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**Joint submission to the UN Special Rapporteur on Violence  
Against Women, its Causes and Consequences, Ms.  
Dubravka Šimonovic**

***Contribution to the thematic report on rape as a grave and  
systematic human rights violation and gender-based violence  
against women***

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## I. INTRODUCTION

1. This contribution to the Special Rapporteur's thematic report on *Rape as a grave and systematic human rights violation and gender-based violence against women* is submitted by the *Association des Juristes Sénégalaises* (Senegal), *Association malienne des droits de l'Homme* (Mali), *Asociación Pro Derechos Humanos* (Peru), *Association tunisienne des femmes démocrates* (Tunisia), International Federation for Human Rights (FIDH), Kenya Human Rights Commission (Kenya), Lawyers for Human Rights (South Africa), *Les Mêmes Droits Pour Tous* (Guinea), *Organisation des femmes actives de Côte d'Ivoire* (Côte d'Ivoire), *Organisation guinéenne de défense des droits de l'Homme et du citoyen* (Guinea), and *Solidarité Fanm Ayisyèn* (Haiti), *Solidarité Féminine pour la Paix et le Développement Intégral* (Democratic Republic of Congo) – together the 'Organisations'.<sup>1</sup>
2. The Organisations are concerned by the prevalence of sexual and gender-based violence (SGBV), impunity of perpetrators and lack of reparation for victims at the national, regional, and international levels. The work of the Special Rapporteur on Violence Against Women, including the harmonisation of national laws with international standards, aligns with the objectives commonly shared by the Organisations, namely to strengthen justice systems, ensure accountability and reparation.

## II. METHODOLOGY

3. This contribution is based on the work of the Organisations to enhance accountability and ensure reparations for victims of SGBV in different regions globally, including through law reform, advocacy, capacity building and litigation before national courts and regional and international human rights and criminal justice mechanisms.<sup>2</sup> The Organisations' experiences reflect situations and practices that occur in a range of countries around the

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<sup>1</sup> For an overview of the work and mission of each organisation, please refer to Annex I.

<sup>2</sup> The *Association des Juristes Sénégalaises* (Senegal) has published several reports on SGBV including a study in 2013 on the harmonisation of the Senegalese law with the Convention on the Elimination of Violence Against Women (CEDAW) and the Maputo Protocol. It also published a report on sexual violence and the legal actions available in Senegal called '*Les violences physiques et sexuelles et les sanctions prévues par la loi*'. *Les Mêmes Droits pour Tous* (Guinea) published in 2015 a compendium on the applicable laws in Guinea regarding female genital mutilation as well as a legal guide for women and girls victims of GBV in 2018. The *Association tunisienne des femmes démocrates* (Tunisia) recently published a report related to SGBV against women, namely the '[In Depth Review Report Issued by the Tunisian Civil Society on the Implementation of the Beijing Declaration and Action Plan](#)' (2020). The Tunisian organisation also submitted a project proposal for a [bill on the protection of women victims of violence in 2018](#) [in French]. The Kenya Human Rights Commission (Kenya) produced in 2017 a shadow report in response to the [Eighth Periodic State Report by Kenya](#) to the CEDAW Committee and published a [joint press statement](#) with Kenyan Women and other civil society organisations on the sexual offences committed against women in 2015. The organisation *Solidarité Féminine pour la Paix et le Développement Intégral* (Democratic Republic of Congo) has also been active in enhancing access to justice for women victims of SGBV through its legal workshops, which outcomes have been published in the 2019 report '*Normaliser les droits des femmes et leur inclusion dans les processus de consolidation de la paix: Accès à la justice pour les survivants de la violence sexuelle et basée sur le genre*'. In 2016, FIDH inaugurated a new program, funded by the OAK Foundation, whose objective is to strengthen accountability for SGBV at the ICC. Within this program, FIDH conducted a project in Ukraine through which it trained its member and partner organisations to better document SGBV. In 2017, FIDH also collaborated with the African Commission on Human and Peoples' Rights in the drafting and development of the Guidelines on combating sexual violence and its consequences in Africa launched during the 61st ordinary session of the African Commission in Banjul (The Gambia).

world and as such help identify general cross-cutting issues and common obstacles shared by SGBV victims when seeking accountability and justice.

