

WAY FORWARD STRATEGIES AS WE SHARE LESSONS LEARNT

(The Prosecutor Best Practice Manual-Summary of Interventions)

“Who interprets the law is at least as important as who makes the law, if so...I can not stress how critical I consider it to be, that women are represented and a gender perspective integrated at all levels of the investigation, prosecution, defence, witness protection and judiciary.”

The Honourable Navanethem Pillay, former President of the International Tribunal of Rwanda, former judge of the International Criminal Court, the United Nations High Commissioner for Human Rights.¹

From the informative presentation given by my colleague, Linda Bianca it is clear that despite the challenges in investigating and prosecuting sexual violence, positive steps are being considered to ensure that crimes of sexual violence are adequately addressed. This is both encouraging and promising for us as Prosecuting authorities, given our respective obligations to end impunity for acts of sexual violence.

Linda has succinctly highlighted the salient points contained in our Best Manual Report. From that powerful presentation we now understand the recommendations and we can conclude by identifying some of the pertinent points which can assist us in agreeing on or **mapping out way forward strategies which are context specific.**

I hope we can now look forward to engage in a frank and constructive discussion on how, as prosecuting authorities we can contribute both meaningfully and significantly to preventing, responding and prosecuting gender based violence in our different jurisdictions. It is hoped that we can share lessons learnt which can inform on where we need to go from this critical stage in the development of gender justice.

¹ Bendoit, B. and Hall Martinez, K., “Ending Impunity for Gender Crimes under International Criminal Court”, Brown journal of World Affairs, vol.6 pages 65-85.

Some national jurisdictions have already made significant progress and contributions to effectively address crimes of sexual violence, including in post conflict situation. However and generally, many legal systems still have insufficient legal framework, inadequate protection for victims and witnesses, some jurisdictions still lack training of judicial officers or specialized staff interacting with witnesses. In many post conflict and conflict situations women still struggle to find justice. The following questions and discussion can assist in making context specific recommendations during our discussion.

How do Prosecuting authorities develop a prosecution policy and approach which ensures that sexual violence crimes are comprehensively integrated into the investigations and prosecution strategy for the whole institution?

At this stage, as we look forward to a constructive discussion I would like us to briefly focus on **three main issues** as we taken immediate action to address or continue to address gender justice in our respective jurisdictions.

- ❖ Capacity building in our respective jurisdictions.
- ❖ Effective collaboration of all stake holders and all levels
- ❖ Witness Care and Protective Measures

Capacity building in our respective jurisdictions.

As Prosecuting authorities, our work is interrelated to other processes in our jurisdictions. Failure in one area can impact negatively on the whole judicial process when addressing gender violence. In many countries, national legislation lack capacity to address gender violence.

Many questions arise, how do we deal address the issue of increasing the contact and coordination between the prosecuting authorities and the majority of victims who happens to be women² and the investigators working on gender based violence cases.

² Men and boys are violated during conflicts or peace so there is a need to maintain a gender balance when recruiting staff.

Linda referred to coming up with a dedicated Investigations and Prosecutions Team of sexual assault investigators and prosecutors that are competent and experienced in the investigation and prosecution of sexual violence is a process. We need to discuss and share different experiences, not only on how we put up such teams but how we retain them.

- So how then, do we build capacity, what are some of the challenges in our respective context specific situations particularly were we lack resources, inter-departmental sharing of resources including personnel?
- What needs to be done in terms of training and continuing legal education on a regular basis for trial lawyers and investigators on the issue of sexual violence crimes?

Effective collaboration of all stake holders and at all levels

There is a need for collaboration of all stakeholders at local, national, regional and international level to facilitate sharing of information and communication between the following:

- The Entire Judicial system, including customary and traditional institutions like the Gacaca in Rwanda
- Ministry of Justice, gender or Women Ministries
- Prosecution and investigating authorities who in some jurisdictions include the police.
- Civil Society (NGOs, faith based groups, women and men groups)
- Academia and Law society's
- Medical fraternity as physicians can be called to enhance our evidence on the “mental harm” and “bodily harm” aspects of the crime of rape as Genocide.

