Introduction

In the period leading up to the 1990s, the world went through an explosion of legal mechanisms, geared at regulating armed conflict which appeared to not only be at an all-time high, but also to have changed in nature. Conflicts were no longer between states only, but had started involving additional non-state actors which the international legal system did not expressly address. These new international legal mechanisms mainly sprung out of the conflicts in former-Yugoslavia and Rwanda which were both highly mediatized and to which the international community could no longer remain silent. Beyond the creation of the tribunals for Rwanda and former-Yugoslavia to address grave violations of International Humanitarian Law (IHL) and crimes against humanity, the world equally witnessed the birth of the International Criminal Court (ICC) in 1998. On the issue of sexual and gender based violence (SGBV) in conflict in particular, these new legal mechanisms proved extremely useful in the investigation and prosecution, at an international level, of SGBV crimes. SGBV crimes in times of conflict are significantly high, with reports indicating that in Rwanda, between 100,000 and 250,000 women were raped during the three months of genocide in 1994; more than 60,000 women were raped during the civil war in Sierra Leone (1991-2002), more than 40,000 in Liberia (1989-2003), and at least 200,000 in the Democratic Republic of the Congo since 1998. It is important to highlight that both men and women alike suffer from SGBV crimes, for the purposes of this paper however, the focus will be on SGBV and protecting the rights of women in conflict.

Building on these positive international legal developments, in Africa in particular a number of conventions and protocols have been ratified by states, and supported by national legislation, which provide an appropriate legal framework to address issues of SGBV in situations of conflict. The situation on the ground in the Democratic Republic of Congo (DRC) and the Central African Republic (CAR) provide relevant illustrations of the implementation of these legal mechanisms, existing limitations, and what can be done beyond litigation to put an end to SGBV. Civil society organisations (CSOs) in particular have a key role to play in developing homegrown mechanisms to support international legal mechanisms that address SGBV, and contribute to peace and reconciliation in societies emerging from conflict.
With this framework in mind, this presentation will discuss SGBV in times of conflict as an interlinked category of structural violence. It will provide an overview of national, continental and international legal mechanisms existing to address this problem, and highlight limitations existing especially at an implementation level, using the cases of the DRC and the CAR in particular. The main argument is that much can be done beyond litigation to support these legal mechanisms and address SGBV in conflict, and that CSOs in particular can play a strategic role in that regard mainly through advocacy, mobilization, and empowerment initiatives.

Femmes Africa Solidarité (FAS) has been using all three strategies in a cross-cutting manner, guided by United Nations Security Council resolution 1325 on women and peace and security and the organization has registered noted successes in Africa in the implementation of the resolution. At the Human Rights Council in Geneva, the United Nations Security Council in New-York or at the Summit of the Heads of State and Governments of the African Union in Addis Ababa, for example, FAS advocates at the highest level of political decision-making to address the issue of SGBV in conflict. At a grassroots and continental level, FAS mobilizes its various partners and networks to be active in the fight to end SGBV, through its role within the Women’s Platform for the Peace, Security and Cooperation Framework, and with the support of the Bujumbura Declaration. It equally empowers grassroots women through training that mainstreams gender, human rights and other issues that directly affect women and SGBV in times of conflict. The value of these is in coordinating the efficient use of tools and mechanisms available to CSOs to have a positive impact on the fight against SGBV. This cross-cutting approach not only empowers agents at the local level, but equally raises awareness on the issue at a global scale, and influences political and legal decision-making processes on the issue at the same time.