4. On the basis of the questionnaire shared by your Office, this joint contribution provides responses to questions 21 to 24 on war and conflict and question 26 regarding additional barriers.<sup>3</sup> Following correspondence with your office, and confirmation that a submission would also be possible and taken into consideration after 20 May 2020, FIDH developed a short questionnaire for interested member leagues to identify potential barriers they may have encountered in their work. The questionnaire was shared in Spanish, French and English.<sup>4</sup> The information provided in response is not exhaustive and is not based on in depth research carried out by all Organisations. The fact that the frameworks and practices of some countries may not be referred to in relation to specific barriers below does therefore not mean that this barrier does not exist in these countries. Rather, the contribution seeks to highlight some common and cross-cutting challenges based on the responses received. Unless otherwise indicated, all country specific information referred to below is based on the contribution from the relevant Organisation.
5. For further information, please contact Dorine Llanta at [dllanta@fidh.org](mailto:dllanta@fidh.org) or Julia Tétrault-Provencher at [jtetrault-provencher@fidh.org](mailto:jtetrault-provencher@fidh.org).

### III. MAIN FINDINGS ON QUESTION 26

#### A. Legal Barriers

6. ***Statutes of limitations for the crime of rape can make it impossible to hold alleged perpetrators to account. This is particularly problematic in cases of SGBV, since for some victims, it can take years before they find the courage to come forward and denounce the crime that was committed against them.***<sup>5</sup> ***Statutes of limitation in national laws are therefore an obstacle to accountability and justice.*** In **Guinea**, for instance, the criminal procedural code foresees a statute of limitation in cases of all crimes, including rape, of 10 years after the commission of the crime.<sup>6</sup>
7. ***Some States have adopted amnesty laws that de facto block the prosecution of rape.*** In **Guinea** and in **Côte d'Ivoire**, the criminal justice system foresees the possibility to grant amnesties for all types of crimes, including rape.<sup>7</sup> According to the work conducted by the *Organisation des femmes actives de Côte d'Ivoire* (OFACI), amnesties have been a major

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<sup>3</sup> “Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.”, available at <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRVAW.aspx>

<sup>4</sup> See in Annex II the questionnaire that was sent to all the participants either in French, Spanish or English.

<sup>5</sup> FIDH, ‘The Impact of Litigation on Combating Sexual Violence and Its Consequences in Africa’, November 2019, p. 21.

<sup>6</sup> The definition of the crime of rape is found under article 268 of the Criminal Code of Guinea while the 10-year prescription is found under article 2 of the Criminal Procedural Code of Guinea.

<sup>7</sup> Code of Criminal Procedure of Guinea, Article 1242; Côte d'Ivoire, Decree N\*2018-669 of December 6 2018 concerning amnesty.

barrier for the prosecution of sexual crimes committed during the post-election crisis in 2010.<sup>8</sup>

8. ***Legal frameworks that are too restrictive in their scope of application also represent a barrier to the prosecution of rape.*** For instance, in **Mali**, the scope of the criminalisation for rape as a crime against humanity and as a war crime is limited to violations committed during international armed conflicts.<sup>9</sup> As noted by the *Association Malienne des Droits de L'Homme* (AMDH) this presents a significant limitation for the prosecution of the crime in the country, especially considering situations such as in central Mali where the armed conflict could be qualified as a non-international armed conflict rather than international.<sup>10</sup>
9. ***The possibility to raise immunity in some circumstances makes it impossible to prosecute certain alleged perpetrators.*** In the **Democratic Republic of Congo (DRC)**, there is no immunity possible for the crime of rape.<sup>11</sup> However, under the *Loi sur le statut des anciens Présidents* (Law on former Heads of States), articles 7 and 8 provide for the personal immunity from prosecution of former Heads of State.<sup>12</sup> Accordingly, it means that in the DRC, a former Head of State cannot be prosecuted for rape.

## **B. Institutional Barriers**

10. ***A high level of corruption in justice system impacts on the independence of legal proceedings, can influence decision makers and prevents funding from being used to combat SGBV.*** Organisations in the **DRC**, **Guinea**, and **Kenya** have noted throughout their work that corruption up to the highest levels can prevent successful prosecutions for SGBV, including rape.
11. In the **DRC**, *Solidarité Féminine pour la Paix et Développement Intégral* (SOFEPADI), is aware of a case where an alleged perpetrator was simply acquitted without legal justification, while *Les Mêmes Droits Pour Tous* (MDT), from **Guinea**, has experienced cases which were dismissed without any reasons, such as a lack of evidence, provided by the authorities. MDT also highlighted concerns that law enforcement authorities were bribed by alleged perpetrators in some cases to shut down their investigations. The Kenya Human Rights Commission (KHRC) also raised concerns regarding the high level of corruption within **Kenya's** National Police Service<sup>13</sup> and the fact that some resources that should have been assigned towards addressing SGBV have been lost to corruption in public offices.

