activities.

Explanatory Notes : Maputo Protocol, Article 16.

E. INFORMATION

35. Access to information

35. 1. States must adopt all necessary measures so that victims of sexual violence and their families are

appropriately informed, through available communication channels, in languages that they understand and in a timely manner, regarding their rights and the protection and support measures available at the local, regional and national levels.

35. 2. In particular, States must create or support the development of a national website providing all appropriate practical information to victims of sexual violence: information on the law, guidance on accessing existing assistance, emergency phone numbers, etc.

F. COORDINATION AND COOPERATION BETWEEN STAKEHOLDERS

36. Fostering synergies between stakeholders

States must take the necessary measures to ensure that there is good coordination and cooperation between the different stakeholders involved in protecting and supporting the victims of sexual violence, including between State services, civil society organisations (especially those specialized in combating sexual violence and its consequences), international organisations, and all relevant partners.

37. Focal points

Designating focal points within the different services, with personnel specifically trained to assist the victims of sexual violence, can make this cooperation easier.

38. National guidebooks

States must make national on-line guidebooks available to the different stakeholders and providing a list of all available services to make it easier for them to contact each other. These guidebooks must be regularly updated.



PART 4. INVESTIGATING SEXUAL VIOLENCE AND PROSECUTING THOSE RESPONSIBLE

Two lawyers of the plaintiffs in the case of former Chadian dictator Hissene Habre, arrive to the Appeal Court of the Extraordinary African Chambers (CAE) on April, 27, 2017 in Dakar, Senegal.
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A. CRIMINALIZATION OF SEXUAL VIOLENCE

39. National legal framework

39. 1. States must ensure that their national legal framework guarantees that the definitions of all forms of sexual violence set out in criminal legislation are consistent with regional and international standards, including the definitions provided in these *Guidelines* (guideline 3. 1.). They must also guarantee that their national legal framework criminalizes forms of sexual violence that are not yet criminalized within their legislation, specifically by creating new offences in their criminal codes. This national legal framework must also expressly:

- Guarantee the effectiveness of any investigation and prosecution of acts of sexual violence;
- Guarantee victims the right to free legal assistance and legal representation beginning with the preliminary investigation;
- Guarantee that medical and legal forensic costs are covered;
- Contain clear and specific provisions regarding gathering, preserving and archiving evidence of acts of sexual violence;
- Ensure that the most serious sexual offences / those qualified as crimes under the law are not subject to prescription ;
- Prohibit any type of mediation between the victim and the perpetrator of the sexual violence before or during the legal proceedings; and
- Provide for penalties commensurate with the seriousness of the acts of sexual violence.

39. 2. States must guarantee that this legal framework is widely disseminated, including within the administration, police and judicial services and appropriate social and medical services.

B. INITIATION AND PROGRESS OF PUBLIC PROSECUTION

40. Preliminary investigation

40. 1. Warning system and reporting sexual violence

a. States must implement a simple, rapid and efficient mechanism to warn of or report any act of sexual violence to the appropriate authorities (police or investigative services). This mechanism must guarantee the security of victims and witnesses (especially through measures to ensure the anonymity of witnesses) and to take into account the constraints that victims face (possibility that they do not have access to their identification and civil status documents). There should be no prerequisite that the victim must provide a medical certificate or any other type of proof that the sexual violence has taken place in order to file a complaint or for the complaint to be admissible.

b. Before a complaint is filed, victims must be fully informed of the consequences of filing it. At a minimum, the reporting mechanism must incorporate toll-free emergency helplines (as mentioned in guideline 21) and special forms available for reporting acts of sexual violence at health centres, hospitals, police offices, associations and at the premises of any other appropriate entity. These forms must have clear and non-discriminatory questions, and where required, victims or witnesses of sexual violence must be offered help from a qualified person to fill out the forms. These forms must be able to be filled out directly on-line at the relevant websites, if possible. Filling out the forms must not be a prerequisite to gaining access to medical and forensic services.

c. States must guarantee that these warning and reporting mechanisms for acts of sexual violence are available and accessible throughout the entire territory, especially in remote areas. The information on the existence and operations of these mechanisms, and on the procedures that will follow once they are activated, must be available and accessible throughout the country in the main languages and dialects spoken there.

d. Through the creation of specific penal policies, States must ensure that any complaint or notification by a victim of an act of sexual violence automatically triggers an official investigation.

40. 2. Specialized investigation and prosecution units

a. States must put in place or, where applicable, strengthen specialized investigative units for acts of sexual violence within the police and in the justice system, including in training for investigators, prosecutors and judges). These units will promote a coordinated and integrated approach while respecting the fair trial rights of the accused and ensure the effectiveness of the investigation and prosecution process, especially where children are involved. These units will also serve to improve the quality of services and encourage victims and witnesses to testify and/or file complaints in a climate of trust and confidence.

b. These units must have specialized personnel, including but not limited to criminal investigation officers, doctors, nurses, midwives, psychologists, investigating judges, prosecutors, and interpreters. All personnel must be specifically trained and accredited in techniques for interviewing victims and gathering and preserving forensic evidence related to acts of sexual violence as well as in methods for supporting victims and witnesses.

c. The personnel of these specialized units must ensure that victims and witnesses are informed through all phases of the proceedings, including, where applicable, during medical and forensic procedures. Beginning with the preliminary investigation, victims and witnesses should be informed of their rights, especially the

right to receive legal assistance and legal representation. They should also be informed of any potential protective measures in effect and be oriented relevant services.

d. Women must be well represented among the members making up the personnel of these specialized units, so that women and girls who are victims or witnesses of sexual violence may interact with female personnel if they wish.

e. These units must have sufficient financial, material and human resources to enable them to properly perform their duties.

Explanatory Notes: South Africa, Department of Justice, National Guidelines for Prosecutors in Sexual Offence Cases (1998); Sex Crimes Units within the Victim Support Units of the Police Service in Zambia; OMCT (World Organisation Against Torture), Human Rights Violations in Zambia, Part 2: Women's Rights, Shadow Report, UN Human Rights Committee, 90th session (July 2007). United Nations Office on Drugs and Crime (UNODC), Handbook on effective police responses to violence against women (2010); United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34 (1985); Circular No. 005, Ministry of Justice of Côte d'Ivoire, 18 March 2014, on complaints filed with police services about physical attacks.

f. Adopting and disseminating protocols for investigation and prosecution: States are encouraged to adopt standardized protocols for procedures and techniques for the investigation and prosecution of acts of sexual violence and for the methods for supporting victims and witnesses to guarantee a minimum standard of professionalism in dealing with such acts. States must ensure that these protocols are widely disseminated to units charged with specialized investigation and prosecution, where these exist, and to other appropriate services of the medical and justice sectors.