Sexual and Gender Based Violence in Conflict

The term structural violence was generated by Johan Galtung, founder of peace studies. It defines violence which is an inherent part of the structure of society, and thus challenging to eradicate. Accordingly, it can be known to cause greater damage due to its insidious nature, and often is the cause for conflict, war, and/or genocide. Looking specifically at structural violence and gender, it refers to “...any form of structural inequality or institutional discrimination that maintains a woman in a subordinate position, whether physical or ideological, to other people within her family, household or community”. Structural Violence is in that sense an interlinked category of SGBV, given that both prioritize masculinities above the rights of women.
Sexual and Gender based violence (SGBV) is that which targets individuals or groups on the basis of their gender, and is a Human Rights violation. The Beijing Platform for Action specifies that gender-based violence includes human rights violations of women in armed conflict, such as: systematic rape, sexual slavery, trafficking, and laws and regulations that limit women’s and girls’ rights and access to services in relation to men’s. Women in situations of conflict are especially exposed, as they face high levels of structural violence.

Women suffer disproportionately from conflict through systematic rape, sexual violence and social and economic vulnerability, due to the breakdown of communities, the collapse of law and order, and a lack of access to basic services. In the context of public international law, and international human rights law, when committed in the context of armed conflict, rape is a war crime. Women are often involved as combatants (voluntarily and forced), and thus exposed even more to SGBV. In Rwanda, half a million women were victims of rape during the 1994 genocide, and in Sierra Leone, 64,000 incidents of SGBV among displaced women were recorded between 1991 and 2001. In recent years, the conflicts in the DRC and the CAR have come under the spotlight with high levels of SGBV characterizing the conflict. The law hasn’t been silent on the matter, the International Criminal Tribunal for Rwanda defined rape as an act of genocide in The Prosecutor v. Akayesu; a groundbreaking definition, as this was the first time rape was recognized as a war crime. At an international level, the ICC included SGBV charges for 70% of its cases, highlighting recognition of SGBV as a crime, and encouraging the participation of gender experts during proceedings. International jurisprudence has improved significantly overall with regard to SGBV, as well as its adoption through ratification by states.

Beyond the Rome Statute, additional international legal instruments exist to cater for SGBV in armed conflict including Public International Law, and International Humanitarian Law (the Geneva Conventions). For Africa in particular, additional international and continental instruments that address SGBV include: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW), the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the United Nations Security Council Resolutions 1325, 1820 & 1960, the African Charter on Human and People’s Rights (ACHPR), and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol). The challenge lies in implementation which suffers from a number of limitations. Though these change from country to country, overall, few countries have officially adopted gender
justice in their laws, and limited attention is paid by the Office of the Prosecutor (ICC) with regards to SGBV. Even when these are included in the charges, they are often set aside and a focus placed on general war crimes and crimes against humanity. This can be explained by the vulnerability of victims, and the attached stigma in communities where the victims and the perpetrators come from, making such cases more complex to prove than others. The cases of the DRC and the CAR illustrate these limitations, and provide an opportunity for an increased role for CSOs in supporting the implementation of these international legal systems.

The Status Quo

Despite the existence of numerous legal mechanisms to oversee SGBV in conflict, challenges and limitations in implementation abound in Africa. The Central African region is a case in point, with increasing levels of SGBV characterizing the conflicts in the Central African Republic (CAR) and the Democratic Republic of Congo (DRC).

The CAR has been host to conflict for decades and in the armed conflict between October 2002 and March 2003, war crimes and crimes against humanity, specifically against women, were committed. In 2003 and 2004, Amnesty International highlighted that SGBV was committed as an attack strategy on the civilian population, by both the government and opposition groups. The International Rescue Committee (IRC) recently identified rape as the most common form of violence experienced by 44% of women and 40% of girls who reported violent incidents in its December 2013 Multi-Cluster/Sector Initial Rapid Assessment. Surprisingly, these events continue to happen unabated despite the CAR’s government’s adoption of national and international legal instruments to counter this.