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<sup>8</sup> These concerns about the granting of amnesties were also shared by FIDH, see FIDH, Press Release, 'Côte d'Ivoire: No Amnesty for Serious Crimes of 2010-11 Crisis! Should Not Include War Crimes, Crimes Against Humanity', 2018, available at <https://www.fidh.org/en/region/Africa/cote-d-ivoire/cote-d-ivoire-no-amnesty-for-serious-crimes-of-2010-11-crisis-should>.

<sup>9</sup> Criminal Code of Mali, Article 32, para. 1 and 2 (Loi N° 01-079 du 20 Août 2001 portant Code Pénal du Mali).

<sup>10</sup> FIDH, 'In Central Mali, Civilian Populations Are Caught Between Terrorism and Counterterrorism: Fact-Finding Mission Report', November 2018, p. 68.

<sup>11</sup> Criminal Code, Law n° 06/019 of 20 July 2006 (loi modifiant et complétant le Décret du 06 août 1959 portant Code de Procédure Pénale Congolais) and law n° 09/001 of 10 January 2009 on the protection of the child.

<sup>12</sup> Law on the status of former Heads of State (2018), Article. 7 and 8.

<sup>13</sup> S. Mbataru, 'Kenya Police Ranked Most Corrupt Institution Again', 19 November 2019, <https://www.kenyans.co.ke/news/46556-kenya-police-ranked-most-corrupt-institution-again>.

12. ***The lack of independence in the law enforcement agencies and units undermines the thoroughness and impartiality of the investigation.*** Human rights groups, including organisations in **Haiti, Guinea, and Kenya** have faced situations where alleged complicity between the police officers and alleged perpetrators adversely impacted their capacity to carry on and support the prosecution. For that reason, rape cases, or of other sexual crimes, are not being followed up, as they should be.
13. As recalled by *Solidarite Fanm Ayisyèn* (SOFA) in **Haiti**, there was a case of a former minister who had allegedly raped his secretary. However, despite SOFA's close monitoring of the situation, no investigation was conducted, and the victim was forced to remove her complaint due to threats against her family.
14. Another concrete example was provided by KHRC in relation to the post-election sexual violence committed in 2007 and 2017 in **Kenya**, including by Security Agencies.<sup>14</sup> In these cases, Kenyan authorities failed to investigate and hold perpetrators accountable.<sup>15</sup> According to KHRC, this failure can in part be explained by the fact that the crimes were committed by members of the law enforcement agencies. The organisation is concerned that police officers were not inclined to conduct thorough investigations or that victims feared retaliation.<sup>16</sup>
15. ***The absence of proper training regarding the collection of evidence in SGBV cases resulted in incomplete or inadequate investigative work.*** Organisations in **Tunisia, Guinea, South Africa, Peru and Senegal** have raised these concerns.<sup>17</sup>
16. In **Tunisia**, Organic Law n° 2017-58 (11 August 2017), on the elimination of violence against women, provides for mandatory trainings for medical personnel on the legal impacts of their medical reports and for better coordination between the legal and medical interventions.<sup>18</sup> While the law is to be welcomed, it has yet to be implemented. The *Association tunisienne des femmes démocrates* (ATFD) is concerned by the delay of implementation and fears that the poor quality of the evidence collected during SGBV investigations might be a factor influencing acquittals in certain cases.
17. In **Guinea**, the organisation MDT observed that the *Office national pour la protection du Gender, de l'enfant et des moeurs* - the entity investigating SGBV - did not receive proper training which led to incomplete investigations. Similar concerns were raised by Lawyers for Human Rights (LHR) in **South Africa** regarding the specialised Family, Child and Sexual Violence unit in charge of investigating these crimes. In **Peru**, the *Asociación Pro Derechos Humanos* (APRODEH) explained that due to improper training, law enforcement authorities sometimes believed they did not have direct authority over these crimes. In **Senegal**, the *Association des Juristes Sénégalaises* (AJS) was worried about the outright absence of specialised units to deal with SGBV in the country.

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<sup>14</sup> Report of the Commission of Inquiry into the 2007 Post Election Violence, p. 248, available at [http://www.knchr.org/Portals/0/Reports/Waki\\_Report.pdf](http://www.knchr.org/Portals/0/Reports/Waki_Report.pdf).

<sup>15</sup> Human Rights Watch, <https://www.hrw.org/report/2017/12/14/they-were-men-uniform/sexual-violence-against-women-and-girls-kenyas-2017>.

<sup>16</sup> KHRC, 'Silhouettes of Brutality: An Account of Sexual Violence During and After the 2017 General Election', 2017, p. 55.