40. 3. Legal assistance and legal representation

a. States must take the necessary measures to guarantee the availability and accessibility of legal assistance and legal representation at no cost for the victims of sexual violence in order to guarantee their effective right to justice.

b. To guarantee adequate, effective legal representation for the victims of sexual violence, States must take the necessary measures to create lists of legal counsels specialized in cases of sexual violence and make these lists available to victims. The right of victims to freely choose their legal representative must be guaranteed. Furthermore, States are encouraged to put in place centres providing legal assistance and legal representation to victims of sexual violence and to promote the involvement of national bar associations in processing such cases.

c. Beginning from the preliminary investigation phase, States must take measures to ensure that victims benefit from the assistance of an interpreter specialized in the follow-up of cases related to acts of sexual violence, as necessary and where the victims wish it.

d. States must allocate sufficient financial and human resources to ensure the proper functioning of the legal assistance and legal representation system.

40. 4. Evidence-gathering

a. *General principles*

i. States must ensure that forensic and legal services apply international standards in gathering, using, preserving and archiving evidence related to acts of sexual violence.

- ii. States must guarantee that the victims of sexual violence are properly informed of the protocols used in forensic examinations and all other procedures for gathering evidence that involve them.
- iii. States must take the necessary measures to prioritize protecting the physical and psychological integrity of victims and/or witnesses in procedures to gather and archive evidence related to acts of sexual violence.
- iv. States must take the necessary measures to ensure that professionals involved in gathering evidence limit the number of examinations and interviews performed, and ensure that they are conducted in a reassuring and confidential environment in order to minimize the re-victimization of victims.
- v. States must ensure that these professionals receive specific training on gathering, using, preserving and archiving evidence related to acts of sexual violence, including for procedures involving children.
- vi. Taking into account the lack of medical personnel in certain areas (especially rural areas) or during times conflict and crisis, States must take the necessary measures to extend training in evidence-gathering and enable certain types of medical personnel, such as nurses and midwives, to gather evidence. These personnel should be specially trained (according to the recommendations 14 and 15 set forth in these *Guidelines*).
- vii. As far as possible, States must guarantee that forensic services are provided at no cost.

b. Procedures for the collection and preservation of forensic evidence

- i. States must implement a mechanism enabling the rigorous collection and preservation of forensic evidence related to acts of sexual violence (DNA sampling, samples of blood, hair, saliva, sperm, etc.), to ensure that the evidence is admissible throughout the criminal proceedings.
- ii. States must guarantee that the professionals involved in investigation and prosecution are provided with equipment for the collection, analysis, preservation and storage of evidence that is sufficient, effective, safe and of high quality. Specific equipment must also be provided in cases involving sexual violence against children. This equipment must enable the collection and preservation of evidence such that the evidence is admissible throughout the criminal proceedings, even if the victim decides to lodge complaints several weeks or months after the crime takes place.
- iii. The evidence must be digitally stored under conditions that guarantee the security of victims, witnesses and those responsible for gathering the evidence, as much as possible.

40. 5. Informed consent of victims in gathering forensic evidence

a. Information and informed consent

States must take all necessary measures so that professionals in the medical and judicial sector properly inform victims of sexual violence, in a language that they understand, of the procedures to gather forensic evidence related to the violence that they have undergone. This information must enable the victims to give their consent to be examined and/or photographed. Victims of sexual violence should be informed of the confidential nature, where applicable, of the information that they provide during any forensic medical examination. They must be consulted and give informed consent before their contact information or any other information regarding them is shared with third parties. Such consent must be obtained both orally and in writing as much as possible.

b. Testimony of the victim

- i. States must guarantee that the rules applicable to gathering and using evidence do not discriminate against victims of sexual violence.
- ii. For offences involving sexual violence, States must provide for a reversal of the burden of proof such that the victims are not obliged to provide any evidence other than their own statement. This means that, depending on the circumstances, the statement of the victim can be sufficient proof of an act of sexual violence in the absence of any other corroborating evidence (witness statements, documents, medical reports, photos, etc.).
- iii. States must guarantee that any mention of the previous or subsequent sexual behaviour of the victim is inadmissible as evidence taken into account to determine whether sexual violence has taken place or as a mitigating circumstance, including any potential questions about virginity or arguments that the victim has delayed in reporting the violence.

Explanatory Notes: ICTR, Case of Mucić et al, Rules of Procedure and Evidence, Article 96; Namibia, Combating of Rape Act, Article 5 (2000); Law on Sexual Violence, Democratic Republic of the Congo (Law 06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940 on the Congolese Criminal Code and Law No. 06/019 of 20 July 2006 amending and supplementing the Decree of 6 August 1959 on the Congolese Criminal Code), Articles 14.2 and 14.3; Rules of Procedure and Evidence, International Criminal Court, Rules 70-71, especially Rule 70 c), indicating that "Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence"; International Protocol on the documentation and investigation of sexual violence in conflict, Annex 9, Rules of evidence and procedure as tools for the protection of survivors/witnesses (2014); Kenya, Kenyan National Guidelines on the Management of Sexual Violence (2009); WHO Guidelines for the medico-legal care for victims of sexual violence (2003); Bangladesh High Court, Al Amin & Ors v. the State Bangladesh 51 DLR (1999) 154, which recalls that the statement made by the victim of rape in and of itself constitutes sufficient evidence, as long as it is credible and consistent; European Court of Human Rights, M.C. v Bulgaria, application 39272/98, judgment of 4 December 2003, par. 166; Rule 70 of the ICC's Rules of Procedure and Evidence provides that "[c]onsent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence."; Karen Tayag Vertido v the Philippines, Communication No. 18/2008, CEDAW/C/46/D/18/2008, par. 8. 9. (1 September 2010).

41. Legal prosecution launched and conducted by the Public Prosecutor

41. 1. Legal action initiated and conducted by the Public Prosecutor

The Public Prosecutor must be able to initiate criminal legal action, even in the absence of a complaint filed by the victim(s). Prosecutors must be able to pursue legal action, even if the victims withdraw their complaint, in agreement with the victims when possible, and always taking into consideration the security and safety of the victims.

Explanatory Notes: See the Sexual Offences Courts in South Africa beginning in 1993 and the Sexual and Gender Based Violence Crime Unit in Liberia beginning in 1999.

41. 2. Participation of the victims and witnesses in the proceedings

States must take all necessary legislative and other measures so that victims and witnesses of sexual violence have the right to be heard and duly represented, especially by allowing them to present their views and concerns at each stage of the proceedings where this is appropriate, while respecting the rights of the accused. Victims and witnesses must be informed of their roles, guarantees of protection and confidentiality, the schedule of proceedings, appeals, and progress in the trial – such as requests for release filed by the perpetrator of the violence – and be informed of the decision made in their case, especially regarding the

arrest, detention and release of the perpetrator of the violence, while respecting the rights of the accused.

