

Challenges to effective protection

by Rose Kimotho

With sexual violence now recognised as a weapon of war and a punishable violation of human rights, it is incumbent upon the international community, national governments and humanitarian organisations to provide more effective protection of women and girls.

The primary obligation to protect women and girls from sexual violence rests with national governments. Many, however, fail to meet this obligation even during peace-time. Women's rights tend to be poorly protected, cases of rape go largely unreported and national records of prosecuting sexual violence and other abuses of women rights are abysmal. Many justice systems, especially within the developing world, are characterised by poor investigations, low arrest records and insensitive judicial procedures that criminalise survivors during trial, further discouraging reporting.

Sexual and gender-based violence (SGBV) in conflict has been prosecuted as a war crime at the international level by the International Criminal Tribunal for the former Yugoslavia (ICTY)¹ and the International Criminal Tribunal for Rwanda (ICTR)². Unfortunately, like their respective national courts, both tribunals have dismal records of prosecution of cases of sexual violence. Established in 1993, the ICTY has 27 indictments related to sexual offences to its credit. The ICTR has only one successful conviction since its inception in 1994, with more than a dozen cases pending that include charges of sexual violence.

Although prevention of SGBV and response to the needs of survivors are now key components of many humanitarian programmes, these initiatives have yet to deliver real protection. Eleven years after UNHCR published the first guidelines on the protection of refugee women,³ efforts by international agencies remain scattered and guidelines themselves are often unevenly implemented.⁴ Their effectiveness in meeting the safety and justice-related needs of survivors is compromised by reliance on national law enforcement agencies and sometimes by religious and cultural traditions. Funding tends to be

only available during the immediate conflict and post-conflict phases and many agency implementation plans do not include long-term rehabilitation and reintegration to help survivors re-establish themselves in their communities.

Strategies for action

National governments must do more to reform their national legislation framework and to domesticate international human rights treaties and conventions on the protection of women's rights. Although more than 90% of UN members have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁵ governments have yet to eliminate discrimination and accord women protection as full and equal citizens – particularly when it comes to sexual violence. Governments emerging from conflict have the opportunity to comply with international treaties while re-establishing the rule of law through new constitutions and legislation and through setting up the judiciary and other public administration institutions.

At the international level, both the ICTY and ICTR must accelerate prosecution processes if they are to complete pending cases before their mandates end in 2010. The establishment of the Special Court for Sierra Leone⁶ and the International Criminal Court (ICC)⁷ seem to hold out more cause for hope regarding international prosecutions. Since the beginning of its operations in 2002, the Special Court for Sierra Leone appears to be taking its mandate as regards sexual violence seriously. Investigations and prosecutions of sexual violence have been an integral part of its activities. Ten of the thirteen indictments issued to date are for crimes of sexual violence,

including rape, sexual enslavement, abduction and forced labour.

The ICC, established in 2001, represents a significant step towards ending the impunity that is commonplace in cases of sexual violence. By criminalising sexual violence, the ICC statute embodies the principles of the various UN conventions and declarations on violence against women. It also provides measures to improve investigations and protection of female witness – weaknesses that have plagued both the ICTY and the ICTR. However, it is only through successful prosecution of crimes that the ICC will fulfil its promise.

Obtaining legal protection is often difficult. Even harder for many survivors of sexual violence is overcoming stigmatisation, for sexual violence is the only crime where the community's reaction is often to stigmatise the victim rather than prosecute the perpetrator. Many victims of sexual violence – especially violence inflicted by fighting forces – are ostracised by their communities, labelled as unmarriageable and regarded as a source of eternal shame for their families. Many leave for towns and cities where, without support or livelihood skills, they often turn to prostitution in order to survive. People's perceptions and attitudes take a long time to change. It is therefore imperative that programmes addressing sexual violence undertake community sensitisation as well as improving economic livelihoods of women and, specifically, survivors of sexual violence.

Rose Kimotho (wanguikimotho@yahoo.com) is a lawyer working on SGBV issues among refugees and IDPs in Kenya, Uganda and Thailand.

1. www.un.org/icty

2. www.ictt.org

3. Updated 2003: www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3f69bccc4

4. [www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5FMC22/\\$FILE/unicef-WomenWarPeace.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5FMC22/$FILE/unicef-WomenWarPeace.pdf?OpenElement)

5. www.un.org/womenwatch/daw/cedaw/

6. www.sc-sl.org

7. www.icc-cpi.int