<sup>17</sup> This concern is also reflected in FIDH, 'The Impact of Litigation on Combating Sexual Violence and Its Consequences in Africa', November 2019, pp. 17 and 72.

<sup>18</sup> ATFD, Rapport d'examen approfondi de la Société civile tunisienne sur la mise en œuvre de la Déclaration et du Programme d'Actions de Beijing, 2020, p. 44-45.

18. ***The absence of legal trainings for judges and prosecutors, including on the importance of a gender-sensitive approach when dealing with SGBV cases, can adversely impact the entire judicial proceedings and, ultimately, the outcomes of the decision.*** Organisations in **Tunisia**, the **DRC**, **Kenya** and **Peru** have experienced situations where they observed that judges lacked the required gender-sensitivity to adequately rule on a case of SGBV.
19. In **Tunisia** for instance, the organisation had the impression that in situations where judges were ruling on SGBV cases, they were being too formalistic and were interpreting the evidence too restrictively, including by not considering the declaration of the victim as valid evidence. In other cases, ATFD has reported that “virginity-tests” were accepted as evidence to assess if the victim was a virgin, if she was used to sexual intercourse and to judge her morality.<sup>19</sup> Similarly, in the **DRC**, several cases have been raised where the judges acquitted the alleged perpetrators based on the alleged consent of the victims, notwithstanding the fact that the rapes committed in those cases occurred in coercive circumstances.<sup>20</sup>
20. In **Kenya**, KHRC were concerned that the lack of basic understanding from judges and prosecutors of the terms and dynamics surrounding SGBV has led to situations where, for instance, the court accepted medical personnel as expert witnesses, regardless of their expertise and past experience, resulting in cases where unqualified witnesses were used as experts in SGBV cases.<sup>21</sup> Similarly, in **Peru**, APRODEH shared that due to a lack of understanding from judicial actors of the gravity of SGBV, some of them considered these crimes as being minor crimes that were prescriptible.
21. ***Military jurisdictions can also constitute an institutional barrier for victims of SGBV.*** For example, in the **DRC**, concerns were raised regarding the inefficiency of the military justice system.<sup>22</sup> In fact, the organisation SOFEPADI, which has been supporting victims of SGBV through judicial proceedings<sup>23</sup> experienced procedures for cases of sexual violence being delayed, or completely frozen, in part due to the fact that the victim must wait for a case to be initiated by the military prosecutor since victims cannot file complaints directly.

### **C. Obstacles in Practice/Implementation**

22. ***Financial constraints and lack of access to legal assistance for victims of SGBV are an important limitation for victims to obtain justice.*** In **Haiti**, **Senegal**, the **DRC**, and **South Africa**, organisations have noted that the costs of the legal proceedings made it impossible

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<sup>19</sup> ATFD, “Les droits des femmes en Tunisie, Résumé des questions prioritaires soumis par l’Association tunisienne des femmes démocrates (ATFD) au Comité des Nations Unies pour l’élimination de la discrimination à l’égard des femmes 47ème session, October 2010, p.6, available at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ATFD\\_Declaration\\_fr.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ATFD_Declaration_fr.pdf).

<sup>20</sup> FIDH, ‘DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity’, October 2013, p. 44.

<sup>21</sup> K. Shako and M. Kalsi, ‘Forensic observations and recommendations on sexual and gender based violence in Kenya’, 1 Forensic Science International: Synergy 185 (2019), p. 191.

<sup>22</sup> FIDH, ‘DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity’, October 2013, p. 46-47.

<sup>23</sup> See the mission of Solidarité Féminine pour la Paix et le Développement Intégral (SOFEPADI), available at <https://www.sofepadirdc.org/>.

for victims of sexual violence, who are often financially dependent,<sup>24</sup> to have access to an attorney or to continue the legal proceedings until the end.