41. 3. Participation of associations in legal proceedings

States must adopt legislative or any other measures to enable associations specifically mandated to combat sexual violence or to support the victims of sexual violence (including providing support during any trials) to participate in proceedings related to acts of sexual violence in order to contribute to the legal action in this type of case and combat the impunity of those who are responsible. This participation could take the form of the associations becoming civil parties, becoming involved through third-party intervention, or providing support and/or legal representation to the victims.

41. 4. Age of sexual consent

States must adopt the necessary legislative measures to create a presumption of absence of consent from minors, who have not reached the age of sexual consent for sexual relations with adults, so that an accused is unable to invoke such consent as a defence. The age of sexual consent must not be below 16 years.

Explanatory Notes: Haut Conseil à l'Égalité entre les femmes et les hommes (High Council for Gender Equality), Republic of France, Avis pour une juste condamnation sociale et judiciaire du viol et autres agressions sexuelles (Notice for fair condemnation in society and fair sentencing for rape and other types of sexual assault), avis n°2016-09-30-VIO-022, 5 October 2016.

41. 5. Other measures for access to justice for the victims of sexual violence

States must work together with civil society organisations and associations of women lawyers, local community leaders and other service providers with a view to identifying strategies in order to improve access to justice for the victims of sexual violence in remote areas where it is more difficult to have access to justice services.

42. Measures for protecting the victims and witnesses of sexual violence

42. 1. General measures

a. States must adopt the necessary legislative and other measures to guarantee that victims and witnesses will be protected against intimidation, reprisals, and all kinds of re-victimization or trauma through all phases of the investigation and prosecution of sexual violence. The informed consent of the people subject to these protective measures must be sought and obtained. These protective measures must guarantee the security, dignity, privacy and well-being of victims and witnesses, while respecting the rights of the accused and the rules of a fair trial.

b. These measures may include but are not limited to the following:

- Protecting the personal information of the victim as much as possible, particularly by redacting the names and locations of victims and witnesses from the transcripts of hearings, prohibiting those participating in the proceedings from revealing such information to third parties, and by using pseudonyms;
- Allowing victims who wish to do so to participate in hearings in a secure environment, protected from the accused, through the use of the following measures:
 - Separate waiting rooms for victims and perpetrators;
 - Protective cubicles for witnesses;
 - Police escorts where required;
 - Gathering testimony / depositions using special methods (video conference, altering the voice or image of the person speaking);

- Filming hearings using a camera or video-conferencing system;
- Ensuring that the rhythm and duration of questioning does not further traumatize the victims;
- Closed hearings;
- Providing safe accommodation for victims and witnesses as needed and when requested by the victims or their legal counsels, during the trial and afterwards as applicable.

42. 2. Special measures for the participation and protection of children victims or witnesses of sexual violence

States must take the necessary measures to guarantee that the best interests of the child are of paramount consideration, and that judicial intervention takes place in the least intrusive manner possible. States should facilitate the participation of children victims or witnesses of sexual violence throughout the proceedings and ensure that they are protected, particularly through the following measures:

- The legal representative of the child should be present during the hearing, and, where applicable, any other person of the child's choosing;
- The hearing of the child should be recorded to avoid trauma related to multiple hearings;

Interviews should be conducted in such a manner that the child has a clear understanding of the process, by simplifying discourse and using age-appropriate representations and any other method of communication that can help the child understand the questions and avoid any further trauma;

Alternative methods of expression, such as art, should be used to encourage the child to express himself/herself (drawing, theatre, etc.);

- Accessible psychological support provided by personnel specialized in listening to and assisting child victim or witness of sexual violence.

Explanatory Notes: ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003); Committee on the Rights of the Child, General comment No. 13 (2011): The right of the child to freedom from all forms of violence, CRC/C/GC/13 (2011); Economic and Social Council, ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005).

43. Sentencing and applicable penalties

43. 1. Penalties

a. States must provide for penalties that are proportional to the seriousness of the act of sexual violence.

b. The applicable penalties must take any aggravating circumstances into consideration, including but not limited to the following:

- The vulnerability of the victim: this could be the result of age, disability, status as a displaced person or refugee, socio-economic status, physical or psychological violence that preceded the act of sexual violence or occurred concurrently, the kidnapping of the victim, and the use of or threat to use a weapon;
- The relationship between the victim and the attacker: the existence of a family relationship, status as a former or current spouse or partner, cohabitation, abuse of authority;
- Whether the offence was committed against or in the presence of a child;
- The number of attackers; the presence of accomplices and/or witnesses;
- The knowledge of the attacker that he/she is infected with HIV;
- Whether the offence was repeatedly committed;
- Recidivism;
- The seriousness of the physical or psychological damage caused by the attack.

c. In particular, the applicable penalties must not take any extenuating circumstances into consideration, such as :

- The sexual behaviour of the victim before or after the attack;
- The victim's status as a member of a given group;

- The conjugal relationship between the perpetrator and the victim;
- The time elapsed between the events and the time that the attack was reported or denounced by the victim.

Explanatory Notes: South Africa, Criminal Procedure Act 51 (1979), Criminal Law Amendment Act 105 (1997), and Criminal Law Sentencing Amendment Act 32 (2007); Istanbul Convention; Rules of Procedure and Evidence, International Criminal Court, Rule 70; Criminal Code of Cameroon, Article 298 on aggravating circumstances (2016).

43. 2. Prescription

a. States must take the necessary measures to ensure that prescription does not apply to the most serious sexual offences / those qualified as crimes under the law, to guarantee that victims will have access to justice for these offences throughout their lives.

b. States must take the necessary measures so that, under all circumstances, prescription is prohibited for the penalties provided for the most serious sexual offences / those qualified as crimes under the law.

Explanatory Note: ICGRL, Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, Article 6 (6) (2006).

43. 3. Immunity

States must take the necessary measures to ensure that the official status of the perpetrator or person responsible for the sexual violence cannot be used under any circumstances to waive criminal liability.

43. 4. Clemency, amnesty and pardon

a. States must take the necessary measures to guarantee that no one who has been found responsible for perpetrating acts of sexual violence can benefit from clemency because of their official status.

b. States must take the necessary measures to guarantee that measures related to clemency or pardon are not applied to the perpetrators or persons held responsible for acts of sexual violence.

C. INVESTIGATING AND PROSECUTING CRIMES OF SEXUAL VIOLENCE IN SITUATIONS OF CONFLICT AND CRISIS AS INTERNATIONAL CRIMES

44. International crimes

States must take all measures to enable the prosecution of crimes of sexual violence committed in situations of conflict and crisis as international crimes, providing for them to be prosecuted as crimes of genocide, crimes against humanity, and war crimes in their domestic legislation, in accordance with international criminal law.