At a domestic level, three national action plans were established for 2007 to 2011: a National Plan of Action on Human Rights, the National Action Plan to Combat Domestic Violence, and the National Plan of Action on Women's Rights. Recently, in 2013, a National Action Plan for the Implementation of UNSCR 1325 was launched. At an international level, in 2005, the CAR’s government referred the situation of crimes in the country to the Prosecutor of the ICC as a signatory to the Rome Statute. In addition, the country is party to the CEDAW (ratified in 1991), the Palermo Protocol (ratified in 2006), the ACHPR (ratified in 1986, signed in 2003), and the PACHPRRWA (signed in 2008).
In the DRC, the use of rape as a weapon of war to specifically target the civilian population has continued unabated over the years. It has been used by militia, rebels, insurgents, and members of the Congolese army with total impunity. Recorded victims of SGBV include women of all age groups and in South Kivu for example, in 2005, approximately 14,200 cases of sexual violence were reported by health services. Even when the cases are reported, either the suspects are released on bail and never return, or they receive light sentences. To illustrate with numbers, out of 14,200 cases, only 287 were taken to court. Overall, the conflict in the DRC is often defined as a war “waged on the bodies of women and girls.”

In addition to international instruments including the CEDAW (signed 1980, ratified 1986) and the Palermo Protocol (ratified 2005), continental instruments are also at play, including the ACHPR (signed and ratified 1987), and the PACHPRRW (signed 2003, ratified 2008). At a local level, the DRC’s Ministries of Justice and Human Rights and the Ministry for the Status of Women and the Family are heavily involved in the fight to combat SGBV. They work together to support the Truth and Reconciliation Commission (TRC) which collects data on crimes and mass human rights violations, in particular those related to SGBV. The TRC aims to identify victims and explore appropriate protection mechanisms. At a regional level, the International Conference of the Great Lakes Region (ICGLR) has been instrumental in combatting SGBV through a training centre and documentation to support local initiatives to end SGBV in the region; and the AU’s Peace and Security Council (PSC) has initiated a supporting framework. H.E. Mary Robinson has equally supported efforts to combat SGBV through a Women’s Platform for the Peace, Security and Cooperation Framework, of which FAS is a civil society partner.

What is immediately evident is that African States face major challenges in enacting and implementing legal mechanisms to combat SGBV, though there has been progress in recent years. States have been recognized as being responsible for fighting SGBV and protecting women and girls in situations of conflict, and otherwise. The Declaration on the Elimination of Violence against Women (1993) defines SGBV broadly and encourages states to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.” The United Nations Special Rapporteur on Violence Against Women supports states efforts through a system for collecting and analyzing information on violence against women throughout the world. Through this system, it was highlighted that “… that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.” The Rome
Statute in particular addresses SGBV crimes by establishing sexual violence as a crime and articulating procedures for investigating and prosecuting sexual violence offenses. Sexual violence crimes specifically enumerated in the Rome Statute are classified both as war crimes and as crimes against humanity.

Despite the existence of these mechanisms to eradicate SGBV, implementation of current laws has been inadequate. This can mostly be attributed to:

- a lack of resources;
- a lack of skilled personnel;
- a lack of appropriate documentation;
- a lack of long-term national political commitment; and
- weak organizational capacity.

The international community recognizes that addressing SGBV is about addressing structural gender inequalities and harmful social norms, and that it requires significant resources and long-term commitment by all stakeholders and not just governments. The Rome Statute mandates the ICC to apply law that is “…consistent with internationally recognized human rights”, thus providing a compelling argument for the Court to apply relevant nonbinding declarations and resolutions that derive from human rights law. This expressly recognizes that the fight against SGBV cannot be limited to litigation but must be embraced by other actors beyond legislature in order to bring an end to violence against women and girls. For SGBV, some of these include the Vienna Conference on Human Rights (1993), the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women (1995), the Southern African Development Community’s Declaration on Gender and Development (1997) and the Addendum on the Eradication of All Forms of Violence Against Women and Children (1998). These all recognize that violence against women can constitute a violation of human rights and embolden the movement to eradicate SGBV through national and international action.