23. OFACI, in **Côte d’Ivoire**, and ATFD, in **Tunisia**, noted that victims were often unaware of the possibility to have access to judicial assistance and thus were not asking for it.<sup>25</sup> However, even when victims received legal assistance, other costs related to the criminal legal proceedings, including the medical certificate, as noted by OFACI in **Côte d’Ivoire**, or the transportation fees to go to Court, raised by ATFD in **Tunisia**, were other financial obstacles for the victims.
24. *Courts are sometimes inaccessible as they are too far away from the places where the victims are living.* According to the experience of organisations working in the **DRC**, **Senegal**, **Guinea**, and **South Africa**, geographical distances, especially for remote communities, were a barrier to accountability.
25. In the **DRC**, in the province of Ituri, which covers an area of 65’658 km, there is only one chamber of the High Court with jurisdiction over sexual crimes. SOFEPADI has noted that the lack of access to the Court has discouraged some victims who were living more than 1000 km away to file a complaint. Similar situations have been noted by the organisation in the province of North Kivu and in the city of Beni.<sup>26</sup> In **Senegal**, the AJS also witnessed situations where access to legal aid and counsel was virtually impossible, especially in remote and landlocked areas.
26. Similarly, in **Guinea**, MDT explained that the a judicial reform has had an adverse effect on the ability of the victims to file complaints, since victims who opened legal proceedings in the Justice of the Peace tribunal near their homes had their files moved to the lower courts which were not always located in the same city where the victims lived. MDT shared that some had to travel hundreds of kilometres to attend trial.
27. In **South Africa**, LHR reported situations where people living in rural areas turned to customary tribunals and traditional leaders to resolve crimes and disputes in the community due to the geographic remoteness of the High Court. According to LHR, this practice can lead to unfair processes and outcomes that are not in accordance with the laws of the country.
28. *Specific requirements, including the conduct of a Sexual Assault Evidence Kit, and the difficulties in practice to have access to such medical tests, are obstacles to the prosecution of the crime of rape.* This specific issue was raised in the **DRC** and in **Guinea**. In Guinea, victims of sexual violence must obtain a medical certificate provided by a medical examiner to prove that they have been raped. However, according to the *Organisation Guinéenne de défense des droits de l’Homme et du citoyen* (OGDH), the limited number of recognised medical examiners in **Guinea** makes it difficult for victims to have the test conducted and to prosecute the alleged perpetrator.<sup>27</sup> This difficulty was

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<sup>24</sup> FIDH, ‘DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity’, October 2013, p. 55.

<sup>25</sup> For instance, in the case of Tunisia, victims are confused since the Law No 2017-58 provides that all women victims of violence can have access to legal assistance while the Law no 52-2002 provides that only people in precarious financial situations can.

<sup>26</sup> The remoteness of the Courts in the DRC was also raised in FIDH, ‘DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity’, October 2013, p. 47.

<sup>27</sup> FIDH, ‘The Impact of Litigation on Combating Sexual Violence and Its Consequences in Africa’, November 2019, p. 72.

shared by SOFEPADI in the **DRC** and also raised in FIDH's report entitled 'DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity'.<sup>28</sup>

29. *The absence of interpreters, combined with the lack of explanation to the victims during the legal proceedings and the lengthy procedures, make it impossible for some victims to fully understand and participate in the legal process.* According to organisations in **Tunisia**, the **DRC**, and **Haiti**, these limitations in practice have affected the will or the capacity of victims to even lodge a complaint in the first place. Both ATFD in **Tunisia** and SOFEPADI in the **DRC** raised that the lack of understanding from the victims sometimes discouraged them to participate in the legal proceedings until the end.<sup>29</sup> In **Haiti**, SOFA explained that while most of the laws were written in French, the majority of the population was Creole native speakers.
30. Additionally, in **Kenya**, the majority of rape proceedings are taking many years to proceed to judgment.<sup>30</sup> For instance, the complaint in the case *COVAWI & Others v. the Attorney General & Others* was filed by civil society organisations in 2013 and is still pending in front of the Nairobi High Court.<sup>31</sup> The overall experience of KHRC in SGBV cases has shown that such delays within the criminal justice system, especially in relation to SGBV, have been discouraging victims from pursuing the perpetrators as well as creating despair and re-traumatisation.<sup>32</sup>

#### **D. Material Limitations**

31. *Police stations or other law enforcement units are ill-equipped to attend victims of sexual crimes.* These concerns have been raised in several countries, including in **Haiti**, **Tunisia** and the **DRC**.
32. In **Haiti**, the women's rights organisation SOFA has noted that police stations were ill-suited to deal with victims of sexual violence. The stations did not have any isolated area to exchange with the victims or to file and receive complaints. Hence, women had to make their declaration in public.
33. Both in **Tunisia** and in the **DRC**, the fact that in certain police units women could only make their declaration to male police officers has been described by the organisations as an important obstacle for female victims to approach the authorities in the first place since they did not feel comfortable or safe around them.<sup>33</sup>

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<sup>28</sup> FIDH, 'DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity', October 2013, p. 44.

<sup>29</sup> These concerns were also reported by FIDH and its member leagues in the DRC in FIDH, 'DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity', October 2013, p. 53.