45. Evidence

States must take into consideration the context of the conflict or crisis, especially the difficulties in gathering evidence that generally result from the destruction of infrastructure and public services, which commonly occurs in conflict and crisis zones. This means that the evidence collected should come from a variety of sources. Investigators must pay particular attention to any risk factor or contextual element that could reveal the perpetration of possible acts of sexual violence in times of conflict and crisis, especially the following:

- The separation of men and women during military operations;
- The use of civil spaces to shelter armed forces;
- The vulnerability of displaced persons or refugees;
- The conscription of child soldiers within armed groups;
- The use of propaganda or hate messages;
- Specialized public or moral order and other policing units and;
- Behaviour of women or of a specific group.

46. The consent of victims in periods of conflict and crisis

It is considered to be impossible for the victims of sexual violence to give their consent under the circumstances of generalized violence and mass atrocities in which international crimes are committed. For this reason, to avoid any risk of additional injury, the victim must not be questioned about consent. This question must only be allowed when the defence has presented evidence attesting to the consent of the victim, and only with the express permission of the judge. This procedure must take place in private, as must any questioning of the victim regarding consent, if authorized.

47. Types of individual criminal liability

47. 1. Investigators, judges and prosecutors in charge of establishing liability in the perpetration of international crimes of sexual violence must take into consideration all types of individual criminal liability provided for under international criminal law (direct and indirect criminal liability).

47. 2. States must take the necessary measures to guarantee that members of security and defence forces, non-State actors and their respective superiors who are responsible for the perpetration of acts of sexual violence can be held liable for their actions before the criminal courts.

48. Peacekeeping operations

48. 1. States involved in the peacekeeping operations (PKO) of the African Union, the United Nations or any other intergovernmental organisation must implement a vetting procedure to prevent the deployment of persons against whom substantiated accusations of sexual violence have been made. When there is sufficient, reliable and consistent evidence of the alleged responsibility of personnel from a PKO having committed acts of sexual violence during their mission, the personnel must immediately be repatriated to their country of origin to face prosecution and be sentenced according to the laws of that country.

48. 2. States must take the necessary measures to ensure that any of their citizens working in PKO are given training on international humanitarian law and international human rights law, including aspects related to sexual violence, before and during their missions.

49. Creating specialized legal divisions

49. 1. To deal specifically with situations where international crimes have been committed, States are encouraged to create a specialized judicial division within their national legal system with a temporary and specific mandate that is in charge of investigating and prosecuting the perpetrators of international crimes, especially crimes of sexual violence and especially when these crimes are committed in situations of conflict or crisis.

49. 2. These legal divisions must have specialized personnel, including but not limited to criminal investigation

officers, investigating judges, prosecutors, and interpreters, all of whom are specifically trained and accredited in techniques for investigating and prosecuting international crimes of sexual violence and in methods for supporting victims and witnesses. Inasmuch as possible, the activities of these specialized investigators and prosecutors must be exclusively limited to cases brought before the specialized legal division. Where necessary, States must plan to provide psychological support for the personnel of the division.

49. 3. These specialized legal divisions must have sufficient financial, material and human resources to properly fulfill their mandate.

50. Cooperation with intermediaries and civil society organisations

During proceedings to investigate and prosecute crimes of sexual violence committed in situations of conflict or crisis, States must promote cooperation with intermediaries, civil society organisations and the affected communities to establish contact with the victims and witnesses of sexual violence. During this cooperation, guarantees of security for intermediaries and representatives of civil society organisations must be provided.

51. Cooperation with national, regional and international jurisdictions

States must cooperate with all national jurisdictions (which respect international standards for the right to a fair trial and for the protection and security of victims and witnesses), and with regional and international jurisdictions in charge of investigating, prosecuting and establishing responsibility for acts of sexual violence that constitute international crimes, according to their national, regional and international obligations. In particular, these mechanisms include the African Court on Human and Peoples' Rights, mixed tribunals and courts, regional or international investigative commissions and the International Criminal Court (ICC).

Explanatory Notes: Maputo Protocol, Articles 8 and 11 (3); ACHPR, Resolution 283: Resolution on the Situation of Women and Children in Armed Conflict, 2014; Framework agreement for cooperation between the office of the Special Representative of the Secretary-General of the United Nations on Sexual Violence in Situations of Conflict and the Commission of the African Union on the prevention and response to conflict-related sexual violence in Africa (2014); Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda (2014); CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30 (2013); General Assembly of the United Nations, Special measures for protection from sexual exploitation and sexual abuse, A/70/729 (2016); Rome Statute of the International Criminal Court; International Protocol on documentation and investigation of sexual violence in conflict (2014); Women's Initiatives For Gender Justice, Gender in Practice: Guidelines & Methods to address Gender-based Crimes in Armed Conflict, Guidelines for investigating conflict-related sexual and gender-based violence against men and boys, Institute for International Criminal Investigations (2016).

52. Truth, Justice and Reconciliation Commissions

52. 1. After serious violations of human rights or the perpetration of international crimes, by virtue of the right to an effective remedy, States that do not have the capacity to fulfill the need of victims for truth, justice and reparation, especially the victims of sexual violence, through active justice measures or other available means of recourse, are encouraged to use transitional justice tools, including creating a Truth, Justice and Reconciliation Commission (TJRC) or other similar body.

52. 2. Complementarity: These commissions must be instruments that complement the mechanisms for justice and reparation. The complementarity between traditional State bodies and ad hoc transitional justice bodies is especially expressed through respect for enshrined norms and principles, such as the inalienable right of victims to bring their case before the courts. Under no circumstances may such commissions take the place of judicial proceedings or any other process enabling victims to obtain reparation.

52. 3. Mandate: It must be part of the mandate of TJRCs or transitional justice bodies that are created to research and establish the truth regarding acts of sexual violence, their motives and the circumstances under which they were committed, as well as measures of justice and reparation for the victims of these acts.

52. 4. Founding texts: The founding texts on the establishment and operations of TJRCs must include specific provisions : on a balance of genders for the personnel working within the Commissions; on the rights of victims, especially the victims of sexual violence; and on measures for protecting and supporting victims and witnesses of sexual violence, including medical and psychological support. TJRCs must also include in their mandate the formulation of proposals for reparation measures for the victims of sexual violence.

52. 5. Victim-centered approach: Truth, Justice and Reconciliation Commissions must adopt a gender-sensitive approach focused on the victims of sexual violence, that pays particular attention to these victims, especially women and girls, but also men and boys. The Commissions must take into consideration their specific needs, ensure that their voice is heard and seek to establish the impact of the events being considered on the victims of sexual violence, particularly women and girls. Truth, Justice and Reconciliation Commissions must also propose reparation measures for the victims of sexual violence.

52. 6. Composition: States must also ensure that there are enough women among the personnel of TJRCs. A balance between men and women within the personnel should enable better implementation of a gender-based approach, in particular allowing women and girls victims of sexual violence to have their statements taken by women if they wish. The personnel of the TJRCs must receive training on gender, on conducting interviews with the victims of sexual violence and on specific protective measures for them. Hearings for acts of sexual violence should be able to be held either behind closed doors, before a panel of commissioners or, where applicable, before a selected public that may be exclusively made up of women, all according to the wishes of the victims.