This mandate highlights the special role INGOs and CSOs have to play in combatting SGBV. The Special Rapporteur on Violence Against Women for example has considered best practices as relevant in fighting violence against women. The development of such practices highlights the role played by these CSOs and human rights activists from the grassroots to the international level. CSOs are mobilizing on, and advocating for prevention, protection, for accountability, reparations and participation. Because this is an issue that is structural in nature, it requires an approach that
reconciles legal systems, with socio-political initiatives that have an impact at a grassroots, local, regional, and international level.

Such CSO efforts to date have included the “All Against Violence” campaign in Zimbabwe, and the Congolese Women’s Campaign Against Sexual Violence in the Democratic Republic of the Congo (DRC). In Rwanda, in tandem to the work done by the ICTR, the Association de Solidarité des Femmes Rwandaises (Asoferwa), Association des Veuves du Génocide d’Avril (AVEGA), and Association des Volontaires de la Paix (AVP) were instrumental in campaigning for steps to be taken to address SGBV crimes during the 1994 genocide. In fact, these efforts are what ultimately influenced the ICTR, in a groundbreaking decision, to define rape as a crime of genocide (war crime) under international law. In Kenya and in South Africa, GROOTS “Grassroots Organizations Operating Together in Sisterhood” and the South African Sonke Gender Justice, have used localized gender justice frameworks in ways that have shifted the legal discourse while transforming wider cultural frameworks. FAS has used the Livingstone Formula as an advocacy tool to link grassroots women and war survivors to policy makers and continental bodies such as the AU on the issue of SGBV. All these initiatives showcase the critical role of CSO’s in placing SGBV on the political and social agenda, and contributing positively to legal implementation and reform.

Unfortunately, the gains derived from such initiatives are often short lived and fragile. Advocacy campaigns lose momentum once the news cycle changes, and face challenges in cementing awareness in communities where the campaigns are enacted. In addition, there is often limited follow up at a decision-making level which means that once key decisions are made, the implementation process is side-lined for other matters that emerge on already busy socio-political agendas. Subsequent empowerment initiatives in that sense are very rarely directly linked to socio-political processes, nor framed within the context of advocacy campaigns. Where they are, this often only happens at the early stages of the action, or at the end, and does not bolster it throughout. This highlights the need for a more concerted approach to the problem which reconciles the strengths of CSOs in a conciliatory manner that makes use of parallel channels at the same time to achieve its goals.

This presentation proposes that CSOs proactively combat SGBV through a combination three main strategies: (1) Advocacy (2) Mobilization (3) Empowerment. FAS has been using all three strategies in a cross-cutting manner, guided by United Nations Security Council resolution 1325 on women and peace and security and the organization has registered noted successes in Africa. At the Human
Rights Council in Geneva, the United Nations Security Council in New-York or at the Summit of the Heads of State and Governments of the African Union in Addis Ababa, FAS advocates to address the issue of gender based violence and sexual violence in conflicts. At a grassroots and continental level, FAS mobilizes its various partners and networks to be active in the fight to end SGBV, through its role within the Gender is my Agenda Campaign, the Women’s Platform and the Bujumbura Declaration. It equally empowers grassroots women through engendered training on human rights and other issues that directly affect women and SGBV in times of conflict.

**Advocacy to end SGBV – FAS experience at the Human Rights Council**

At the HRC, FAS has mobilized its efforts around the issues of peace and security in the Great Lakes and the Sahel region, in the Central African Republic and closely monitors the emerging crisis in Africa. In CAR and Mali, FAS has pleaded for the restoration of peace, security, rule of law and the justice system, in order to allow the fight against sexual violence and impunity, and to protect and assist the victims. FAS has put forward UNSCR 1325, 1820, 1888 and 1889 and demanded their effective implementation, in order to ensure African women’s protection during conflicts and to allow them to be completely integrated in mediation, conflict management, as well as peace building.