<sup>30</sup> 'Kenya's Judicial System Is Failing Survivors of Post-Election Sexual Violence', 23 September 2019, available at <https://reliefweb.int/report/kenya/kenya-s-judicial-system-failing-survivors-post-election-sexual-violence>.

<sup>31</sup> FIDH, 'The Impact of Litigation on Combating Sexual Violence and Its Consequences in Africa', November 2019, p. 62.

<sup>32</sup> Ibid, p. 64.

<sup>33</sup> FIDH, 'DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity', October 2013, p. 49.

34. *Investigators do not have the proper material or resources to ensure that investigations for sexual crime are properly conducted, including collecting the testimony of the victim and evidence.* In the **DRC**, investigators do not benefit from proper documentation tools or do not have the necessary mobility to carry out their investigations properly.<sup>34</sup> Such limitations have a direct impact on the length of the procedures, which, according to SOFEPADI, have been a driving factor forcing victims to accept amicable settlement.

## **E. Social and Cultural Beliefs**

35. *The stereotypes and myths that are influencing how victims are being perceived by their family members and their communities discourage victims to come forward and to publicly denounce the crime.*<sup>35</sup> Organisations in **Peru**, **Tunisia**, **Mali**, the **DRC** and **Kenya** have all reported situations where victims feared stigmatisation and preferred not to lodge a complaint. Similar concerns have been raised by FIDH in cases where victims were clearly stigmatised.
36. In **Peru**, APRODEH has documented situations where the community and family held the victims of rape responsible and did not perceive them as victims. For instance, some women victims of rape living in the Andean communities are considered the “wives” of the military men.<sup>36</sup>
37. In **Tunisia**, the *Meriem Ben Mohamed Case* was a striking example where the social stigmas attached to the victim, especially regarding her “honour”, were major obstacles to accountability.<sup>37</sup> In **Mali**, as explained by AMDH, SGBV is still a taboo. Victims who reported SGBV were stigmatised by their community and were thus less likely to come forward and report the crime.<sup>38</sup>
38. Both SOFEPADI in the **DRC** and KHRC in **Kenya** have witnessed throughout their work that victims feared being ridiculed or re-victimised by their communities.
39. *Cultural and social stigmas, attached to the crime of rape, condition the choice of victims and their families to prioritise amicable settlement to avoid further stigmatisation. In many cases this option constitutes yet another obstacle for access to justice.*<sup>39</sup> In **Côte d’Ivoire** and in **Guinea**, the organisations OFACI and MTD respectively have raised

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<sup>34</sup> FIDH, ‘DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes needed to Fight Impunity’, October 2013, p. 44.

<sup>35</sup> See for instance a study that was conducted in DRC: K. Albutt, J. T. D. Kelly, J. Kabanga and M. VanRooyen (2016), ‘Stigmatisation and rejection of survivors of sexual violence in eastern Democratic Republic of the Congo’, Disasters, Vol. 41, N°2.

<sup>36</sup> Lawyers Without Borders, ‘Fortalecimiento del acceso a la justicia y del litigio estratégico en casos de violencia contra mujeres Memoria del seminario internacional de Abogados sin fronteras Canadá en Guatemala – 2016’, (2016), p. 25, available at [https://www.asfcanada.ca/uploads/publications/uploaded\\_actas-seminario-finallowres-pdf-93.pdf](https://www.asfcanada.ca/uploads/publications/uploaded_actas-seminario-finallowres-pdf-93.pdf)

<sup>37</sup> In Tunisia the Meriem Ben Mohamed Case is a striking example where the social stigma attached to the victim, especially regarding her “honour”, were major obstacle to accountability, FIDH, ‘The Impact of Litigation on combating Sexual Violence and Its Consequences in Africa: Sharing experience and practical advice’, November 2019, p. 28-29.

<sup>38</sup> This was also reported in the joint fact-finding mission report made by FIDH and AMDH, see FIDH and AMDH, ‘In central Mali, Civilian Populations Are Caught Between Terrorism and Counterterrorism: Fact-Finding Mission Report’, November 2018, p. 44.

<sup>39</sup> FIDH, Statement: Sexual and Sexist Violence Against Women’, November 2019, available at <https://www.fidh.org/en/issues/women-s-rights/sexual-and-sexist-violence-against-women>.

concerns relating to cases where religious leaders encouraged amicable settlements instead of judicial prosecution. This practice contributes to underreporting and impunity for sexual violence. In addition, OGDH, in **Guinea**, and AJS, in **Senegal**, are especially concerned by amicable settlements, which, they find, were more frequent when the alleged perpetrator and the victim belonged to the same family since the victim feared discrediting her family.