52. 7. Reports: In public and non-public reports of TJRCs, a specific chapter should be devoted to sexual violence. This section of the TJRC's reports should present the reasons, facts, and consequences of the sexual violence that took place. As such, the identity of the victims may only be revealed with their approval and only after having evaluated victims' safety concerns. Public and non-public reports of TJRCs must also include specific measures for the victims of sexual violence in the section on reparation.

52. 8. Reparation measures: States must pay particular attention to creating and implementing the reparation measures proposed by TJRCs for the victims of sexual violence. Reparation must include individual and collective measures, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (pursuant to the Part 5 of the *Guidelines*).

52. 9. Compensation and reparation Funds: Financing for the individual or collective reparation measures recommended by TJRCs must be included and provided in the broader context of national funds created for the compensation and reparation of victims, or by a specific fund with enough funding from the State and its partners that provided technical expertise and funding (in accordance with the Part 5 of the *Guidelines*).

52. 10. Cooperation: Organisations that defend the rights of women, those specialized in combating sexual violence and its consequences, the victims of sexual violence and the affected communities must all be consulted at each phase of the process and all must be guaranteed the opportunity to actively participate.

Explanatory Notes: ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle C (b) (3) (2003); Ayumi Kusafuka, Truth Commission and Gender: A South African Case Study, *African Journal on Conflict Resolution*, Vol. 9, No. 2, pp. 45-67 (2009)

A photograph showing three women from behind, looking out a window. They are wearing traditional headwraps and colorful clothing. The scene is brightly lit from the window, creating a silhouette effect on the women.

PART 5. RIGHT TO REPARATION

Three women victims of sexual violence in the Camp Mugunga 3, August 2013, Democratic Republic of Congo.
© Habibou Bangre / AFP.

A. GENERAL PRINCIPLES

53. Right to reparation

States must take the necessary legislative and other measures required to guarantee access to appropriate, efficient, accessible, timeous and long-lasting reparation for injury and loss suffered by victims of sexual violence, as well as access to appropriate information regarding reparation mechanisms. The reparations must be proportional to the seriousness of the violation and injury undergone. Court-ordered and/or administrative reparation must be granted to the victims of sexual violence. States must grant reparation to the victims for acts or omissions for which the States are responsible or for which a physical person or entity is responsible in cases where the latter are not able to or do not agree to repair the injury.

54. Enforcement of reparation orders

States must ensure the enforcement of the reparation orders issued by their national courts against the perpetrators of sexual violence. States must also strive to ensure that decisions to provide reparation that are qualified as *res judicata* and handed down by foreign courts are enforced according to their internal law and international legal obligations. To that end, in their internal legislation, States must provide for effective mechanisms to ensure the enforcement of decisions to provide reparation.

55. National funds

55. 1. To facilitate the access to reparation for victims, States must create, strengthen and/or encourage the establishment of national funds which can benefit victims of sexual violence in priority. A specially dedicated national fund, for reparation for victims of acts of sexual violence, must be created where possible. To be effective, these mechanisms must be appropriately financed by States, their technical and financial partners, private sector stakeholders, and if possible, by the perpetrators of the violence.

55. 2. States must guarantee that victims have access to these funds regardless of whether a complaint is filed, prosecution takes place, or the perpetrators of the violence are identified and/or sentenced.

55. 3. States must ensure that these national funds have a governance structure. In order to guarantee their transparency, sustainability, inclusiveness and effectiveness, their members should include relevant representatives of the State, victims associations, professional associations that are involved (bar associations, medical colleges, etc.) and other relevant civil society organisations.

55. 4. States must ensure that there is cooperation between the governance structures of these funds and relevant actors from the governmental, non-governmental, regional and international spheres in order to guarantee that the greatest possible number of victims is identified and that they have access to appropriate reparation measures.

56. Holistic reparation

Reparation measures must be designed and implemented to meet the needs of victims arising from the acts of sexual violence and must take into consideration all forms of sexual violence and all consequences, including physical, psychological, material, financial, and social consequences, immediate or otherwise, suffered by the victims. The reparations must also go beyond the immediate causes and consequences of the sexual violence and aim to remedy discrimination and structural and political inequality that negatively affect the lives of victims, especially women and girls (see Section B below).

57. Participation of victims in reparation programs

States must ensure that the victims of sexual violence and civil society can participate in designing, creating, implementing, monitoring and evaluating all reparation programs to guarantee that they meet the needs of victims.

B. TYPES OF REPARATION

58. Access of the victims to different types of reparations

States must take the necessary measures to guarantee that the victims of sexual violence have access to different types of reparation, including individual and collective reparation. These measures must be determined by the appropriate authorities based on their relevance, taking into account the context in which the violence was perpetrated (armed conflict, peacetime, scope of the violations, etc.). The types of reparation enumerated below should be accessible for victims of sexual violence.

59. Restitution

Restitution should aim as far as possible to restore victims to the same or similar situation they were in before the violations took place. According to the principle of transformative reparation, this restoration must only be attempted when it does not lead to replicating or perpetuating discrimination against women and girls, or discrimination based on sexual orientation or gender identity. In cases of sexual violence, restitution may include the following: the exercise and enjoyment of human rights, particularly the rights to dignity, security, and health, including sexual and reproductive rights; enjoyment of family life and return to employment and education

60. Compensation

Compensation must be granted for all damages that can be quantified from an economic perspective, such as psychological or physical damages, unwanted pregnancies, job loss, loss of income or potential income, loss of social services and learning opportunities, lost educational opportunities, and compensation for legal, medical and social costs. When this compensation is evaluated, States must ensure that the unpaid domestic labour of women and girls is evaluated at its fair value.

61. Rehabilitation

Rehabilitation must include medical, psychological, legal and social care for the victims. In situations of conflict and crisis, the psychological rehabilitation of the victims may require community therapy and awareness-raising activities for members of their communities, with a view to reducing the stigmatization of victims, encouraging a sense of trust and promoting peaceful coexistence. Providing training to members of the community to lead this type of activity will make it possible to guarantee long-lasting reparation. Income-generating and community solidarity initiatives can promote the social rehabilitation of victims.

62. Satisfaction

Satisfaction is intended to promote the recognition of the damages undergone by the victims of sexual violence. This type of reparation can include verification that the acts of sexual violence took place; full and public disclosure of the truth inasmuch as this does not cause new injury to the victims, especially in terms of stigmatization, and does not threaten the safety or interests of the victims and the witnesses; an official declaration or a court decision that restores the rights of the victims; public apologies from the perpetrators of the violence, especially acknowledgement of the facts and acceptance of responsibility; administrative and court-ordered sanctions against the perpetrators; commemorations and homages to the victims.