**CSOs Role in combatting SGBV in Conflict**

In order for the ICC to better enforce international and regional legal mechanisms in combatting SGBV, it needs to rely on CSOs to support its work in situations of conflict. While a reform of the legal system in most African countries is required, addressing the limitations of international legal mechanisms to effectively investigate and prosecute SGBV crimes in conflict must involve action from more than one stakeholder, and beyond litigation. Legislation has proven to not be sufficient in eradicating SGBV, without political and social initiatives designed to foster its implementation. Because SGBV in conflict constitutes structural violence, an approach that combines community based mechanisms with wider regional initiatives is required. Advocacy, mobilization, and empowerment are all elements which can work together to combat SGBV.

**Advocacy**

Mainstreaming gender in various peace processes is a necessary step in addressing the issue of sexual violence during conflict. This requires maximizing advocacy targeted at prevention, participation and protection.

- For **prevention** purposes, there is a need to advocate for a ‘female force’ that is able to deter violence.
It is necessary for CSOs to advocate for women’s active participation in peace processes, in order to combat SGBV. Women’s inclusion and representation at the negotiation table will create an opportunity to raise awareness on SGBV and to develop mechanisms in order to mitigate the problem at all levels of the peace process.

**Advocacy to end SGBV – linking grassroots efforts to policy makers**

In partnership with the AU panel of the Wise and in collaboration with UN Women and CSOs such as ISIS-WICCE, ACCORD, Urgent Action Fund and Oxfam among others, FAS organized a one-day preparatory meeting on 27 March 2011 in Addis Ababa for women survivors of sexual violence. This preparatory meeting supported the female survivors in the production of a statement and to deliver their testimonies during the 28 March 2011 Livingstone Formula.

CSOs should advocate for the protection of women in times of conflict through peacekeeping troops that are guided by a code of conduct that is gender sensitive. Other protection services that CSOs should strongly advocate for is the provision of psychosocial services for women to accelerate the healing process. This action can range from activities addressing the trauma to activities that target their economic and social life.

CSOs have a critical role to play in the fight to end impunity, by advocating for the development of a stronger monitoring mechanism for SGBV crimes in times of conflict.

**Mobilization**

Women’s groups have mobilized around the issue of SGBV using the UN Security Council Resolutions, particularly 1325 and 1820. FAS approach to this is on full implementation of 1325, which addresses prevention, protection and participation of women in the fight to end SGBV.

CSOs need to mobilize to improve institutional response to SGBV. This mobilization should ideally encourage the implementation of policies on sexual violence, sponsor antiviolence awareness campaigns, and nurture cooperation among the public and private sector, and NGOs to end SGBV.

CSOs need to raise awareness, in the public sector, on the value of collaboration and the need for new levels of coordination and integration between various sectors including the criminal justice system, health, education and employment in the fight against SGBV.

CSOs need to mobilize local communities, through social, political, religious, and other leaders, to speak out against SGBV.
Empowerment

Local communities and those working in the field need full ownership of the various legal and political mechanisms existing to combat SGBV. This full ownership can only be achieved through the empowerment of those on the ground, on the various tools existing to combat SGBV.

- CSOs need to empower women through human rights education, conflict resolution, SGBV, and legal mechanisms existing to protect their rights in times of conflict and beyond.

Femmes Africa Solidarité (FAS) combats SGBV in the DRC

The value of human rights education is critical, in the DRC for example, Femmes Africa Solidarite (FAS) has had the opportunity to provide human rights training to La Dynamique des Femmes Juristes, a major actor in the fight against SGBV in the country.

It has also recently launched a project, in partnership with the US government, to empower women of North and South Kivu. The project will provide training on SGBV and legal mechanisms existing to protect their rights.