40. *The absence of training to raise awareness for law enforcement personnel on SGBV can have a direct impact on how the authorities receive the complaint. The different prejudices of actors within the criminal justice system can lead to “victim blaming” or “second victimisation”<sup>40</sup> where the victims are deemed responsible for the crime committed against them.*<sup>41</sup> Organisations in **South Africa**, the **Haiti**, **Tunisia**, and **Guinea** have noted that in certain circumstances, the victims were not listened to or taken seriously. This can discourage victims to seek justice in the first place.
41. In **South Africa**, LHR raised concerns regarding the Family, Child and Sexual Violence Units. These police units are receiving specialised training to detect SGBV. However, in practice, the organisation found that these detectives still showed the same prejudicial views about sexuality and gender than the one held in some segments of the South African society.<sup>42</sup> According to LHR, the lack of sensitivity from the trained personnel of this unit further showed that the training currently received was insufficient.
42. In **Haiti**, **Tunisia** and **Guinea**, organisations have reported that married women who filed complaints against their husbands were often blamed by police officers. In **Haiti**, for instance, SOFA has experienced cases where the victims were required to fix the situation with their husbands and were sent back home. Similar conducts were witnessed by MDT in **Guinea**.
43. In **Tunisia**, ATDH has noted that there was sometime a presumption that victims were responsible for the rape committed against them, in part due to sexist myths and stereotypes still attached to the crime of rape. These included: how the victims behaved, the perceived provocative clothes they were supposedly wearing, the place where they were (a safe environment or not), the relationship held with their aggressor(s) or the fact that they did not fight enough to refuse the sexual act.<sup>43</sup>

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<sup>40</sup> FIDH, ‘The Impact of Litigation on Combating Sexual Violence and Its Consequences in Africa’, November 2019, p. 17.

<sup>41</sup> UNSG, ‘Report of the Secretary-General on Conflict-Related Sexual Violence’, UN Doc. S/2017/249 (2017), p. 6.

<sup>42</sup> Press Article, ‘Rape victims struggle against police flaws’, 8 September 2017, <https://www.news24.com/news24/SouthAfrica/News/rape-victims-struggle-against-police-flaws-20170908>.

<sup>43</sup> See for instance the judgment of Kef’s Lower Court, Case n° 7809, of 26 June 2019.

#### IV. ANSWERS TO QUESTIONS 21 TO 24 – WAR AND CONFLICT

	<b>21. Is rape criminalised as a war crime or crime against humanity?</b>	<b>22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?</b>	<b>23. Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?</b>	<b>24. Has the Rome Statute of (ICC) been ratified?</b>
Côte d'Ivoire	YES	NO	YES	YES
DRC	YES	YES	YES	YES
Guinea	YES	NO	NO	YES
Haiti	NO	NO	NO	NO
Kenya	YES	NO	NO	YES
Mali	YES (War crime only in context of international armed conflict)	NO	NO	YES
Peru	YES	YES	YES	YES
Senegal	YES	NO	YES	YES
South Africa		NO	NO	YES
Tunisia		NO	NO	YES

## ANNEX I

### Overview of the work and mission of the participating organisations

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#### *Asociación Pro Derechos Humanos (Peru)*

The *Asociación Pro Derechos Humanos* (APRODEH) has been defending human rights for the past 36 years. Through its work, the organisation has denounced SGBV and represented women victims of sexual violence during an armed conflict before national jurisdiction and the Inter-American Court of Human Rights, including in the case of Gladys Carol Espinoza. APRODEH has also produced reports on the access to justice and to reparation for women victims within the context of an internal armed conflict.

#### *Association malienne des droits de l'Homme (Mali)*

The *Association malienne des droits de l'Homme* is the first human rights organisation in Mali. Its objective is to disseminate and promote the principles and standards of human rights law, primarily through their protection and the fight against impunity.

#### *Association des Juristes Sénégalaises (Senegal)*

The *Association des Juristes Sénégalaises* is a Senegalese organisation of women lawyers who has always worked as a pioneer in the promotion and protection of the rights of women and children. Among other missions, it assists vulnerable people through the provision of legal and judicial assistance, advice, and support for victims of sexual and gender-based violence and through its “Legal Workshop”.

#### *Association tunisienne des femmes démocrates (Tunisia)*

The *Association tunisienne des femmes démocrates* is a feminist association created in 1989. Its mission is to defend and promote the evolution of women’s rights in the law and in practice, to defend women against all forms of violence and discrimination, to spread the values pertaining to gender equality at all levels, including social, political, economic and legal. The organisation stands in solidarity with all women victims of violence and discrimination and is determined to fight patriarchal oppression.