63. Guarantees of non-repetition

Guarantees of non-repetition of the violations, which can also contribute to prevention. This form of reparation can include the following:

- Effective control of armed and security forces by civil authorities and command structures in order to prevent the members of these forces from perpetrating sexual violence;
- Education on human rights, including women's rights, in all sectors of society, and training on this topic for those responsible for applying laws and for the personnel of armed and security forces;
- Encouraging compliance with codes of conduct and ethical standards, according to international norms on combating sexual violence;
- Reform of discriminatory laws that contribute to or permit the perpetuation of sexual violence.

Explanatory Notes: Maputo Protocol, Article 25; ACHPR, Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence (2007); SADC Protocol on Gender and Development, Article 32 (2008); Universal Declaration of Human Rights, Article 8; ICCPR, Article 2 (3); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14; Convention on the Rights of the Child, Article 39 (2009); General Assembly of the United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (2005); General Assembly of the United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, par. 13, A/RES/40/34 (1985); United Nations Security Council, Resolutions on women, peace and security, S/RES/1325 (2000), S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1889 (2009), S/RES/1960 (2010), S/RES/2106 (2013), S/RES/2122 (2013), S/RES/2242 (2015); Guidance note of the United Nations Secretary General, Reparations for Conflict-Related Sexual Violence (2014); Rome Statute of the International Criminal Court, Articles 75 and 79; Report of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, A/HRC/14/22, par. 44 (2010); Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007).



PART 6. IMPLEMENTATION OF REGIONAL AND INTERNATIONAL OBLIGATIONS

Hundreds of Angolan hold placards and shout slogans as they march to protest against a draft law that would criminalise all abortion, March 18, 2017, in Luanda, Angola. © Ampe Rogerio / AFP.

64. Ratification

A number of African States have not yet ratified regional and international instruments to combat sexual violence and its consequences, including the Maputo Protocol, CEDAW and its Optional Protocol. These States are encouraged to immediately ratify all of these instruments without reservation.

A. NATIONAL LEGISLATION ON COMBATING SEXUAL VIOLENCE

65. Harmonization of domestic legislation with regional and international instruments

Even though many African States have ratified the Maputo Protocol and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), laws in effect continue to discriminate against women and girls and contribute to the perpetuation of sexual violence across the continent. States must review or repeal all legislation and regulations that contain provisions that discriminate against women and girls, and ensure that their domestic legislation is harmonized with the Maputo Protocol and other regional and international instruments for the protection of women's rights, according to their regional and international obligations.

66. Specific legislation to combat sexual violence

66. 1. States must adopt and apply specific legislation that criminalizes all forms of sexual violence and metes out appropriate punishment to the perpetrators, pursuant to the recommendations outlined in the Part 4 of these *Guidelines*. States should ensure that this legislation provides a definition of sexual violence that allows for combating it in all its forms. This legislation must also be regularly updated and must contain provisions that provide the following in particular:

- measures to prevent sexual violence and its consequences as well as measures to protect and support victims, such as those recommended by these *Guidelines* in Parts 2 and 3;
- rules of civil and criminal procedure that respect the rights and the needs of the victims of sexual violence.

These norms must include but are not limited to the following:

- that the absence of evidence corroborating the victim's testimony does not prevent judicial prosecution as well as the judgment of the perpetrator with respect to the right to a fair trial,
- a prohibition on bringing up the question of the behaviour and sexual past of the victim, including virginity, at all stages of the proceedings,
- a prohibition on any provisions that could result in dissuading victims from denouncing sexual violence, such as rules that could lead to the prosecution of the victims for adultery, "immoral acts", "crimes of indecency", "false allegations" of sexual violence, slander, or mischievous accusations;
- penalties that are appropriate and proportional to the seriousness of the acts of sexual violence committed, pursuant to the guideline 43. 1. of these *Guidelines*;
- the right to a remedy and reparation for victims, pursuant to Part 5 of these *Guidelines*.

66. 2. In order to ensure the consistency of their legal framework and the elimination of all types of sexual violence, their causes and their consequences, States must review or repeal provisions contained in other instruments of their domestic law that are contrary to the legislation adopted / amended, including the Constitution, criminal code, criminal procedural code, military justice code, codes of conduct and operations manuals for the use of military and police forces, civil code, civil procedural code, family code, land code, and health code.

Explanatory Notes: DAW, DESA, United Nations Handbook for Legislation on Violence against Women, ST/ESA/329, pp. 45 and 46, (2010); Addendum to the SADC Declaration on Gender and Development (1997), Prevention and Eradication of Violence against Women and Children (1998) ; SADC Protocol on Gender and Development (2008), Articles 20, 21, 22, 23, 26 and 27. See also the provisions of the legislation of the Republic of South Africa, Criminal Law Amendment Act 32 (2007). See the Namibian Combating of Rape Act (2000), Article 5, which states that: "No court shall treat the evidence of a complainant in criminal proceedings against a person accused of an offense of a sexual or morally wrongful nature with particular caution because of the nature of the wrongful act". See also the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004).

B. GOVERNMENTAL MEASURES

67. Integrated public policy

States must adopt and implement effective and coordinated domestic public policy, focused on the rights of victims, to prevent and combat sexual violence and its consequences. Such public policy is intended to ensure consistency in State action in the legislative, judiciary and administrative domains as well as ensuring appropriate coordination of public policy regarding health, justice, education, prevention, policing and any other public domain of intervention that deals with sexual violence. These public policies must be implemented at all levels of the State by national gender equality institutions and national institutions for protection and promotion of human rights (NHRIs), in close cooperation with civil society actors.

68. National action plans

68. 1. Development of national action plans

- a. States must adopt and/or strengthen new or existing multi-year national action plans to operationalize the integrated public policies on gender equality and combating sexual violence and its consequences. These plans must enunciate a consistent and sustainable programme of activities over the short, medium and long term, with specific goals, enabling the following:
 - cross-cutting integration of the issue of gender equality and combating sexual violence and its consequences in all actions taken by the State (for example, by advocating before those in charge of

institutions, strengthening the capacity of mechanisms for the promotion of gender equality and providing training to the personnel of State institutions and their partners on these topics);

- the implementation of specific policies and programmes for gender equality and for combating sexual violence and its consequences (for example, programmes on promoting equality between men and women, on combating gender-based violence, domestic violence, female genital mutilation, child marriage, etc.).

b. States must ensure that this mainstreaming strategy is properly developed and effectively implemented. This will entail regular analysis and review of the policies and programmes of States to identify any differentiated impact on women, girls, men and boys, and any policies or practices contributing to the perpetuation of sexual violence and its consequences, so that relevant adjustments can then be made.

c. The national action plans of States must include but are not limited to the following provisions: a coordinated strategy to prevent gender inequality and sexual violence and its consequences; evaluations of and possibly amendments to legislation and any other relevant text; a strategy to strengthen, finance and support integrated delivery of service for all stakeholders involved in cases of sexual violence (police, the courts, all services that assist, protect and support victims, the educational sector, international, regional and civil society organisations, the private sector, etc.).