Investigators and trial lawyers need to be gender sensitive as they are working closely with witnesses. How do we facilitate prosecution strategies which deliberately engage persons with a gender perspective so as to provide the bridge between rhetoric and practice?

How we handle the retention issues for continuity?

Witness Care and Protective Measures Treatment of Witnesses

- Prosecuting authorities can actively support, and actively seek funding for, programs which provide assistance to victims, including programs that deal with victims who have finished testifying. Practically how do we make provision of counselling services before, during and after the trials a possibility?
- Provisions for private and comfortable interviewing facilities.
- The dignity and safety of the victim of sexual violence.
- All staff that interacts with witnesses should be trained to acknowledge and demonstrate concern in response to distress those witnesses may exhibit. What are some of the challenges?
- Protection programs should be designed to protect the victims and witnesses against potential reprisals and be capable of responding to various protection needs.
- How do we ensure counselling services should be made easily accessible to rape victims?
- Issues of specialized medical care should be made available to rape witnesses, which should encompass both physical and psychological assistance.

(Rape victims should receive as a matter of course gynaecological care, including HIV testing if they choose it. Of particular concern to rape victims is the issue of HIV/AIDS most likely contracted as a result of being raped.)

Civil society Organisations, especially local women's and other organizations that can provide support and assistance to women witnesses after the close of the trial in which the witness testified, and, eventually after the close of the Tribunal. How do we engage them in relation to witness care issues like:

- ❖ Ensuring Safety Issues in Rural Settings

- ❖ Provisional arrangements in post conflict situations; (Victim friendly huts whilst putting up proper infrastructures)
- ❖ Shelters from violence-safe houses/huts within communities
- ❖ Raise awareness and support by working with other NGOs and civil groups who working in the areas of public awareness campaigns to sensitise communities
- ❖ . Encouraging all stake holders to address cultural attitudes and practices which result in stigmatisation of victims of rape.
- ❖ Special considerations for the cultural aspects.
- ❖ Special attention to different categories of victims, e.g. elderly and young women, males and children and those living with physical challenges or the visually impaired. (**These** cases would present special problems through the investigation and prosecution stage and would require particular skills.)

Role of Governments:

Working together with our Governments, how can we :

- ✓ Facilitate and implement gender justice reforms with progressive laws based on international standards and human rights instruments
- ✓ Respond to justice needs by ensuring that sexual violence crimes, including rape, sexual slavery and sexual mutilation are fully and fairly investigated and prosecuted, where appropriate, as crimes against humanity, genocide crimes or war crimes in order to show full liability of perpetrators.
- ✓ Balance the obligation to prosecute domestic crimes on the one hand and to give priority to gender based crimes under crimes against humanity, war crimes and genocide on the other, given our limited resources. There is a real need to train and retain competent and specialised staff

- ✓ Deal with complex investigations and prosecutions. And with our broad mandates how do we create detailed action strategies and work plans that not only include a comprehensive analysis of sexual violence charges but administrative procedures.

Lastly it is important that prosecuting authorities at all levels work together to ensure that sexual violence information is ultimately used for the prosecution of perpetrators of gender based violence. With political will we can address gender based violence and make an impact as we bring in quality justice.

“Accountability of the justice sector is based on the principles of transparency, responsibility, participation and responsiveness to citizens (especially the most vulnerable like victims of gender based violence) Representatives of justice institutions must be liable for their actions and should be called to account for malpractice. As prosecuting authorities we have obligations to ensure our institutions operate efficiently and effectively while respecting the rule of law”³

Renifa Madenga

Appeals Counsel –ALAD. 29 November, 2008.

³ Modified from Kristin Valasek “Security Sector and Gender reform”; Geneva centre for the Democratic Control of Armed Forces (DCAF)-UN (Intraw);OECD DAC Handbook on Security system Reform, page 112.