- CSOs need to work in partnership with local governments and national agencies to educate communities about all aspects of SGBV including rape, sexual assault, and domestic violence.
- CSOs need to empower communities through activities that shape and promote more equitable gender relations. As an issue that concerns an entire society and not just women, the active role of men in these activities must be encouraged.
- CSOs need to encourage humanitarian agencies to prioritize programs that protect and empower women and girls in times of crisis. Without specific services, emergency assistance often overlooks the special needs of women and further exacerbates their already fragile condition.
- CSOs need to train public officials on aspects of SGBV including rape, sexual assault, and domestic violence; and the legal mechanisms existing to protect women’s rights in times of conflict and beyond.

Conclusion

Femmes Africa Solidarite (FAS) has been using advocacy, mobilization, and empowerment as cross-cutting strategies, guided by United Nations Security Council resolution 1325 on women and peace and security, to positively impact the role of women in peace processes. The organization has registered noted successes in Africa in the participation of women at the peace tables, and subsequently in the inclusion of women’s issues such as SGBV in decision making. At the Human Rights Council in Geneva, the United Nations Security Council in New-York or at the Summit of the Heads of State and Governments of the African Union in Addis Ababa, FAS advocates at the highest
level of political decision-making to address the issue of SGBV in conflict. At a grassroots and continental level, it mobilizes its various partners and networks to be active in the fight to end SGBV, through its role within the Women’s Platform for the Peace, Security and Cooperation Framework, and with the support of the Bujumbura Declaration. It equally empowers grassroots women through training that mainstreams gender, human rights and other issues that directly affect women and SGBV in times of conflict.

The value of using these tools together allow for greater coordination in use of tools and mechanisms available to CSOs to have a positive impact on the fight against SGBV. It can positively impact legal implementation and reform, by raising awareness and encouraging the respect and implementation of national, regional, and international legal mechanisms geared at ending SGBV. This cross-cutting approach not only empowers agents at the local level, but equally raises awareness on the issue at a global scale, and influences political and legal decision-making processes on the issue at the same time. In the long term, if used together, these strategies can have a strong and positive impact on the fight to end SGBV.

\[http://www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml\]

\[In FAS vision, each and every African woman can play a role in conflict prevention and resolution, and peacebuilding, contributing to peace in Africa, while improving their own life at the same time. FAS recognizes that women are disproportionately affected by violent conflicts. However, rather than perceiving women only as passive victims, FAS acknowledges that women are also active civil society agents with skills, strengths, and the potential to bring about positive change for their own countries and themselves, and beyond. With this vision in mind, FAS primary mission is to empower African women to assume a leadership role in building peace. FAS uses international instruments such as the UN Resolution 1325 as its main conceptual framework for guiding its programmes.\]

\[http://www.fasngo.org/assets/files/Great%20Lakes%202013/Bujumbura%20Regional%20Conference%20Declaration.pdf\]


\[It is estimated that 66% of victims of sexual trafficking are women and a further 13% girls, although patterns differ between regions (UNODC, 2009). Most trafficking is for sexual exploitation and prostitution, where women and girls are the main victims.\]

\[SGBV is a strategy of war in violent conflicts, as acknowledged by the UNSCR 1325.\]

\[www.unwomen.org/fr/what-we-do/ending-violence-against-women/facts-and-figures#sthash.UIMAWBOO.dpuf\]


\[The Trial Chamber of the International Criminal Tribunal for Rwanda (the “ICTR”) convicted the accused of genocide and crimes against humanity for acts of sexual violence. This was a ground-breaking decision in the area of SGBV in international law. (ICTR-96-4-T) (1998)\]


\[International Federation for Human Rights (March 2008). Democratic Republic of Congo: Breaking the Cycle of Impunity, No 490/2.\]

\[Statistics from UN Office of Human Rights in South Kivu.\]

xiv  http://www.drcsexualviolence.org/site/en/node/35
*xv  http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=29349&baseHREF=country&baseHR
EFId=437
*xvii  http://www.stopvaw.org/un_special_rapporteur_on_violence_against_women
*xviii  http://www.icc-cpi.int/nr/rwhere/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
*xix  http://www.fasngo.org/Livingstone-Formula.html
xx  See endnote (iii)