#### **International Federation for Human Rights**

The International Federation for Human Rights is a federation working with 192 member organisations in 117 countries and collaborating with partner organisations all around the world. These international connections grant FIDH the opportunity to work directly with a plethora of stakeholders, civil society organisations and human right defenders, to benefit from their experience and expertise on a wide variety of issues, including sexual and gender-based violence. The International Justice Desk of the FIDH focuses on fighting impunity and promoting justice through documentation of international crimes, assistance to victims and advocacy for the adoption and implementation of independent procedures and judicial mechanisms.

#### **Kenya Human Rights Commission (Kenya)**

The Kenya Human Rights Commission (KHRC) is a premier and flagship non-governmental organisation in Africa mandated to enhancing human rights centered-governance at all levels with a vision to secure human rights states and societies. The KHRC espouses a very holistic concept

of human rights straddling interventions that are executed under four independent strategic objectives and thematic programs: (1) Transformative Justice; (2) Economic and Social Justice, (3) Political Pluralism and Diversity and (4) Institutional Support and Development.

### **Lawyers for Human Rights (South Africa)**

Lawyers for Human Rights (LHR) has a 40-year track record of using the law as an instrument for change across six thematic portfolios: gender equality, refugees/migrants rights, land/housing rights, environmental rights, penal reform, and strategic litigation. LHR employs impact litigation, research, community education, policy and law reform, and participation in broader social justice movements that seek to strengthen democracy and promote human rights.

### ***Les Mêmes Droits pour Tous (Guinée)***

The non-governmental organisation *Les Mêmes Droit pour Tous* has been working since 2006 to protect the rights of vulnerable people, including detainees, women victims of gender-based violence, children and communities affected by mining activities

### ***Organisation guinéenne de défense des droits de l'Homme et du citoyen (Guinée)***

The *Organisation guinéenne de défense des droits de l'Homme et du citoyen* is an independent non-governmental organisation which promotes, protects and defends human rights. It organises seminars advocating for human rights protection addressed to law enforcement officials, media professionals, and administrative personnel. It also created a human rights training program to raise awareness among citizens living in rural areas. OGDH is particularly active in collecting testimonies from victims and in accompanying them before Guinean judicial authorities.

### ***Organisation des femmes actives de Côte d'Ivoire (Côte d'Ivoire)***

The non-governmental organisation *Organisation des femmes actives de Côte d'Ivoire* is a think tank which, since 2003, has brought together women who value freedom, equality, justice and the well-being of humanity have found themselves in a think tank. The mission of this non-governmental organization is to work for the promotion and protection of human rights, particularly those of women, and to ensure their political, economic and social development.

### ***Solidarité Féminine pour la Paix et le Développement Intégral (Democratic Republic of Congo)***

*Solidarité Féminine pour la Paix et le Développement Intégral* is a Congolese all women's organisation with the mission of defending and promoting the specific rights of women and the families. The organisation notably campaigns for the promotion of gender equality and denounces sexual and gender-based violence against women and girl.

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## ANNEX II

### Template sent to FIDH member organisations to submit their contributions to the report on rape.

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#### **Questions:**

##### ***War and/or conflict:***

- 1) *Is rape criminalised as a war crime or crime against humanity? YES/NO*
- 2) *Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO*
- 3) *Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO*
- 4) *Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO*

##### ***Barriers to accountability:***

5) *“Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context.”*

*To answer this question, please identify whether there are any of the following obstacles that prevent victims of rape from coming forward/ that prevent authorities from investigating allegations of rape:*

*Social/cultural obstacles: stereotypes, myths influencing members of society, including police officer, investigators, judges, but also families of victims and communities. A key example here is the ‘victim blaming’ (please provide specific examples if you have, including specific cases)*

- *Institutional barriers: corruption; no expertise within law enforcement agency; lack of independent law enforcement agency; absence of training (e.g. does a specialised entity exist for sexual violence crimes? Do you know if the authorities receive training on investigating allegations of sexual violence, including rape? Are there cases that would show that investigations are not carried out thoroughly, independently etc.?)*
- *Legal obstacles E.g. an inadequate definition of the crime; statute of limitation/ prescription; amnesty laws; immunity for officials (please provide references to articles/provisions in domestic legislation)*
- *Obstacles in practice: cost of proceedings, access to judicial instances (geographical access but also knowledge of legal mechanisms, etc.), territorial insecurity that discourages travel to present claims before institutions.*
- *Any other obstacles that you have identified in your work that prevent accountability of perpetrators*