68. 2. Effective implementation of the national action plans

a. Involvement at the highest State level

States must take the necessary legislative and regulatory measures to ensure that these national action plans provide structures for oversight, mobilization, control, support and participation at the highest political levels for all aspects of the plan. An inter-departmental committee made up of ministers and the appropriate high-level political decision-makers must be put in place in order to guarantee that these plans receive the support required for their effective implementation. In particular, this Committee should be exercising influence regarding the necessary legislative and political amendments, playing a role in mobilization to ensure that the bodies charged with executing the plan have appropriate and sufficient resources and, where necessary, becoming involved in certain cases of sexual violence.

b. Implementing authority

States must guarantee that an implementing authority in charge of ensuring that plans are implemented is put in place. It should be made up of senior officials from all ministries and stakeholders involved, including civil society organisations specialized in combating sexual violence and its consequences. This entity will make operational decisions concerning the implementation of the plan and will coordinate all activities at all levels of administration throughout the national territory. The decisions made by this authority should be executed by personnel who are trained and qualified in gender equality and in combating sexual violence and its consequences, in each sector of administration that is involved.

68. 3. Monitoring and evaluation

a. States must ensure that these national action plans are subject to effective and independent monitoring to improve their efficiency. To that end, the plans must have clearly defined objectives and indicators that make it possible to monitor progress and evaluate effectiveness in achieving the goals and performing the activities.

b. States must set up an independent mechanism for monitoring the execution of the plans. This mechanism will: collect and analyse data related to the activities; monitor progress in achieving the goals of the plan; gather information on obstacles and best practices; propose measures to determine future guidelines and priorities to improve the plans; and write evaluation reports.

Explanatory Notes: UN Women, Handbook for National Action Plans on Violence against Women (2012). See the “365 Day National Action Plan to End Violence against Women” in South Africa (2007); the “National Action Plan on Gender Based Violence” in Lesotho (2008); the “National Action Plan to End Violence against Women and Children” in Tanzania (2017/18-2021/22); the “National Action Plan for the Acceleration of the Abandonment of FGM” in Senegal (2000-2005, 2005-2010, 2010-2015); the “National Action Plan to Promote the Elimination of Female Genital Mutilation” (2009) and the activities of the National Committee for Combating the Practice of Excision (SP/CNLPE) in Burkina Faso.

69. National Action Plans on Women, Peace and Security

69. 1. The United Nations Security Council has adopted several resolutions on Women, Peace and Security acknowledging that women and girls are particularly affected by sexual violence during armed conflicts, that this violence can be used as a weapon of war, and that it is urgent to protect women and children from this violence. The resolutions also focus on strengthening the participation of women in the prevention and resolution of conflicts and combating the impunity of perpetrators. States must develop, adopt, and/or strengthen (their) national action plans to implement these resolutions. They must guarantee that the institutions in charge of their implementation have sufficient financing and resources.

69. 2. These action plans must focus on priority goals such as the following:

- implementing or strengthening early warning and rapid response mechanisms to anticipate, detect and quickly respond to cases of sexual violence;
- protecting women and girls against sexual violence in conflict or post-conflict situations;
- strengthening the direct participation of women in managing situations of conflicts and crisis, particularly by increasing their participation in peacekeeping and reconstruction operations while promoting their access to positions within civil and military institutions, including management positions;
- raising awareness in all personnel deployed in peacekeeping operations (PKO) regarding all forms of sexual violence, its consequences for victims, and assisting victims;
- promoting the adoption and implementation of a zero-tolerance policy for sexual violence within PKO ;
- training peacekeeping personnel to deliver awareness-raising workshops on combating sexual violence and its consequences to armed forces and related groups involved in processes for disarmament, demobilization and reintegration;
- combating impunity for the perpetrators of sexual violence.

69. 3. These priority goals must translate into specific objectives with targeted indicators that enable effective implementation and regular evaluation of these action plans.

Explanatory Notes: Maputo Protocol, Articles 10 and 11; see the recommendations of the Special Envoy of the African Union Commission on Women, Peace and Security in her report, “Implementation of the Women, Peace and Security Agenda in Africa” (2016). See the SADC Protocol on Gender and Development, Article 28 (2008). See also the Dakar Declaration on the implementation of UN Security Council Resolution 1325 in West Africa (2010); see the Economic Community of West African States (ECOWAS) action plan for the implementation of UN Security Council Resolutions 1325 and 1820 in West Africa (2010 - 2015); see United Nations Security Council Resolutions S/RES/1325 (2000), S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1889 (2009), S/RES/1960 (2010), S/RES/2106 (2013), S/RES/2122 (2013), S/RES/2242 (2015). See also the United Nations Ten-year Impact Study on Implementation of UN Security Council Resolution 1325 (2000) on Women, Peace and Security in Peacekeeping, Final Report to United Nations Department of Peacekeeping Operations, Department of Field Support (2010).

Nineteen African countries have adopted national action plans to implement UN Security Council Resolution 1325 at the time of writing these Guidelines : Kenya (2016), South Sudan (2016), the Gambia (2014), Central African Republic (2014), Ghana (2012), Senegal (2011), Mali (2012), Nigeria (2013), Burundi (2012), Togo (2012), Burkina Faso (2012), Democratic Republic of the Congo (2010), Sierra Leone (2010), Guinea Bissau (2010), Liberia (2009), Rwanda (2009), Guinea (2009), Uganda (2008), and Côte d'Ivoire (2008). Algeria, Angola, and Tanzania are planning to adopt similar plans sometime in 2017.

C. NATIONAL GENDER EQUALITY INSTITUTIONS AND NATIONAL INSTITUTIONS FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

70. Creation

Pursuant to the *Principles relating to the status and functioning of national institutions for the promotion and protection of human rights* (the Paris Principles), States must establish national gender equality institutions, either constitutionally or through legislation. Where such institutions are lacking, the directives listed below should apply mutatis mutandis to NHRIs.

71. Composition

States must ensure that the procedures governing the creation of these institutions and the appointment of their members guarantee that civil society organisations specialized in combating gender-based violence and discrimination are represented.

72. Independence

States must take the necessary measures to guarantee the independence of these institutions. In particular, these institutions must have sufficient resources of their own (financial, human and material) to ensure their autonomy.

73. Powers

States must allow these institutions to:

- review and evaluate policies, legislation, regulations and practices related to sexual violence and its consequences, and draft public reports;
- recommend the adoption of new legislation and regulations or reforms of the texts relating to sexual violence and its consequences, pursuant to regional and international instruments for the protection of human rights. States must ensure that these institutions are consulted in legislative and regulatory procedures related to sexual violence and its consequences;
- participate in the creation of teaching and training programs related to gender-based violence and discrimination, and the fight against sexual violence and its consequences, and in their implementation;
- conduct investigations relating to sexual violence and its consequences. They must be authorized to receive and examine complaints and to implement sanctions after adversarial proceedings, or to forward these complaints to competent authorities.

74. Referrals

States must take the necessary measures for these institutions to be able to act on their own initiative, or for cases to be referred to them by national authorities, individuals or their representatives, third parties, non-governmental organisations, associations and unions and any other representative organisation.

75. Complementarity and coordination

75. 1. Where applicable, States must ensure that there is good cooperation and coordination between national gender equality institutions and NHRIs.

75. 2. States must take the necessary measures to ensure complementarity between these institutions and any other mechanism for the protection and promotion of human rights, particularly NHRIs. States must encourage and promote good cooperation between these national institutions and the regional and international mechanisms for combating sexual violence and protecting women's rights, such as the Special Rapporteur of the African Commission on Human and Peoples' Rights on the Rights of Women; the Special Envoy of the African Union on Women, Peace and Security; the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences; and the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict.

Explanatory Notes: Principles relating to the status and functioning of national institutions for the promotion and protection of human rights (the "Paris Principles", 1991); Republic of South Africa, Commission on Gender Equality Act, Government Gazette, Vol. 373, No. 17341 (1996). See also the Statutes of the Uganda Human Rights Commission, which has a court that has the jurisdiction, in cases where human rights violations have taken place and under certain conditions, to order that a person who has been imprisoned be released or that compensation be paid or any other means of recourse or remedy for victims be exacted (Article 53 (2) of the Constitution of Uganda).

D. MEASUREMENTS AND STATISTICAL DATA

76. Disaggregated data

States must take the necessary measures for statistics on sexual violence and its consequences to be compiled by independent authorities. In particular, statistics must be compiled on the different forms of sexual violence, their frequency, the personal characteristics of the victims and perpetrators (sex, age, possible disability, etc.), the relationships between victims and perpetrators, the location where the violence took place, the report on the violence, how long it takes to process complaints, investigations launched, prosecution undertaken, sentences handed down to perpetrators, ineffective prosecutions, dismissal of action, acquittals, claims for civil damages, reparation granted to and obtained by the victims, long and short-term consequences for the victims and those around them, including their communities and societies, caused by the violence, and the types of assistance that victims received, among other information. This disaggregated data should serve as a tool to enable States to draw up or adapt their public policy for combating sexual violence and its consequences, and should be publicly available.

77. Information

States must ensure that the persons or organisations approached during statistical research are fully informed of the reasons for collecting their personal data and the measures taken to ensure its confidentiality.

78. Protection of personal data

78. 1. States must ensure that the privacy and confidentiality of the information is absolutely guaranteed by statistics authorities and statisticians and by all who work in the field of statistics, and that this information is used solely for statistical purposes. For example, the statistics collected cannot be used in legal proceedings or administrative decisions against individuals or non-state entities, or by the police and intelligence services.

78. 2. While ensuring the confidentiality of this data, the States must also ensure that the statistics are accessible and are made public.

79. Cooperation

Cooperation between the stakeholders of the African Statistical System (ASS) should be encouraged and facilitated, especially with a view to producing regional statistics on sexual violence and its consequences.

Explanatory Notes: African Union, African Charter on Statistics (2009); United Nations, "Guidelines for Producing Statistics on Violence against Women", ST/ESA/STAT/SER.F/110 (2014).

E. GENDER-RESPONSIVE BUDGETING

80. Allocation of sufficient financial resources

States must allocate sufficient financial resources to prevent and investigate sexual violence, punish perpetrators, protect and support victims, and provide reparations to them. In particular, these resources must allow for the adoption of legislative, judicial, regulatory, and institutional measures as well as all other measures necessary to combat sexual violence and its consequences. States must significantly reduce military expenses and allocate the funds to combating sexual violence and its consequences, as required.

81. Evaluation and adjustments

States must adopt gender-responsive budgeting (GRB) to enable them to identify the beneficiaries of national budgets (women, girls, men and boys) and to analyse the impact of budgetary allocations on promoting gender equality and combating sexual violence and its consequences. This evaluation requires statistics that are disaggregated by sex and the definition of sex-based indicators for all budgets, especially those dealing with justice, health and education. After this diagnosis, if required, States must take the necessary measures to adjust budgets, especially by taking corrective measures to enable the creation of gender-sensitive budgets. These corrective measures must be aimed at financing specific activities, such as establishing one-stop centres or conducting awareness-raising campaigns or trainings under national action plans.

82. Capacity building for civil servants

States must develop and/or strengthen the knowledge and capabilities of all government employees in all departments in charge of financing, planning and budgeting in order to effectively implement GRB in their services. States must guarantee that there is good cooperation between these departments. States must also establish units in charge of coordinating GRB in all ministries, especially during planning and programming phases.

Explanatory Notes: Maputo Protocol, Articles 4 (2) (l), 10 (3) and 26 (2); SADC Guidelines on Gender Responsive Budgeting (2014); United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, final report of the Regional Training Workshop on Gender-Sensitive National Planning and Budgeting for National Machineries for the Advancement of Women, Bamako, Mali (2003); United Nations Development Fund for Women (UNIFEM), Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW (2006). See also Ashwanee Budoo's thesis on the role of gender responsive budgeting in implementing the obligation to provide resources to realize women's rights in Africa, Law faculty of the University of Pretoria (2016). See the initiatives taken in establishing gender responsive budgeting in South Africa and Tanzania.

F. IMPLEMENTATION OF THE GUIDELINES

83. Implementation of the Guidelines

States must adopt legislative, administrative, judicial and all other necessary measures to implement these *Guidelines* and to ensure that the rights and obligations set forth herein are guaranteed in fact and in law, including during armed conflicts, crisis situations and states of emergency. This will include examining legislative and regulatory provisions and all other relevant provisions to ensure that they are compliant with the provisions of the *Guidelines*.

84. Dissemination

States should ensure that these *Guidelines* are broadly disseminated, including at the offices of relevant ministries, local authorities, congressional representatives, national gender equality institutions and NHRIs; to defence and security personnel and personnel in the legal, educational, medical and social fields as well as throughout civil society. Disseminating the *Guidelines* to services that are liable to be the first interveners in assisting victims of sexual violence should be a priority.

85. Training

States must ensure that all government employees in charge of preventing sexual violence, punishing perpetrators and supporting and protecting victims receive effective, appropriate training on the contents and implementation of these *Guidelines*. These *Guidelines* must make up an integral part of programmes for training government employees.

86. Reports

The reports of States that are presented to the Commission every other year pursuant to Article 62 of the African Charter and Article 26 of the Maputo Protocol shall contain a description of progress achieved in implementing these *Guidelines*.

